



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North  
701 Northwest 1<sup>st</sup> Court · 8<sup>th</sup> Floor · Miami, Florida 33136  
Phone: (305) 579-2594 · Facsimile: (305) 579-0273  
Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

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### MEMORANDUM

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**TO:** Doralba Vargas  
Engineer 3, Utility Engineering Division  
Miami-Dade Water and Sewer Department

David Vazquez, PE  
Senior Professional Engineer, Utility Plant Engineering and Construction  
Division  
Miami-Dade Water and Sewer Department

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

**SUBJECT:** INQ 2023-87, Outside employment, Sections 2-11.1(j) and (k)(2), County Ethics Code

**DATE:** July 18, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts: You are employed as an Engineer 3 in the Utility Engineering Division for the Miami-Dade County Water and Sewer Department (“WASD”). You would like to engage in outside employment as an Inspection Supervisor and President for D&R Consulting Group, Inc. (“D&R”).

As an Engineer 3 in the Utility Engineering Division of WASD, you are tasked with overseeing the design of pipeline and pump station infrastructure systems. You also ensure that the pipeline and pump stations comply with all technical and safety regulations. Additionally, you review and approve task authorizations for consultants as a project manager.

As an Inspection Supervisor of D&R and President, you will be overseeing the inspection process at private residences in the time leading up to installations of septic tanks and the time after the septic tanks are installed.

D&R is a for-profit corporation incorporated in Florida, according to the Florida Department of State, Division of Corporations. D&R will provide consulting services prior to installation of septic

tanks for private residences. D&R will also provide consulting services after the septic tanks are installed. You will act as Inspection Supervisor, overseeing the inspection process of the septic tanks.

You advise that D&G is not a County vendor and that your work with D&G would occur outside your County employment hours. You also indicate that your work would not require the use of any equipment or resources which you use in your County employment nor would you work with the same clients. Your supervisor has identified no issue with your outside employment. The septic tanks are on private property and not within WASD's jurisdiction. Lastly, you advise that in your County duties you have no oversight of, authority over, or involvement with your outside employer.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your prospective outside employment as President and Inspection Supervisor for D&R Consulting Group.

Analysis and Opinion:

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible." Thus, County department directors have the discretion to deny outside employment if he or she finds that it is contrary, detrimental or adverse to the interest of the County and/or the employee's department. *See* County's Administrative Order 7-1 and RQO 16-02; RQO 00-10; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 19-101; INQ 13-28.

In consideration of your inquiry, we must look at several factors, the first of which is whether there are similarities in your duties as an Engineer 3 for WASD and your position as President and Inspection Supervisor of D&G. In this instance, it seems that the positions would require to you utilize a similar knowledge base involving wastewater management. However, even if your position would require you to utilize a similar knowledge base there is no indication that a prohibited conflict of interest exists. *See* INQ 21-54; INQ 21-64; and INQ 22-114.

As noted above, the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment that is likely to create conflicts of interest between the employee's County responsibilities and their outside job duties. The Ethics Commission has previously opined that a County employee working for WASD as a water treatment plant officer may engage in outside employment performing similar functions for a company which operates water treatment plants

for entities not served by the County. *See* RQO 00-10. Similarly, in RQO 04-168, the Ethics Commission opined that, with limitations, a County land surveyor may engage in outside employment as land surveyor for private clients, including other municipalities. Lastly, a Parking Attendant Assistant Supervisor does not have a conflict of interest regarding his employment at the County and his outside employment as a municipal Parking Enforcement Officer, because his outside employment would not impair his independence of judgment in the performance of his public duties, as he will not assist the same clients or use the same resources in both positions; his work for the City would be performed outside of his County hours; he will not interact with County employees in his outside position; and he has no involvement, oversight, supervision, or authority over the City, its staff, or its traffic enforcement operations in his County position. *See* INQ 22-31.

Based on the information provided, it appears to be unlikely that the type of outside employment that you are seeking to engage in would impair your independence of judgment in the performance of your County duties as an Engineer 3 for WASD. This is because there is no overlap between your public duties and your outside employment; D&G will not contract with the County; it will perform work for private residential properties; it does not perform work for any other entities that are County vendors; you will not assist the same clients; you will not use the same resources; your outside employment does not require you to interact with other County employees; and the work would be performed outside your County hours. Further, the similarities in the services you would be providing in the two positions do not preclude you from engaging in outside employment provided any necessary limitations are imposed. Further, the Ethics Commission has also held that use of an acquired knowledge base in outside employment for a privately owned company does not in and of itself create a conflict of interest. *See* INQ 20-43.

Nevertheless, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in the aforementioned outside employment in order to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- You may not conduct business with and/or employ any vendor or subcontractor with which you encounter, supervise, inspect, oversee, or are otherwise involved with in the performance of your County duties. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit,

for the benefit of D&G, or for the benefit of D&G clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.

- You may not exploit your County position to secure special privileges or exemptions for yourself, D&G, or D&G clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent D&G or D&G clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for D&G, it is important to note that you would be prohibited from doing any such activities on behalf of D&G or its clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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 Commission on Ethics.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.