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June 28, 2023

Honorable Melissa Castro
Coral Gables Commissioner
405 Biltmore Way
Coral Gables, Florida 33134

Re: INQ 2023-___, Outside Employment, Section 2-11.1(j), Miami-Dade Code

Dear Commissioner Castro:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for seeking guidance regarding the application of the County Ethics Code's provisions to your outside employment as the principal in a construction permit expediting company. It is contemplated that you or your employees may interact with City of Coral Gables staff. Consequently, this opinion provides some broad cautionary guidance and identifies some scenarios where it would be best for you to request a more specifically tailored ethics opinion.

Facts:

Melissa Castro was elected to the Coral Gables City Commission in April 2023. Commissioner Castro is the owner and chief executive officer of M.E.D. Expeditors, Inc., a Florida for-profit corporation (MED).

Relevant to this opinion, MED broadly advertises its business services as assisting clients with obtaining construction permits and municipal approvals. These broadly defined services more specifically include engagements on behalf of clients with construction permit revisions, expired permits, permit extensions and renewals, as well as securing certificates of completion and occupancy.

While MED provides services across the United States, its corporate base is in Coral Gables, Florida. MED provides services to clients with projects in Coral Gables.

Ms. Castro advises that she has worked in various capacities in the permit expediting business since she was a teenager in high school helping in the family business that is now MED. She is known to Coral Gables employees tasked with construction permitting matters and her affiliation with MED is similarly well known.

The City has a manager form of government and Commissioners are not involved in the direct supervision of employees. However, in legislative and quasi-judicial roles, Commissioners are called upon to consider and vote upon matters relating to real property located in the City. Also, Commissioners are likely to have contact with City employees.

Issue:

Whether a city commissioner may be employed as the owner and chief executive officer of a permit expediting company that represents clients in her city and what limitations does the ethics code place on her official involvement in matters related to his business.

Discussion:

As a preliminary matter, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (Ethics Code) applies to elected councilmembers in the City of Coral Gables (City).¹

Several provisions of the County Ethics Code will apply to those outside employment activities that will require you or your employees to interact with City staff or otherwise engage in official actions that may affect your company or its clients.

a. Conflicting Employment

There is no *per se* bar on an elected official operating a business within her city and the Ethics Code only prohibits an official or member from engaging in employment that might impair his or her independence of judgment in the performance of public duties.²

From the description you have provided, it does not appear that your work as the owner and chief executive officer of a permit expediting company will impair your independence of judgment in the performance of your public duties as a City Commissioner such that it would be prohibited by the County Ethics Code's provisions.

¹ See Section 2-11.1(a), Miami- Dade Code.

² Section 2-11.1(j), County Ethics Code; INQ 2022-145.

However, employment that will create a continuing or frequently recurring conflict between public and private duties or interests may become prohibited conflicting outside employment.³ Consequently, if you find going forward that requirements of your outside employment are giving rise to recurring conflict of interest scenarios, either in you or your employees' interaction with City staff, or in the consideration and vote on Commission agenda items, then you are encouraged to seek further guidance at that time.

b. Prohibited Board Appearances and Payments

You are not permitted to appear before the City Commission or any City board, either directly or through an associate, and make a presentation on behalf of a company client. Moreover, you are not allowed to receive compensation from a person seeking a benefit from the City in relation to the benefit sought.⁴

This latter prohibition can be cumbersome to interpret. Stated more plainly, you are not allowed to be compensated directly or indirectly through MED, if your compensation is funded in part by a client that is seeking some benefit from the City.

³ See also Sec. 112.313 (7)(a), Florida Statutes (No public employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an employee. Nor shall an employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.)

⁴ Section 2-11.1(m)(1), County Ethics Code (Prohibiting a council member from appearing before any municipal board on behalf of third party and from receiving compensation, directly or indirectly or in any form, for any services rendered to the third party seeking a benefit from the municipality.) See generally RQO 07-02; RQO 07-39; INQ 15-229; INQ 17-254; INQ 19-12.

See also, Section 112.313(7)(a), Fla. Stat.; CEO 09-10; CEO 10-24. (The Florida Commission on Ethics has found the conflicting employment prohibition in state law is triggered when the public officer represents a client on a *single matter* or in a *single instance*, when the matter is a matter of his or her board and the conflict cannot be mitigated simply because another member of the officer's firm engages in the representation before the public board, because the concern is the potential loss of objectivity a public officer may have if his firm is attempting to influence the decisions of his board. This concern remains present so long as the officer's firm is representing a client on a matter of his board, even if he is refraining from personally advising the firm or its client about the matter.

