

Memo

To: Sylvia Novela
Procurement Contracting Officer
Department of Procurement Management

From: Anya Walker
Staff General Counsel

Date: 6/25/2007

Re: Inquiry 07-147

I received your request for an advisory opinion regarding whether the spouse of a Parks Department employee may contract with the Department of Parks and Recreation to provide services. I am providing the staff opinion based on the facts contained in your request. The Ethics Commission has not considered this matter. Please contact me if you want this matter placed on the October Ethics Commission agenda.

In your request, you advised me that Hit Zone, Inc. has responded to a solicitation to provide batting cages at Tropical Park. Steven Zelenka, President of Hit Zone, is married to Maria Zelenka. Zelenka is an Account Clerk with the Department of Parks and Recreation.

The Conflict of Interest ordinance prohibits the spouse of an employee from contracting with the employee's department. Section 2-7 1.1(d) provides that "no person shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or a member of his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and any such contract, engagement or business engagement entered into in violation of this subsection shall render the transaction voidable. Immediate family is defined under the ordinance as spouse, parents and children. A controlling financial interest is defined as ten percent or more of the stock in the corporation.

The provisions of Section 2-11.1(c) are applicable to Section 2-11.1(d). Section 2-11.1(c) provides that: "Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee... from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest with Miami-Dade County or any person or agency acting for Miami-Dade County as long as: 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 awards 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. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract. Section 2-11.1(c) permits the Board of County Commissioners to waive the conflict by a 2/3 vote after a determination by the Ethics Commission that the affected person has a conflict of interest.

Accordingly, the Conflict of Interest and Code of Ethics ordinance prohibits The Hit Zone from contracting with the Department of Parks and Recreation unless the corporation receives a waiver from the Board of County Commissioners.

Please contact me at (305) 350-3878 if you have any questions or I can provide any further assistance.

- 11/0 07-147

Memorandum



Date: September 12, 2007

To: Robert Mayors
Executive Director
Commission on Ethics and Public Trust

From: Sylvia Nowels
Procurement Contracting Officer
Department of Procurement Management

Subject: Request for Conflict of Interest Opinion regarding the Baiting Cages at Tropical Park

In August 2007, the County received three proposals in response to Request for Proposals (RFP) 8428 for Baiting Cages at Tropical Park. During the Evaluation Meeting, one of the Review Team members pointed out that upon reviewing the proposal submitted by HI Zone, Inc., he realized a familiar name of Steven Zelenka, who is the President of HI Zone, Inc. according to the Florida Department of State Division of Corporations. He further noted that Mr. Zelenka is the husband of Maria Zelenka who is currently employed by Miami Dade County Department of Parks and Recreation at Tropical Park.

Please provide an opinion on whether the Processor, HI Zone, Inc. has a conflict of interest due to Mr. Zelenka's association with HI Zone, Inc. and his relationship with a County Employee who works for the Department of Parks and Recreation.

If you require any additional information, please do not hesitate to contact me at (305) 375-2690.

cc: Rita Silva, Senior Procurement Contracting Officer
Department of Procurement Management

Marina Rizo, Assistant County Attorney
County Attorney Office

Roger Lewis, Chief, Strategic Business Planning
Department of Parks and Recreation