

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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June 6, 2022

Via U.S. Mail & email:
dwilliams@Opalockafl.gov

Darvin E. Williams, Esq.
Interim City Manager
City of Opa-locka
780 Fisherman Street, 4th Floor
Opa-locka, Florida 33054

Re: INQ 2022-98, Outside Conflicting Employment, Section 2-11.1(j), County Ethics Code

Dear Mr. Williams:

Thank you contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the County Ethics Code to your service as the founder and President of Wellspring Community Resources, Inc.

Facts:

You are the Interim City Manager for the City of Opa-locka, Florida. You were appointed on or about April 5, 2022. Previously, you were an Assistant City Manager for Opa-locka in 2018 and 2019.

You are the incorporator and President of Wellspring Community Resources, Inc., a Florida nonprofit corporation (WCR). You do not currently receive compensation from WCR, but you are actively engaged in the running of the entity inasmuch as WCR does not have any paid employees.

On or about August 31, 2020, the Board of County Commissioners adopted Resolution R-822-20 declaring three county owned parcels (“Jackson North Maternity Center” or “JNMC” site) surplus and approved of a long-term lease and development agreement between the county and WCR.¹

¹ The site used to house the now closed Jackson North Maternity Center.

The JNMC site is generally located at 14701 Northwest 27th Avenue, in Opa-locka, Florida. The agreement requires the development of a medical office complex and affordable housing. The Resolution also approved allocation of up to \$2,800,000 to WCR to fund eligible infrastructure projects related to the development.²

The Opa-locka City Commission approved the final site plan for the construction and operation of a senior affordable housing facility at the JNMC location on July 23, 2021. The Commission also adopted a Resolution approving a Development Agreement between the City of Opa-locka and WCR for the construction and operation of a senior affordable housing facility on the JNMC site.

The Resolution approved the development agreement between the City of Opa-locka, Florida and WRC. The actual accompanying agreement is between the City and WAL. You have advised that WRC has “contracted” with WAL to develop and construct the affordable housing component of the development.³

You appeared in support of the two agenda items as is noted in the minutes of the Opa-locka City Commission meeting of that date.

It is anticipated that the project will be on the agenda of the Opa-locka City Commission in the future. Action on the project was recently before the Commission but action was deferred.

There is a municipal thoroughfare that abuts the above-described parcel. There are infrastructure deficiencies that regularly cause the thoroughfare, at the southeast corner of the parcel, to flood and collapse. There are clay water pipes under the thoroughfare that date back to the 1970’s and have outlived their usable lifespan. The pipes leak and thus during rain events, the leaking pipes cause the street surface above to flood and on occasion collapse. It is estimated that a complete repair of the infrastructure along the entire thoroughfare will cost approximately \$10,800,000.

The City of Opa-locka has recently approved the use of approximately \$8,000,000 to repair the above-described infrastructure deficiencies. WRC will contribute the approximately \$2,800,000 provided for by county resolution.

There are several departments in Opa-locka whose directors and employees may be engaged in some manner in inspecting, reviewing, or approval aspects of the development, construction and

² WRC is currently seeking a modification of the lease agreement with the County. Another entity, Wellspring Apartments, LLC, (WAL) is due to become the tenant on a portion of the JNMC site and will assume responsibility for housing component of the development. It is believed that Kareem Brantley is the principal of WAL, either directly or through his affiliation with another entity, Integral Development, LLC (Integral). Integral’s chief executive officer is Egbert Perry.

³ The agreement’s predicate clauses provide that WAL is the *fee simple owner* of a portion of the JNMC site. This appears to conflict with the lease agreement between Miami-Dade County and WCR that designates WCR as the *long-term leaseholder*. However, this discrepancy is outside of the parameters of this opinion.

operation of the medical office complex and affordable housing project planned for the properties located at 14701 Northwest 27th Avenue, in Opa-locka, Florida. The same department directors and employees will likely be engaged in the infrastructure repairs to the abutting thoroughfare and underground water pipes.

The following departments may be involved with the projects: Public Works, Planning and Community Development, Code Enforcement, Building and Licenses, and Finance.

All these municipal department directors and employees are either direct or indirect reports to you, as the Interim City Manager for the City of Opa-locka.

Issues:

Whether your dual employment as the Opa-locka Interim City Manager and the President of Wellspring Community Resources, Inc. (WCR), an active Florida nonprofit corporation, while WCR is developing, remodeling, or constructing a medical office complex and senior affordable housing facility complex located in the City of Opa-locka, Florida, is permissible under Section 2-11.1 (j) of the County Ethics Code relating to conflicting outside employment.

Whether your contract as President of Wellspring Community Resources, Inc. (WRC), an active Florida nonprofit corporation, with Wellspring Apartments, LLC, that in turn is party to a development agreement with the City of Opa-locka for the construction and operation of a senior affordable housing facility, is permissible under Section 2-11.1(u) of the County Ethics Code.

