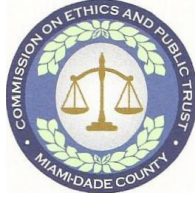


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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GENERAL COUNSEL

December 13, 2024

Hilda M. Fernandez  
The H Factor LLC  
16339 NW 84th Ave  
Miami Lakes, FL 33016  
**Delivered via e-mail to: thehfactormiami@gmail.com**

RE: INQ 2024-171, Section 2-11.1(c), Prohibition on transacting business within the County

Dear Ms. Fernandez:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest regarding your County board service.

### Facts

The Miami-Dade County Homeless Trust (“the Trust”) serves as the lead agency for the County’s homeless continuum of care (“CoC”), meaning that it is responsible for the oversight, planning, and operations of the CoC. These responsibilities include administering the proceeds of the County’s one-percent food and beverage tax, implementing the Homeless Plan to prevent homelessness, applying for federal and state funding, administering grants and overseeing operations for housing and services programs, managing the County’s Homeless Management Information System, developing homelessness policy, and serving in an advisory capacity to the Miami-Dade Board of County Commissioners (“BCC”) regarding homelessness.<sup>1</sup> The Trust is led by a twenty-seven (27) member Board of Trustees that consists of members of the city and business community, elected officials, formerly homeless persons, religious leaders, and homeless advocates.<sup>2</sup> You advised that you were appointed as a Member of the Trust’s Board of Trustees in June 2018, and that you continue to serve in that position.

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<sup>1</sup> See *About Us*, HOMELESS TRUST, <https://www.homelesstrust.org/homeless-trust/about-us/home.page> (last visited Dec. 9, 2024).

<sup>2</sup> See *Leadership*, ABOUT US, <https://www.homelesstrust.org/homeless-trust/about-us/home.page> (last visited Dec. 9, 2024).

You own and operate The H Factor LLC (“The H Factor”), a Florida limited liability company that you recently created. You have obtained a business tax receipt for The H Factor and registered The H Factor as a County vendor.

You advised that, in light of your subject-matter experience, the Executive Director of the Trust contacted you to consider contracting with the Trust as an independent consultant. This work would involve you providing assistance with relation to the development of policies and procedures in light of the recently enacted Florida House Bill 1365.<sup>3</sup> You also advised that you have considered contracting as a consultant with the Miami-Dade Public Housing and Community Development Department (“PHCD”).

### Issue

Whether a Member of the Board of Trustees of the Miami-Dade County Homeless Trust may contract or otherwise do business with the Trust or PHCD as an independent consultant.

### Analysis

The Miami-Dade Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) applies to the Trust. *See* Miami-Dade County Code § 2-752(f). The Trust is a semi-autonomous County agency, and as such members of the Board of Trustees of the Trust are “autonomous personnel”<sup>4</sup> under the County Ethics Code. *See* INQ 17-123 (noting that the Trust is a semi-autonomous County agency).

Section 2-11.1(c)(1) of the County Ethics Code provides that autonomous personnel shall not enter into any contract or otherwise transact any business with the County, “except as provided in subsections (c)(2) through (c)(7).” The County Ethics Code then provides that County autonomous personnel may contract with the County, either individually or through a business entity, so long as the contract is not “with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.” County Ethics Code § 2-11.1(c)(3).

In practice, a member of the Board of Trustees of the Miami-Dade Affordable Housing Trust Fund (“AHTF”) and the Miami-Dade Affordable Housing Advisory Board (“AHAB”) did not have a

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<sup>3</sup> House Bill 1365, among other things, preempted “counties and municipalities from authorizing individuals to regularly sleep or camp on public property, at public buildings, or on public rights-of-way within their jurisdictions.” *See CS/CS/HB 1365 – Unauthorized Public Camping and Public Sleeping*, BILL SUMMARY, <https://www.flsenate.gov/Committees/BillSummaries/2024/html/3463> (last visited Dec. 10, 2024).

