



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: J C Shawn Crow, Chairman
Miami-Dade County Board of Rules and Appeals

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

SUBJECT: INQ 2023-137, Board Member Contracting with County, Section 2-11.1 (c)(3) and (m)(2) and (v)

DATE: August 8, 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 potential limitations on you as a member of a County quasi-judicial board if your company works as a subcontractor on a County contract.

Facts

You are the President of Austen Electric, Inc., (“Austen”), a private for-profit corporation that provides electrical work. Austen intends to be a subcontractor for Schindler Elevator Corp., (“Schindler”), which was recently awarded a contract with the Miami-Dade County Department of Transportation and Public Works (“DTPW”) to modernize elevators at transit stations.¹

You are also the chairman of the Miami-Dade County Board of Rules and Appeals (“BORA”), a quasi-judicial County board that has broad authority to hear appeals of building official decisions County-wide and interpret the Florida Building Code. BORA is staffed by the Miami-Dade County Department of Regulatory and Economic Resources. BORA members serve on a volunteer, unpaid basis and are appointed by the Board of County Commissioners to fulfill specified roles on the

¹ See INQ 22-61 (addressing RFP 02030 when it was before a County selection committee).

board. You fill the role of an electrical contractor on BORA. The Board is a quasi-judicial board, as defined in Section 2-11.1(b)(3) of the Ethics Code.

We consulted with Jaime Gascon, the RER division director for code and board administration, and Kathy Charles, of RER's board administration section. They said it is unlikely, though not impossible that anything involving the referenced contract would come before BORA. You have stated that you would recuse yourself if anything regarding the contract on which you are a subcontractor did come before BORA.

Issue

Whether Austen may work as a subcontractor on a County contract while you serve as chairman of BORA.

Discussion

Sections 2-11.1(c) and (d) of the County Ethics Code addresses limitations and prohibitions on board members doing business with the County. Specifically, Section 2-11.1(c)(3) provides that a board member may enter into a contract with Miami-Dade County individually or through a firm, corporation, partnership or business entity in which the board member or his immediate family has a controlling financial interest, as long as the board member does not contract with a County department or agency which is subject to being regulated, overseen, managed, engaged in policy-setting or quasi-judicial authority of the member's board agency. *See* RQO 09-22, INQ 19-78, INQ 20-124, INQ 22-04.

The above sections of the County Ethics Code address contracts *directly* with Miami-Dade County. There is no prohibition on a County board member serving as a subcontractor to another company that has a contract directly with Miami-Dade County. *See* RQO 18-02 (finding that a County employee's spouse was prohibited from contracting with the County department where the employee worked, but that that restriction does not apply to subcontracting with a County vendor). *See also* INQ 17-217 (finding that the parent of a County employee was prohibited from contracting with the County department that employed his son, but that the restriction did not apply to subcontracting with a County vendor); INQ 11-20 (finding that a member of a County quasi-judicial board could not contract directly with his board or with the County department that was overseen by the board, but that he could serve as a subcontractor to a County vendor).

For these reasons, Austen is generally permitted to serve as a subcontractor on a County contract. If, in the future, Austen would like to contract directly with Miami-Dade County, you are required to obtain an ethics opinion prior to submitting a bid. *See* Section 2-11.1(c)(4), County Ethics Code. Additionally, you are not permitted to contract directly with RER because your board is staffed by that Department and has oversight over RER employees. *See* Section 2-11.1(c)(3).

Furthermore, other sections of the County Ethics Code may also be implicated in the present question.

Section 2-11.1(m)(2) **prohibits a board member from appearing before the board in which he or she serves**, *either directly or through an associate*, and make a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board

for the benefit of your company or of any other entity. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 11-178; INQ 09-33. Additionally, this County Ethics Code section prohibits a board member from receiving compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her Board. *See* RQO 07-12; INQ 19-12; INQ 15-229.

In your case, this means that if your company or a company that your company is working for, such as Schindler Elevator Corp., appeals a decision of a building official to BORA, you are not permitted to represent either company before BORA, submit any documents or correspondence to BORA related to the appeal, or receive compensation for any services rendered to the third party seeking a benefit from BORA.

Section 2-11.1(v)(3) prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity or person appearing before the member's board or committee. *See* RQO 07-39; INQ 17-69.

What this means in your case is that, should Austen or Schindler, or any other company with whom you have one of the above relationships, come before BORA, you must recuse yourself from any vote on that matter if you will be directly affected by the vote. Both prongs – the prohibited relationship and a direct effect on you – must be met to trigger a requirement for you to recuse yourself. *See* RQO 07-39.²

You are also cautioned that:

- Section 2-11.1(n) prohibits a board member from participating in any official action, as a member of the Board, directly or indirectly, affecting a business in which you or a member of your immediate family has a financial interest. *See* INQ 19-78.
- Section 2-11.1(g) prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in related matters, said board member may not use his or her service on the board to proffer or promote the use or sale of the board member's company or products. *See* INQ 21-121.

Conclusion:

² Whenever you have a prohibited voting conflict as described above, you are required to publicly announce that you have a conflict of interest and the nature of your conflict of interest. *See* Fla. Stat. § 112.3143(3)(a). Furthermore, upon recusal, you must file a written disclosure regarding the nature of the conflict with the person responsible for recording the minutes of the meeting within fifteen (15) days after the vote. *See id.*

Austen may serve as a subcontractor to a County vendor while you serve as chairman of the BORA, with certain limitations discussed above.

We appreciate your consulting with the Commission in order to avoid a possible prohibited conflict of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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 state law, other conflicts may apply. 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 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.