



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Steven Miro, Public Safety Office
Jackson Health Systems

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

SUBJECT: INQ 2023-105, Section 2-11.1(j), Conflicting employment prohibited.

DATE: August 28, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your proposed outside employment for Allied Universal (“Allied”).

Facts

You are employed by Jackson Health Systems (“JHS”) as a public safety officer¹. Your primary job duties involve providing security at JHS facilities, including investigating suspicious incidents, interacting with the public and patrolling the premises. You would like to engage in outside employment as a floating security guard for Allied, for-profit corporation which provides security guards at Miami-Dade County facilities but does not have a contract with JHS. Your primary role at Allied would include patrolling premises, investigating suspicious incidents and interacting with the public assigned to different County facilities. You would work for Allied part time, outside of your JHS work schedule. You do not have any oversight or authority over Jackson vendors or contracting decisions.

You also serve on the Independent Civilian Panel (“ICP”), a County board that is tasked with conducting independent investigations into concerns and grievances raised against sworn officers of the Miami-Dade Police Department. The ICP does not have jurisdiction over security guards, nor does it have any oversight or authority over County contracts with Allied.

¹ JHS is governed by the Public Health Trust (“PHT”) and Miami-Dade County Code § 25A-1 establishes that the PHT is an agency and instrumentality of Miami-Dade County.

Issue

Whether any prohibited conflict of interest may exist between your employment at JHS and your proposed outside employment with the Allied.

Analysis

JHS employees are covered by the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“Ethics Code”) and considered County employees for purposes of the Ethics Code. *See* Section 25A-3 of the Miami-Dade County Code. “Jackson employees are required to adhere to the conflict of interest regulations as outlined in Florida Statute Chapter 112.313 (and) Section 2-11.1 of the [Ethics Code].” JHS Employee Code of Conduct, p. 13, <https://www.jhsmiami.org/orientation/OrientationMaterial/ComplianceCodeofConduct.pdf>, (last visited August 23, 2023).

Sections 2-11.1(j) of the Ethics Code prohibits County employees from engaging in outside employment which would impair the employee’s independence of judgment in the performance of his/her official duties, thereby creating a conflict between the employee’s public responsibilities and private interests. The County’s Administrative Order 7-1 reiterates the general principle that: “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.”

JHS employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County’s Administrative Order 7-1. The County’s Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds, at any time, that the outside employment is contrary, detrimental, or adverse to the interest of the County and/or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 23-15; INQ 12-49.

Several factors are considered to determine whether a potential conflict of interest exists between an individual’s County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the official solicits business or customers in the same area over which he or she has jurisdiction; whether the official will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the official serves funds or contracts with his or her outside employer. *See* RQO 17-01; INQ 21-66.

Outside employment is more likely to conflict with County employment “when the two pursuits overlap or are closely related.” INQ 16-89 (citing RQO 12-11, INQ 12-159). However, “a similarity between an employee’s County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest.” INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict by abiding by certain limitations).

In the past, the Commission has found that a JHS employee did not have a conflict of interest when accepting work with a JHS vendor because he was not involved in the negotiation, approval, renewal, supervision, or monitoring of the vendor's contract, and did not have the discretion to recommend or prescribe the use of the outside employer's product over that of another. *See* INQ 22-22; *see also* INQ 21-135 (JHS' Vice President may engage in outside employment as a lecturer for the University of Miami ("UM"), because he does not approve, oversee, administer, or monitor the contract(s) between UM and JHS); INQ 15-115 (a surgical technician may engage in outside employment as a consultant for a JHS vendor because she is not involved with the vendor's contract and makes no decisions regarding the procurement of surgical equipment).

Additionally, the Commission has found that a security specialist with County Internal Services Department could engage in outside employment as a security officer for a county vendor, with certain limitations. *See* RQO 16-02. Those limitations included that his county supervisors did not assign him to any area serviced by his outside employer and that he not be supervised at his County employment by anyone who is also responsible for overseeing, negotiating, monitoring or enforcing the County's contract with his private employer. *See id.*

Here, based on the information that you provided, **it appears to be unlikely the outside employment you are seeking to engage in with Allied would impair your independence of judgment as a Public Safety Officer at JHS.** This is because there is no overlap between your public duties and your outside employment; your outside employment will be performed outside of your County hours; you will not come into contact with the same persons or entities involved in your County work; and you will not use the same resources in your outside employment as used in your County work. You have been advised that you cannot share non-public information you have access to as part of your County employment with anyone outside of JHS, including your outside employer. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 16-02; INQ 20-102.

Additionally, neither you nor anyone who supervises you is currently involved in any aspect of the County contract with Allied and the ICP board on which you serve has no jurisdiction of Allied or its employees. **However, if Allied applies to become a JHS vendor in the future, you may have a conflict of interest and you should seek a new opinion.** *See* RQO 16-02.

Opinion

Based on the facts discussed above, you would not have a conflict of interest in your outside employment as a security guard for Allied. However, the Commission on Ethics strongly recommends that the following limitations be imposed on your supervisor's permission for you to engage in outside employment with Allied:

- You may not engage in activities that relate to your outside employment during your scheduled work hours (including phone calls, text messages, e-mails, or other communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, and County vehicles) in connection with your outside employment, even after work. *See* Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

- You may not exploit your County position to secure special privileges or exemptions for yourself or for Allied. *See* Ethics Code 2-11.1(g); INQ 19-101.
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a benefit for yourself or Allied. *See* Ethics Code Section 2-11.1(h).
- You may not represent Allied, or its employees or clients, before any County board or agency. *See* Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of your potential activities as a security guard, it is important to note that you would be prohibited from doing any such activities on behalf of Allied.
- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement² with the County’s Elections Department each by July 1st for the prior year’s outside employment.** *See* Ethics Code Section 2-11.1(k)(2).

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 JHS or under state law. Questions regarding possible conflicts based on JHS directives should be directed to the JHS Chief Executive Officer. 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, <https://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.

² The required form can be found online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.