

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Wednesday, November 07, 2012 11:28 AM
To: Brewer-McDuffie, Cecilia (WASD)
Cc: Centorino, Joseph (COE)
Subject: INQ 12-187 Outside Employment_Jose Govea

Ms. Brewer-McDuffie,

You've asked for an ethics opinion regarding Jose Govea's request to engage in outside employment as an electrical contractor. Mr. Govea is employed by the County as a Plant Electrician for the Pump Station Division. In his private capacity, Mr. Govea is seeking to activate his state electrician's license and work as a "qualifier" for his private electrical repair company.

The Ethics Commission has consistently supported department directors and supervisors in their determinations as to whether the public's interest will be compromised by employees engaging in outside employment. Only the director or supervisor understands the full range of duties required of the County employee to do his job competently, and ultimately the director is responsible for insuring that his/her department functions properly.⁽¹⁾

Recognizing the ultimate authority of the director in these matters, the Ethics Commission offers guidance as per Sections 2-11.1 (j) and (g) of the County Ethics Code. Section 2-11.1 (j) states that County employees shall not accept other employment that would impair their independence of judgment in the performance of their public duties. Section 2-11.1 (g) states that County employees shall not use or attempt to use their official positions to secure special privileges or exemptions for themselves or others.

We agree with Mr. Galambos's memo to Mr. Arrebola, dated October 8, 2012, that Mr. Govea's proposed outside employment conflicts with his duties to the County and should be denied.

Our rationale follows that of Mr. Galambos:

THE TIME REQUIREMENTS IMPOSED ON ESSENTIAL COUNTY WORKERS SUCH AS MR. GOVEA DO NOT ALLOW TIME FOR THIS TYPE OF PRIVATE WORK.

- Mr. Govea must be consistently and reliably present on his County job during ordinary times as well as during inclement weather. His absence could imperil the health and safety of the public and endanger the environment.

During ordinary times, Mr. Govea is part of a two-man field crew responsible for the operation and maintenance of the electrical and control systems for approximately 249 facilities located within the Central West Service Area. During periods of inclement weather, his presence is critical in preventing overflow conditions and must not be delayed by private interests.

- In Mr. Govea's private capacity, obtaining permits, overseeing inspections, and managing private employees will interfere with Mr. Govea's ability to respond in a timely manner and perform his critical duties to the County.⁽²⁾ Obtaining permits and overseeing inspections can only be accomplished during a very limited number of regular business hours.

CONFLICTS OCCUR WHEN THE EQUIPMENT AND MATERIALS USED IN ONE'S OUTSIDE EMPLOYMENT ARE THE SAME AS THOSE USED IN COUNTY EMPLOYMENT.

- Mr. Govea has complete control over a service vehicle that is equipped with the same type of tools, equipment and materials he would use in his private business. He is authorized to take the vehicle home four times a year to respond to emergencies.

- Administrative Order 7-1 states, “Under no circumstances shall a County employee accept outside employment or render other than official services to a private interest where County time, equipment or material is to be used....”

THE CONFLICT CANNOT BE CURED BY ESTABLISHING RESTRICTIONS ON THE OUTSIDE EMPLOYMENT.

- No amount of restrictions on Mr. Govea’s private work will overcome the inherent conflicts with County time and County materials that this type of outside employment creates.
- Even if limitations could be envisioned, accurately verifying the scope of Mr. Govea’s private work is unrealistic and monitoring his outside activities places an unwarranted burden on his County supervisors.(3)

In conclusion, we support Mr. Galambos’s decision that Mr. Govea not be permitted to engage in outside employment as a private electrical contractor because this type of work is likely to impair his independence of judgment in the performance of his public duties and could potentially lead to an exploitation of his official position.

(1) Administrative Order 7-1 unequivocally states, “County employees must receive written approval from their department director prior to engaging in outside employment.”

(2) The Ethics Commission has consistently advised government employees *not* to work as private qualifiers in outside employment, but rather to hire other qualifiers to work on their behalf. *See* RQO 08-29 to a City of Miami Construction Manager II and RQO 08-45 to a Miami Beach Construction Advisor. This is in direct contradiction to a comment in Mr. Alvarez’s letter of August 17, 2012, indicating that State and County governments allow government employees to act as private qualifiers to obtain permits and have employees underneath them do the technical work.

(3) Although accommodations have been made by two municipal governments for certain high-ranking city employees with unique skills that the cities could not otherwise acquire, this is not the case in Mr. Govea’s situation. *See* RQO 08-29 to a City of Miami Construction Manager II and RQO 08-45 to a Miami Beach Construction Advisor.

If you have additional questions, please feel free to contact me.

Sincerely,

VICTORIA FRIGO, STAFF ATTORNEY

Phone: 305 350-0601

Fax: 305 579-0273



19 West Flagler St., Suite 820
Miami, FL 33130

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From: Brewer-McDuffie, Cecilia (WASD)
Sent: Monday, November 05, 2012 3:14 PM
To: Ethics (COE)
Subject: Ethics Opinion Requested

I am requesting an opinion on the attached Outside Employment Request prior to further routing and a final decision from the Department Director. If you have any questions or need additional information, please let me know. Thank you.

Cecilia Brewer-McDuffie
Chief, Human Resources
Miami-Dade Water and Sewer Department

