



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Carolina Castrillon
Manager of PROS Capital Improvement
Miami-Dade Parks, Recreation, and Open Spaces

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-91, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

DATE: May 26, 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 Manager of Capital Improvement for the Miami-Dade Parks, Recreation, and Open Spaces Department (PROS). You would like to engage in outside employment as President of your private company, Castina Construction, Inc.

As a Manager of Capital Improvement for PROS, you manage and supervise capital reports, estimates, and budget forms and schedules.

Your private company, Castina Construction, Inc. (Castina) will provide general contractor and construction management for residential projects. You will act as President of Castina, reviewing construction proposals and overseeing permitting and project completion. Castina is no longer a County vendor.¹ You advise that your work with Castina would occur outside your County hours.

¹ You previously sought guidance from the Ethics Commission for Castina to become a County vendor; more specifically, Castina was to provide construction services to departments such as the Department of Transportation & Public Works and the Miami-Dade Aviation Department. See INQ 19-67. The Ethics Commission opined that you may contract with the County through your privately-owned company, but you may not contract with the County's

You also indicate that your work would not require the use of any equipment or resources which you use in your County employment nor would you work with the same clients.

Issue: Whether any prohibited conflicts of interest may exist between your employment as a Manager of Capital Improvement for PROS and your prospective outside employment for your privately-owned company, Castina Construction, Inc.

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 Water and Sewer Department employee does not have a conflict of interest regarding his outside employment performing interior remodeling work through his privately-owned company 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 PROS Construction Manager does not have a conflict of interest regarding his employment at the County and his outside employment as a freelance civil engineer because his outside employment would not impair his independence of judgment in the performance of his County duties as he will not transact business with the County or any County vendor; he will work exclusively on residential projects; and he will not use any County time or resources in his outside employment. *See* INQ 21-54. Lastly, a Contract Compliance Officer for the Internal Services Department does not have a conflict of interest regarding her employment at the County and her outside employment as the owner of a construction company because her outside employment would not impair her independence of judgment in the performance of her

Parks Department which employs you; and you may not lobby the County for the contract. *See id.* As you are no longer seeking contract with the County, this is no longer a concern.

county duties as she will not transact business with the County or any County vendor; and she will not use any County time or resources in her outside employment. *See* INQ 21-22.

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 a Manager of Capital Improvement for PROS. This is because there is no overlap between your public duties and your outside employment; Castina will not contract with the County; it will perform work for private residential properties; it does not perform work for any other entities that are County vendors; 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 may not conduct business with and/or employ any vendor or subcontractor with which you encounter, supervise, inspect, oversee, or are otherwise involved with in the performance of your County duties. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- 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 Castina, or for the benefit of Castina clients. *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, Castina, or Castina clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent Castina or Castina clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for Castina, it is important to note that you would be prohibited from doing any such activities on behalf of Castina or its clients.

- 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.