

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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June 20, 2023

Via Facsimile Only to Expedite Delivery:

ljulien@miamigardens-fl.gov

Honorable Linda Julien, Councilwoman
City of Miami Gardens
18605 Northwest 27th Avenue
Miami Gardens, Florida 33056

Re: INQ 2023-78 , Outside Employment as Lobbyist, County Ethics Code, Sections 2-11.1(j),
Conflicting Employment, and (q), “Two-Year” Post-Employment Lobbying Prohibition

Dear Councilwoman Julien:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting guidance regarding the application of the County Ethics Code’s outside employment and prohibited lobbying provisions.

Facts:

You are an elected municipal councilwoman in the City of Miami Gardens. You are planning to lobby other local governments in Miami-Dade County, on behalf of private clients. You will not engage in any lobbying activities in Miami Gardens.

Issue:

Whether a municipal councilwoman may lobby in other jurisdictions while serving in an elected capacity.

Discussion:

As a preliminary matter, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) applies to elected councilmembers in the City of Miami Gardens. (Sec. 2-11.1(a), Miami-Dade Code)

There is no provision in the County Ethics Code that prohibits an elected municipal official from lobbying other governments.

Section 2-11.1(j) of the Miami-Dade Code, relating to outside employment, prohibits elected municipal officials from engaging in employment which would impair their independence of judgment in the performance of his/her official duties, thereby creating a conflict between the official's public responsibilities and private interests.

Section 2-11.1(m)(2) of the Miami-Dade Code, relating to certain appearances, prohibits a council member from appearing before any municipal board in his or her city on behalf of third party and from receiving compensation, directly or indirectly or in any form, for any services rendered to the third party seeking a benefit from the municipality. ¹

The Ethics Commission has interpreted this section broadly to prohibit anything beyond ministerial information requests from municipal employees in the elected official's city. Officials may not sign proposals or submit documents or correspondence on behalf of the third party. The officials may collect documents for clients and forward them to the city but are cautioned not to proceed beyond these types of ministerial exchanges. Advocacy of any type is prohibited. ²

Section 2-11.1(g) of the Miami-Dade Code prohibits elected officials from using their official positions to secure special benefits, privileges or exemptions for themselves or others. Consequently, municipal staff and resources should not be used in relation to private employment. The official may not use public resources to promote private employment. Finally, the official

¹ Section 2-11.1(m)(2), County Ethics Code (Prohibiting a council member from appearing before any municipal board on behalf of third party and from receiving compensation, directly or indirectly or in any form, for any services rendered to the third party seeking a benefit from the municipality.) *See generally* RQO 07-02; RQO 07-39; INQ 15-229; INQ 17-254; INQ 19-12.

² *See* INQ 09-33 (County executive serving on the board of a non-profit agency receiving county funding may not sign any documents or grant applications presented to the County and if any issues arise relating to grant applications, the employee may not participate in meetings or discussions with County staff regarding the dispute.); INQ 09-33 (County executive serving on the board of a non-profit agency receiving county funding may not sign any documents or grant applications presented to the County and if any issues arise relating to grant applications, the employee may not participate in meetings or discussions with County staff regarding the dispute.)

should be cautious and avoid suggesting to private clients that he or she will be able to use the prestige of the public elected position to secure special access or benefits for the clients.³

Section 2-11.1(q) of the Miami-Dade Code, also referred to as the “Two-Year Rule” provides that no person that has served as an elected local official shall, for a period of two years after his or her public service has ceased, lobby an officer, departmental personnel, or employee in their city. The Ethics Commission has interpreted the Two-Year Rule to ban a very broad range of activities during the post service time period.⁴

This does not mean that the official is precluded from sharing his or unique insight or knowledge regarding municipal government with private parties transacting with their city as a consultant or advisor. Also, this section does not prohibit the official from submitting routine administrative requests or applications to a city department or agency during the post-service time period. Again, what is prohibited are lobbying activities defined as encouragement or advocacy.

There are a number of exclusions from the Two-Year Rule. Notably, if the official is engaged by a governmental agency, a 501(c)(3) non-profit, or an educational institution or entity, then lobbying in on behalf of such an entity is not prohibited.

Also worth noting, and outside of this agency’s authority to interpret or opine on, effective December 31, 2022, as a result of a 2018 amendment to the state constitution, elected officials are prohibited from lobbying both *during* public service (in-service) and for a *six-year period following* vacation of public office (post-service). The prohibitions are expansive and address lobbying on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision.⁵

On February 28, 2023, in *Rene Garcia, et al. v. Kerry J. Stillman, et al.*, Case No. 22-cv-24156-BLOOM/Otazo-Reyes, U.S. District Court, Southern District of Florida, the federal district court enjoined state officials from enforcing the in-service lobbying prohibition.⁶

Opinion:

You have advised that you will not be engaging in any lobbying activities in Miami Gardens, Florida.

³ Sections 2-11.1(g) and (n), County Ethics Code; INQ 21-121.

⁴ *See generally* RQO 13-07.

⁵ “A public official shall not lobby for compensation on issued of policy, appropriations, or procurement before the federal government, the legislature, any state government or body or agency, or any political subdivision of this state, during his or her term of office.”

⁶ Court Order on Motion for Preliminary Injunction is attached.

Consequently, based upon the plain reading of the above referenced provisions contained in the County Ethics Code and the reasoning supporting the cited formal and informal opinions, you are not prohibited from engaging in lobbying activities in *other* jurisdictions apart from Miami Gardens.

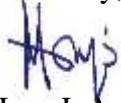
You should be mindful of the guardrails detailed above regarding the prohibited use of public resources and position in your outside employment as a lobbyist.

This opinion is limited to the facts as presented to the Commission on Ethics, is limited to an interpretation of the County Ethics Code only and is not intended to interpret state or federal laws, or court opinions. While there may be references to state statutes, questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

Notably, while there is a specific reference to an order issued by the federal district court enjoining enforcement of the state prohibition on in-service lobbying, undersigned is without jurisdiction to interpret the court's order. The reference and attached order are for informational purposes only.

Thank you again for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance. We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience. If the facts associated with your inquiry change, or you develop a more specific plan to engage with the County, then please contact us for additional guidance.

Sincerely,



Jose J. Arrojo
Executive Director

cc: 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 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.