CEO 12-9 and CEO 03-7 (Recusal from voting on the matter and compliance with voting conflict statute found at Section 112.3143(3)(a), Florida Statutes, does not negate the prohibited employment conflict because the two statutes operate independently.)

This subsection of the Ethics Code also prohibits you from lobbying or trying to influence City staff for the benefit of MED clients. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third-party client. Thus, while you are allowed to collect documents for your clients and forward them to City, you are cautioned not to proceed beyond these types of ministerial exchanges. You should certainly avoid advocating any type of action by a City staff member.⁵

c. Exploitation of Official Position & Official Actions

As a Commissioner, you may not use your official position to secure special benefits, privileges or exemptions for yourself or others. You should be cautious, if you are interacting with City staff, even as part of a purely ministerial transaction related to your outside employment duties, to not represent yourself as a Commissioner. Of course, you are not permitted to use City staff or resources to support your outside employment. You should refrain from giving City employees any direct or indirect instruction to engage on any matters in which you or MED are involved. Finally, you cannot use your public positions to promote the use of your company's services and you should avoid suggesting to MED current or potential clients that they will receive preferential treatment from City staff as a benefit of your official position.⁶

d. Voting Conflicts

Because you are a covered party under the Ethics Code, then Section 2-11.1(d) of the Code would likewise apply to you. The second part of Section 2-11.1 (d) of the Ethics Code provides that an elected official shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of

⁵ See INQ 09-33 (County executive serving on the board of a non-profit agency receiving county funding may not sign any documents or grant applications presented to the County and if any issues arise relating to grant applications, the employee may not participate in meetings or discussions with County staff regarding the dispute); INQ 11-178.

⁶ Sections 2-11.1(g) and (n), County Ethics Code; INQ 21-121.

the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official “would or might, directly or indirectly, profit or be enhanced by the action...” as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”

Consequently, if there is any matter that comes before the Commission that may affect MED or one of its clients, then you will have a voting conflict that will require your recusal. Because of your ownership of MED, you would or might, directly or indirectly, profit or be enhanced by the action, and thus you would have a prohibited voting conflict. As a general rule, you should abstain from the vote or at a minimum request ethics guidance before the matter is considered.

e. Appearance of Impropriety

Finally, as regards recent clients on completed projects, you may wish to pause and seek ethics guidance regarding your actions as a Commissioner. The Ethics Commission has previously considered somewhat related scenarios involving local elected officials that had prior business relationships with developers and other business clients that were going to be affected by votes of a city commission, on subsequent matters unrelated to the subject matter of the original private business retainer.

While opining that the elected officials did not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the prior clients, the Ethics Commission advised caution.⁷

More specifically the Commission noted as follows:

The County’s Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address “appearance of impropriety” issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business.

⁷ See INQ 2021-69; INQ 13-148; and RQO 12-03.

Moreover, while the Ethics Commission does not have the authority to interpret or enforce state statutes, we are cognizant of Section 286.012, Florida Statutes, relating to voting requirements at meetings of governmental bodies. While that section provides that a member may not abstain from voting unless there is, or appears to be, a possible conflict of interest under the state ethics code, it does also provide as follows regarding quasi-judicial matters:

If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Conclusion:

The Ethics Code does not prohibit your outside employment as the owner of a permit expediting firm that does business in the City of Coral Gables.

However, there are several provisions of the Ethics Code that limit or otherwise prohibit your communications or interactions with municipal or staff in your capacity as the owner and chief executive officer of a permit expediting firm that does business in your city. There are additional Ethics Code prohibitions on your consideration or vote on matters that may come before the Commission relating to MED and its clients, as these would or might, directly or indirectly, affect you.

This opinion is limited to the facts as you presented to the Commission on Ethics, is limited to an interpretation of the County Ethics Code and is not intended to interpret state laws. While there are significant references to state ethics laws cited in footnotes in this opinion, additional guidance regarding their application should be addressed to the Florida Commission on Ethics.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jose J. Arrojo".

Jose J. Arrojo
Executive Director

cc: Cristina M. Suárez, Coral Gables City Attorney
All Commission on Ethics Attorneys

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 Ethics Commission 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.