



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Milenys Garcia, Business Analyst
Miami-Dade County Office of Management and Budget

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

SUBJECT: INQ 2024-119

DATE: June 27, 2024

CC: All COE Legal Staff; John Vanegas, Public Housing and Community Development (“PHCD”); Simona Marlow, PHCD; Tangie White, PHCD Shawn Topps, PHCD, Josue Garcia, PHCD

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust to request our guidance regarding your application for a First Time Home Ownership Mortgage through the Homebuyer Loan Program (“HLP”),¹ administered by the Miami-Dade County Public Housing and Community Development Department (“PHCD”).

Facts:

You are interested in applying for the HLP in an effort to purchase a home. You are employed as a Business Analyst at Miami-Dade County’s Office of Management and Budget (“OMB”). Your job responsibilities involve working with other departments in the wake of declared disasters to apply for reimbursement from the Federal Emergency Management Agency. Your supervisor, Elena Quevedo, was consulted and she confirmed that you have no administrative responsibility or oversight over any of PHCD’s homebuyer assistance programs. She said that PHCD is one of the departments you are assigned to work for in the event of a disaster, however she said the PHCD

¹ The HLP is a federally funded program that was created in 2015 to assist qualified individuals and families in the purchase of a primary residence. See guidelines at <https://www.miamidade.gov/global/housing/affordable-homeownership-program.page> (last visited May 7, 2024).

employees your office works with after disasters generally have nothing to do with HLP applications or administration.

Your brother, Josue Garcia², is employed by PHCD as a Real Estate Officer for the Miami-Dade County Infill Housing Initiative Program³ (“Infill Program”). In his role as a Real Estate Officer, he is responsible for the monitoring and compliance of the developers and homebuyers who participate in the Infill Program from initial conveyance of County owned lots to the final sale of the developed property to a qualified homebuyer. Tasks for the Real Estate Officer position include, but are not limited to, the review of Infill Program required application documents, recording of release of liens as applicable, review of Impact Fee deferral/refund applications, review of buyers income for adherence to area median income guidelines, site inspections to determine accuracy of developers progress reports, monitoring for compliance with the County deed and Infill Program requirements, and assisting with all aspects of the sale of an Infill home to a qualified buyer including the coordination of requirements for second mortgages and the preparation of restrictive covenants for closing.

While your brother does not specifically work administering the HLP, some functions of his position with the Infill Program require that he have some administrative roles/interactions with the HLP when an Infill property buyer also utilizes the HLP. For instance, his position includes assistance with all aspects of the sale of an Infill home to a qualified buyer, including the coordination of requirements for second mortgages and the preparation of restrictive covenants for closing.

Per the PCHD mitigation plan discussed below, you have filed the required ethics disclosure statement with PHCD, alerting the department that you are the sibling of a PHCD employee.

Issue:

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with PHCD, your brother’s employing County department, to participate in the HLP.

Discussion:

Prior to February 16, 2024, sections 2-11.1(c) and (d) of the County Ethics Code generally allowed County employees and their family members to enter into a contract or transact business, individually or through a firm, with the County, as long as the County employee did not work within the County department that enforced, oversaw, or administered the contract, agreement, or

² The County Ethics Code includes siblings in the definition of immediate family member. *See* Section 2-11.1(b)(9).

³ The Infill Program manages the sale or transfer of County-owned properties to Infill Developers, who agree to build affordable homes to be sold to very low, low- and moderate-income persons. *See* guidelines available at <https://www.miamidade.gov/housing/library/guidelines/infill/infill-housing.pdf> (last visited May 7, 2024).

business transaction with the County. *See* RQO 00-13 (an employee of the Public Health Trust working at Jackson Memorial Hospital could contract with the then-extant Miami-Dade Housing Agency (“MDHA”) to provide Section 8 housing without giving rise to a prohibited conflict of interest because she did not work for the MDHA, and her County employment was otherwise entirely separate from her agreement with the MDHA). *See also* Section 2-11.1(c)(2), County Ethics Code.

Here, because your County employment does not include responsibility for any oversight over PHCD programs or contracts, by yourself you would have no conflict of interest. However, your brother’s position at PHCD must also be considered.

Sections 2-11.1(c)(5)(5) and (c)(5)(6) of the County Ethics Code provide an exemption to the above limitation on transacting business with the County to allow a County employee to apply for direct assistance from PHCD, as long as the employee is otherwise eligible for the assistance program and does not participate in the administration the program. In prior opinions, the Ethics Commission has applied the above referenced section of the County Ethics Code to employees of PHCD (and predecessor agencies) seeking housing assistance and determined that PHCD employees were permitted to participate in housing assistance programs administered by PHCD as long as they did not work in the division that administered any portion of the assistance program for which they are applying. *See* RQO 12-06; RQO 05-127. For example, the Commission found that a Senior Executive Secretary for PHCD could participate in the First Time Homebuyers Homeownership Second Mortgage Program because her job responsibilities did not include administration or oversight of the program or the division that operated the program. *See* RQO 17-06.

On February 6, 2024, the Miami-Dade County Board of County Commissioners voted to change the County Ethics Code. Effective February 16, 2024, section 2-11.1(c)(6) of the County Ethics Code now allows employees of PHCD to apply for PHCD assistance programs, even if they participate in the administration of the assistance program, as long as the Department takes steps to mitigate any potential conflict of interest. The ordinance specifies that employees in this situation may proceed with an application for assistance **only after** the Ethics Commission has found the mitigation plan “sufficient to abate the potential conflict of interest” and must include the removal of the employee “from participation in the administration of the program as regards his or her application.” Section 2-11.1(c)(6), County Ethics Code.

The Ethics Commission received a mitigation plan, “Mitigation Measures for Employees and Family Members Accessing Department Housing Programs Policy,” from PHCD on June 12, 2004. That policy requires PHCD employees and their immediate family members who apply to participate in PHCD assistance programs to notify the department in writing of their employee status or relationship to an employee. The policy also provides for a separate level of review by an assistant department director of any applications to PHCD assistance programs filed by PHCD employees or their immediate family members.

Additionally, Tangie White, the director of the division that oversees HLP, was consulted and she stated that she and Shawn Topps, the supervisor of HLP, will ensure that PHCD employees and their family members who have applied to the program are screened out of any access to their own applications.

Opinion:

Based on the facts presented here, we find that your application and participation in the HLP program will not violate the County Ethics Code, despite the fact that your brother's position as a Real Estate Officer in the PHCD Infill Program includes some involvement or administrative responsibilities in the HLP, because you have disclosed the conflict and PHCD has presented a mitigation plan to the Ethics Commission that is sufficient to abate the potential conflict of interest, as required. *See* Section 2-11.1(c)(5)(5) and (c)(6), County Ethics Code.

You are reminded that **your brother can have no role in your application** and that he must refrain from contacting anyone at PHCD on your behalf regarding your application as long as it is pending.

Please submit this opinion to the Public Housing and Community Development Department for inclusion in your file. The Ethics Commission does not submit this memorandum 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 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 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.