



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Danilo Vargas, Mayor's Aide
Miami-Dade Office of the Mayor

FROM: Nolen Andrew Bunker, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-132; Section 2-11.1(q), Continuing application after municipal service.

DATE: September 27, 2023

CC: All COE Legal Staff; Francesca de Quesada Covey, Chief Innovation and Economic Development Officer, Miami-Dade Department of Regulatory and Economic Resources

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from your anticipated business with Miami-Dade County after your impending separation from County employment.

Facts

You are currently employed by the Miami-Dade County Mayor's Office as a Mayor's Aide. Specifically, you are the Small Business Innovation Senior Manager. In that position, you are primarily responsible for the Mayor's *STRIVE305* Small Business Initiative, which is a program designed to accelerate small business growth countywide and support entrepreneurs as they start and grow new businesses.¹ As part of your responsibilities, you host The Morning Huddle, which you described as a weekly virtual call hosted on Zoom for local small business entrepreneurs. You advised that you started it prior to joining the County, but that since you started your work with the County it has become part of your County duties and you have expanded it to include small businesses countywide. In short, The Morning Huddle is a format by which ideas are shared with and between small business owners and by which they are made aware of available resources in the County to support their business ventures.²

¹ See *About Strive305*, STRIVE305, <https://www.miamidade.gov/global/government/mayor/strive305/home.page> (last visited 09/21/2023).

² See JOIN THE MORNING HUDDLE EVERY FRIDAY, https://www.miamidade.gov/global/news-item.page?Mduid_news=news1634842183785154 (last visited 09/21/2023).

You advised that your last day of work with the County is September 22, 2023. You further advised that you have been asked by your current immediate supervisor, Ms. Francesca de Quesada Covey, to consider continuing to produce and host The Morning Huddle as a County vendor, and to further expand and improve its programming. You are considering doing so, and advised that if you were to do so, you would initially operate a sole proprietorship and register a fictitious name to register as a County vendor. You advised that you may eventually create a Florida limited liability company to continue the operation of The Morning Huddle.

The above-named Staff Attorney spoke with Ms. de Quesada Covey, who is employed by the Miami-Dade Department of Regulatory and Economic Resources (“RER”) as Chief Innovation and Economic Development Officer. She confirmed that it is the decision of the County to request that you continue to host The Morning Huddle as a County vendor and that you did not suggest or request the proposal. Ms. de Quesada Covey further advised that she would be the County employee tasked with negotiating any potential contract between you and the County to continue to operate The Morning Huddle. She further advised that, as a result, the contract would be with the Office of Innovation and Economic Development, a part of RER. In addition to being responsible for negotiating the contract with you, Ms. de Quesada Covey stated that she will also be responsible for administering, overseeing, and enforcing the proposed vendor contract between you and the County to continue to operate The Morning Huddle.

Issue

Whether there is any prohibited conflict of interest related to your proposed work for the County as a vendor in light of your recent employment with Miami-Dade County.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) Section 2-11.1(q)(1) provides that:

No person who has served as an . . . employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any . . . application, RFP, RFQ, bid, request for ruling, or other determination, contract . . . or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect.

This is commonly referred to as the Two-Year Rule. *See* INQ 23-45. Under the Two-Year Rule, former County and municipal employees are prohibited from *lobbying* their former employer for two years after their employment has ceased. *See* INQ 23-45; INQ 22-61. The Two-Year Rule is designed to limit a former employee’s ability to use his or her former County service and contacts for his or her personal benefit through lobbying, to the detriment of others who do not have County connections. *See* INQ 21-105.

Generally, the Two-Year Rule is expansively interpreted to mean all activities intended to influence an official decision or action are considered impermissible lobbying. *See* RQO 13-07; INQ 23-45. As such, **within the two-year period covered by the Two-Year Rule, former County employees are prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with County officials or staff for the purpose of influencing the County elected official, staff, or employee to take any type of official action, decision, or recommendation.** *See* INQ 16-151 (citing RQO 04-33, RQO 02-139). However, the Two-Year Rule does not prohibit former County employees from contracting with the County or working for a company that contracts with the County. *See* RQO 12-09 (the former Department Director of the Office of Capital Improvement Projects for the City of Miami Beach may work as the Vice-President of a company working on a City project as a subcontractor).

