



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Waldo Almonte, Police Officer
Miami-Dade Police Department

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

SUBJECT: INQ 2023-140, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j) and (k), Conflicting Employment Prohibited.

DATE: October 17, 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 concerning your company and potential future contracts with the County.

Facts

You are employed by the Miami-Dade Police Department (“MDPD”) as a police officer. Specifically, you work in the Neighborhood Resource Traffic Unit in the Kendall Division. You advised that your job responsibilities primarily include traffic enforcement, which includes responding to tips about traffic infractions as well as monitoring different traffic areas and enforcing any traffic violations.

You advised that you are the owner Blu Bros Customs, LLC., (“Blu Bros”) which manufactures and markets challenge coins and other items emblazoned with the MDPD seal.¹ Your primary customers to date have been MDPD employees that you know through your work for the department. You advise that customers tell you the design they want. You also have a website upon which there are currently thirteen products available for purchase.² The products available

¹ You should be aware that the unauthorized use of a County or municipal seal is a misdemeanor under state law. *See* Section 165.043, Florida Statutes.

² <https://blubroscustoms.com/collections/all>. (Last visited on October 5, 2023).

are challenge coins, cigar cutters, and ashtrays. You have specifically asked if you can enter into a contract with MDPD's Personnel Bureau to purchase these items from your company for use by MDPD employees.

You are the sole owner of Blu Bros and you do not currently have any family members working for Miami-Dade County. You do not engage in work for Blu Bros during your County hours. In your County position, you do not supervise other County employees and you do not have access to non-public information that could be relevant to your company. You also are not responsible for recruiting County vendors, contractors or members of the public who could also use the products your company sells.

Issue

Whether there is a prohibited conflict of interest that would prevent Blu Bros, your privately owned business, from selling products to MDPD and whether your outside employment with Blu Bros constitutes a prohibited conflict of interest.

Analysis

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

A. Contracting with the County

Blu Bros may **not** contract with MDPD. *See* County Ethics Code §§ 2-11.1(c), (d). The County Ethics Code prohibits County employees and their immediate family members from transacting business with the County department for which the employee works. *See* County Ethics Code § 2-11.1(c)(2).³

For example, a police officer with MDPD was not permitted to sell forcible entry breaching ballistic shields that he designed to MDPD. *See* INQ 22-148. Similarly, a company owned and operated by the stepparent of an MDPD employee could not contract to provide polygraph services to MDPD because she was an immediate family member of an employee of the contracting County department. *See* RQO 11-29; INQ 11-167. Furthermore, a firefighter employed by Miami-Dade County Fire Rescue ("MDFR") who owned a company that provided custom uniforms could contract with the County through his business, but only so long as neither he nor his company contracted with MDFR, his employing department. *See* INQ 21-21.

³ *See also* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

Here, while your company, Blu Bros, is permitted to contract with the County generally, it is specifically prohibited from contracting with MDPD, your employing department.

B. 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, Blu Bros, your privately-owned business, constitutes outside employment for which you are required to obtain permission.

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 employee has decision-making authority over the same subject matter that the outside employment concerns; whether the employee solicits business or customers in the same area over which he or she has jurisdiction in his or her public duties; whether the employee 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 employee serves funds or has contracts or agreements with his or her outside employer. *See* RQO 17-01; INQ 21-54.

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.** For example, an airport employee could not engage in outside employment working for a company that serviced the terminal of the airport where she worked because in her outside employment she would be in contact with the same people and entities she worked with in her County employment. *See* INQ 17-162. Similarly, a County employee who worked as a security guard at a County facility could not engage in outside employment with a company that provided contracted security guards for that facility because he would be in contact with the same persons in both his private employment and his County employment. *See* INQ 19-31.

However, County employees are permitted to engage in outside employment providing goods or services to their co-workers, as long as they do not solicit their co-workers while on County time or using County resources. For example, a tax record specialist with the Finance Department was permitted to work for the private tax preparation business that she owned and could offer her tax preparation services to her co-workers, but not while she was working, and not while using County resources. *See* INQ 19-101. She was specifically prohibited from offering her services to members of the public she encountered in the course of her duties at her County employment. *Id.* Similarly,

a firefighter was permitted to market his private business, an online platform for firefighters to promote their personal businesses, to Miami-Dade Fire Rescue employees as long as he did not do so when he was at work or using County resources. *See* INQ 2023-103.

It appears that your outside employment with your private company will not conflict with your County employment, as long as you do not sell Blu Bros products during your County work hours, or use any County resources, including your assigned vehicle or County-owned phone, to conduct the work of the company. You currently do not supervise other County employees, though if that changes in the future you should contact our office for a new opinion, as that fact would change this analysis.

C. Lobbying

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 Blu Bros's bid on any County solicitation or contract. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to Blu Bros.

Opinion

Based on the facts presented here, Blu Bros may not contract with MDPD but your outside employment with Blu Bros appears to present no prohibited conflict, so long as you avoid doing any work for Blu Bros on County time or using County resources.

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. This opinion is limited to an interpretation of the County Ethics Code only. 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.