



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Stacy Louis, SBD Capital Improvement Project Specialist,
Small Business Development Office
Office of the Mayor

FROM: Susannah Nesmith, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2024-107, Section 2-11.1(c), Limitations on Contracting with the County, and
Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: June 13, 2024

CC: All COE Legal Staff; Laurie Johnson (SBD)

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning your company's participation in the Business Resource and Education Grant program at Miami-Dade Economic Advocacy Trust ("MDEAT").

Facts

You are employed by the Small Business Development Office ("SBDO"), a unit of the Mayor's Office. Your unit formerly worked within the Internal Services Department ("ISD") but was recently transferred to the Mayor's Office. You advised that your job responsibilities primarily include reviewing prospective contracts before a solicitation is issued to apply any small business measures that are required. In some cases, you may recommend that a specific certified Small Business Enterprise ("SBE") be invited to bid on a contract, based on that business's specific expertise. While you work with user departments, you are not responsible for the solicitation, award or administration of any contracts. Additionally, you have no oversight or administrative responsibilities specifically with MDEAT or the grant program. You advise that you have no immediate family members working for MDEAT or any other County Department.

The Business Resource and Education Grant program run by MDEAT assists start-up small businesses, particularly ones located in the targeted urban areas that MDEAT primarily serves. In addition to providing technical courses, small business start-ups can be awarded grants of \$2,500.¹

You advise that you own and operate Stacy Has The Keys, LLC, (“SHTK”) where you work as a realtor, primarily helping private clients find residential rental properties. You have requested outside employment approval from your supervisor to do real estate work in your off hours when you are not working for the County. You also do not use any County resources, including telephones, copiers or computers, in your outside employment and you do not have access to confidential information that you could utilize in your outside employment. You have stated that you do not solicit clients for your small business among members of the public you deal with in your County employment and you are not likely to come into contact with the same people or entities in your County employment and in your outside business. The certified SBEs in Miami-Dade County can be considered, in a very general sense, your clients, but it is unlikely that you would have an occasion to recommend one of them for a specific contract while also representing the same person or entity in your outside employment. In an abundance of caution, you have agreed to ensure that none of your outside employment clients have businesses that are registered SBEs in Miami-Dade County while you work for them as a realtor.

Your supervisor, Laurie Johnson, the Chief of the SBDO, was also consulted. She advised that she had no concerns about your engaging in outside employment as a realtor provided you do not accept clients involved in SBDO programs.

Issue

Whether there is a prohibited conflict of interest that would prevent SHTK, your privately owned business, from participating in MDEAT’s Business Resource and Education Grant and whether there is a prohibited conflict of interest between your work at SHTK and your County employment.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Contracting with the County

Regarding contracting with the County generally, sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. A County employee is permitted to transact business with the County only if 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

¹ Information about the program was obtained from MDEAT’s website here: <https://www.miamidade.gov/economicadvocacytrust/library/2024-q2-grant-cycle-application-updated.pdf> (accessed on June 11, 2024).

or her to be involved with awarding, enforcing or overseeing the contract. *See* County Ethics Code §§ 2-11.1(c), (d).² Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2).

For example, a services clerk responsible for tracking capital equipment at ISD was permitted to apply for a different small business grant at MDEAT because her County role had no administrative authority or oversight responsibilities related to MDEAT programs. *See* INQ 2024-34. Similarly, a clerk with the Domestic Violence Unit of the Clerk of the Courts was allowed to apply for an MDEAT grant under a predecessor program because her County department had no role in the grant program. *See* INQ 19-71.

Here, given that your County work does not involve any administrative or oversight responsibilities at MDEAT or over the grant program for which you would like to apply, your participation in the program is unlikely to cause a conflict of interest.

B. 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 SHTK, 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 employee’s independence of judgment in the performance of his or 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. 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.

For example, a secretary in the Office of Risk Management and Safety at ISD was permitted to engage in outside employment as a realtor because her County responsibilities did not overlap with her outside employment. *See* INQ 22-16. Similarly, an attorney who worked as a development

² *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

special advisor at ISD was permitted to engage in outside employment as an independent arbitrator because prior to accepting any arbitration assignments she agreed to ensure that none of the parties were County contractors, seeking to become County contractors, parties to litigation that were adverse to the County, or otherwise seeking any benefit, ruling or decision from the County or any of its agencies that was related to the arbitration. *See* INQ 2024-60.

It appears unlikely your outside employment with your private company will impair your independence of judgment in the performance of your County duties as a Capital Improvement Project Specialist in the Small Business Development unit of the Mayor's Office, based on the information that you have provided to us at this time, including that a) your work with your company will only occur outside of working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; and c) you will not use the same or similar resources that you use in your County work. Additionally, in an abundance of caution you will ensure that you do not represent private clients who have businesses that are certified under the SBE program.

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

- 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* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; 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 your private company or its clients. *See* County Ethics Code Section 2- 11.1(h).
- 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 **file an Outside Employment Statement with the County's Elections Department by July 1st of each year**. *See* County Ethics Code Section 2-11.1(k)(2).³

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. Accordingly, **this memorandum does not grant you permission to engage in outside employment**. You must obtain permission to engage in outside employment every year from your department director.

³ The form is available online at https://www.miamidade.gov/elections/library/forms/_outside-employment-statement.pdf.

C. Lobbying

You may not lobby the County. In this case, that means that you may not contact anyone within the County in an attempt to influence a decision about SHTK's application for the MDEAT grant. You may engage in routine communications about the requirements of the grant, however.

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. See County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to SHTK or its clients.

Opinion

Based on the facts presented here and discussed above, SHTK's participation in MDEAT's Business Resource and Education Grant program does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, your outside employment with SHTK does not present a conflict of interest with your County responsibilities, provided you adhere to the restrictions above.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

Please submit this memorandum to the MDEAT as part of your grant application. The Commission on Ethics does not submit it on your behalf.

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 this is an informal opinion, 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.