



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Eric Somoano
Elevator Inspector
Internal Services Department

Wilfredo Medina
Elevator Selection Supervisor
Internal Services Department

Nicolas Ortiz
Elevator Selection Manager
Internal Services Department

Lorena Zapustas
Assistant Division Director
Internal Services Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-26, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: March 1, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts: You are employed as an Elevator Inspector for the Internal Services Department (ISD). You would like to engage in outside employment as an Elevator Inspector for a private company, Jacksonville Elevator Inspection Services (JEIS).

As an Elevator Inspector, there are two areas to which you may be assigned, contract management or enforcement/regulatory. Both areas are tasked with the overall regulation of the elevator industry in Miami-Dade County. Contract management ensures that service providers are meeting

contractual obligations, and the enforcement/regulatory side has authority over inspections, permits, and periodic inspections. You previously were assigned to the contract management section but have been recently transferred to the regulatory section. Your role as a regulatory inspector includes inspecting elevators, escalators, moving walkways, dumbwaiters, wheelchair lifts, and other types of conveyances enforceable by the Florida Building Code, American Society of Mechanical Engineers (ASME) and National Fire Protection Association (NFPA). You are tasked with ensuring compliance and safety. Per your supervisor, Wilfredo Medina, your assignment to the enforcement/regulatory area means that you now have authority and oversight over the elevator industry in Miami-Dade County, which would include Miami-Dade County buildings and private company providers.

JEIS is a private elevator inspection company that performs inspections on elevators, escalators, wheelchair lifts, dumbwaiters. JEIS performs inspections in Miami Dade County and all throughout the State of Florida.

You would be employed with JEIS as an elevator inspector performing the same duties as your County position. As part of your duties with JEIS, you would *not* perform or witness inspections in Miami-Dade County. You confirmed with JEIS that it is not a County vendor and has no current County contracts; however, **JEIS witnesses inspections in Miami-Dade County, which would bring them within the authority of your County department.** You advise that your work with JEIS would occur outside your County hours and you will not interact with County employees or departments in your outside employment.

You also indicated that you are likely to come in contact with the same or similar people or entities in both your outside employment and County position. You explained that the elevator industry is very small and the same technicians that perform inspections for the County are the same technicians that perform inspections in the private sector. Also, the same resources i.e., tools and books, are used in both positions. You advised that while these are the same resources that you use in your County position, these are resources that you owned prior to becoming a County employee and have continued to use in your current position. You further advise that you would *not* be using County resources for your outside employment.

Issue: Whether any prohibited conflicts of interest may exist between your employment as an Elevator Inspector for ISD and your prospective outside employment for a private elevator inspection company, JEIS.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

The County's Administrative Order No. 7-1 gives a County department director the ultimate discretion to deny outside employment if he or she finds that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

The Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee's County responsibilities and their outside job duties. In consideration of your inquiry, we must look to several factors, one of which is whether there is similarity in your duties as an Elevator Inspector for ISD and your prospective work with JEIS. In this instance, it is quite clear that both positions require you utilize the same knowledge base involving elevator inspections; however, similarity in your duties alone are not enough to determine whether a prohibited conflict of interest exists.

The Ethics Commission has previously opined that a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12-07 which noted that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing in the two positions does not preclude you from engaging in outside employment provided any necessary limitations are imposed. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company does not in and of itself create a conflict of interest. *See* INQ 20-43.

Moreover, in RQO 00-10, the Ethics Commission did not find a conflict of interest for a County employee working for WASD as a water treatment plant officer to engage in outside employment performing *similar* functions for a company which operates water treatment plants for entities not served by the County. Similarly, in RQO 04-168, the Ethics Commission opined that, *with limitations*, a County land surveyor may engage in outside employment as land surveyor for private clients, including other municipalities. Also, in RQO 12-07, the Ethics Commission concluded that, *with limitations*, a County liability claims adjuster at ISD-Risk Management could work as a private risk management consultant (performing similar duties).

Nevertheless, other factors are indicative of potential conflicts between an employee's public duties and his or her outside employer duties. Some of these factors include whether the County employee will come in contact with the same or similar people or entities in both his outside employment and County position (e.g., similar personnel, clients, suppliers, or subcontractors); whether the employee performs his duties outside his County hours; whether the employee uses the same or similar resources in both positions; whether the employee in his outside employment would be required to interact with County employees; and whether the outside employer is regulated by the employee's department.

Here, your duties will bring you in contact with the same or similar people or entities in both positions and the resources used to complete your duties are also the same. However, you would not use County resources in your outside employment; your outside employment would be outside your County hours; and you would not come into contact with County employees or departments in your outside work. The remaining issue is the fact that while you would not be witnessing inspections in Miami-Dade County, your outside employer, JEIS, would still perform inspections in Miami-Dade County, which would bring them within the jurisdiction of the enforcement/regulatory purpose of your department.

It is important to note, in RQO 10-01, the Ethics Commission found no conflict of interest for an elevator contract specialist for Miami-Dade Transit, responsible for evaluating the performance of Transit contractors in their construction and maintenance of elevators in transit facilities including inspections of elevators to ensure compliance with state and local safety codes, to conduct elevator safety inspections for his privately-owned company *as long as his firm does not do any work for governmental entities and the employee is not responsible for evaluating any work that may be done by his firm*. Additionally, “the Commission found that the employee may perform outside employment as an elevator inspector but *he may not perform inspections on work done by vendors that he supervises in his public capacity.*” *Id* (emphasis added). “**If the employee is evaluating work by the same companies in both capacities, then it may impair his independence of judgment in his public capacity.**” *Id*. The Ethics Commission directed the Transit Department to monitor the employee’s activities to ensure compliance. *See id*.

In this case, JEIS would conduct inspections in Miami-Dade County, even if your employment with JEIS would not require you to be *the* inspector completing the work. This means that, contrary to the above opinion, you and your department would be responsible for evaluating the work done by JEIS. Additionally, after consulting with the Elevator Section Manager, Nicolas Ortiz, he advised that he is also aware of the Ethics Commission’s findings in RQO 10-01; however, the opinion was issued to an employee of the Elevator Department of Miami-Dade Transit (Transit) not ISD. Mr. Ortiz noted while it may appear that the duties of Transit and ISD are similar, Transit does not have the same regulatory authority as ISD, and, in fact, ISD has regulatory authority over inspections completed and submitted by Transit. ISD has regulatory authority over *all* elevator companies and inspections including those completed by third party providers and County departments. Additionally, while the Ethics Commission directed Transit to monitor the employee’s activities to ensure compliance, Mr. Ortiz indicated that such a direction would be impractical and unfeasible in his department.

Based on the facts presented here and after consultation with your supervisors, we find that a conflict exists between your County employment and your potential outside employment with JEIS. The conflict arises due to the regulatory nature of your County position, and the potential that you and your department would have regulatory authority over your outside employer, which may impair your independence of judgment in your public capacity.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.