



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Hugo Llamas  
Traffic Engineer 3  
Miami-Dade County Department of Transportation and Public Works

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

**SUBJECT:** INQ 2023-25, Section 2-11.1(c), Limitations on Contracting with the County;  
Section 2-11.1(j), Conflicting employment prohibited.

**DATE:** March 13, 2023

**CC:** All COE Legal Staff

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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 possible conflicts of interest arising from the operation of your anticipated private business and your County employment.

#### Facts

You are employed by the Miami-Dade County Department of Transportation and Public Works (“DTPW”) as a Traffic Engineer 3. Specifically, you advised that you are a traffic engineer supervisor responsible for supervising four traffic engineers. You also advised that you oversee the Plans Review Section for traffic signal modification permits, review timing requests for inspection, and otherwise perform maintenance and operational tasks related to traffic signals in the County.

You advised that, while you have not yet done so, you intend to establish a Florida limited liability company to provide engineering services. Specifically, you and/or your company anticipate providing three categories of services: 1) shop drawings and wind load calculations for installation of impact resistant windows and doors for private clients; 2) mechanical, electrical, and plumbing plans for residential and commercial properties for private clients; and 3) forty-(40)-year building certifications for both private clients as well as County and municipal clients.

Regarding your anticipated work with your private company, you advised that your work with your company will only occur after working hours on weekdays and during the weekends. You

further advised that you will not be required to encounter the same or similar people or entities as in your County position because in your County position you currently deal with signal contractors and other governmental entities' transportation departments, whereas in your anticipated outside employment you only expect to come into contact with County and municipal building department employees. You advised that your anticipated outside employment will not use the same or similar resources as your County work, nor does your County position provide you with access to non-public information that is or could be relevant to your anticipated outside employment. You also advised that your position with DTPW does not involve the recruitment or management of vendors, contractors, bidders, or members of the public who could also be involved in your anticipated outside employment.

Finally, you advised that you have a Professional Engineer "P.E." license that you will use as part of your anticipated outside employment. You advised that you pay to maintain this license, not DTPW, and that you do not need or use your P.E. license as part of your current DTPW position.

#### Issue

Whether there is any prohibited conflict of interest related to your public employment as a Traffic Engineer 3 with DTPW and your anticipated private company providing engineering services to private entities as well as to County and/or municipal entities.

#### Analysis

This inquiry involves several sections of the County Ethics Code, each of which is analyzed below:

##### A. Contracting with the County

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") Sections 2-11.1(c)(1) and (d) prohibit County employees from contracting or transacting business with the County, individually or through a business in which they have a controlling financial interest. "Transacting business" with the County is defined as the purchase or sale of goods or services for consideration. *See* County Ethics Code § 2-11.1(b)(10). However, a limited exclusion exists from the broad prohibition against contracting with the County if:

- (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County,
- (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and
- (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

County Ethics Code § 2-11.1(c)(2). Nevertheless, a Miami-Dade County employee and his or her immediate family members may not contract with the County department for which the County employee works. *See id.*

In practice, this has meant that a company owned and operated by the stepparent of a Miami-Dade Police Department (“MDPD”) employee could not contract to provide polygraph services to MDPD because the stepparent was an immediate family member of an employee of the contracting County department. *See* RQO 11-29; INQ 11-167. Likewise, a Field Test Engineer employed by DTPW who owned and operated a private company that provided engineering, construction, and management services could contract with the County to provide engineering services so long as the contract was not with DTPW and otherwise did not interfere with the Field Test Engineer’s full and faithful discharge of his County duties. *See* INQ 17-249. Furthermore, the City of Sweetwater’s Building Official could contract with the City of Sweetwater through his private company to provide public works functions without giving rise to a prohibited conflict of interest so long as the City’s Building Department did not oversee the contract that the Building Official’s company had with the City. *See* INQ 16-199.

