



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Loanis Gonzalez, Engineer,
Miami-Dade Regulatory and Economic Resources Department

Jose Cuenca, Real Estate Evaluator
Miami-Dade County Property Appraiser's Office

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

SUBJECT: INQ 2024-129, Section 2-11.1(c), Limitations on Contracting with the County.

DATE: July 22, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding your ability to contract with the County’s Public Housing and Community Development Department (PHCD) as a vendor/landlord under the Workforce Housing Incentive Program (WHIP),¹ administered by PHCD.

Facts

You, Ms. Gonzalez, and your husband, Mr. Cuenca, would like to contract with PHCD as a vendor/landlord for WHIP. You are employed by the Miami-Dade County Regulatory and Economic Resources Department (“RER”) as an Engineer. Your job duties primarily include

¹ The Workforce Housing Incentive Program provides local property owners direct incentives to expand the existing supply of available workforce housing, providing immediate relief to renters and eligible homebuyers. *See* <https://www.miamidade.gov/sites/global/government/mayor/building-blocks/homes-whip-faqs-for-landlords-owners.pdf> (last accessed July 15, 2024).

reviewing plans for industrial and commercial properties. Your RER job duties do not include any oversight or administration of WHIP.

Your husband, Jose Cuenca, is also a County employee. He works for the Miami-Dade Property Appraiser's Office ("PA") as a Real Estate Evaluator. His job duties at PA primarily include appraising all types of properties in the County for ad valorem taxation. He has no oversight or administrative duties over WHIP. Neither of you have any other immediate family members working for the County.

You and your husband own a duplex where you live in one unit and would like to rent out the second unit, using the WHIP program.

WHIP provides subsidies to landlords who agree to keep the rent they charge affordable.

Issue

Whether the County Ethics Code would prevent you from contracting with PHCD to participate in WHIP as a vendor/landlord.

Discussion and Opinion

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permits County employees to transact business with the County, so long as the contract in question 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, a drafting specialist at RER was permitted to contract with a different PHCD program, Section 8, as a landlord because her County employment did not require her to have any oversight or administrative authority over the PHCD Section 8 program and her participation in the program would not interfere with the RER employee's full and faithful discharge of her duties to RER. *See* SEC 18-12. *See also* SEC 18-20, SEC 20-07, SEC 21-06. Similarly, income evaluation specialist who worked at the PA was permitted to contract with Section 8 as a landlord because her County employment did not require her to have any oversight or administrative authority over

the PHCD Section 8 program and her participation in the program would not interfere with the RER employee's full and faithful discharge of her duties to PA. *See* SEC 23-20. *See* also SEC 23-19.

While the Section 8 program and the WHIP program are not the same, for the purposes of this analysis they are quite similar. Here, you and your husband may participate as landlords in the WHIP program run by PHCD because neither of you work in County jobs that require you to have any oversight or administrative authority over the program and your participation in the program will not interfere with your full and faithful discharge of your duties to RER, nor will it interfere with your husband's full and faithful discharge of his duties to PA.

You are both cautioned that other sections of the Miami-Dade County Code of Ethics also govern your interactions with PHCD's landlord programs.

- As County employees, 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 your application to participate in WHIP. *See* Section 2-11.1(m)(1), County Ethics Code.
- The County Ethics Code prohibits County employees from exploitation of their official position. *See* Section 2-11.1(g), County Ethics Code. This means that you may not use your County position to secure any special privilege or exemption with respect to your application to, and ultimate participation in WHIP.
- Ownership of more than two rental properties is considered outside employment for which both of you must obtain approval from your County supervisors. *See* RQO 06-48. This means that if you obtain two more rental properties, you will both be required to seek approval from your supervisors for outside employment.

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 your department's 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/>.

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.

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.