



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Antwain Corley, Bus Operator
Miami-Dade Department of Transportation and Public Works

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-101, Section 2-11.1(c), Limitations on Contracting with the County.

DATE: August 14, 2023

CC: All COE Legal Staff

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 bus operator. Your job primarily involves driving County busses on specified routes, letting passengers on and off. In years past, you have also held County jobs at the Department of Water and Sewer and at the Seaport.

You advised that you are submitting a bid for a County contract with the Miami-Dade Police Department (MDPD). The bid is for janitorial services to be supplied by your company, River’s Property Services, LLC, which you state you own with a co-owner who is not a County employee. The Invitation to Bid that you provided, EVN0000735, is for the thrice-weekly cleaning of two facilities used by MDPD in Surfside.

You indicate that at River’s Property Services you perform cleaning jobs and that your role requires you to oversee day-to-day operations, keep financial records and handle scheduling, marketing, and procurement. Your work for River’s Property Services does not cause you to come into contact with the same or similar people or entities as those you encounter in your DTPW work. You do not perform any of your work for River’s Property Services during your DTPW shift and you do not utilize the same or similar resources in your private employment that you use for your work for DTPW.

Additionally, at DTPW you do not have access to non-public information that could be relevant to your business and in your work at DTPW, and you do not have any involvement, authority or oversight over River's Property Services contracts or agreements with the County.

Issue

Whether there are any prohibited conflicts of interest related to your public employment as a Bus Operator with DTPW and your anticipated work providing janitorial services to MDPD.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest (County Code of Ethics), each of which is analyzed below:

A. Outside Employment

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7- 1. "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. Thus, work conducted for River's Property Services, your privately-owned business, constitutes outside employment.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee's independence of judgment in the performance of his or her official duties, thereby creating a conflict between the employee's public duties and private interests. "Under 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." A.O 7-1. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

For example, the Ethics Commission has previously found that a DTPW bus driver who co-owned a private company that cleaned and detailed cars was permitted to contract with the County because the proposed contract was not with the department that employed him. INQ 22-118. Similarly, a DTPW was permitted to work for Sodexo, which contracts with the County through Jackson Health Systems, because Sodexo did not contract with DTPW and his work for Sodexo did not overlap with his County employment. INQ 21-103. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting).

It appears unlikely your outside employment with your private company will impair your independence of judgment in the performance of your County duties as a Bus Operator 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 that you use in 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.

Nevertheless, you must continue to abide by certain limitations outlined below to avoid a conflict:

- You cannot use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; *see also* RQO 17-01.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* County Ethics Code Section 2-11.1(g); *see also* RQO 17-01.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of your private company or its clients. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County’s Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.¹

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. Accordingly, **this memorandum does not grant you permission to engage in outside employment.** You must obtain permission to engage in outside employment every year from your department director.

B. Contracting with the County

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, as long as the contract does not interfere with the full and

¹ The form is available online at <https://www.miamidadade.gov/elections/library/forms/outside-employment-statement.pdf>.

faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] 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 Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).

For example, the Ethics Commission found that a firefighter with MDFR who owned a cleaning service was permitted to contract with the County, so long as he did not contract with the department that employed him. *See* INQ 22-14. *See also* INQ 23-74 and INQ 23-64 (DTPW employees were permitted to contract with the County departments that provided small business grants because they did not work for those departments).

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 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.² *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 (several 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). **Please note that you should ask for an opinion each time you bid on a County contract.**

² 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).

C. Lobbying

Additionally, you may not lobby the County. This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that GODR is seeking with the County. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

Furthermore, the County Ethics Code prohibits County employees from exploiting their official position. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract for which your company is applying. *See* County Ethics Code § 2-11.1(g); AO 7-1; INQ 15-240; INQ 05-29.

Opinion

Based on the facts presented here and discussed above, the County Ethics Code does not prohibit you from contracting with MDPD. Going forward, neither you nor your 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.

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.