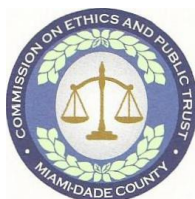


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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December 15, 2023

Jose Felix Diaz
Executive Vice President
Ballard Partners
2 Alhambra Plaza, Suite 102
Coral Gables, FL 33134
diaz@ballardpartners.com

Re: INQ 2023-164, Section 2-11.1(q), Continuing application after county service.

Dear Mr. Diaz:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest that may arise from the recent public employment of a Ballard Partners employee with either Miami-Dade County and/or the City of Miami.

Facts

Ballard Partners, Inc. (“Ballard”), is a Florida for-profit corporation that describes itself as “a lobbying firm offering comprehensive services for clients, from legislative advocacy to relationship management.”¹ Specifically, Ballard provides a number of services, including advocacy for the passage or defeat of legislation, policy, and appropriations.² You are Ballard’s Executive Vice President and Managing Partner of the Miami office.

You advised that, as part of its business, Ballard represents not-for-profit, tax-exempt entities when they have matters before local government. For example, you advised that Ballard represents HistoryMiami Museum³ (“HMM”) with regard to procurement and funding issues in Miami-Dade County.

¹ *What We Do*, BALLARD PARTNERS, <https://ballardpartners.com/what-we-do/> (last visited Dec. 12, 2023).

² *Id.*

³ HistoryMiami Museum is one of the largest regional history organizations in the Southeastern United States. *See Who We Are*, ABOUT THE MUSEUM, <https://historymiami.org/about-us/about-the-museum/> (last visited Dec. 12, 2023).

Furthermore, you advised that Ballard has hired and/or will hire former employees of Miami-Dade County and the City of Miami. Ballard would like to have these former County and/or City employees represent not-for-profit, tax-exempt entities like HMM before their former employers.

Issue

Whether any prohibited conflict of interest would prevent a former employee of Miami-Dade County or the City of Miami from representing and lobbying on behalf of not-for-profit entities before their former employer.

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 . . . a member of the staff of an elected county official, or 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 judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest 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.⁴

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 or municipal service and contacts for his or her personal benefit through lobbying, to the detriment of others who do not have County or municipal connections. *See* INQ 21-105. As such, **within the two-year period covered by the Two-Year Rule, the former County or municipal employee is prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with County or municipal officials or staff for the purpose of influencing the County or municipal 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). Public identification as part of a lobbying team and attendance at a meeting with a current public official or employee of the former public employer as a part of a lobbying team would likely run afoul of this prohibition. *See* C21-11-05 Public Report and Final Order (former Director of the Miami-Dade Department of Transportation and Public Works violated the Two-Year Rule when she attended a private meeting with a County Commissioner at which a colleague at her new employer lobbied the Commissioner); RQO 12-09 (former Director of the City of Miami Beach Office of Capital Improvement Projects may not arrange or participate in meetings with City of Miami Beach officials or staff for the purpose of influencing an official decision); RQO 04-34 (the former

⁴ The County Ethics Code “shall be applicable to all County personnel as defined herein, and shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers . . . References in the section to County personnel shall therefor be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to.” County Ethics Code § 2-11.1(a).

Director of the Miami-Dade Office of Public Transportation Management working for a private engineering firm should not be publicly identified as part of his employer's lobbying team to the County or attend meetings with the County were covered activities occurred).

However, the County Ethics Code includes the following exception to the Two-Year Rule's blanket ban on lobbying activity:

[t]he provisions of this Subsection (q) shall not apply to officials, departmental personnel or employees who become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of such entities in their official capacities.

County Ethics Code § 2-11.1(q)(2).

This exception applies both to former employees directly employed by not-for-profit entities, as well as those who work for firms retained by not-for-profit entities to lobby on their behalf. *See* INQ 17-74 ("entering into a contractual relationship with one of these 'exempt' entities meets the definition of being employed by them") (citing INQ 15-140; INQ 05-42); *see also* INQ 18-02 (citing RQO 06-54) (stating that the "post-employment restriction does not apply to former County/municipal employees who subsequently become employed or *retained* by 501(c)(3) nonprofit organizations . . .") (emphasis added).

The City of Miami's Code of Ordinances also contains a restriction on post-employment lobbying. Specifically, the City Code provides that "[n]o employee shall appear in any capacity on behalf of any third party before any board, commission or agency of the city . . ." City of Miami Code § 2-612(a). The City Code further provides that: "[t]he prohibition upon activity which is set forth in subsections (a) and (b) of this section shall remain in effect for a period of two years after the officer, official, or employee has left city service or terminated city employment." City of Miami Code § 2-612(c). However, unlike the County Ethics Code, there is no exception to the prohibition on lobbying activity during the two-year post-employment period for former employees employed by and lobbying on behalf of not-for-profit entities. *See generally* City of Miami Code § 2-612; *see also* INQ 18-22 (noting the lack of an exception for lobbying on behalf of not-for-profit entities in the City of Miami Code).

