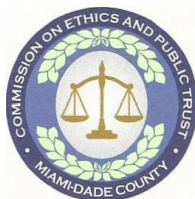


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 22, 2024

Hardeep Anand, PE
APAS Consulting LLC
Sent via e-mail to: hardeep@apas.ai

Re: INQ 2024-39, Section 2-11.1(q), Continuing application after county service

Dear Mr. Anand:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from your current private employment due to your recent employment with Miami-Dade County.

Facts

You are a former employee of Miami-Dade County. Specifically, you worked as the Director of One Water Strategy from October 2021 until you left County service in April 2023. In that position you worked toward developing a “One Water Miami-Dade Master Plan.”¹ You advised that, prior to this position, you worked as the Deputy Director of Capital Improvements for the Miami-Dade Water and Sewer Department (“WASD”). You held that position from November 2015 until October 2021. Additionally, you advised that you had previously worked for Miami-Dade County as the Chief of the Pollution Regulation and Enforcement Division of what is now the Miami-Dade Department of Regulatory and Economic Resources (“RER”).

You advised that you are currently employed as the founder and chief executive officer of APAS Consulting LLC (“APAS”), a Delaware limited liability company. Records from the Florida Department of Business and Professional Regulation show that you are a licensed professional engineer. You advised that, as part of your responsibilities for APAS, you have been retained by a client who has an affordable housing project in the City of Opa-Locka that is currently under enforcement or oversight by RER’s Division of Environmental Resources Management (“DERM”), and you have been retained to advise said client on how to bring the property back into compliance with County regulations. You advised that your role will be to assess the issues

¹ See *Miami-Dade County Mayor Daniella Levine Cava Announces New Director of One Water Strategy on Imagine a Day Without Water*, NEWS RELEASE, <https://www.miamidade.gov/releases/2021-10-21-wasd-one-water-strategy-director.asp> (last visited Feb. 21, 2024).

outlined in the enforcement action, provide recommendations, and develop an approach to achieve compliance. Specifically, you advised that your client must submit a corrective action plan to DERM, which your client has, in turn, asked you to draft. You advised that, as part of drafting and submitting the corrective action plan, you will be required to sign the plan indicating that it will bring the client's property back into compliance with County regulations. You further advised that your client has an attorney who is interfacing with DERM such that you will not have any occasion to meet with or otherwise discuss any matter with DERM, and that the client or the client's attorney will be responsible for submitting the plan to DERM. You stated that, in the event that DERM has any questions or concerns about the corrective action plan, that the attorney will convey those to you, which will enable you to make any requested modifications to the plan.

Issue

Whether there is any prohibited conflict of interest related to your work on a project for a client that, among other things, will involve drafting and signing a corrective action plan that will be submitted to a County department or agency.

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 . . . 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 and municipal 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 connections. *See* INQ 21-105.

Generally, the Two-Year Rule is expansively interpreted to mean that all activities intended to influence an official decision or action of a County official or employee are considered impermissible lobbying. *See* RQO 13-07; INQ 23-132. As such, **within the two-year period covered by the Two-Year Rule, former County employees are prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with County officials or staff for the purpose of influencing the County elected official, staff, 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). The Two-Year Rule also does not prohibit the review of construction documents for constructability. *See id.* Nor does it prohibit former County employees from submitting permit applications *and plans*. *See* RQO 04-33 (emphasis added). 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).

In practice, the former Director of the Miami-Dade Department of Transportation and Public Works ("DTPW") who was a licensed professional engineer and who left County service to accept employment with a global company providing technical expertise and strategic advice to clients in various industries was permitted to "work in a technical and professional advisory role as an engineer" on behalf of her new employer and its clients. INQ 21-40. Similarly, a former Project Manager and Engineer for WASD, who was a licensed professional engineer and left County service to accept employment with a global engineering and project management company, was permitted to "work in a technical and professional advisory role as an engineer" on behalf of his new employer on existing and future County contracts. INQ 23-45; *see also* INQ 23-42 (the former Town Engineer and Public Works Director of the Town of Bay Harbor Islands could, within two years of leaving Town service, work for a private company as the Project Manager for a Town project if the Town awarded the private company the project). Both of these individuals could do so provided that they did not make any presentations to County boards or staff or attempt to persuade any County officials or staff, whether orally or in writing, to take any particular course of action. *See* INQ 23-45; INQ 21-40; *see also* INQ 23-42.

Here, your situation is analogous to the former County employees discussed above. As a result, the Two-Year Rule would not prohibit you from owning APAS, operating as its CEO, and performing work for your client that includes drafting a corrective action plan and signing it in your capacity as a licensed professional engineer because the plan itself does not constitute lobbying; rather, it is a product of your work in a technical and professional advisory role as an engineer. *See* RQO 12-09; INQ 23-45; INQ 21-40. As you have described it, the corrective action plan is a document or report that DERM requires your client to prepare in order to explain how it intends to come back into compliance with County regulations; it is not a document whereby you will try to persuade DERM (or any County official or employee) that DERM should cease its enforcement activity or that your client is already in compliance.

However, it is important to note that you may not engage in any meetings with County officials or staff to discuss whether DERM should accept the corrective action plan that you draft on your client's behalf, nor may you meet or discuss with any County officials or staff any modifications to the corrective action plan that DERM may request. *See* RQO 04-33 ("activities that entail meetings with County staff to discuss . . . requested modifications to plans or permits may be considered lobbying, and therefore, deemed impermissible under the [T]wo-[Y]ear [R]ule."); INQ 21-40. This does not appear to be a likely impediment to your work for the client in question because you advised that they have hired an attorney who is responsible for all direct communications with DERM. Nevertheless, you are cautioned that you cannot merely use the

attorney as an intermediary to communicate with DERM and thereby engage in a conversation with County officials or staff.

Finally, you may share your expertise and familiarity with County regulations and procedures garnered over your years of County service with your clients. *See* INQ 22-96. However, you are cautioned that you may not disclose or use any confidential information acquired as a result of your past County service to derive any personal benefit for yourself, APAS, or your clients. *See* County Ethics Code § 2-11.1(h); INQ 23-135; INQ 21-40.

Opinion

Based on the facts presented here and discussed above, the Two-Year Rule does not prohibit you from owning and operating APAS generally, or from accepting work from the client in question to draft and sign a corrective action plan for your client that they will submit to DERM. *See* RQO 12-09; RQO 04-33; INQ 23-45; INQ 21-40. **However, the Two-Year Rule would prohibit you from directly engaging in any meetings, presentations, negotiations, or other discussions with any County official or employee regarding the corrective action plan and any modifications to it that may be requested.** *See* RQO 04-33; INQ 21-40. **This prohibition includes both oral and written communications.** *See* INQ 23-135; INQ 21-40.

Additionally, while you may share your expertise and familiarity with County regulations and procedures with your client, you may not disclose or use any confidential or proprietary information acquired as a result of your past County service to derive any personal benefit for yourself, APAS, or your clients. *See* County Ethics Code § 2-11.1(h); INQ 23-135; INQ 21-40.

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 23-135. Former County employees should carefully consider the totality of the circumstances before taking any action that may erode the public's trust in government. *See id.*

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the below-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 "Drew" Bunker, Esq.
Staff Attorney

CC: All COE Legal Staff

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.