For example, a veterinarian formerly employed by the Miami-Dade Animal Services Department (“ASD”) within the past two years could submit a proposal in response to a request to quote establishing a prequalified pool of vendors to provide veterinary services to ASD, provided that she not engage in any lobbying activity, including contract negotiations. *See* INQ 22-61. Additionally, the former Finance Director with the City of North Miami Beach may enter into an independent contractor agreement with the City to provide financial advice, but he may not seek to encourage acceptance of an offer or otherwise negotiate with the City. *See* INQ 14-271.

Furthermore, once a contract has been awarded or otherwise ratified, the Two-Year Rule does not prohibit a former County employee from providing management or oversight of the contracted-for project. *See* INQ 16-151. As such, a former County employee otherwise covered by the Two-Year Rule may meet with County officials or employees to discuss matters arising under the awarded contract. *Id.* It is also not considered “lobbying” to engage in ministerial activities, such as filing routine requests, inquiring about the status of submitted requests, and otherwise performing activities pursuant to the terms of awarded or otherwise ratified contracts or agreements. *Id.*

Here, your situation is analogous to the former County and municipal employees discussed above. As a result, the Two-Year Rule would not prohibit you from entering into a contract with the County as a vendor to produce and host The Morning Huddle. *See* INQ 22-61; INQ 14-271. However, you may not directly engage in any negotiations regarding the contract between you and the County, nor may you participate in any meetings or oral presentations with County staff regarding the proposed vendor contract. *See* RQO 12-09; INQ 22-61; INQ 15-152. This prohibition includes any meetings, negotiations, presentations, or other discussions that are initiated or requested by County officials or staff regarding the proposed vendor contract or agreement. *See* INQ 22-61. We understand that this may make it difficult for you to contract with the County, but any such *direct* negotiations are prohibited by the Two-Year Rule. *See* RQO 12-09; INQ 22-61.

Opinion

Based on the facts presented here and discussed above, the Two-Year Rule does not prohibit you, or a company you own and operate, from contracting with the County as a vendor to produce and host The Morning Huddle. **However, the Two-Year Rule would prohibit you from *directly* engaging in any meetings, presentations, negotiations, or other discussions with any County**

official or employee regarding the proposed contract or vendor agreement and its terms. *See* RQO 12-09; INQ 22-61. **This prohibition includes any meetings, negotiations, or discussions initiated by County staff, whether orally or in writing.** *See* INQ 22-61.

Nevertheless, once a contract is entered into, you may communicate with County officials and staff concerning the already awarded or ratified contract insofar as you are engaged in the performance of whatever duties you are obligated to perform pursuant to the contract. *See id.*; INQ 16-151. You may also engage in ministerial actions, such as submitting routine administrative requests, as well as submitting requests in furtherance of the awarded or ratified contract, such as requests for payment of services rendered. *See* INQ 16-151. However, you are cautioned that you may not engage in any re-negotiation or other discussion regarding amending or changing the terms of the ratified contract because this, too, would be considered impermissible lobbying under the Two-Year Rule. *See* RQO 12-09; INQ 22-61.

Furthermore, you should consider another provision of the County Ethics Code that impacts former employees. Specifically, you may not disclose or use any confidential or proprietary information acquired as a result of your past County service to derive any personal benefit for yourself or your prospective company. *See* County Ethics Code § 2-11.1(h); INQ 21-105; INQ 22-61.

Finally, it is important to emphasize that the County Ethics Code represents a **minimal standard of conduct** for those who have engaged in public service and remain subject to the Two-Year Rule. *See* INQ 22-61; INQ 17-181. Former County employees should carefully consider the totality of the circumstances before taking any action that may erode the public's trust in government. *See* INQ 17-181 (citing INQ 13-197).

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 RER or under state law. Questions regarding possible conflicts based on RER directives should be directed to RER or 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.