

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 10, 2023

Via email only: Jose.Custodio@wsp.com

Mr. Jose Custodio, P.E.
WSP
7650 Corporate Center Drive, Suite 300
Miami, Florida 33126

Re: INQ 2023-42, Section 2-1.11(q), County Ethics Code, Two-Year Rule

Dear Mr. Custodio:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting our guidance regarding the limitations imposed on your interaction with the Town of Bay Harbor Islands (“BHI” or “Town”), within two years of separation as the Town Engineer and Public Works Director for that municipality.

Facts:

In November 2022, you separated from your position as the Town Engineer and Public Works Director for the Town of Bay Harbor Islands. You are currently employed as a Water Practice Area Leader with WSP.

WSP self-describes as a global company that provides technical expertise and strategic advice to clients in the Transportation & Infrastructure, Property & Buildings, Environment, Industry, Resources (including Mining and Oil & Gas) and Energy sectors, as well as offering project and program delivery and advisory services. Its experts include engineers, advisors, technicians, scientists, architects, planners, surveyors, and environmental specialists, as well as other design, program, and construction management professionals.

WSP has submitted a bid in response to an RFQ for Engineering and Architectural Consulting Services Continuing Contract (RFQ-5-1000-0-2023/FVR) issued by the Town of Bay Harbor Islands. You are the proposed WSP Project Manager in that bid.

While employed with the Town of Bay Harbor Islands, you were not involved in the preparation of the above referenced request for qualifications.

Analysis and Opinion:

The lobbying ordinance found at Section 2-11.1(s) of the Ethics Code, defines “lobbying activity” as follows:

...any attempt to influence or encourage the passage or defeat of, or modification to, governmental actions, including, but not limited to, ordinances, resolutions, rules, regulations, executive orders, and procurement actions or decisions of the County [municipal] Commission, the Mayor, any County [municipal] board or committee, or any County [municipal] personnel. The term "lobbying activity" encompasses all forms of communication, whether oral, written, or electronic, during the entire decision-making process on actions, decisions, or recommendations which foreseeably will be heard or reviewed by County [municipal] personnel.

Section 2-11.1(q), the “Two-Year Rule” found in the Miami-Dade County Ethics Code, prohibits county or municipal employees from “lobbying” their former employer for a period of two years following separation.¹

Specifically, the relevant section of that rule prohibits a department director, for a period of two years after his or her county or municipal service has ceased from:

...lobby[ing] any county [municipal] officer, department 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 [municipality] or one of its agencies or instrumentalities is a part or has any interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the Ethics Code’s lobbying ordinance. *See generally* RQO 12-09; RQO 13-07; INQ 2021-40.²

Consequently, you may not attempt to persuade BHI staff, whether in person or by written communication, to take a particular course of action particularly as it regards the hiring of WSP as a contractor or on behalf of a WSP client in any transaction as defined in subsection (q). These actions are considered lobbying and are prohibited. *See* RQO 02-139.

¹ The County Ethics Code’s references to County personnel are applicable to municipal personnel who serve in comparable capacities to County personnel referred to. In this opinion any reference to the “County” is also applicable to the Town of Bay Harbor Islands. *See* Section 2-11.1(a), Miami-Dade Code.

² The Town of Bay Harbor Islands’ Conflict of Interest and Code of Ethics is contained in Article IV of its Charter and provides as follows: “All Council Members, officials and employees of the Town shall be subject to the standards of conduct for public officers and employees set by Federal, State, County or other applicable law. The Council may adopt additional standards of conduct and code of ethics requirements that are not inconsistent with Federal, State, County or other applicable laws.” There is no additional ethics code contained in the Town’s Code of Ordinances nor does the Town have a limitation on former employees lobbying Town officials or requiring lobbyist registration.

You are also prohibited from making presentations before BHI selection committees, boards and agencies, the Town Commission and its and committees and subcommittees.

This prohibition is broad and covers any activity where you would be publicly identified as part of WSP lobbying team, even if you do not speak or otherwise participate in a meeting or presentation. See RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

You are however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding Town of Bay Harbor Island procedures with WSP or other clients, and to provide guidance regarding interactions with the Town. See INQ 20-63. Direct meetings and contacts between you and BHI personnel are also permissible as long as there is no advocacy involved in the interactions and you are not seeking to influence County personnel. See INQ 20-63.

Most importantly, you are of course allowed to work in a technical and professional advisory role as an engineer on behalf of WSP on existing and future BHI contracts and there is no prohibition on these post-employment activities as part of your duties with WSP.

You are simply cautioned against engaging in any action that might be perceived as advocating or seeking to influence Town elected officials or personnel as this this would be a violation of the Two-Year Rule.

As regards your work for WSP with private clients or other local, state, or federal government entities, the only applicable prohibition would be under Section 2-11.1(h) of the Ethics Code. That section would prohibit you from engaging in any employment, business, or professional activity, where you might reasonably be required or induced to disclose any confidential information gained by you as a result of your former Town position.

This opinion is limited to the facts as you 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 Ethics Commission.

We appreciate your consulting with the Ethics Commission. If the facts associated with your inquiry change, please contact us for additional guidance.

Sincerely,



Jose J. Arrojo
Executive Director

Copies: COE Legal Staff
Onaivys Diaz, Executive Assistant
Alice Bravo, P.E., WSP (via facsimile only)
Fausto Vargas-Reyes, BHI (via facsimile only)

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 Ethics Commission 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.