



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Johnson Louis
Accountant 2
Miami-Dade County Seaport Department

David Fung-On
Accountant 4
Miami-Dade County Seaport Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-99, Section 2-11.1(j), Conflicting employment prohibited.

DATE: June 7, 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 Mr. Johnson Louis's proposed outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Mr. Johnson Louis, an employee of the Miami-Dade County Seaport Department ("PortMiami"), to engage in outside employment as a Tax Professional with AJK Multiservice, LLC ("AJK").

Mr. Louis is currently employed by PortMiami as an Accountant 2. His job duties are primarily to participate in the maintenance of departmental accounting records pursuant to established account classification, departmental, and statutory accounting procedures.

Mr. Louis would like to engage in outside employment as a seasonal Tax Preparer with AJK. AJK is a Florida limited liability company. Mr. Louis's duties with AJK would include conducting face-to-face tax interviews with clients and preparing tax returns for them.

A records search indicates that AJK is not a County vendor. Mr. Louis also stated that, to his knowledge, AJK is not a County vendor.

With regard to the seasonal Tax Preparer position with AJK, Mr. Louis advises that his outside employment would only occur from mid-January to mid-April, and that he only meets with clients after 6:00 p.m., which is outside of the times/hours that he will be expected to perform his duties as an Accountant 2 for PortMiami. He further advises that, as part of his proposed outside employment, he will not be required to encounter the same or similar people or entities as in his County position. Mr. Louis advises that his position with PortMiami does not involve the recruitment or management of County vendors or contractors. He also advises that no County resources will be used for his proposed outside employment. Finally, Mr. Louis advises that, as part of his County position, he does not have access to non-public information that is, or could be, relevant to his proposed outside employment.

Issue

Whether any prohibited conflict of interest may exist between Mr. Louis's County employment and his proposed outside employment as a seasonal Tax Preparer with AJK.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") prohibits County employees from accepting outside employment, "which would impair his or her independence of judgment in the performance of his or her public duties." Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, "[u]nder 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."

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

Outside employment is more likely to conflict with County employment "when the two pursuits overlap or are closely related." INQ 16-89 (citing RQO 12-11, INQ 12-159). However, "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." INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

In the past, a Tax Record Specialist II for the Miami-Dade County Finance Department was able to engage in outside employment as the President of a for-profit company preparing personal and

business federal tax returns without giving rise to a conflict of interest, so long as she abided by certain limitations. *See* INQ 19-101. Likewise, a Facilities Equipment Technician was also able to engage in outside employment owning and operating her own special event catering and tax preparation company without giving rise to a conflict of interest, subject to certain limitations. *See* INQ 21-114.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that Mr. Louis is seeking to engage in would impair his independence of judgment in the performance of his County duties as an Account II for PortMiami. This is because there is no overlap between his public duties and his proposed outside employment: his proposed outside employment will be performed outside of his County hours because it is seasonal and evening work; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment preparing individual tax returns. *See* RQO 17-01; RQO 16-02; INQ 21-114; INQ 19-101.

Opinion

Based on the facts presented here and discussed above, Mr. Louis would not have a conflict of interest in his proposed outside employment as a seasonal Tax Preparer for AJK.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Mr. Louis's permission to engage in his proposed outside employment with AJK:

- He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or other communications) and he may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- He may not exploit his County position to secure special privileges or exemptions for himself and/or for AJK and/or AJK's clients. *See* County Ethics Code 2-11.1(g). **Specifically, he may not offer his or AJK's tax preparation services to anyone during County working hours, including co-workers and other County employees.** *See* INQ 19-101.
- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to derive a personal benefit, or for the benefit of AJK or its clients. *See* County Ethics Code Section 2-11.1(h).
- He may not represent AJK before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of his potential activities as a seasonal Tax Preparer for AJK, it is important to note

that he would be prohibited from doing any such activities on behalf of AJK and/or its clients.

- He must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and he must file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from PortMiami or under state law. Questions regarding possible conflicts based on PortMiami directives should be directed to PortMiami or the Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 Commission on Ethics 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.