



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Elizabeth Lubin
Treatment Plant Operator 1
Miami-Dade Water and Sewer Department

Omar Lopez
Treatment Plant Supervisor
Miami-Dade Water and Sewer Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-79 Conflicting /Outside employment, Sections 2-11.1(k)(2) and (j),
County Ethics Code

DATE: May 9, 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 a Treatment Plant Operator 1 for the Miami-Dade Water and Sewer Department (WASD). You would like to engage in outside employment as baker for your privately-owned company, Liz's Tasty Treats LLC.

As a Treatment Plant Operator 1, you monitor equipment on the plant and are responsible for performing plant operation and maintenance duties in manner consistent with standard operating practices compliant with State and Federal standards to protect the public health and environment.

You would like to engage in outside employment as a baker and owner of Liz's Tasty Treats LLC (Liz's Tasty Treats), during which you will bake treats for purchase by request. You advise that Liz's Tasty Treats is not a County vendor nor are you seeking to become a County vendor. Your job duties will include baking and decorating cakes and pies. You advise that you will not be required to come into contact with the same people, clients, or entities in your position with the County and with Liz's Tasty Treats. You will not utilize the same or similar resources for your outside employment. Your outside employment would not require interactions with County

employees, departments, or County boards. Lastly, you advise that your work for Liz's Tasty Treats would be performed outside of your County hours.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your prospective outside employment for your privately-owned company, Liz's Tasty Treats.

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." Thus, County department directors have the 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* County's Administrative Order 7-1 and RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors 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.

As noted above, 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. The Ethics Commission has previously opined that a WASD employee does not have a conflict of interest regarding his outside employment performing interior remodeling work through his privately-owned company, Kevin Construction Services Corp, because his outside employment is unrelated to his County duties; would not impair his independence of judgment in the performance of his duties; and it will not conflict with his County employment hours. *See* INQ 18-79. Additionally, A WASD employee does not have a conflict of interest involving his employment at the County and his work as a referee for Miami Roller Hockey, LLC, a County vendor, because his outside employment would not impair his independence of judgment in the performance of his public duties. *See* INQ 18-182. Lastly, a WASD Environmental Chemist does not have a conflict of interest regarding his employment at the County and his outside employment as a life insurance agent for Primerica, Inc., because his outside employment would not impair his independence of judgment in the performance of his County duties, as there is no overlap in the position duties; and he will not use any County time or resources in his outside employment. *See* INQ 21-47.

Based on the information provided, it appears to be unlikely that the type of outside employment that you are seeking to engage in would impair your independence of judgment in the performance of your County duties as Treatment Plant Operator 1 for WASD. This is because there is no overlap between your public duties and your outside employment; you will not assist the same clients; you will not use the same resources; your outside employment does not require you to

interact with other County employees; and the work would be performed outside your County hours.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of yourself or Liz's Tasty Treats. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself or Liz's Tasty Treats. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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.