



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Melanie McLean, Deputy Director
Miami-Dade County Human Resources Department

FROM: Loressa Felix, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 2023-55, Sections 2-11.1(c), Transacting business with the County, Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

DATE: April 27, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance on the application of the Miami-Dade County Ethics Code (“County Ethics Code”) to the newly implemented First Time Homebuyer and Emergency Housing Assistance Programs¹.

Background:

The Board of County Commissioners (“Board”) adopted Resolution R-219-22, which directed the Mayor or her designee, to evaluate the feasibility of and provide recommendations to the Board on developing a First Time Homebuyer Assistance Program through which eligible County employees could utilize accrued annual leave time to pay for down payment and/or closing costs associated with the purchase of a home.

Subsequently, the Board adopted Resolution R-445-22, which directed the Mayor or her designee to evaluate the feasibility of and provide recommendations to the Board on developing an emergency housing payment assistance program through which eligible County employees could utilize accrued annual leave time to pay for current or past-due rent or mortgage payments on their primary residence. Both Resolutions required reports to the Board, which were adopted at the October 6, 2022, Board meeting.

On April 10, 2023, the Mayor announced the launch of two new employee benefits programs: the First-Time Homebuyer Program and the Emergency Housing Assistance Program (“Programs”). These Programs offer a readily available, alternative source of funding, by allowing eligible

¹ See Miami-Dade County Resolution Nos. R-219-22 and R-445-2.

employees to be paid for accrued annual leave. The Programs will be available to non-bargaining employees and all other County employees within collective bargaining units, provided that written consent is obtained to provide the benefit to members of the unit.

The Programs offer employees the option to cash out annual leave up to a value of \$25,000 gross for the First Time Homebuyer Program, and an allowable maximum of \$12,000 gross for the Emergency Housing Assistance Program. The requirements for both programs are as follows: (1) employees must be employed by the County for at least three years; (2) only annual leave can be cashed out and at least 80 hours must remain in the employee's annual leave bank; (3) employees may only participate in both programs, but only once in either program during their County career; and (4) proof that the funds are used expressly for the purpose intended, along with the requisite form, must be provided to the Departmental Personnel Representative (DPR) or designee, who will be responsible for reviewing, validating and forwarding to the Human Resources Department (HR) for final processing.

The programs are offered only to County employees meeting the eligibility requirements listed above, as an employee benefit allowing access to funds already earned by County employees.²

Generally, County employees seeking to contract with the County, i.e. participate in other homeownership or rental assistance programs offered to the public, must obtain an ethics opinion from the Commission on Ethics to determine the existence of conflicts of interest within the County Ethics Code which may impede an employee's participation. *See* County Ethics Code § 2-11.1(c)(4). This inquiry addresses whether employees seeking to participate in the First Time Homebuyer and Emergency Housing Assistance Programs must seek an ethics opinion prior to his/her participation in the program.

Analysis

A County employee or his/her immediate family member is prohibited from entering into any contract or transacting any business with the County in which he/she or his/her immediate family has a direct or indirect financial interest. *See* Section 2-11.1(c)(1), County Ethics Code; RQO 17-05. However, there is a limited exclusion of this prohibition. Under Section 2-11.1(c)(2) of the County Ethics Code, a County employee or the immediate family of a County employee *may* transact business with the County by entering into a contract with the County as long as the following criteria are met: entering into the contract will not interfere with the full and faithful discharge of the County employee's duties to the County; the County employee will not participate or be involved in the contract award or requirements; the County employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance; and, the County employee will not be working in the County department that enforces, oversees, or administers the subject contract, agreement or grant. *See* RQO 17-05.

² *See generally* Miami-Dade County Leave Manual, Nos. 01.03.00 and 01.08.00, which explain the annual leave general accrual rates for County employees and the circumstances which allow County employees to receive payment for their accrued annual leave time.

“Transacting business” with the County is defined as the purchase or sale of goods or services for consideration. *See* County Ethics Code § 2-11.1(b)(10).³

In this instance, the County is offering a benefit⁴ to County employees by expanding the circumstances through which payments of accrued annual leave may be made to County employees. The employee is not seeking to participate in a program offered to the general public or transact any business with the County. The employee would simply be taking advantage of a benefit offered to all County employees meeting eligibility requirements.

The First Time Homebuyer and Emergency Housing Assistance Programs are akin to tuition reimbursement benefits currently offered to existing County employees, which also require eligibility, completion of an application process, and subsequent departmental approval.⁵

Thus, as the First Time Homebuyer and Emergency Housing Assistance Programs is an employee benefit that does not constitute contracting with the County nor transacting business with the County, and as such is not subject to Sections (c) of the County Ethics Code.

Conclusion

As Sections 2-11.1(c)(1) of the County Ethics Code are not applicable to the benefits offered to County employees by the First Time Homebuyer and Emergency Housing Assistance Programs, no ethics opinion is required prior to an employee’s participation in the program.

This opinion is limited to the facts as you presented them to the COE 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.

³ *See also* CEO 86-24 (Florida Commission on Ethics has opined that “a business entity is doing business with an agency where the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach”).

⁴ While the term employee benefit is not specifically defined within the Miami-Dade County Code or County employee manuals, the Courts have defined employee benefits or employee welfare benefit plan as any plan, fund, or program established or maintained by an employer, for the purpose of providing medical, surgical, hospital care, sickness, accident, disability, death, unemployment or vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services or severance benefits to participants or their beneficiaries. *See Rasmussen v. Time Ins. Co.*, 884 So. 2d 354, 356 (Fla. 2d DCA 2004); *Donovan v. Dillingham*, 688 F.2d 1367, 1371 (11th Cir. 1982).

⁵ *See* https://www.miamidade.gov/global/service.page?Mduid_service=ser1522095253774673

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.