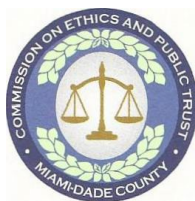


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 5, 2023

Mariana Evora
Delta Consultants, LLC
4841 NW 1 Avenue
Miami, FL 33127

Delivered via email to: mariana.evora@gmail.com

Re: INQ 2023-03, Sections 2-11.1 (j), (k), (c) and (d), County Ethics Code

Dear Ms. Evora,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the application of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) to your proposed business venture.

Facts:

You are currently employed with the City of Miami Beach (“City”) as an engineer. Your current title is as the Assistant Director of the Infrastructure Division, and you have authority over water sewer, storm water, and street light infrastructure for the City.

You have started a new venture with the opening of Delta Consultants, LLC (“Delta Consultants”) and would like guidance on the application of the County Ethics Code regarding the operation of Delta Consultants as it pertains to doing business with the City of Miami Beach and Miami-Dade County. Delta Consultants would offer engineering consultations regarding water sewer and storm water management, water sewer design and construction, and the maintenance of such systems.

Additionally, your husband is employed with Miami-Dade County as an Assistant Director in the Water and Sewer Department (WASD). He is a Utility Engineer responsible for pipeline, plans, and surveys for WASD as the Division Chief of Survey. He is also responsible for the overall supervision of the division. He has no ownership or involvement in Delta Consultants.

Issue:

Whether there are any provisions within the County Ethics Code that would impact your privately owned business, Delta Consultants, LLC's potential business dealings with the City of Miami Beach or Miami-Dade County.

Analysis and Opinion:

Your inquiry involves several sections of the County Ethics Code which are analyzed below.

1) Outside Employment

As long as you maintain your employment with the City of Miami Beach, the work you conduct on behalf of Delta Consultants will constitute outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01). Both the County Ethics Code and the City of Miami Beach Ethics Code prohibit municipal employees from engaging in outside employment which would impair the municipal 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. *See* Sections 2-11.1(j) and (k), County Ethics Code; Section 2-453, City of Miami Beach Code.

To consider potential conflicts, we must look to several factors, one of which is whether there is similarity in your duties as an Assistant Director of Infrastructure Division for the City and your prospective work with Delta Consultants. In this instance, it is quite clear that both positions require you utilize the same knowledge base involving water and sewer system and storm water management; 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.

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 City employee will come in contact with the same or similar people or entities in both her outside employment and City position (e.g., similar personnel, clients, suppliers, or subcontractors); whether the employee performs her duties outside her City hours; whether the employee uses the same or similar resources in both positions; whether the employee in her outside employment would be required to interact with City employees; and whether the City department that employs you would have authority over your private company.

In this instance, a conflict would likely be found if the duties for your outside employment will involve the factors listed above. Specifically, if you come into contact with the same or similar people, use the same resources, interact with City employees, and have authority over the work done by your company, then a conflict would likely exist between your public duties and your private interests. *See generally* INQ 22-26 citing RQO 10-01.

2) Contracting with the City/County

The County Ethics Code at Sections 2-11.1 (c)(2) and (d) allow you to enter into a contract, individually or through a firm, with Miami-Dade County, your husband's employer, as long as the contract does not interfere with the full and faithful discharge of your husband's duties to the County.

Similarly, Section 2-454 of the City Ethics Code allow you to transact business with the City; however, Delta Consultants would be prohibited from contracting with you in your official capacity. Additionally, this section bars "any personal investments in any enterprise that will create a substantial conflict between [your] private interests and the public interest." Section 2-454, City of Miami Beach Code.¹

This means that you shall not participate in determining contracts requirements or awards for the City and your husband shall not participate in determining the contract requirements or in awarding the contract for the County. Additionally, neither you nor your husband's responsibilities and job descriptions shall require you to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. In your case, this means that Delta Consultants, LLC, shall not enter contracts with Miami-Dade County WASD or the City of Miami Beach Infrastructure Division. *See* Sections 2-11.1 (c) and (n), County Ethics Code; Section 2-454, City of Miami Beach Code.²

Furthermore, you and your husband may not lobby the City/County on behalf of Delta Consultants, LLC. This means that you or your husband may not appear before any City/County board or agency to represent Delta Consultants, LLC, nor contact anyone within the City/County in an attempt to influence a decision about any contract that Delta Consultants, LLC is seeking. *See* Section 2-11.1(m)(1), County Ethics Code.

¹ Section 2-450 of City of Miami Beach Code requires employee disclosure of interest in and/or relationship with a business entity doing business with the City.