In practice, a former Chief of Staff for a City of Miami Commissioner who was subsequently employed by a law firm that was, in turn, engaged by a not-for-profit entity to represent said not-for-profit entity before the City of Miami, the County, and the State, was prohibited from representing said not-for-profit entity before the City of Miami because of the City's prohibition on post-employment lobbying on behalf of third parties. *See* INQ 18-02. However, a former County employee may be retained by the University of Miami and Florida International University to represent them before the County because they are exempt entities under the County Ethics Code's prohibition on post-employment lobbying. *See* INQ 17-74.

Here, turning first to the County Ethics Code, former County employees working for Ballard may engage in lobbying activity with the County on behalf of governmental, not-for-profit, and educational entities that have retained Ballard to provide such services, and they may do so within two years of their separation from the County. *See* County Ethics Code § 2-11.1(q)(2); INQ 17-74. Specifically, a former County employee may, within two years of separation from the County,

represent HMM before the County and lobby County officials and employees on its behalf, and said former County employee may do so either as a direct employee of HMM or as an employee of Ballard where Ballard has been retained to provide said lobbying services on behalf of HMM. *See* INQ 18-02; INQ 17-74.

However, turning to the City of Miami's Code of Ordinances, former City of Miami employees are prohibited from representing third parties before "*any board, commission or agency of the city.*" City of Miami Code § 2-612(a), (c) (emphasis added). This post-employment prohibition on lobbying activity is more restrictive than the County's post-employment prohibition because it does not include any exception for the representation of governmental, not-for-profit, or educational entities. *Compare* County Ethics Code § 2-11.1(q)(1), (2) *with* City of Miami Code § 2-612(a), (c); *see also* INQ 18-22; INQ 18-02. Accordingly, a former City of Miami employee working for Ballard may not engage in any lobbying activity on behalf of HMM, or any other third party, with any City of Miami board, commission, or agency or department, including employees thereof.

Nevertheless, former public employees are permitted to share institutional knowledge regarding their former employer's procedures with their new clients in their new private employment, and to provide guidance to those clients regarding interactions with their former public employer. *See* INQ 22-96 (citing INQ 21-02; INQ 20-63; INQ 19-75).

Opinion

Based on the facts presented here and discussed above, the County's Two-Year Rule does not prohibit a former County employee now employed by Ballard who separated from the County less than two years ago from lobbying the County on behalf of a government entity, not-for-profit tax-exempt entity, or educational institution that has retained Ballard to provide said lobbying services. *See* County Ethics Code § 2-11.1(q)(1), (2); INQ 17-74. **However, the City of Miami's Code of Ordinances does prohibit a former City of Miami employee who is employed by Ballard from lobbying the City – within two years of separation from the City – on behalf of any third party, including government entities, not-for-profit tax-exempt entities, and educational institutions.** *See* City of Miami Code § 2-612(a), (c); INQ 18-02.

Former County and municipal employees should consider another provision of the County Ethics Code that impacts former employees. Specifically, they may not disclose or use any confidential or proprietary information acquired as a result of their past County or municipal service to derive any personal benefit for themselves or their employers and/or clients. *See* County Ethics Code § 2-11.1(h); INQ 21-105; INQ 22-61.

Furthermore, 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 and municipal 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).

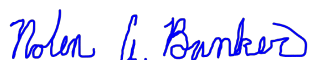
Finally, you are reminded that this opinion only addresses restrictions on former County and municipal employees, not on former County or municipal elected officials. The City of Miami's broad restrictions regarding lobbying as discussed above appear to be limited to former employees,

not former elected or appointed officials. *See* City of Miami Code § 2-612(a); INQ 20-98 (finding that a former member of the City of Miami Historic and Environmental Protection Board may represent a third party before the City of Miami Commission within two years of leaving City service). Furthermore, while the Ethics Commission lacks jurisdiction to interpret State law, it should be noted that former County and municipal elected or appointed officials should be aware that there are similar or lengthier prohibitions on engaging in lobbying activities after leaving elected or appointed office. *See* Art. II, § 8(f), Fla. Const.; § 112.313(14), Fla. Stat.; INQ 22-142.

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 under state law. 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/>.

Sincerely,



Nolen Andrew “Drew” Bunker, Esq.
Staff Attorney

CC: All COE Legal Staff

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.