



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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

---

---

### MEMORANDUM

---

---

**TO:** Ana DaSilva, Selection Committee Coordinator  
Strategic Procurement Department

Phillip Rincon, Senior Research Analyst  
Office of the Commission Auditor

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2023-20, Voting Conflicts § 2-11.1(v); Actions Prohibited When Financial Interests Involved § 2-11.1(n); County Resolution R-449-14, Appearances of Impropriety

**DATE:** March 2, 2023

**CC:** All COE Legal Staff

---

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding the following proposed transaction.

Facts:

We have reviewed your memorandum dated February 15, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request to Advertise for Professional Services for Miami-Dade Water and Sewer Department Standards Review and Update - Project No. E22-WASD-01. The memorandum was prepared in connection with Resolution Number R-449-14, directing the Office of the Commission Auditor (“OCA”) to conduct background checks on members serving on Evaluation/Selection Committees.

The memorandum noted that one member of the Selection Committee made disclosures on their Neutrality Affidavits/Disclosure Forms that merited submission to the Ethics Commission for an opinion. The memorandum noted that:

Helga Sommer, Seaport Department, disclosed on her Neutrality Affidavit that her spouse is the Associate Vice President at Hazen and Sawyer PC.<sup>1</sup> Hazen and Sawyer PC is listed as a sub-consultant to this solicitation.

We conferred with Ms. Sommer. She is Chief Seaport Engineer for the Miami-Dade County Seaport Department (“Seaport”). Ms. Sommer stated that her spouse, Mr. Guillermo Regalado, is an Associate Vice-President for Hazen and Sawyer PC (“Hazen”). In that role, she stated that his responsibilities include heading many of their water resources and hydraulic groups, as well as the master planning for most local County projects handled by Hazen. She further advised that Mr. Regalado is a shareholder in Hazen, though his share is less than one percent of the total number of shares issued by Hazen. She also stated that Mr. Regalado’s bonuses are dependent on whether Hazen does well; meaning, when Hazen gets more business, then Mr. Regalado gets a larger bonus. Finally, Ms. Sommer candidly stated that she would endeavor to treat all respondents to the solicitation fairly, but that she fears that she would overcompensate to Hazen’s detriment in order to avoid any appearance of impropriety and expressed discomfort at the idea of serving on this selection committee.

Discussion:

The Ethics Commission conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards. The Ethics Commission also considers whether the circumstances presented create an appearance of impropriety and makes recommendations based on Resolution No. R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Specifically, Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel:

shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stock holder, bondholder, debtor or creditor.

In this case, it does not appear that Ms. Sommer has a voting conflict of interest under Section 2.11-1(v) of the County Ethics Code because she will not be directly affected by the vote,

---

<sup>1</sup> The memorandum named Ms. Sommer’s spouse’s employer and a listed sub-consultant to this solicitation as “Hazen and Sewer PC.” On consultation with Mr. Rincon of the Office of the Commission Auditor, it was clarified that this was a typo, and that the employer and sub-consultant to this solicitation is Hazen and Sawyer PC.

nor does she have any of the enumerated relationships with any entity affected by the vote. *See* INQ 22-60.

However, Section 2-11.1(n) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel “shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.” Spouse is included in the definition of “immediate family.” County Ethics Code § 2-11.1(b)(9). The Commission on Ethics has therefore concluded that the County Ethics Code prohibits a County employee from serving as a Selection Coordinator, or otherwise serving on a Selection Committee, when his or her spouse’s employer is a respondent to the solicitation. RQO 11-11. Furthermore, in a situation similar to the one at hand, an Assistant Port Director for Seaport could not serve on a County selection committee where her spouse’s employer, in which said spouse also had an ownership interest, was a subconsultant to a solicitation respondent. *See* INQ 22-60.

Accordingly, in this case, a prohibited conflict of interest would arise if Ms. Sommer were to serve on this selection committee because, if she serves, she will have the opportunity to take official action as part of the selection committee that will directly or indirectly affect Hazen, a subcontracting firm, in which her spouse has a financial interest. *See* RQO 11-11; INQ 22-60.

Furthermore, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the Ethics Commission also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed selection committee. *See* Miami-Dade County Code § 2-1067; Ethics Commission Rules of Procedure § 2.1(b). As the Ethics Commission has previously noted on numerous occasions, “[i]n all procurement matters, appearances of integrity and fairness are paramount, [as there is a] ‘need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence . . . [which] may require a higher standard of ethics . . . .’” INQ 17-131 (quoting INQ 14-242).

Historically, it has been recommended that a County employee should not serve on a selection committee, even though not specifically prohibited by the County Ethics Code, when there is a close personal relationship between the County employee and an individual that has either a) an ownership interest in one of the responding firms, or b) a managerial position in one of the responding firms and involvement in the project.

For example, in order to avoid an appearance of impropriety, it was recommended that a County employee whose spouse owned stock in a respondent firm and as vice-president, could possibly become involved with the project based on her role, should not serve on the selection committee due to the possible appearance of impropriety. *See* INQ 18-258. It was also recommended that a County employee whose second cousin, with whom the employee had a close familial bond, was employed by a respondent to a solicitation in a high-level position likely to be involved in the project should not serve on the selection committee due to the potential appearance of impropriety. *See* INQ 22-13.

In this case, as discussed above, Ms. Sommer’s spouse is an employee and shareholder of Hazen, a subconsultant to a respondent to the solicitation that will be before this selection committee. Ms.

Sommer also candidly expressed discomfort with the idea of serving on the selection committee because of her concern with her ability to treat all respondents to the solicitation equitably. Thus, Ms. Sommer should be excused from service on this selection committee in order to avoid any appearance of impropriety.

Opinion:

Accordingly, **we recommend that the Strategic Procurement Department excuse Ms. Sommer from service on this selection committee** because her service on the selection committee would give rise to a prohibited conflict of interest due to her spouse's financial interest in Hazen, a subconsultant to a respondent to this solicitation. *See* County Ethics Code § 2-11.1(n); RQO 11-11; INQ 22-60. Furthermore, while we emphasize that there has been no issue raised concerning Ms. Sommer's personal integrity, with her candor and honesty in this matter appreciated, Ms. Sommer's spousal relationship with Mr. Regalado, the latter being a shareholder of Hazen, and Ms. Sommer's own expressed discomfort regarding her selection committee service cause us to conclude that her service could give rise to an *appearance of impropriety* and we recommend Ms. Sommer's excusal from service on this selection committee. *See* INQ 22-60; INQ 22-13; INQ 18-258.

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.

This opinion is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. 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 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.