



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Guillermo Fernandez Prieto, Maintenance Supervisor  
Port of Miami/Miami Dade County Seaport Department

Hydi Webb, Director  
Port of Miami/Miami Dade County Seaport Department

**FROM:** Etta Akoni, Staff Attorney  
Miami Dade County Commission on Ethics and Public Trust

**SUBJECT:** INQ 2024-150, Outside Employment §2-11.1(k)(2) and (j)

**DATE:** September 5, 2024

**CC:** All COE Legal Staff

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

Facts:

You, Guillermo Fernandez Prieto, are employed by the Miami Dade County Seaport Department ("PortMiami") as a maintenance supervisor. You advised that your job responsibilities primarily include the supervision of a team that includes an electrician, a plumber and an air conditioning mechanic and that your team works the night shift, fixing issues inside the PortMiami buildings. You advised that you own and operate Suma Electric Inc. ("Suma"), a Florida for-profit corporation. You advised that Suma is an electrical contractor company that mainly does swimming pool electrical installations for BAFCO POOLS, a Florida Limited Liability general contracting company owned by Brian Anderson Fox. You indicate that SUMA also has the potential and capability to work in other residential and commercial electrical projects, but 90% of the work Suma does is electrical installations for swimming pool for BAFCO POOL in Miami Dade and Broward counties.

According to the Florida Department of Business and Professional Regulation, you are licensed as a Registered Electrical Contractor<sup>1</sup>. Said license is an integral part of your county position but you indicate that you personally maintain and pay all fees for your license. You previously advised that Suma would like to contract with the County in the future, but that there is no specific County solicitation to which Suma has submitted a bid for at this time and you understand that you cannot bid on any solicitations from PortMiami.<sup>2</sup> Subsequent to the issuance of INQ 2023-108, Suma became a Small Business Enterprise Certified Vendor with the Internal Services Department, Office of Small Business Development.

You indicate that your work for Suma will not occur during your county work hours. You also advise that your work with Suma will not require you to come into contact with any county employees, departments, or county boards that you regularly encounter in your County employment. You indicate that your County position does not involve the recruitment or management of vendors, contactors, bidders, or members of the public who could also be involved in your outside employment with Suma. Additionally, your County position does not provide you with access to non-public information that is, or could be, relevant to your outside employment. Lastly, you state that while you use similar tools for Suma as you do in your County position, you do not however use the County owned tools for Suma. You advise that Suma does not rent space from Miami-Dade County.

**Issue:**

Whether any prohibited conflict of interest may exist, pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), between Guillermo Fernandez Prieto’s County employment with the Miami Dade County Sea Port Department and his outside employment as the owner of Suma Electric Inc.

**Analysis or Discussion:**

Your inquiry involves several sections of the Miami-Dade County Ethics Code which are analyzed below:

**A. Outside Employment**

The Miami-Dade County Conflict of Interest and Code of Ethics (“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.” Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that,

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<sup>1</sup> Florida Registered Electrical Contractor License Number: ER13016007 was issued on June 27, 2022.

<sup>2</sup> INQ 2023 – 108 was issued to Guillermo Fernandez Prieto on August 28, 2023 and advised that there was no conflict of interest for Guillermo Fernandez Prieto to engage in outside employment as the co-owner and operator of a private company, Suma Electric Inc., doing electrical subcontracting work for residential pool construction projects because his outside employment would not impair his independence of judgment in the performance of his County duties. Additionally, his private business is not prohibited from participating in the Miami-Dade County Small Business Enterprise (“SBE”) Certification Program administered by the Internal Services Department, because Guillermo Fernandez Prieto does not, as part of his County duties, have any involvement in the administration, oversight, selection, or enforcement of any aspect of the SBE Certification Program.

“[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.”<sup>3</sup>

County employees are required to obtain approval from their department director prior to engaging in outside employment and annually. *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.

Conflicting employment can occur when the outside employment is closely related to the employee’s public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, e.g., similar clients, suppliers, or subcontractors. *See* RQO 15-03. However, if an employee’s outside employment is totally unrelated to his/her County employment, such conflicts would generally not arise. For instance, in INQ 21-49, COE staff determined that an Airport Lighting Technician did not have a conflict of interest between his employment with the Miami-Dade County and his outside employment as owner of an electrical contracting company, which was also a registered County vendor, because his outside employment would not impair his independence of judgment in the performance of his public duties, as the employee has no contact or authority over the selection, oversight, of administration of the County’s contract with his outside employer, in his County employment. *See also* RQO 16-02.

#### *B. Contracting with the County*

You have advised that Suma is a Small Business Enterprise Certified county vendor, but Suma has not yet sought to contract with Miami Dade County to provide its services. However, in the event that Suma decides to pursue a county contract, the County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows you to enter into a contract, agreement, business engagement, or transact any business, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of your duties to the PORTMIAMI. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

This means that you may not participate in determining the contract, agreement, or business engagement requirements or in awarding the contract, agreement, business engagement for which Suma may apply. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract, agreement, business engagement in any way including, but not limited to, enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, you may not work in any County department that would enforce, oversee or

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<sup>3</sup> Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. (2017).

administer the contract, agreement, business engagement, or business transactions with Suma. *See* Sections 2- 11.1(c)(2), (d), and (n), Miami-Dade County Ethics Code. Consequently, Suma **may not** enter into contracts with PORTMIAMI. *See* RQO 07-18.

### C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about any contract, agreement, business engagement, or business transaction that Suma is seeking. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code. INQ 19-36, INQ 19-32

### D. Exploitation of Official Position

Finally, the Miami-Dade County Ethics Code prohibits County employees from exploitation of their official position to secure special privileges or exemptions for themselves and/or their businesses. This means that you may not use your County position to secure special privileges or exemptions with respect to any County contract to which Suma is applying. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43. Specifically, the County Ethics Code does not prohibit employees from using annual leave time or legal holidays approved by the County to engage in approved outside employment, however, an employee may not use sick leave to engage in outside employment. *See* INQ 18-222; INQ 09-194.

### Opinion:

Based on the information provided during this review, it appears to be unlikely that the type of outside employment that Guillermo Fernandez Prieto is seeking to continue to engage in would impair his independence of judgment in the performance of his County duties as a Maintenance Supervisor. Thus, Guillermo Fernandez Prieto does not have a conflict of interest in his proposed outside employment with Suma.

This is because there is no overlap between his public duties and his outside employment; his 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 tools in his outside employment as is used in his County work; and he does not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01; RQO 16-02.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Guillermo Fernandez Prieto's permission to engage in his proposed outside employment:

- Guillermo Fernandez Prieto shall not engage in activities that relate in any way to his outside employment during his regular work hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with his outside employment, even after work). *See* Sections 2-11.1 (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05-29, and INQ 15-240.

- Guillermo Fernandez Prieto is prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his County employment to derive a personal benefit or a benefit for Suma *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- Guillermo Fernandez Prieto shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his supervisor and department director through the designated County human resources system, which is currently INFORMS. Also, full time County employees are required to annually file an Outside Employment Financial Statement, disclosing income earned, or the lack thereof, from their outside employment, on a yearly basis with the Miami Dade County Commission on Ethics and Public Trust by 12 Noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

This opinion is limited to the facts as you, Guillermo Fernandez Prieto, presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to 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 in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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 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.