Here, you and/or your anticipated private company may not contract with DTPW because that is the County department that employs you. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 11-29. However, you and/or your anticipated private company may contract with other County departments that do not employ you, provided that your County duties do not have any relation to the enforcement, administration, oversight, amendment, extension, or termination of any contract you and/or your anticipated private company may secure with the County.<sup>1</sup> *See* INQ 17-249; INQ 16-199. However, “prior to submittal of a bid, response, or application of any type to contract with the County,” you must seek a conflict of interest opinion from the Ethics Commission regarding that particular County contract. County Ethics Code § 2-11.1(c)(4); *see e.g.*, INQ 23-18; INQ 22-107; INQ 22-43; INQ 21-154 (string of opinions addressing whether there was a conflict of interest from separate bids in response to different County solicitations from a company that employees two County advisory personnel). Finally, you are free to contract with local municipal entities that operate in Miami-Dade County because those entities do not employ you, so long as your County duties bear no relation to any contract you may secure with those local municipal entities. *See* County Ethics Code § 2-11.1(b)(6), (c)(1), (c)(2).

## B. Outside Employment

The 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.” County Ethics Code § 2-11.1(j). 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.” Outside

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<sup>1</sup> However, you should be aware that Florida law provides that:

Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

Fla. Stat. § 112.313(3).

employment is generally defined as “any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03; *see also* INQ 20-20. “County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income . . . .” RQO 16-01. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his or her County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* RQO 17-03; INQ 21-25.

Work you conduct for your anticipated private company will constitute outside employment, as defined by the County Ethics Code. *See* RQO 16-01; INQ 17-249. However, it appears unlikely that the type of outside employment that you plan to engage in through your anticipated private company will impair your independence of judgment in the performance of your County duties as a Traffic Engineer 3 with DTPW based on the information that you have provided to us at this time, including that a) your work with your company will only occur outside of working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; c) you will not use the same or similar resources as your County work; d) your County position does not provide you with access to non-public information that is or could be relevant to your anticipated outside employment; and e) your DTPW position does not involve the recruitment or management of vendors, contactors, bidders, or members of the public who could also be involved in your anticipated outside employment. *See* RQO 17-03; RQO 16-01; INQ 21-25; INQ 17-249.

However, County 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* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. Accordingly, this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director.

Additionally, given that you are a full-time employee, you must also file with the County Election’s Department an outside employment financial disclosure form – Outside Employment Statement – by July 1st of each year for income from outside employment earned during the preceding year, including income earned through your anticipated private company regardless of whether the company runs at a profit. *See* County Ethics Code § 2-11.1(k)(2). The form is available online at <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

### C. Certain Appearances and Payment Prohibited

You may not lobby the County. Specifically, no County employee “shall appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person.” County Ethics Code § 2-11.1(m)(1). In this case, it does not appear that you anticipate lobbying the County regarding your anticipated private company; rather, you describe engaging in ministerial tasks, such as submitting forty-(40)-year inspection certifications or

obtaining permits related to mechanical, electrical, and plumbing plans for residential and commercial properties that you have created. However, we caution that, in future, you may not contact anyone within the County, or DTPW in particular, in an attempt to influence a decision about any County action related to you and/or your anticipated private company, including seeking to influence any decision by a County official or employee related to any of your future clients. *See* County Ethics Code § 2-11.1(m)(1); INQ 21-21; INQ 17-111.

D. Exploitation of Official Position

The County Ethics Code provides that no County employee “shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others,” unless expressly permitted by ordinance. County Ethics Code § 2-11.1(g). Accordingly, you may not exploit your County position to secure special privileges or exemptions for yourself and/or your anticipated private company. This includes soliciting business for yourself or your anticipated private company while on duty with DTPW, either by handing out business cards or informing DTPW employees and/or clients about your anticipated private company and/or its services.

Opinion

Based on the facts presented here and discussed above, neither you nor your anticipated private company may contract with DTPW because it is your employing County department, and therefore any contract with it would give rise to a prohibited conflict of interest. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 17-03. However, you and/or anticipated private company may contract with other County departments and with local municipalities because they do not employ you and your DTPW duties do not concern them, so long as you adhere to the limitations discussed above regarding such a contract. *See* INQ 17-249; INQ 17-111; INQ 16-199.

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 DTPW or under state law. Questions regarding possible conflicts based on DTPW directives should be directed to your DTPW supervisor or to 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.