




MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Isidoro Lopez
Assistant Director
Water and Sewer Department (WASD)

FROM: Jose J. Arrojo 
Executive Director

SUBJECT: INQ 2023-06, Section 2-11.1(j), County Ethics Code, Outside Employment

DATE: January 24, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting our guidance regarding your proposed outside employment.

Facts:

You are recently employed as an Assistant Director in the Water and Sewer Department (WASD). In that role, you report to the Deputy Director. You are primarily charged with supervision of the following department functions: quality assurance and quality control; retail and customer service; contract compliance and monitoring; performance management and improvement; security and communications; and general facility maintenance.

You are an attorney by training, have a graduate degree in public administration, and were recently employed as the Chief of Staff for the former Chair of the Board of County Commissioners. You also served on the on the County Commission Auditor's staff. Consequently, as a result of your academic training and professional experience, you have significant insight and expertise in matters relating to local governance.

You would like to engage in outside employment as a government relations consultant. You will advise clients on local governance matters including policy, legislation, or procurement. ¹

¹ Services may be provided through Lopez Legal Group, Inc., a Florida for-profit entity for which you are the principal.

You may, infrequently, advise County contractors, vendors, or proposers, but you will not advise them on any matters relating to Miami-Dade County. You will not be engaged with any client, on any matter, who has interests averse to those of Miami-Dade County.

The WASD Director is aware of your proposed outside employment and has approved of it, as long as it does not constitute a conflict under the County Ethics Code.

Issue:

Whether an Assistant Director in the Water and Sewer Department may engage in outside employment as a local government consultant.

Analysis:

Several sections of the Miami-Dade Code of Ethics must be considered in analyzing whether a County employee's outside employment may give rise to a prohibited conflict of interest. Principally, Section 2-11.1(j) of the County Ethics Code prohibits outside employment which would impair the employee's independence of judgement in the performance of his or her public duties.

The Ethics Commission has interpreted Section 2-11.1(j) to prohibit outside employment that results in an employee routinely interacting in his or her private role with County staff or persons that are receiving County services; where there is an overlap in county work hours and the outside employment schedule; when the public employment worksite will also be the site of the outside employment; or if the employee, his or her supervisor, or employing County department, are responsible for oversight or management of the employee's outside employer or clients. (RQO 16-02; INQ 11-67; INQ 20-03)

Section 2-11.1(m) of the County Ethics Code prohibits employees from appearing before any County Board or agency when making a presentation on behalf of a third party and also prohibits the receipt of any compensation, directly or indirectly from any party that is applying or seeking a benefit from the County, in relation to the benefit sought. The Ethics Commission has interpreted this section as prohibiting a County employee that is privately employed as a consultant from appearing *or meeting* with County staff on behalf of private clients. (RQO 05-15; RQO 12-10)

Employees are also cautioned, if they are retained or otherwise contracted by a person or party that has a contract with the County. Section 2-11.1(u) of the County Ethics Code prohibits an employee on the staff of a County elected official, or certain County managers from entering into a business transaction with an entity or person that has a contract with the County, unless the transaction is arm's length transaction.²

² See also Section 112.313(7)(a), Fla. Stat. (No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which

Finally, Section 2-11.1(g) of the County Ethics Code prohibits employees from using their official position to obtain special privileges or exemptions for themselves or their outside employers.³

While not a restriction on outside employment, Section 2-11.1 (k) requires County employees engaged in outside employment to file an outside employment financial disclosure form reporting any money received from your employment. This form must include any money earned even if the business is not profitable.

Opinion:

Your current public employment as an Assistant Director in the Water and Sewer Department does not appear to conflict with your proposed private employment as a local government consultant. Your public and proposed private duties do not appear to overlap and your proposed outside employment is permissible as long as you comply with the following guidelines.

In your proposed outside employment as a local government consultant, you will primarily advise clients that are not County contractors, vendors, or proposers. If you infrequently engage with a County contractor, it will be on a non-County matter. You may not engage with any client, on any matter, who has interests averse to those of Miami-Dade County. Also, in abundance of caution, you are advised not to engage a client that has a contract with WASD, even if to advise on a non-County matter.

You may not have any direct or indirect interaction with Miami-Dade County elected officials or staff. Moreover, you may not appear before any County board, nor may you receive compensation from a client that is seeking a benefit from the County if your advice or assistance is related to the benefit sought.

You should also be cautious when informing your potential clients of your significant local government expertise. Of course, your experience and qualifications are your own, but the use of County seals or other paraphernalia should be avoided. To avoid even the appearance of impropriety, you should not suggest to private clients that your public employment will afford them some special benefit or access that is ordinarily not available to a similarly situated consultant that is not publicly employed.

is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee.)

³ See RQO 99-40; Section 2-11.1(h), County Code (This includes a prohibition on using information regarding County vendors which is *not readily available to the public* to market your services as well as the disclosure of any confidential information gained in your County employment to benefit yourself, or your clients)

Of course, you may not use County time or resources, including but not limited to staff, phones, computers, databases, office or printing supplies, and vehicles, in your outside employment, as this may constitute an exploitation of official position.

Finally, you must secure permission to engage in outside employment and file an annual outside employment financial disclosure form reporting any money received from your employment.

This opinion is limited to the facts as you presented them to the Commission on Ethics, is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. While there may be references to state statutes, 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 the project 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.