



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Marcia Martin, Capital Improvement Projects Specialist,  
Small Business Development Division, Internal Services Department

**FROM:** Etta Akoni, Staff Attorney  
Miami Dade County Commission on Ethics & Public Trust

**SUBJECT:** INQ 2023-04, Section 2-11.1(c), County Conflict of Interest and Code of  
Ethics Ordinance, Limitations on Contracting with the County

**DATE:** January 4, 2023

**CC:** COE Staff; John Vanegas, Accountant 3, Public Housing and Community  
Development (“PHCD”); Simona Marlow, Senior HR Manager, PHCD

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Commission on Ethics”) and requesting our guidance regarding your ability to contract with the County’s Public Housing and Community Development Department (“PHCD”) as a vendor/landlord under the Emergency Rental Assistance Program (“ERAP”),<sup>1</sup> administered by PHCD.

#### Facts

You, Marcia Martin, are employed by the Miami-Dade County Internal Services Department (“ISD”) Small Business Development Division (“SBD”) as a Capital Improvements Projects Analyst. Your job duties include assisting with administering the Miscellaneous Construction Contracts (“MCC”), Equitable Distribution Programs (“EDP”), and the Capital Improvements Information System (“CIIS”); managing the Parent and Child Contracts for the MCC and EDP programs in INFORMS; reconciling MCC and EDP contracts allocation via FAMIS and INFORMS; reviewing and approved awards and notices to proceed for the MCC program; review and approve MCC POs for the Aviation Department and Water & Sewer; provide technical support for County

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<sup>1</sup> The ERAP is a federally funded program that provides rental assistance for up to eighteen (18) months for eligible tenants in arrears of rent payments due to financial hardships resulting from the COVID-19 pandemic. See <https://www.miamidade.gov/global/housing/emergency-rental-assistance-program.page>.

employees utilizing the CIIS software; provide guidance to County employees during the MCC solicitation process; and ensure that the MCC users are in compliance with the terms and conditions of the MCC Program. You would like to contract with PHCD as a vendor/landlord under ERAP, which is administered by PHCD. Your ISD job duties do not include any oversight or administration of the ERAP program.

You and your husband, James Martin, own four residences and one parcel of undeveloped land. One of the residences is your homestead property. The other three residences are rental properties. Your three rental properties are not managed by a property management company. All of your properties were timely disclosed on the State of Florida Form 1 (Statement of Financial Interests)<sup>2</sup>. Moreover, you maintain additional outside employment with Martin Property, LLC., a company owned by your husband Mr. Martin, where you process evictions, as applicable. Your outside employment with Martin Property, LLC. was disclosed to and approved by your county supervisor and department director, in accordance with the Miami Dade Ethics Code requirements, in January of 2022.

### Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with PHCD to participate in the ERAP as a vendor/landlord.

### Discussion

#### *A. Contracting with the 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, as long as the contract does not interfere with the full and faithful discharge of your duties to the County. This means that you shall not participate in determining the contract requirements or in awarding the contract and that none of your county responsibilities and job descriptions shall require you to be involved in the aforementioned contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. In your case, this means that you may contract with PHCD for Miami Dade County’s ERAP as a vendor/landlord because ISD, the department that you work for, does not oversee or administer the program and none of your County job responsibilities involve administration or oversight of the ERAP program. *See* County Ethics Code §§ 2-11.1 (c). *See* INQ 2022-06. INQ 2022-166

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<sup>2</sup> Section 2-11.1(i) of the County Ethics Code addresses financial disclosure by county employees. The Ethics Code also clarifies that if the individual is covered by state financial disclosure statutes, then filing the financial disclosure forms required by state statutes serves as compliance with the County Ethics Code. *See* Section 112.3145(1)(a), Florida Statutes. Financial Disclosure is distinct from the outside employment approval requirement as defined in Sections 2-11.1(k) of the Miami-Dade County Ethics Code.

### *B. Outside Employment*

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. Specifically, Section 2-11.1(k)(2) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance requires that

All full-time County and municipal employees engaged in any outside employment for any person, firm, corporation or entity other than Miami-Dade County, or the respective municipality, or any of their agencies or instrumentalities, shall file, under oath, an annual report indicating the source of the outside employment, the nature of the work being done pursuant to same and any amount or types of money or other consideration received by the employee from said outside employment. Said County employee's reports shall be filed with the supervisor of elections no later than 12:00 noon on July 1st of each year, including the July 1st following the last year that person held such employment.

Additionally, Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7-1. The County's Administrative Order No. 7-1 gives a County department director the ultimate 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* RQO 16-02; RQO 12-07; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121. Directors may also request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

In prior opinions, the Commission on Ethics has opined that ownership of 3 or more rental units is considered outside employment, unless a management company is hired to manage the units for the owner. (RQO 06-48, INQ 07-83). Based on these prior opinions, your personal ownership of 3 or more properties, which are not your homesteaded residence, is considered outside employment. As of the date of this opinion, there is no record that your outside employment of owning and managing personally owned rental property has been previously approved by your supervisor and department director.<sup>3</sup> Please note that you are required to obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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<sup>3</sup> Mrs. Martin's currently approved outside employment does not make reference to her ownership and management of three (3) or more properties, but only addresses her work with eviction processing for Martin Property, LLC.

With the proper approval by your supervisor and department director, we find that your outside employment of owning and managing personally owned rental property is not likely to cause conflicts of interest between your private interest and your public duties. This is because there is no overlap between your public duties as a Capital Improvement Projects Specialist and that outside employment, as you will not be assisting the same clients, you will not use the same resources, and the work would be performed outside of your County hours.

Nevertheless, you must abide by certain limitations and cautions outlined below 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 or for the benefit of your client(s). *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.

#### *C. Lobbying*

Furthermore, you may not lobby the County to participate in the ERAP program. This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that you are seeking with the County. *See* County Ethics Code §§ 2-11.1 (m)(1).

#### *D. Exploitation of Official Position*

Finally, the County Ethics Code prohibits County employees from exploitation of their official position. In this instance, it means that you may not use your County position to secure special privileges or exemptions with respect to any County contract to which you are applying. *See* County Ethics Code § 2-11.1(g).

#### Opinion

After reviewing the facts presented to us, we conclude that there is no conflict of interest that would prohibit you from contracting with PHCD to participate in the ERAP as a vendor/landlord. Therefore, provided that your current or future job responsibilities with ISD, or any other Miami Dade County agency, do not require your involvement in any aspect of the ERAP, you may contract with PHCD to participate in the ERAP as a vendor/landlord. However, you must obtain permission to engage in any and all outside

employment on an annual basis by filing a Request for Outside Employment with your department director by noon on July 1st of each year.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from the department that employs you and/or Ms. Johnson, or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on your County department directives, contact your respective department supervisors 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/>.

***Please submit this opinion to the Public Housing and Community Development Department for inclusion in your file. The Commission on Ethics does not submit this memorandum on your behalf.***

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.