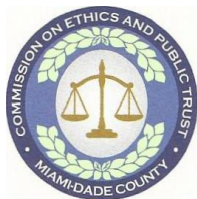


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 19, 2024

Jayson Page, Vice President
Hazen and Sawyer
999 Ponce de Leon Blvd, Ste 1150
Coral Gables, FL 33134
jpage@hazenandsawyer.com

Re: INQ 2024-155, Section 2-11.1(q), Continuing application after county service.

Dear Mr. Page:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest that may arise from the work of one of your new employees based on his recent public employment.

Facts

Hazen and Sawyer, P.C., (“Hazen”), is a New York corporation that describes itself as helping “utilities deliver billions of gallons of high-quality drinking water to customers.”¹ Hazen focuses on “the planning, design, and oversight of construction of environmental infrastructure – for water, wastewater, and stormwater management.”² You are a Vice President of Hazen.³

You advised that, as part of its business, Hazen has contracted with Miami-Dade County pursuant to County Project Number E23WS05 for Engineering Design Services for Proposed Upgrades to Miami-Dade County’s Wastewater Treatment Plants and Appurtenant Facilities. On June 4, 2024, the Miami-Dade Board of County Commissioners ratified and approved Hazen’s contract with the County in Resolution R-497-24. Pursuant to the Mayor’s Memorandum regarding the Resolution, the scope of services to be provided by Hazen involves engineering and design services for three existing wastewater treatment plants operated by the Miami-Dade Water and Sewer Department (“WASD”): the Central District Wastewater Treatment Plant, the North District Wastewater Treatment Plant, and the South District Wastewater Treatment Plant, as well as all appurtenant facilities of these three plants.

¹ *Our Work*, DRINKING WATER, <https://www.hazenandsawyer.com/topics/drinking-water> (Sept. 16, 2024).

² See HAZEN, <https://www.hazenandsawyer.com/careers#:~:text=Hazen%20and%20Sawyer%20is%20an,%2C%20wastewater%2C%20and%20stormwater%20management> (Sept. 16, 2024).

³ See *Jayson Page, PE*, <https://www.hazenandsawyer.com/people/jayson-page-pe> (Sept. 16, 2024).

You further advised that Hazen has hired Mr. Thomas Pfiester as an Operations Specialist. In that role, you advised that Hazen would like to assign him to take on specific operations/projects at WASD wastewater facilities to ensure compliance with applicable federal, state, and local regulations and ensure proper functioning of the assigned facility. Specifically, you advised that Mr. Pfiester would have five general areas of anticipated responsibility: a) review operating data at an assigned plant/facility; b) instruct County staff regarding needed changes to ensure regulatory compliance and/or greater efficiency; c) review subsequent operating data to ensure optimal operation; d) review the general status of operations, chemicals, and equipment at an assigned plant/facility; and e) provide emergency guidance during natural disasters.

Mr. Pfiester was recently employed by WASD as Assistant Director for Wastewater Operations. You advised that he left County service on April 18, 2024, with the last day of his last pay period being April 28, 2024. As a result, he received his last County paycheck on May 3, 2024. You advised that, as a County employee, Mr. Pfiester stated that he supervised the day-to-day functions of WASD's wastewater treatment facilities and their staff. You acknowledged that some of the same responsibilities that Mr. Pfiester had in his prior role as WASD Assistant Director would be the same as those in his new role with Hazen. However, you advised that Mr. Pfiester's role with Hazen will not involve any planning; rather, it is a position in which he will be expected to provide real-time guidance and technical advice.

Issue

Whether any prohibited conflict of interest would prevent a former employee of Miami-Dade County from working as an Operations Specialist for a private company that has contracted with the County and providing services to the County pursuant to said company's County contract.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") Section 2-11.1(q)(1) provides that:

No person who has served as . . . [an] employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect.

This is commonly referred to as the Two-Year Rule. *See* INQ 23-45. Under the Two-Year Rule, former County employees are prohibited from lobbying their former employer for two years after their employment has ceased. *See* INQ 23-45; INQ 22-61. The Two-Year Rule is designed to limit a former employee's ability to use his or her former County service and contacts for his or her personal benefit through lobbying, to the detriment of others who do not have County or municipal connections. *See* INQ 21-105. As such, **within the two-year period covered by the Two-Year Rule, the former County employee is prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with County officials**

or employees for the purpose of influencing the County elected official or employee to take any type of official action, decision, or recommendation. *See* INQ 16-151 (citing RQO 04-33, RQO 02-139).