Discussion:

As the Interim City Manager for the City of Opa-locka, you are a covered person under the County Ethics Code and are included in the category defined as “departmental personnel” as provided for in Section 2-11.1(b)(5) of the Code. Departmental personnel include County and municipal employees serving as government chief executives and department heads.

Covered persons engage in “outside employment” when they serve in a compensated or uncompensated basis as an Executive Director, President, or perform some other managerial role in a nonprofit entity. ⁴

Moreover, even if a member of the departmental personnel class of covered persons were not engaged in the active management of a nonprofit, in abundance of caution because of the public and prominent nature of the positions held by this category of employees, prior ethics opinions have treated lesser engagement with a nonprofit as outside employment. ⁵

Section 2-11.1(j) of the County Ethics Code, prohibits employees from engaging in outside employment that would impair the employee’s independence of judgment in the performance of his or her public duties.

⁴ RQO 17-03

⁵ INQ 2021-70, INQ 2021-89

When providing opinions regarding outside employment, the Ethics Commission considers several factors that may be indicative of potential conflicts between an employee's public and private outside employment duties. These include:

- 1) whether the employee will come in contact with the same people or entities in both the public and outside employment; and
- 2) whether the outside employment will require the employee to interact with municipal employees; and
- 3) whether the outside employment can only, or primarily, be accomplished during the same regular business hours in which the employee is required to work for the county or municipality; and
- 4) most importantly, whether the outside employment is likely to place the County or Municipal employee in situations in which private economic considerations may override the faithful discharge of his/her public responsibilities.⁶

In this instance, it is likely that you will interact with the same people or entities in your public and private roles as regards the JBC Project. These will include elected officials and community leaders in Opa-locka with a civic interest in the development of the JNMC site.

It is expected that in your private role you will be engaged with Opa-locka municipal employees in the Public Works, Planning and Community Development, Code Enforcement, Building and Licenses, and Finance departments who will be inspecting, reviewing, and approving aspects of the project.

Also, these various municipal department employees are likely to be involved in their official roles regarding the development during the regular business day when you are required to be available as a municipal manager and administrator.

Finally, the outside employment may well place you in situations in which economic and legal considerations as the President of WCR will conflict with the faithful discharge of your public responsibilities.

Sections 2-11.1(c) and (d) of the County Ethics Code generally prohibit a public official or employee from entering into any contract or transacting business with the County in his or her individual capacity, through an immediate family member or through a firm, corporation, partnership, or business entity (collectively "entities") if the employee or family member has a controlling financial interest in the entity.

In this case, it appears that WAL is the party that has entered into a development agreement with the City of Opa-locka, not your own nonprofit, WCR. You have advised that WCR has contracted with WAL to develop the affordable housing component of the development at the JNMC site.

⁶ See generally Ethics Commission Outside Employment Guidelines, May 2019.

Section 2-11.1(u) of the Ethics Code provides that a municipal manger may not enter into a business transaction with persons or entities that are contracting with the city “unless said business transaction is an arm’s length transaction made in the ordinary course of business.” Business transaction includes a contract where persons render services for value or consideration. This prohibition is designed to prevent preferential treatment from being afforded to a municipal employee by a private entity that is contracting with the employee’s municipality.⁷

The exact nature of the agreement between WRC and WAL or Integral is unknown. Nevertheless, the terms should be comparable to those afforded similarly situated persons or parties. The Ethics Commission has in the past suggested that covered persons should make public the contracts between covered persons and persons or parties that are transacting with the covered person’s employing municipality.

Opinion

Based on the facts presented, your outside employment as the founder and President of Wellspring Community Resources, Inc. (WCR), an active Florida nonprofit corporation, while WCR is developing, remodeling, or constructing a medical office complex and senior affordable housing facility complex and accompanying public works improvements, located in the City of Opa-locka, Florida, constitutes conflicting outside employment and is not permissible under Section 2-11.1 (j) of the County Ethics Code.

There is simply far too much overlap between your public role as the Interim City Manager for Opa-locka, and your private role with WRC, while that entity is engaged in varying degrees with the development and construction of a project in the City of Opa-locka, and abutting public works improvements, worth millions of dollars.

In other scenarios, the Ethics Commission has suggested that an internal separation between the employee’s public role and the private employment might provide a sufficient mechanism to avoid conflicts of interests. However, in this case, this is not possible as there are too many municipal departments that will be involved in the JNMC site development and abutting public works improvements.

The Ethics Commission does not have the authority to interpret or enforce state statutes, and thus it is recommended that you consult with the Florida Ethics Commission regarding the interpretation and application of section 112.313(7), Florida Statutes, which provides that no public officer shall have or hold any employment or contractual relationship with any business entity or agency which is doing business with the agency of which she is an employee.

⁷ See RQO 2021-01, RQO 12-05.

But see Section 112.313(7), Florida Statutes, provides that no public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or agency which is doing business with the agency of which she is an employee.

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. Again, questions regarding state ethics laws should be addressed to the Florida Commission on Ethics and Public Trust.

Please do not hesitate to contact me should you require any additional assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jose J. Arrojo".

Jose J. Arrojo
Executive Director

cc: All COE Legal Staff

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.