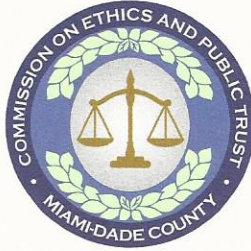


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 13, 2016

Alice Bravo, Director
Miami-Dade Transit Department
701 NW 1st Court, Suite 1700
Miami, Florida 33136

Re: RQO 15-06

Limitations on Contracting with the County. Miami-Dade County Code at Sec. 2-11.1 (c) and (d).

Dear Ms. Bravo:

In a public meeting on January 13, 2016, the Miami-Dade Commission on Ethics and Public Trust opined that the County Ethics Code does not prohibit Stantec Consulting Engineering ("Stantec"), a publicly traded corporation, from contracting with Miami-Dade County while Stantec employs your spouse as a "Senior Principal," as long as your spouse does not have a controlling financial interest in the corporation.¹ The Commission did, however, express concern over the appearances that may be created by such transactions as discussed below.

As background, the Mayor's Office announced the formation of a new County Department, the Department of Transportation, which will merge the County Transit Department with all or part of the County's Public Works and Waste Management Department ("PWWM") in the late fall of 2015. You have been appointed to serve as the Director of this new Department of Transportation which will be made up of numerous divisions and will have between three thousand and four thousand employees.

Your spouse, Walfrido Pevida, is employed by Stantec, a publicly traded corporation as a "Senior Principal." You advise that this identification as a "Senior Principal" does not include a controlling financial interest (10% or more, direct or indirect) in Stantec.² Rather, your spouse is a salaried employee with a small investment interest (less than 1%).³ You further advise that your spouse is not involved either directly or indirectly in any County projects.

¹ See Miami-Dade Code §§ 2-11.1 (c) and (d) of the Miami-Dade County Code which prohibit immediate family members of County employees and officials from contracting with the County through a company in which the immediate family member has a financial interest, direct or indirect, of 10% or more.

² *Id.*

³ You advise that your spouse owns 1,000 shares in Stantec out of the company's 93 million outstanding shares (less than 1% stock ownership) as part of an employee profit-sharing program at Stantec which is based on the overall performance of the multinational corporation rather than on the profit generated by the local division of the company.

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Currently, Stantec does not contract directly with the County Transit Department. However, Stantec does contract directly with PWWM's Roadway Engineering and Right of Way Division, one of the PWWM divisions that will be transferred to the new Department of Transportation which you will lead.

The County Ethics Code at Section 2-11.1(c)(1) delineates certain limitations for County Department Heads⁴ and their immediate family members⁵ in contracting with the County if a financial interests exists. This section specifies that its provisions are cumulative and shall not be construed "to amend or repeal any other law pertaining to the same subject matter."⁶

Section 2-11.1(d) of the County Ethics Code, which also addresses the issue of limitations on contracting with the County, prohibits County Department heads and their immediate family members from transacting business with the County through a firm in which the department head or his or her immediate family member has a "controlling financial interest".⁷

The term "controlling financial interest"⁸ is defined in the County Ethics Code as 10% direct or indirect **ownership** of an entity.⁹ Furthermore, in previous opinions the Ethics Commission held that the County Ethics Code only prohibits spouses of County employees from contracting with the County where the spouse has a controlling financial interest (10% or more) in a corporation or firm that is doing business with the County.¹⁰

Similarly, the State of Florida Code of Ethics provides:

"No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a **material interest**." (Emphasis added).¹¹

⁴ See Miami-Dade Code § 2-11.1(b)(5) (defining the term "departmental personnel" to include the 'mayor, **his or her department heads**, the County Attorney and all Assistant County Attorneys'" (emphasis added).

⁵ Miami-Dade Code § 2-11.1(b)(9) (defines the term "immediate family member" as a "spouse, domestic partner, parents, stepparents, children and stepchildren of the person involved").

⁶ See Miami-Dade Code § 2-11.1(c) (emphasis added); Last amended Dade, FL, Ordinance No. 00-151, § 1 (Nov. 28, 2000).

⁷ Miami-Dade Code § 2-11.1(c)(1) states that "No person included in the terms defined in subsection ... (b)(9) shall enter into any contract or transact any business ... in which he or she or a member of his or her immediate family member has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County ..."; Last amended Dade, FL, Ordinance No. 86-24 § 1 (Apr. 01, 1986).

⁸ Miami-Dade Code § 2-11.1(b)(8) (defines a "controlling financial interest" as "ownership, directly or indirectly, [of] ten (10) percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten (10) percent or more in a firm, partnership, or other business entity").

⁹ Miami-Dade Code § 2-11.1(c) specifies that it shall be cumulative with other sections of the code. Consequently, it would seem to follow that when reading Sections (c) (1) and (d) together, the term "financial interest," would mean a controlling financial interest.

¹⁰ See RQO 11-11, 10-32 (holding that § 2-11.1(c) only prohibits spouses from contracting with Miami-Dade County where they have a controlling financial interest in a corporation doing business with the County); See also RQO 12-13 (holding that a County Commissioner was not prohibited from being employed by a corporation doing business with the County because he did not have a controlling financial interest in that company).

¹¹ Fla. Stat. § 112.313(3) (2015).

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Under Florida law, the term “material interest” is defined as “direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.”¹²

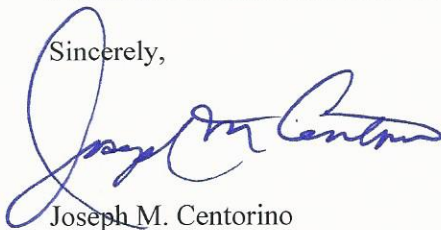
In sum, based on previous Ethics Commission opinions and on relevant sections of the County Ethics Code described herein, the Commission opined that the County Ethics Code does not prohibit Stantec Consulting Engineering, a publicly traded corporation, from contracting with Miami-Dade County while Stantec employs your spouse as a “Senior Principal,” as long as your spouse does not have a controlling financial interest in Stantec.

Although a direct or indirect ownership of less than 1% in a corporation does not meet County or State definitions of a controlling or material financial ownership interest, the County Ethics commission considered the importance of the operations of the Department of Transportation in Miami-Dade government and your position there; and sets out the following provisions and limitations regarding transactions that may occur between your agency and Stantec while your spouse is employed by that corporation:

- 1) Stantec should put in place an internal policy to ensure that your spouse, Mr. Pevida, should avoid participating in any County projects involving Stantec, and should also adopt safeguards to ensure that Mr. Pevida does not obtain financial or non-financial benefits tied to any business that Stantec conducts with the County;
- 2) In the event that you were to encounter a decision in the future that would affect Stantec’s financial interests, you should recuse yourself from that decision and delegate the decision-making authority to another individual in your department;
- 3) You must file a sworn statement disclosing your spouse’s employment with Stantec with the County Clerk of the Board.¹³
- 4) The County Department of Transportation should adopt safeguards to ensure that employees of that department are not overseeing or administering contracts that involve their immediate family members.

This opinion is based on the facts presented. If these facts change, please contact us. While reference is made to State law, the opinion construes only the Miami-Dade Conflict of Interest and Code of Ethics Ordinance and is not binding under State law. Inquiries regarding possible conflicts under State law, should be directed to the State of Florida Commission on Ethics.

Sincerely,



Joseph M. Centorino
Executive Director

¹² See Fla. Stat. § 112.312(15) (2015).

¹³ Miami-Dade Code § 2-11.1(f).

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