² *See also* INQ 21-125 (The parent of a County employee is not prohibited from subcontracting with a firm that may be awarded a project working with the Parks, Recreation and Open Spaces Department (PROS), his daughter's department, because the daughter does not and will not have any direct or indirect involvement in the solicitation/Project and the parent's firm would not be directly transacting business with the County's PROS but rather, would be in privity of contract with the Prime Contractor in this project); INQ 17-217 (The parent of a County employee may subcontract with a County vendor through his privately-owned company, but he may not contract directly with the department that employs his son); INQ 13-69 (The husband of a PHCD employee is not prohibited from *subcontracting* with construction firms servicing projects managed by PHCD because her husband would not be contracting with PHCD but rather, with the prime contractor and subcontractors (who are all under the direct supervision of the prime contractor); and INQ 11-20 (The member of a County board charged with hearing appeals of DERM decisions, who has an ownership interest along with his immediate family in a company *subcontracting* with a prime contractor doing business with DERM may enter into a contract with the prime contractor but is prohibited from entering into contracts directly with his board or DERM).

Finally, the both the County Ethics Code and the City Ethics Code prohibit employees from exploitation of their official position. In this instance, it means that you and your husband may not use your City/County position to secure special privileges or exemptions with respect to any City/County contract to which Delta Consultants, LLC is applying. *See* Section 2-11.1(g), County Ethics Code; Section 2-451, City of Miami Beach Code. Additionally, you may not use or attempt to use your City position “to solicit potential clients or customers (including city officers, employees or any other city personnel) for the officer or employee's private business.” Section 4-454, City of Miami Beach Code.

3) Two-Year Rule

If you separate from the City at any point, then Section 2-11.1(q) of the Ethics Code or the “Two-Year Rule” would apply. This section prohibits former City employees from “lobbying” the City for a period of two years following separation.

Specifically, this section prohibits a municipal employee, for a period of two years after his or her City service has ceased, from:

...lobby[ing] any [municipal] officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge accusation, arrest or other particular subject matter in which [City of Miami Beach] or one of its agencies or instrumentalities is a part or has any interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the general lobbying ordinance. *See* INQ 21-05, INQ 21-123, INQ 22-61, and INQ 22-96. The Two-Year Rule includes advocating for actions or decisions that may be made at the sole discretion of any municipal personnel. *See* RQO 12-09; RQO 13-07.

Accordingly, former municipal employees may not attempt to persuade municipal staff, whether in person or by written communication, to take a particular course of action. These actions are considered lobbying and are prohibited. *See* RQO 02-139 and INQ 21-05. Former municipal employees are however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding their former employer’s procedures with their new clients, and to provide guidance to their clients or employers regarding interactions with the City. *See* INQ 19-75, INQ 20-63 and INQ 21-02.

Additionally, a former municipal employee may engage in interactions with municipal staff which are ministerial in nature, such as filing/submitting permit applications, confirming receipt of permit applications, obtaining documents, asking a procedural question or requesting information about a permit. *See* INQ 16-46 citing RQO 04-33. However, any attempt to persuade City staff, whether in person or by written communication, to take a particular course of action or to make a determination, are considered lobbying. *See id* citing RQO 02-139.

In RQO 12-09, the Miami-Dade Commission on Ethics further explained the parameters of the prohibition with respect to allowable meetings with municipal staff as follows:

These meetings must be held for informational purposes only and not for the purpose of influencing any recommendations or other actions on the project. You are prohibited from *arranging and/or participating in meetings* with City officers and staff... if the meetings are convened for the purpose of influencing elected officers and/or City employees to take an official action or make an official decision. (Emphasis added.)

Consequently, former municipal employees must refrain from meeting with City staff in order to persuade the expedited review or approval of permits, or discuss reviews or modifications related to the permits as these discussions may be considered lobbying. See INQ 16-46 and INQ 21-123.

Lastly, it is worth noting that former employees are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his former municipal position to derive a personal benefit either to herself or her client. See Section 2-11.1 (h), County Ethics Code; Section 4-452, City of Miami Beach Code; and INQ 17-181 and INQ 16-46.

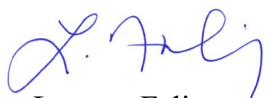
Conclusion:

Delta Consultants is not prohibited from doing business with either the City of Miami Beach or the County provided it abides by the restrictions above. Additionally, you and your husband must adhere to the limitations and parameters provided above to avoid potential conflicts of interest. You are encouraged to seek further guidance from the Commission on Ethics as you continue to build Delta Consultants.

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.

Sincerely,



Loressa Felix
Staff Attorney

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.