



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Alice Isabell Eason, Administrative Secretary
Miami-Dade Fire Rescue Department

Michael Eng, Fire Division Chief
Miami-Dade Fire Rescue Department

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-88, Section 2-11.1(c), Limitations on Contracting with the County;
Section 2-11.1(k)(2) and (j), Outside Employment

DATE: July 24, 2023

CC: COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding the limitations on transacting business with Miami-Dade County through your privately owned business, Gals on Da Run, Inc. (“GODR”).

Facts

You, Alice Isabell Eason, would like to contract with the County as a vendor to provide catering services through your business, GODR. You are employed by the Miami-Dade Fire Rescue Department (“MDFR”) as an administrative secretary. Your job duties primarily involve answering the phone, typing up correspondence, ordering supplies, and keeping current with all department scheduling documents.

GODR is a for-profit corporation incorporated in Florida offering catering services specializing in Bahamian, Caribbean, and Southern cuisine. You are the President of GODR, and your duties include cooking, customer service, supply management, solicitation and marketing, and bookkeeping. You provided that GODR has previously contracted with organizations such as the Greater Miami Visitors and Conventions Bureau and Historic Hampton House. You provided that your goals for the company include expanding your business and potentially being a caterer for County events. However, you

said that you have no intention of contracting with your own department (MDFR), and that there is no specific County solicitation to which GODR has submitted a bid at this time.

You also indicate that your work does not require the use of any equipment or resources which you use in your County employment, nor would you work with the same clients. Lastly, your work with GODR will be conducted outside your County hours.

Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with the County to provide catering services through your privately-owned company, GODR.

Analysis

A. Outside Employment

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County’s Administrative Order 7-1. “County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income” RQO 16-01. Thus, work conducted for GODR, your privately-owned business, constitutes outside employment.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits 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. “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.” A.O 7-1.

Department directors or their designees may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* RQO 16-02; INQ 19-101; INQ 13-28. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

As an example, the Ethics Commission has previously opined that firefighter working for MDFR may engage in outside employment as the owner and operator of his privately-owned company, which provides cleaning services, without giving rise to a prohibited conflict of interest as long as he did not contract with his County department or lobby or seek to influence a decision regarding any County contract his company secures. *See* INQ 22-14.

After reviewing the facts presented here, your outside employment, which consists of running your privately owned catering company (GODR), does not appear likely to cause conflicts between your private interests and your public duties as an Administrative Secretary for MDFR. This is because there is no overlap between your public duties as an administrative secretary and your outside employment. Additionally, you will not be assisting the same clients, you will not use the same resources, and the work would be performed outside of your County hours. Furthermore, your County employment does not involve the recruitment or management of vendors, contactors, bidders, or members of the public who could also be involved in your outside employment.

Nevertheless, you must continue to abide by certain limitations and cautions outlined below to avoid a conflict:

- You cannot use County time or resources in your outside employment.
- 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).
- 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 GODR, or for the benefit of GODR clients. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- 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.

County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director.** Given that you are a full-time County employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis. ¹

¹You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outsideemployment-statement.pdf>.

B. Contracting with the County

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, so long as the contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).

For example, the Ethics Commission found that a firefighter with MDFR who owned a food truck and catering company was permitted to conduct outside employment for his privately-owned company and contract with County departments other than the one he worked for. *See* INQ 22-22 (quoting RQO 07-18). *See also* INQ 23-74 and INQ 23-64 (County employees were permitted to contract with the County departments that provided small business grants because they did not work for those departments).

Further, once you have been granted permission to engage in outside employment by your department director, you may enter into a County contract through your privately-owned business, GODR, provided that the contract does not interfere with the full and faithful discharge of your duties to the County. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This includes the condition that you may not participate in determining the contract requirements or in awarding the contract. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or administer the contract. *See* Sections 2- 11.1(c) and (n), Miami-Dade County Ethics Code. **Consequently, GODR may not enter contracts with MDFR.**

C. Lobbying

Additionally, you may not lobby the County. This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that GODR is seeking with the County. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

Furthermore, the County Ethics Code prohibits County employees from exploiting their official position. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract for which GODR is applying. *See* County Ethics Code § 2-11.1(g); AO 7-1; INQ 15-240; INQ 05-29.

Opinion

Based on the facts that you have provided, it does not appear that your work for GODR conflicts with your County employment as an administrative assistant with MDFR. Additionally, GODR may contract with County departments outside MDFR. Lastly, GODR's potential future business with the County may require further evaluation once a specific County solicitation or contract is contemplated.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from the department that employs you, or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on MDFR directives, contact your supervisor or the Mayor's office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 Commission on Ethics 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.