



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Elizabeth Ogden, Assistant Port Director  
PortMiami

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

**SUBJECT:** INQ 2024-11, Section 2-11.1(q), County Ethics Code, Two-Year Rule

**DATE:** January 19, 2024

**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 your proposed employment after you separate from your County employment at PortMiami (“Port”).

#### Facts

You are employed by the Port as an Assistant Director in charge of capital development. Your work entails supervising infrastructure improvements and major maintenance at the Port, including the supervision of County employees who manage multiple Port contractors and subcontractors working on infrastructure projects. You advise that you do not directly oversee any prime or subcontractors at the Port, though you are in the chain of approvals for invoices. You also advise that you have not been a member of a selection committee or involved in competitive selections for years, nor did you participate in the competitive selections of the current prime and subcontractors under your purview. You have been at the Port for 16 years and worked for the County for 30 years, with prior roles at the Adrien Arsht Center for the Performing Arts and Miami International Airport.

You intend to separate from your County employment in the near future and begin private employment as a consultant on capital improvement projects at ports generally, and specifically at Miami-Dade County’s Port. You advise that your proposed post-County employment would involve advising clients, including current Miami-Dade County contractors, with a focus on program management, quality control of construction documents, metrics on project progress and permitting requirements. You advise that you do not envision being involved in actual permit

applications. You also advise that you do not intend to engage in contract negotiations, even in a supporting role, between the County and vendors or contractors.

Issue

Whether any prohibited conflict of interest may exist in your proposed post-County employment.

Analysis

Under Section 2-11.1(q) of the County Ethics Code, no former Miami-Dade County employee may lobby the County for two years following separation. Specifically, the relevant section of that rule prohibits a County employee, for a period of two years after separation from County service, from:

...lobby[ing] any county officer, department personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one of its agencies or instrumentalities is a part or has any interest whatever, direct or indirect.

The post-employment lobbying activity prohibitions contained in subsection (q) of the Ethics Code are more expansive than those found under the general lobbying ordinance. *See* INQ 22-61, INQ 21-123, and INQ 21-05. The Two-Year Rule includes advocating for actions or decisions that may be made at the sole discretion of *any* County personnel. *See* RQO 13-07, RQO 12-09; INQ 21-40.

Consequently, you may not attempt to persuade County staff, whether in person or by written communication, to take a particular course of action as it regards the hiring of your private clients or employer as a contractor or on behalf of your private clients or employer in any transaction as defined in subsection (q). These actions are considered lobbying and are prohibited. *See* RQO 02-139.

You are cautioned that the Commission has found that a former County employee who attended a lobbying meeting with County personnel violated Section 2-11.1(q), even though the former County employee did not speak during the meeting. *See* C 21-11-05.

You would also be prohibited from making presentations before County selection committees, boards and agencies, the Board of County Commissioners and its committees and subcommittees. This prohibition is broad and covers any activity where you would be identified as part of a lobbying team for your private clients or employer. *See* RQO 04-34 (citing RQO 01-38, where the Ethics Commission opined that a former County employee could not engage in such activities but was not prohibited from attending quasi-judicial hearings and County Commission meetings and from providing administrative support as long as he was not publicly identified as a member of the lobbying team).

The two-year period is calculated beginning on the day after the last day that the employee receives benefits or compensation from the County or municipality, such as payments for accrued vacation time, sick time, insurance, etc. *See* INQ 14-241.

You are however allowed under subsection (q) of the Ethics Code to share institutional knowledge regarding County procedures with your private clients or employer and provide guidance regarding interactions with the County. *See* INQ 21-40; INQ 20-63. Direct meetings and contacts between you and County personnel are also permissible as long as there is no advocacy involved in the interactions and you are not seeking to influence County personnel. *See* INQ 21-40.

Most importantly, you are allowed to work in a technical and professional advisory role as an architect on behalf of your private clients or employer on existing and future County contracts and there is no prohibition on these post-employment activities as part of your duties with your private clients or employer.

Given the supervisory nature of your current County employment, you should inform the department if you are applying for a position with current County vendor and should seek advice from your supervisor regarding removing yourself from any role in contract disputes, negotiations, or other interactions with the vendor during the time that the application for the position with the vendor is pending. *See* INQ 14-241.

Additionally, you are advised that under Section 2-11.1(h) of the Ethics Code you are prohibited from engaging in any employment, business, or professional activity where you might reasonably be required or induced to disclose any confidential information garnered or gained by you as a result of your former County position. *See* INQ 21-40.

### Opinion

Based on the facts presented here and discussed above, you are permitted to engage in post-County employment with County contractors, with certain limitations. Namely, you must not lobby County personnel on behalf of your private clients or employer for a period of two years after you separate from the County. *See* Section 2-11.1(q), Ethics Code. Additionally, you must not disclose any confidential information you have obtained as a result of your County position. *See* Section 2-11.1(h), Ethics Code.

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.

Other conflicts may apply based on directives from the Port or under state law. Questions regarding possible conflicts based on Port directives should be directed to the Port Director 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 this is an informal opinion, covered parties who 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.