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September 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 that provides services across the country. Relevant to this opinion, your company currently provides permitting services to clients in Coral Gables and you, or your employees may interact with City of Coral Gables staff. Consequently, this opinion provides cautionary guidance and identifies scenarios where the County Ethics Code may limit or prohibit specific outside employment transactions.

Facts:

You were elected to the Coral Gables City Commission in April 2023. You are the owner and chief executive officer of M.E.D. Expeditors, Inc., a Florida for-profit corporation (“MED”).

MED assists clients with obtaining construction permits and other municipal approvals. More specifically, the company engages on behalf of clients in matters relating to construction permits, construction permit revisions, expired permits, permit extension and renewals, and certificates of completion and occupancy. (collectively “permitting services”)

While MED provides permitting services across the United States, its corporate base is in Coral Gables, Florida. (“City”) MED provides permitting services to clients with projects in Coral Gables.

You have worked in various capacities in the permitting services business since you were a teenager in high school and growing up you helped with the family business that is now operates as MED. You are known to City employees tasked with construction permitting matters and your 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 very 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.

Discussion:

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

Several provisions of the County Ethics Code will limit or prohibit your outside employment activities regarding: 1) interactions with City staff on behalf of MED's permitting services clients; 2) your consideration and vote on matters before your board involving MED clients; and 3) your official actions, aside from voting, on matters that may affect MED or its clients.

a. Conflicting Employment

There is no *per se* bar on an elected official operating a business within his or her city and the County Ethics Code only prohibits an official 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 permitting services company, that represents clients nationally, 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), Miami-Dade Code; INQ 2022-145.

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

b. Prohibited Board Appearances and Payments

The County Ethics Code prohibits an elected official or a member of his or her firm from appearing before a municipal board on behalf of a third party. Moreover, the official is not permitted to receive compensation, directly or indirectly, for services rendered to a third party that seeks some benefit from the municipality, in connection with the benefit sought. "Benefit" is defined broadly in the ethics ordinance to include a license, contract, certificate, ruling, decision, or opinion.⁴

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, in connection with the benefit sought.) See generally RQO 07-02; RQO 07-39; INQ 15-229; INQ 17-254; INQ 19-12.

See also CEO 20-8 (Section 112.313(7)(a), Florida Statutes, would permit a law firm with which a city council member has a referral relationship to represent clients before the city council, subordinate boards, and city staff, so long as the councilmember "does not have an employment or contractual relationship with the firm." A contractual or employment relationship with the firm will create a prohibited conflict of interest for the official as relates to the firm representing clients with business before the city's boards or staff.)

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

Consequently, the first proscription prohibits your appearance before the City Commission or any subordinate City board to make a presentation on behalf of a MED client. 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

Additionally, even if you abided by the aforementioned limitations on contacts with the City, the latter proscription prohibits your receiving compensation from an MED client that is seeking a benefit from the City, in relation to the benefit sought. Because of the broad definition of “benefit” in the applicable section of the County Ethics Code, you may not receive any financial benefit, directly or indirectly, from fees charged to MED clients for permitting services in Coral Gables.

Consequently, unless there is some change in the ownership structure of MED, a matter beyond the scope of this opinion, it does not appear feasible for MED to continue to represent permitting services clients for a fee in Coral Gables while you are an elected official in the City, without violating the County Ethics Code.

c. Exploitation of Official Position & Official Actions

The County Ethics Code prohibits an elected official from using his or her official position to secure special benefits, privileges, or exemptions for themselves or others, not otherwise allowed by law.⁶

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.)

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.

As such, you should be cautious when 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 position 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.

d. Voting Conflicts

Because you are a covered party under the County Ethics Code, then you are bound by its voting conflict of interest section. Section 2-11.1 (d) of the County Ethics Code provides, in relevant part, 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 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)

The local voting conflict section 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.”⁷

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. You should abstain from the vote.

⁷ See generally RQO 15-04.

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 and recent 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 and suggested that officials may wish to abstain from voting on the matter.⁸

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 that when presiding over quasi-judicial matters, a voting 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 County Ethics Code does not prohibit your outside employment as the owner of a permit expediting firm that does business nationally.

However, there are several provisions of the County Ethics Code that limit or otherwise prohibit your communications or interactions with City boards and staff in your capacity as the owner and chief executive officer of a permit expediting firm that represents clients with matters before the City.

There are additional County 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.

Finally, while you may be able to continue your outside employment as defined above, it would appear that your company may not be able to provide permitting services to private clients in Coral Gables while you are an elected official in the City, inasmuch as you would be receiving some

⁸ See INQ 2021-69; INQ 13-148; and RQO 12-03.

financial benefit, directly or indirectly, from the fees these clients pay your company to represent them in matters they have before the City.

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 "J. Arrojo", is positioned above the printed name.

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.