However, the Two-Year Rule does not prohibit former County employees from contracting with the County or working for a company that contracts with the County. *See* RQO 12-09 (the former Department Director of the Office of Capital Improvement Projects for the City of Miami Beach may work as the Vice-President of a company working on a City project as a subcontractor). Furthermore, former public employees are permitted to share institutional knowledge regarding their former employer's procedures with their new clients in their new private employment, and to provide guidance to those clients regarding interactions with their former public employer. *See* INQ 22-96 (citing INQ 21-02; INQ 20-63; INQ 19-75). Once a contract has been awarded or otherwise ratified, the Two-Year Rule does not prohibit a former County employee from providing management or oversight of the contracted-for project. *See* INQ 16-151. As such, a former County employee otherwise covered by the Two-Year Rule may meet with County officials or employees to discuss matters arising under the awarded contract. *Id.*

In practice, this has meant that a former Contracting Officer with Miami-Dade County could work as a purchasing agent for a County vendor providing services related to County projects, including management, oversight, and coordination of activities with the County, so long as those activities are related to an already awarded contract. *See* RQO 11-24. Similarly, the former Deputy Director of the Miami-Dade Aviation Department ("MDAD") could work as the Vice-President of a private company working as a subconsultant on a contract with MDAD, under which he would assume responsibility for oversight of part of the contracted-for project with duties similar to those that he had in his County position, because the position will not require him to engage in any lobbying activities. *See* RQO 09-36. Additionally, a former Engineer 3 with WASD's Construction Management Division could work as an engineer for a private company working as a contractor and subcontractor with WASD, and he could provide services for the private company in fulfillment of its County contracts, so long as he did not engage in any meetings or negotiations with County officials or employees about new contracts and/or the renegotiation of already awarded contracts. *See* INQ 23-135.

Here, Mr. Pfiester's situation is analogous to the former County employees discussed above. Thus, the Two-Year Rule would not prohibit him from working for Hazen on already awarded County contracts, including contracts that Hazen has with WASD. *See* RQO 12-09; RQO 11-24; RQO 09-36; INQ 23-135. However, Mr. Pfiester may not directly engage in any negotiations regarding any contract with the County during the applicable two-year period, meaning until May 3, 2026. *See* RQO 12-09; INQ 22-61; INQ 16-151. Furthermore, he may not attend or participate in any meetings or oral presentations with County officials or staff regarding pending unawarded County contracts or renegotiation or modification of existing County contracts. *See id.*

Opinion

Based on the facts presented here and discussed above, the County's Two-Year Rule does not prohibit a former WASD Assistant Director – Mr. Pfiester – who is now employed by Hazen as an Operations Specialist, from working for Hazen and providing services to Hazen in relation to Hazen's contract that arose from County Project Number E23WS05. *See* RQO 12-09; RQO 11-24; RQO 09-36; INQ 23-135. Furthermore, Mr. Pfiester may communicate with County officials and

staff concerning the already awarded and ratified contract insofar as he is engaged in the performance of his duties pursuant to Hazen's contractual obligations per the contract. *See* INQ 23-135; INQ 22-61; INQ 16-151. **However, the Two-Year Rule prohibits Mr. Pfiester from directly attending or engaging in any meetings, presentations, negotiations, or other discussions with any County official or employee regarding any proposed contracts or agreements, as well as the renegotiation or amendment of any existing contract Hazen has with the County.** *See* RQO 12-09; INQ 23-135; INQ 22-61.


Mr. Pfiester should also consider another provision of the County Ethics Code that impacts former employees. Specifically, he may not disclose or use any confidential or proprietary information acquired as a result of his past County service to derive any personal benefit for himself or for Hazen and/or its clients. *See* County Ethics Code § 2-11.1(h); INQ 21-105; INQ 22-61. Nevertheless, former public employees are permitted to share institutional knowledge regarding their former employer's procedures with their new clients in their new private employment, and to provide guidance to those clients regarding interactions with their former public employer. *See* INQ 22-96 (citing INQ 21-02; INQ 20-63; INQ 19-75).

Finally, it is important to emphasize that the County Ethics Code represents a **minimal standard of conduct** for those who have engaged in public service and remain subject to the Two-Year Rule. *See* INQ 22-61; INQ 17-181. Mr. Pfiester, as a former County employee, should carefully consider the totality of the circumstances before taking any action that may erode the public's trust in government. *See* INQ 17-181 (citing INQ 13-197).

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 under state law. 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/>.

Sincerely,



Nolen Andrew Bunker, Esq.
Staff Attorney

CC: All COE Legal Staff; Thomas Pfiester, Operations Specialist, Hazen and Sawyer

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.