



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Johan Williams, Accountant 3
Miami-Dade Department of Transportation and Public Works

Zunilda Perez, Accountant 4
Miami-Dade Department of Transportation and Public Works

FROM: Nolen Andrew Bunker, Staff Attorney
Miami- Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-138, Section 2-11.1(j), Conflicting employment prohibited.

DATE: August 9, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in Mr. Johan Williams' proposed outside employment.

Facts

Mr. Williams is employed by the Miami-Dade Department of Transportation and Public Works ("DTPW") as an Accountant 3 within DTPW's Finance Division. He advised that his duties include recording deposits, reviewing interdepartmental billings, verifying and reconciling revenue, and managing bond funds for the causeways. He also assists with preparing financial statements and other year-end tasks, as well as audit requests for the causeways.

Mr. Williams advised that he wishes to engage in outside employment as an Accountant in association with True Accounting & Finance Experts LLC ("True Accounting").¹ A record check with the Florida Department of Business and Professional Regulation confirms that Mr. Williams is registered as a certified public accountant. He advised that, as an Accountant with True Accounting, his duties will involve preparing financial statements, including profit and loss

¹ Mr. Williams originally advised that he intended to work for Tate's Accounting. However, he clarified that the name of the company with whom he intends to work as an Accountant is True Accounting.

statements, balance sheets, and cash flow statements, as well as reviewing transactions for accuracy based on the information provided by the clients. Mr. Williams clarified that he is an independent contractor working in association with True Accounting, not an employee. He also advised that, to his knowledge, True Accounting is not a County vendor.

With regard to his anticipated work as an accountant with True Accounting, Mr. Williams advised that his outside employment will occur outside the times/hours he is expected to perform his duties as an Accountant 3 for DTPW. He further advises that he does not have access to non-public information that is or could be relevant to his proposed outside employment. Additionally, he advised that his outside employment activities do not require him to encounter similar people, vendors, or subcontractors involved in his County position. Regarding the resources that he will use in his outside employment, Mr. Williams acknowledged that he will use similar tools, such as word processing and email software. However, he advised that the software licenses for his proposed outside employment are personal and not provided by the County. Finally, Mr. Williams advised that he does not own or have any ownership interest in True Accounting.

Issue

Whether any prohibited conflict of interest may exist between Mr. Williams' County employment and his proposed outside employment as an Accountant with True Accounting.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") prohibits County employees from accepting outside employment, "which would impair his or her independence of judgment in the performance of his or her public duties." County Ethics Code § 2-11.1(j); *see also* County Ethics Code § 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, "[u]nder 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."

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. 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* RQO 16-02; RQO 00-10; INQ 13-28.

Multiple factors are considered when evaluating whether outside employment is conflicting, including similarity of duties with the employee's County duties, contact with the same or similar entities in both the employee's County position and proposed outside employment, overlapping work hours, use of County resources in the outside employment, and the management of County vendors who are also involved in the proposed outside employment. *See* RQO 17-01. However, the similarity between an employee's County duties and his or her outside employment duties does

not indicate, *by itself*, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (noting that a County employee can engage in outside employment with similar duties and functions so long as he or she abides by certain limitations).

In the past, an Accountant 2 with the Miami-Dade Seaport Department was able to engage in outside employment as a Tax Preparer with a private tax preparation company because there was no overlap between his public duties and his private duties, which involved seasonal tax preparation work. *See* INQ 22-99. Likewise, a Tax Record Specialist II for the Miami-Dade Finance Department could engage in outside employment as the President of a for-profit company preparing personal and business federal tax returns without giving rise to a conflict of interest, so long as she abided by certain limitations including not offering her tax preparation services to anyone during her County work hours. *See* INQ 19-101.

Here, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment in which Mr. Williams seeks to engage would impair his independence of judgment as an Accountant 3 for DTPW.** This is because there is no prohibited overlap between his public duties and his proposed outside employment as an Accountant: his proposed outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment as an Accountant preparing financial statements based on information provided by his private clients. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); INQ 22-99; INQ 19-101.

Opinion

Based on the facts presented here and discussed above, Mr. Williams would not have a conflict of interest in his proposed outside employment as an Accountant associated with True Accounting. In the future, if his outside employment changes, or if he seeks additional outside employment, he should request an opinion specific to those circumstances.

Furthermore, the following limitations are imposed on Mr. Williams' ability to engage in his proposed outside employment:

- **He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or other communications)** and he may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 7-1; AO 5-5; INQ 20-43; INQ 19-123; INQ 15-240.
- He may not exploit his County position to secure special privileges or exemptions for himself and/or True Accounting and its clients. *See* County Ethics Code § 2-11.1(g). **Specifically, he may not offer his or True Accounting's services to anyone during**

County working hours, including co-workers and other County employees. *See* INQ 19-101.

- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to derive a personal benefit, or for the benefit of True Accounting or its clients. *See* County Ethics Code § 2-11.1(h).
- He may not represent True Accounting or its clients before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of his potential activities as an independent consultant for True Accounting, it is important to note that he would be prohibited from doing any such activities on behalf of True Accounting or its clients.
- He must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and **he must file an Outside Employment Statement² with the County's Elections Department by noon on July 1st of each year for the prior year's outside employment regardless of whether he made a profit or not in his outside employment.** *See* County Ethics Code Section 2-11.1(k)(2).

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 DTPW or under state law. Questions regarding possible conflicts based on DTPW directives should be directed to DTPW 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 these are informal opinions, 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.

² Mr. Williams can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.