<sup>4</sup> Section 2-11.1(b)(2) defines autonomous personnel as follows:

The term “autonomous personnel” shall refer to the members of semi-autonomous authorities, boards, and agencies as are entrusted with the day to day policy setting, operation and management of certain defined County functions or areas of responsibility, even though the ultimate responsibility for such functions or areas rests with the Board of County Commissioners.

prohibited conflict of interest that prevented his private company from purchasing and developing a property as part of the County's Infill Housing Program, administered by PHCD, provided that: a) he did not seek County funds to develop the property, and 2) neither the AHTF nor the AHAB had authority over PHCD or the Infill Program. *See* RQO 18-03. Similarly, a Member of the Board of Trustees of both the Trust and the AHTF who served as Executive Director of a Florida non-profit did not have a prohibited conflict of interest that prevented the non-profit from accepting a grant from PHCD because neither the Trust nor AHTF had authority over PHCD. *See* INQ 21-46. In contrast, a member of the Board of Trustees of the Trust who owned and operated a private consulting firm had a prohibited conflict of interest that prevented his company from serving as lead coordinator for a program created by the Trust. *See* INQ 18-25.

Here, based on the information provided at this time, it appears that the County Ethics Code would prohibit The H Factor, your private company, from contracting with the Trust to provide consulting work in relation to the effects of Florida House Bill 1365 because you serve as a Member of the Trust's Board of Trustees. *See* RQO 18-03; INQ 18-25. Nevertheless, the County Ethics Code permits you to seek a waiver of the prohibition against contracting with the Trust from the BCC.<sup>5</sup> Regardless, it should be noted that State law also prohibits public officers from doing business with the public agency in which they serve, and that the BCC has no authority to waive this State prohibition. *See* Fla. Stat. § 112.313(3).<sup>6</sup> For guidance on the application of State law to your inquiry, you should contact the Florida Commission on Ethics.

However, it does not appear that any prohibited conflict of interest would prevent The H Factor from contracting or otherwise doing business with PHCD because the Trust does not have any regulation, oversight, management, policy-setting, or quasi-judicial authority over PHCD. *See* RQO 18-03; INQ 21-46. Nevertheless, you must request an opinion from the Ethics Commission once a specific transaction with PHCD is contemplated. *See* County Ethics Code § 2-11.1(c)(4).

### Opinion

Based on the facts presented here and discussed above, neither you nor your private company, The H Factor, may contract or otherwise do business with the Miami-Dade County Homeless Trust while you continue to serve as a Member of the Board of Trustees of the Trust. *See* RQO 18-03;

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<sup>5</sup> The County Ethics Code provides that, where the Miami-Dade Commission on Ethics and Public Trust ("Ethics Commission") finds that a proposed transaction creates a prohibited conflict of interest, the affected autonomous personnel may request a waiver from the BCC within ten days of the Ethics Commission's opinion by filing a notice of appeal with the Ethics Commission. The Clerk of the Board shall then place the request on the agenda of the BCC and the BCC may grant a waiver by an affirmative vote of two-thirds of the entire BCC if it finds that the requirements of the Ethics Code regarding the exclusion of the affected person have been met and the transaction is in the best interest of the County. *See* County Ethics Code § 2-11.1(c)(4).

<sup>6</sup> Section 112.313(3), Florida Statutes, provides in pertinent part:

Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

INQ 18-25. However, it does appear that neither you nor The H Factor are prohibited from contracting or otherwise doing business with PHCD because the Trust does not have any authority over PHCD. See RQO 18-03; INQ 21-46.

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,

A handwritten signature in blue ink that reads "Nolen Andrew Bunker".

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

CC: All COE Legal Staff

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*INQs are informal opinions provided by the legal staff after review and approval by the Executive Director and/or General Counsel. INQs deal with opinions previously addressed in public session by the Miami-Dade Commission on Ethics and Public Trust or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Ethics Commission 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 this opinion may be subject to investigation and a formal Complaint filed with the Ethics Commission.*