

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 14, 2023

Via email only: Eduardo.Luis@exp.com

Mr. Eduardo M. Luis
Water/Wastewater Senior Technical Advisor
EXP
201 Alhambra Circle, Suite 800
Coral Gables, Florida 33134

Re: INQ 2023-45, Section 2-1.11(q), County Ethics Code, Two-Year Rule

Dear Mr. Luis:

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 Miami-Dade County, within two years of separation as an engineer and project manager with the County's Water and Sewer Department (WASD).

Facts:

In September 2022, you separated from your position as a WASD engineer and project manager. You are currently employed as a Water/Wastewater Senior Technical Advisor with EXP.

EXP is a global company that provides engineering, consulting, and project management services. The company offers architectural, design, building and infrastructure engineering, environmental, and geotechnical solutions for aviation, civil, commercial, retail, construction, education, energy, sports, oil and gas, and railway industries worldwide.

EXP has submitted a bid in response to a WASD RFQ and you are the proposed Project or Design Manager in that bid.

While employed with the County, 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 Commission, the Mayor, any County board or committee, or any County 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 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.

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

...lobby[ing] any county 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 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.

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

You are also prohibited from making presentations before County selection committees, boards and agencies, the Board of County Commissioners and its and committees and subcommittees.

This prohibition is broad and covers any activity where you would be publicly identified as part of EXP 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 County procedures with EXP or other clients, and to provide guidance regarding interactions with the Town. *See* INQ 20-63. Direct meetings and contacts between you and County 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 EXP on existing and future EXP contracts and there is no prohibition on these post-employment activities as part of your duties with EXP.

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

As regards your work for EXP 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 County 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

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.