



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Vaushaun Harvin, Services Clerk
Internal Services Department

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

SUBJECT: INQ 2024-34, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: February 20, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning your company and potential future contracts with the County.

Facts

You are employed by the Internal Services Department (“ISD”) as a Services Clerk. Your job responsibilities primarily include identifying capital equipment items. You further advised that your position at ISD does not include any oversight, authority, supervision or administration of contractors at ISD or any other department and you are not involved in the process of awarding contracts.

You advised that you are the owner of Chy’s Bundt Cakes and More, a private business which bakes cakes. You further advise you are a self-taught baker. You would like to apply to the Miami-Dade Economic Advocacy Trust (“MDEAT”) for a small business grant.

You advised that you do not have any family members working for Miami-Dade County and you have asked for and received permission from your supervisor to engage in outside employment working for your company.

Issue

Whether there is a prohibited conflict of interest that would prevent Chy's Bundt Cakes and More, your privately owned business, from contracting with MDEAT because of your employment at ISD.

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. Contracting with the County

Generally, County employees may contract with the County with certain limitations. Sections 2-11.1(c) and (d) of the County Ethics Code prohibit County employees from contracting with the Department that employs them, in most cases. *See* § 2-11.1(c)(2), County Ethics Code. Additionally, County employees cannot be involved with negotiating, enforcing or overseeing any county contract with their private company. *See* County Ethics Code §§ 2-11.1(c), (d).

For example, an Electrical Equipment Technician at ISD was permitted to contract with Miami-Dade County, through his private alarm installation company, because he was not seeking to contract with ISD and nothing about his County employment required him to negotiate, oversee or enforce County contracts with alarm installation companies. *See* INQ 19-61; *see also* INQ 22-08 (a County Commission Clerk 2 was permitted to contract with the County through her personally owned company – Baked to Lashed, LLC – to participate in the Mom and Pop Small Business Grant program because her outside employment with Baked to Lashed, LLC is unlikely to give rise to a prohibited conflict of interest, and because the Clerk of the Court is not involved in processing or administering the grant).

Here, you have indicated that you would like to apply, through your private company, for a small business grant from MDEAT, an independent County agency. Based on the facts that you have provided, no conflict of interest would arise from your County employment at ISD if you applied for a small business grant awarded by MDEAT because you have no involvement in contracting at ISD and no oversight over anything at MDEAT.

B. Outside Employment

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County's Administrative Order 7- 1. "County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income . . ." RQO 16-01. You have already received approval for outside employment from your supervisor, this year and last year.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee's independence of judgment

in the performance of his or her official duties, thereby creating a conflict between the employee's public duties and private interests. "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." A.O 7-1. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

For example, an ISD administrative services employee was found to have no conflict of interest when she requested approval for outside employment working as a janitor for a County vendor because 1) in her County job she had no authority or oversight over her outside employer and she was not required to come into contact with the same persons or entities in her County employment and her outside work; 2) she would not use the same resources or equipment in the two jobs; and 3) she did not work in a position at the County where she might recruit vendors, contractors, bidders or members of the public that could use the services of her outside employer. *See* INQ 21-111. Similarly, a treatment plant operator for the Miami-Dade Water and Sewer Department was permitted to work baking pastries for her private company, because her work baking pastries was unrelated to her County duties; would not impair her independence of judgment in the performance of her County duties; and would not conflict with her County hours. *See* INQ 22-79.

Here, it appears unlikely your outside employment with your private company will impair your independence of judgment in the performance of your County duties at ISD for several reasons, including that: a) your work with your company will only occur outside of your County working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; c) you will not use the same or similar resources that you use in your County work; d) your County position does not provide you with access to non-public information that is or could be relevant to your anticipated outside employment; and e) 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 anticipated outside employment.

Nevertheless, you must continue to abide by certain limitations outlined below to avoid a conflict:

- You shall not engage in activities that relate in any way to your outside employment during regular business 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 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 are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of your private company or its clients. *See* County Ethics Code Section 2-11.1(h).
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside

Employment Statement with the County's Elections Department by July 1st of each year. *See County Ethics Code Section 2-11.1(k)(2).*¹

C. Lobbying

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 your company's application for the MDEAT grant. *See County Ethics Code § 2-11.1(m)(1).*

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See County Ethics Code § 2-11.1(g).* This means that you may not use your County position to secure any special privilege or exemption with respect to your effort to obtain the MDEAT grant.

Opinion

Based on the facts presented here, Chy's Bundt Cake and More may contract with the County to receive an MDEAT small business grant, subject to the limitations discussed above.

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.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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.

¹ The form is available online at <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

