



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Thelbert Smith, Waste Truck Driver Operator
Miami-Dade Department of Solid Waste Management

FROM: Nardia Haye, Staff Attorney
Miami-Dade County Commission on Ethics and Public Trust

SUBJECT: INQ 2025-42 - Section 2-11.1 (j) Conflicting Employment Prohibited, Section 2-11.1 (k) Prohibition on Outside Employment

DATE: May 6, 2025

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest that may occur as a result of your outside employment as a realtor for Grand Realty.

Facts:

You, Thelbert Smith, are employed by the Miami-Dade Department of Solid Waste Management (“DSWM”) as a Waste Truck Driver Operator. Your primary responsibilities include transporting solid waste, recyclables, and other materials along a designated route. Additionally, you operate and inspect the waste truck and ensure proper waste handling at the landfill or processing site.

You are currently engaged in outside employment as a realtor for Grand Realty.¹ You are an independent contractor and do not have an ownership stake in Grand Realty. In this role, you sell and lease real property for clients.

¹ You advised that you have been a realtor at Grand Realty for approximately 10 years with approval from your department director. A records check with the Florida Department of Business and Professional Regulation confirms that you have been a licensed real estate broker or sales associate since 2000.

You explained that you create your own schedule as a realtor and that your working hours at Grand Realty would not occur during your assigned hours at DSWM.² Further, your work for Grand Realty would not require contact with the same or similar people as your DSWM position requires, and would not require contact with County employees, departments, or County boards, even for routine matters. Moreover, you would not use the same resources at Grand Realty as you do at DSWM, including the Commercial Driver's License that DSWM requires you to possess; you do not have access to non-public information through your County position that is or could be relevant to your role at Grand Realty; and your work for DSWM does not include recruiting vendors, contractors, bidders, or members of the public who could use your outside employment services.

Finally, you indicated that Grand Realty is not a Miami-Dade County vendor and is not currently seeking to become one. Regardless, you do not have any involvement, authority, or oversight over Grand Realty, its staff, and/or any contracts or agreements it may have with the County.

Issue:

Whether any prohibited conflict of interest may exist, pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code"), between your County employment with DSWM and your outside employment with Grand Realty.

Analysis and Discussion:

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. The 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" or is likely to create conflicts of interest between the employee's County responsibilities and their outside job 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." ³

Conflicting employment can occur when outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both their outside employment and public position, e.g., similar clients, suppliers, or subcontractors. *See* RQO 15-03. Several factors are considered to determine whether a potential conflict of interest

² INFORMS reflects that your hours at DSWM are from 7 am to 5:30 pm. Further, INFORMS delineates that Grand Realty will release you if DSWM needs your services.

³ Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. (2021).

exists between an individual's County position and their outside employment, including: the nexus between the public duties and the outside employment; whether the employee has decision-making authority over the same subject matter that the outside employment concerns; whether the employee solicits business or customers in the same area over which they have jurisdiction; whether the employee will come into contact with the same or similar people or entities in both their public position and outside employment; and whether the employee's public entity funds or has a contract with their outside employer. *See* RQO 17-01; INQ 21-66.

The Ethics Commission previously opined that a Secretary for the Internal Services Department did not have a conflict of interest as a real estate agent partly because there was no overlap between her public duties and her outside employment, and she would not assist the same clients or use the same resources. *See* INQ 22-16. Similarly, a Miami-Dade Corrections and Rehabilitation Department Correctional Corporal was not prohibited from engaging in outside employment as a real estate agent because there was no overlap between her public duties and her outside employment. *See* INQ 23-41.

Finally, 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 may request an opinion from the Miami-Dade County Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 19-101; INQ 21-111. 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 00-10; RQO 16-02; INQ 13-28.

In this case, your supervisors, Jaime Thomas and Antwane Thurston, expressed no concern regarding your outside employment request. This is supported by the fact that you have previously received approval to be a realtor at Grand Realty, with no reported issues regarding the impairment of your independence of judgment in the performance of your public duties.

Additionally, your duties as a Waste Truck Driver Operator for DSWM, which include transporting solid waste, recyclables, and other materials, do not overlap with your outside employment selling and leasing real estate. Further, your work for Grand Realty will be performed outside of your DSWM hours, and Grand Realty will release you if DSWM needs your services. Moreover, your outside employment would not require you to use the same resources at Grand Realty that you use at DSWM, including use of your Commercial Driver's License; your work at Grand Realty would not require contact with County employees, departments, or County boards, even for routine matters; and you would not have access to non-public information through DSWM that is or could be relevant to your role at Grand Realty. Lastly, Grand Realty does not have any contracts or agreements with the County, and you do not have any involvement, authority, or oversight over Grand Realty, its staff, and/or any contracts or agreements it may have with the County.

Accordingly, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment you are engaging in would impair your independence of judgment as a Waste Truck Driver Operator at DSWM.**

Opinion:

Based on the facts presented here and discussed above, you would not have a conflict of interest in your outside employment as a realtor for Grand Realty. However, you must adhere to the following sections of the County Ethics Code to avoid any future conflicts of interest:

- You may 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, or County vehicles, in connection with your outside employment, even after work). *See* County Ethics Code §§ 2-11.1(g) and (j); AO 5-5; AO 7-1; INQ 05-29; INQ 15-240; INQ 19-123; INQ 20-43.
- You may not appear before any County board or agency to make a presentation on behalf of or seek any benefit for your clients, Grand Realty clients, or Grand Realty. *See* County Ethics Code § 2-11.1(m)(1).
- You may not exploit your County position to secure special privileges or exemptions for yourself, your clients, Grand Realty clients, Grand Realty, and/or any of its parent or subsidiary organizations. *See* County Ethics Code § 2-11.1(g). **Specifically, you may not offer your or Grand Realty's real estate services to anyone during County working hours, including co-workers, subordinates, and other County employees.** *See* INQ 19-101.
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment and/or position to derive a personal benefit or for the benefit of your clients, Grand Realty clients, or Grand Realty and/or any of its parent or subsidiary organizations. *See* County Ethics Code § 2-11.1(h).
- You must obtain permission to engage in outside employment annually by filing a Request for Outside Employment with your department director. *See* AO 7-1. Additionally, **you must file an Outside Employment Statement⁴ with the County Ethics Commission 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 § 2-11.1(k)(2).

This opinion is limited to the facts as you presented them to the Miami-Dade County Commission on Ethics and Public Trust, is limited to an interpretation of the County Ethics Code only, and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

⁴ You can find the required form online at: <https://documents.miamidade.gov/ethics/outside-employment/outside-employment-statement.pdf>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.