



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: Christian Garcia, Police Complaint Officer
Miami-Dade Police Department

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

SUBJECT: INQ 2024-140, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: August 12, 2024

CC: COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding your outside employment as owner of your private company, Miami Metro Fulfillment Hub, LLC, (“Hub”) and your ability to bid on solicitations for goods and services issued by Miami-Dade County.

Facts

You are employed by the Miami-Dade Police Department (“MDPD”) as a civilian Police Complaint Officer. Your job duties primarily entail answering 9-1-1 calls and looking up vehicle registrations. You have no authority or oversight over County contracts, and you do not participate in the determination of contract specifications or requirements for the County. You do not have access to any confidential information that you could or would use in your outside employment.

You advise that you own Hub, which will bid on contract solicitations issued by Miami-Dade County for a variety of goods and services required by different County departments. You further advise that you intend to find subcontractors to supply the goods or services and would act as a middle manager, preparing the bids and managing the contracts that your company wins. Your company will not provide services or goods directly to Miami-Dade County.

You have no immediate family members working for any Miami-Dade County department and Hub does not have any employees who work for Miami-Dade County except you. You

will not work for your business during your County hours or use County resources in your outside work.

Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics (“Ethics Code”) would prevent you contracting with Miami-Dade County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Outside Employment

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment that would impair the County employee’s independence of judgment in the performance of his/her official duties, thereby creating a conflict between the employee’s public responsibilities and private interests. The County’s Administrative Order 7-1 reiterates the general principle that County employees must conduct the public’s business without even an appearance of conflicting loyalties: “Under 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*.” (Emphasis added).

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County Administrative Order 7-1. While directors/supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment, the County’s Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds, **at any time**, that the outside employment is contrary, detrimental, or adverse to the interest of the County and/or the employee’s department. *See* RQO 16-02; RQO 00-10; INQ 23-15; INQ 12-49.

Outside employment is more likely to conflict with County employment “when the two pursuits overlap or are closely related.” INQ 16-89 (citing RQO 12-11, INQ 12-159). However, “a 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.” INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

For example, the Ethics Commission found that an MDPD officer was permitted to engage in outside employment as a network administrator, managing computers networks for Indian Creek Village, because there was no overlap between his County role and his outside

employment and he would not engage in outside employment on County time or using County resources. *See* INQ 18-04. Similarly, a City police officer was permitted to engage in outside employment as the operator of a parking lot near Marlins Stadium because his government employment did not intersect in any way with his outside employment. *See* INQ 16-174. An MDPD civilian employee was likewise permitted to contract with the County, through his outside business, but he was not permitted to contract with the police department. *See* INQ 14-216.

Here, you are permitted to engage in outside employment running your private business, Hub, because you are able to perform that work when you are not required to work for the County, your work answering 9-1-1 calls has nothing to do with the work Hub will do, and you will not come into contact with the same people or entities in your County employment and your private work and you do not have access to confidential information in your County role that you could use in your outside business.

Note, this memorandum **does not give you permission to engage in outside employment; rather, you must obtain permission to engage in outside employment yearly from your department director.** Furthermore, given that you are a full-time County employee, **you are required to file an Outside Employment Statement¹ with the County's Elections Department by noon on July 1st of each year** for the prior year's outside employment regardless of whether you made a profit in the outside employment. *See* Section 2-11.1(k)(2), County Ethics Code.

B. Contracting with the County

Section 2-11.1(c)(2) of the County Ethics Code generally permits County employees to contract with County departments other than the department that employs them. There are certain restrictions, however:

Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee ... from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as

- (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County,
- (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and
- (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

¹ You can find the required Outside Employment Statement form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

Section 2-11.1(c)(2), County Ethics Code

Given that neither you nor any member of your immediate family is employed by the County and that your job duties with the MDPD do not involve any oversight or administration over County contracts, you are generally permitted to bid on County contracts. *See* Section 2-11(c)(2), County Ethics Code; *see also* INQ 23-140; INQ 22-146; INQ 14-216 (finding that MDPD officers could contract with the County through their private businesses because the contracts would not interfere with their County duties and they had no role in the subject contracts – but they were cautioned they could not contract with MDPD). Consequently, Hub may not contract with MDPD, your employing department.

You are cautioned, however, that you must seek a new opinion from the Ethics Commission prior to submitting each bid, response or application of any type to contract with the County. *See* Section 2-11.1(c)(4), County Ethics Code.

You must also abide by the following restrictions:

- You may not use your County position to secure any special privileges or exemptions with respect to any bid or solicitation you submit to the County. *See* Section 2-11.1(g), County Ethics Code.
- You may not lobby the County on behalf of yourself or your business or any other third party. This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that you or your business is seeking with the County. *See* Section 2-11.1(m)(1), County Ethics Code.
- You may not disclose any confidential information you obtain through your County employment in the pursuit of your outside employment, or any other endeavor. *See* Section 2-11.1(h), County Ethics Code.

This opinion is limited to the facts as you presented them to the Ethics Commission and is limited to an interpretation of the County Ethics Code only. This opinion is not intended to interpret state laws. 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/>.

We appreciate your consulting with the Commission on Ethics in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us at (305) 579-2594 for additional guidance.

Please submit this opinion to the Public Housing and Community Development department to be included in your application. The Commission on Ethics does not submit this memorandum on your behalf.

SECs are informal ethics opinions provided by the legal staff of the Miami-Dade Commission on Ethics and Public Trust. SECs 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.