



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Evelio Carmona
Passenger Bridge Bag Conveyor Technician
Miami Dade County Seaport Department/PortMiami

Luis Jimenez
Passenger Bridge Bag Conveyor Technician
Miami Dade County Seaport Department/PortMiami

FROM: Etta Akoni
Staff Attorney
Miami Dade County Commission on Ethics and Public Trust

SUBJECT: INQ 2023-134 Outside Employment §2-11.1(k)(2) and (j)

DATE: October 2, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in Evelio Carmona's proposed outside employment.

Facts:

You, Evelio Carmona, are a Passenger Bridge Bag ("PBB") Conveyor Technician with the Miami Dade County Seaport Department ("PortMiami"). In this role, you operate the passenger boarding bridge and bag conveyor. You are also responsible for troubleshooting and fixing any issues with the passenger boarding bridge and bag conveyor, as well as performing preventative maintenance on the passenger boarding bridge and bag conveyor system. You advise that the PBB Conveyor Technician position does not require a license. You indicated that as PBB Conveyor Technician you do not work directly with suppliers, contractors, subcontractors, or clients; and you do not have access to any non-public information. You also advised that your PortMiami position does not afford you the opportunity to recruit vendors, contractors, bidders, or members of the public who could use your outside employment services.

You are seeking approval to engage in outside employment with NEC Controls, LLC. You are also the owner of NEC Controls, LLC, a Florida Limited Liability Company established

in 2014. You have stated that NEC Controls will do electrical controls work but will address customer needs, generally. You are a licensed electrical contractor and are the primary qualifying agent for NEC Controls LLC.¹ You indicate that Miami Dade County does not pay for this license. You advise that your work with NEC Controls, LLC. will not require you to come into contact with any county employees, departments, or county boards that you encounter in your County employment. You state that you will use the same tools for NEC Controls, LLC. that you use for your PortMiami position, but you indicate that you own those tools. You state that NEC Controls, LLC. is a registered county vendor, but you do not anticipate that NEC Controls, LLC. will pursue any contracts, agreements, or business engagements with Miami Dade County. Lastly, you advise that NEC Controls, LLC. does not rent space from Miami Dade County.

Issue:

Whether any prohibited conflict of interest may exist, pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), between Evelio Carmona’s County employment with PortMiami and his outside employment as the owner of NEC Controls, LLC.

Analysis:

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

A. Outside Employment

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder 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.”²

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside

¹ State of Florida Department of Business and Professional Regulation website indicates that Evelio Carmona was issued a certified electrical contractor License, number [EC13009775](https://www.myfloridalicense.com/licenseRelation.asp?SID=&licid=7656942), on April 6, 2020, and it expires on August 31, 2024. <https://www.myfloridalicense.com/licenseRelation.asp?SID=&licid=7656942> Website visited on September 27, 2023.

² Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. (2017).

employment. *See* INQ 21-111; INQ 19-101. 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* RQO 16-02; RQO 00-10; INQ 13-28.

Conflicting employment can occur when the outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, e.g., similar clients, suppliers, or subcontractors. *See* RQO 15-03 (The COE determined that a conflict of interest existed between a Miami Dade County IT Department Senior Systems Analyst and Programmer's county position and his proposed outside employment as an IT consultant for a private client who provides IT services to municipalities, because the outside employment was closely related to, and would eventually overlap, the work he performed for the County (specifically the transit tracking system). As a result, it appeared probable that his loyalties would eventually be divided between his County employment and his private employment). However, generally, if an employee's outside employment is totally unrelated to his/her County employment, conflicts would generally not arise. For instance, in INQ 21-49, COE staff determined that an Airport Lighting Technician did not have a conflict of interest between his employment with the Miami Dade County and his outside employment as owner of an electrical contracting company, which is also a registered County vendor, because his outside employment would not impair his independence of judgment in the performance of his public duties, as the employee has no contact or authority over the selection, oversight, of administration of the County's contract with J&A, in his County employment. *See also* RQO 16-02

B. Contracting with the County

You have advised that NEC Controls LLC. is a registered county vendor but you do not currently anticipate that NEC Controls LLC. will seek to contract with Miami Dade County to provide its services. However, in the event NEC Controls LLC. decides to pursue a county contract, the County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows you to enter into a contract, agreement, business engagement, or transact any business, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of your duties to the PortMiami. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This means that you may not participate in determining the contract, agreement, or business engagement requirements or in awarding the contract, agreement, business engagement that you may also apply for. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract, agreement, business engagement in any way including, but not limited to, enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract, agreement, business engagement, or business transaction. *See* Sections 2- 11.1(c)(2), (d), and (n), Miami-Dade County Ethics Code. Consequently, NEC Controls LLC. **may not** enter into contracts with PortMiami. *See* RQO 07-18.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract, agreement, business engagement, or business transaction that NEC Controls LLC. is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code. INQ 19-36, INQ 19-32

D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees from exploitation of their official position to secure special privileges or exemptions for themselves and/or their businesses. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract to which NEC Controls LLC. is applying. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43. Specifically, the County Ethics Code does not prohibit employees from using annual leave time or legal holidays approved by the County to engage in approved outside employment, however, an employee may not use sick leave to engage in outside employment. *See* INQ 18-222; INQ 09-194.

Opinion:

Based on the information provided during this review, it appears to be unlikely that the type of outside employment that Evelio Carmona is seeking to engage in would impair his independence of judgment in the performance of his County duties as a PBB Conveyor Technician. Thus, Evelio Carmona would not have a conflict of interest in his proposed outside employment as the owner of NEC Controls, LLC.

This is because there is no overlap between his public duties and his outside employment; his outside employment will be performed outside of his County hours, and he will not come into contact with the same persons or entities involved in his County work. Although, he will use the same tools in his outside employment as is used in his County work, said tools belong to Evelio Carmona. Moreover, he does not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01; RQO 16-02.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Evelio Carmona's permission to engage in his proposed outside employment:

- Evelio Carmona shall not engage in activities that relate in any way to his outside employment during his regular work 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 his outside employment, even after work). *See* Sections 2-11.1 (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.

- Evelio Carmona is prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his County employment to derive a personal benefit or a benefit for NEC Controls, LLC. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- Evelio Carmona shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his supervisor and department director through the designated County human resources system. County employees are also required to file an annual Outside Employment Financial Statement, disclosing income earned, or the lack thereof, from their outside employment, on a yearly basis with the County’s Elections Department by 12 Noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

This opinion is limited to the facts as you, Evelio Carmona, presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.