



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Bryan Thomas, Software Developer  
Miami-Dade Information Technology Department  
  
Thomas Hilpold, Information Technology Manager  
Miami-Dade Information Technology Department

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

**SUBJECT:** INQ 2024-26; Section 2-11.1(j), Conflicting employment prohibited; Section 2-11.1(k), Prohibition on outside employment.

**DATE:** February 6, 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 related to your proposed outside employment.

#### Facts

You are currently employed by the Miami-Dade Information Technology Department (“ITD”) as a Software Developer in the Enterprise Customer Experience Divisions. Your job duties primarily include developing and managing multi-tiered web applications. Your supervisor, Thomas Hilpold, clarified that you work on the County’s customer-facing websites and mobile apps. Unlike some employees in ITD, you are not assigned to work with one client department. We have confirmed with Mr. Hilpold that your work does not involve music streaming or social media applications for the county. He further advised that he does not see a conflict of interest between your proposed outside employment and your current County responsibilities.

You are a newly hired employee and advise that you wish to engage in outside employment, continuing work you started before you were hired at the County. You advise that you are the founder of General Public, LLC, doing business as MetaTech Solutions, LLC. While this company is currently inactive, you would like to reactivate it to act as a holding company for a proposed

venture named Dubarub, LLC<sup>1</sup>. You intend for this company to develop and market a music streaming social media application.

You do not intend for your company to become a County vendor. You further advised that you will not encounter the same or similar people or entities in your proposed outside employment as you encounter in your County position. You further advised that your ITD position does not give you access to non-public information that is, or could be, relevant to your proposed outside employment. You advise that will not use the same or similar resources for your proposed outside employment as those that you use in your County work, with the exception of an open-source web application development platform called Angular and developed by Google that is commonly used by web developers for a variety of applications. This platform is available to the general public. You advise you will engage in your outside employment outside of your County work hours.

### Issue

Whether any prohibited conflict of interest may exist between your County service and your proposed outside employment as the founder and CEO of a private company that will develop and market music streaming social media applications.

### 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.” Section 2-11.1(j); *see also* section 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. 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.

Outside employment is considered “any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated.” RQO 17-03. Several factors are considered to determine whether a potential conflict of interest exists between an individual’s County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the individual has decision-making authority over the same subject matter

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<sup>1</sup> A review of the online records of the Department of State’s Division of Corporations reveals that you have incorporated General Public, LLC, and registered the fictitious name of Metatech Solutions. Both entities are inactive at this time. Dubarub, LLC, is not registered with the Division of Corporations at this time. *See* <https://dos.fl.gov/sunbiz/search/> (searched on February 6, 2024).

that the outside employment concerns; whether the individual solicits business or customers in the same area over which he or she has jurisdiction; whether the individual will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the individual serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66.

In practice, the Commission has found that a programmer for ITD who supported security functions important to applications used by Miami-Dade Corrections and Rehabilitation Department and Jackson Health Systems could engage in outside employment creating an applications parents could use to monitor their children on transportation to and from school her work at the County did not overlap in any way with her private outside employment. *See* INQ 21-03. Similarly, systems administrator for ITD could engage in outside employment managing websites for private clients unrelated to the County because her outside employment would not have impaired her independence of a judgement in his County work. *See* INQ 21-18; *see also* INQ 21-20.

Here, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment you are seeking to engage in as an entrepreneur developing and marketing a music streaming social media application will impair your independence of judgment as a programmer for ITD.** This is because there does not appear to be overlap between your public duties and your anticipated responsibilities for your private company because: your proposed outside employment will be performed outside of your County hours; you will not come into contact with the same or similar persons or entities in your proposed outside employment who are involved in your County work; you will not use the same or similar resources in your proposed outside employment beyond a commonly-used, open-source platform; and you do not have access to non-public information as part of your County position that is or could be relevant to your proposed outside employment. *See* RQO 17-01; INQ 21-03; INQ 18-27; INQ 14-59.

### Opinion

**Based on the facts presented here and discussed above, you would not have a prohibited conflict of interest between your County position and your proposed outside employment.** *See* RQO 17-03; INQ 21-03; INQ 18-27; INQ 14-59. However, if your position or responsibilities at the County change, **or** if the scope or direction of your outside employment changes, you should seek further guidance from the Commission on Ethics.

Additionally, the Commission on Ethics strongly recommends that you abide by the following limitations regarding your proposed outside employment with General Public, LLC; Metatech Solutions, LLC; and Dubarub, LLC:

- You may not engage in activities that relate in any way to your outside employment during your scheduled work hours (including phone calls, text messages, e-mails, or other communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with your outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

- You may not exploit your County position to secure special privileges or exemptions for yourself and/or for any of your private companies, either currently incorporated or contemplated in the future. *See* County Ethics Code 2-11.1(g).
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of your private companies. *See* County Ethics Code Section 2-11.1(h).
- You may not represent any of your private companies 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 your potential activities developing and marketing a music streaming social media application, it is important to note that you would be prohibited from doing any such activities on behalf of your company or its clients.
- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement<sup>2</sup> 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 or not in your 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 or under state law. Questions regarding possible conflicts based on ITD directives should be directed to ITD 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 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.

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