

FILE 2698--July 11, 2017

POSTEMPLOYMENT RESTRICTIONS

FORMER CHIEF INSPECTOR GENERAL IN THE EXECUTIVE OFFICE OF THE GOVERNOR CONSULTING AS TO PROVIDER OF COMMUNITY-BASED CARE FOR DCF

To: Melinda M. Miguel (Tallahassee)

SUMMARY:

Section 112.3185(3), Florida Statutes, will not prohibit a former Chief Inspector General from working in connection with a contract regarding which she was involved in a Whistle-blower report. CEO 83-8, CEO 87-8, and CEO 08-17 are referenced.¹

QUESTION:

Would Section 112.3185(3), Florida Statutes, prohibit you, following your public employment, from working as a consultant regarding a provider of community-based care for the Department of Children and Families?

Under the circumstances presented, your question is answered in the negative.

¹ Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

In your letter of inquiry, you write that you formerly served as the Chief Inspector General in the Executive Office of the Governor² and, as such, you had a role in 2011 in issuing a final Whistle-blower report which involved a corporation under review by the Inspector General of the Department of Children and Families (DCF).³ You have formed a limited liability company (LLC) through which you will provide various consulting services. In response to a request for further information from our staff, you relate that your LLC may contract with another company (Program). Under the contract, you, personally, will assess some organizational elements of the corporation that was the subject of the Whistle-blower report.⁴ You state that the Program, with which your LLC would contract and which would pay for your work, is a national foundation focused on foster care and child welfare to influence long-lasting improvements to the safety and success of children, families, and their communities, especially that of vulnerable children and their families. More particularly, you relate that your work for the Program would involve assessing organizational structure, finances, and certain operations of the corporation, and would involve providing recommendations to the corporation's incoming director. Further, you state that DCF currently contracts with the corporation for the corporation to serve as the community-based care provider in Miami-Dade and Monroe Counties.

As to your involvement in the 2011 matter concerning the corporation, you relate that you reviewed the report prepared by the DCF Inspector General, assessed the report for compliance with statutory requirements, evaluated some of the information gathered by the DCF Inspector General, and compared the reported findings to available policies established by DCF. However, you

² Serving January 2007 to November 2010, and February 2011 to April 2017.

³ Concerning misspending of funds for foster care.

⁴ In a telephone conversation with our staff subsequent to your provision of the additional written information mentioned above, you clarified that your consulting work will be an overall review or evaluation of the corporation and will not target "fixing" deficiencies identified in the Whistle-blower report, which report did not weaken the findings of DCF's Inspector General.

emphasize that you had no personal involvement in any award, or re-award, of any contract between DCF and the corporation, that you had no procurement, operational, or managerial decisionmaking role regarding any DCF contract, and that you had no role in designing, awarding, or managing the DCF contract with the corporation or any contract with which you may be working as a consultant.

Relevant to your inquiry is Section 112.3185(3), Florida Statutes, which provides:

An agency employee may not, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee

In order for Section 112.3185(3) to prohibit one's post-public-service work, the work must be in connection with a contract in which one, while a public employee, participated personally and substantially in the procurement process regarding the contract. CEO 87-8.

We find that the situation described in your inquiry will not trigger the prohibition of the statute were you to perform consulting for the Program/corporation. While you did have a personal role as a State employee regarding the corporation and its contracting with DCF (via the Whistle-blower matter), it is apparent that the role was not a procurement role. Rather, it is apparent that you became involved to inspect and report on contracting designed or procured by others. We are not prepared in the context of the situation you describe to construe the statute as encompassing such limited, after-the-fact involvement. Conversely, we have expressly found that the prohibition of the statute is limited to those persons who participated in procurement of the contract, stating in CEO 83-8:

We also find that this provision would not prohibit your employment as administrator of the corporation's alcohol detoxification program because, although you did monitor the program as an employee of the Department, you had no responsibility in the procurement or development of that contract. In our view, the prohibition of Section 112.3185(3) is directed to those persons who participated in the procurement or development of a contract

See, also, among others, CEO 08-17.

Accordingly, we find that you are not prohibited by Section 112.3185(3), Florida Statutes,⁵ from engaging in the consulting described in your inquiry.

cc: Melinda M. Miguel

XXX/cca/dw

⁵ We also see no indication that Sections 112.3185(4), 112.313(9)(a)4., and 112.313(8), Florida Statutes, would be transgressed by the consulting.

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Anderson, Chris

From: Doss, Virindia
Sent: Thursday, June 08, 2017 5:46 PM
To: Anderson, Chris
Subject: FW:

For log-in and assignment for response by letter, if possible. Melinda is the former Chief Inspector General, and she is concerned with 112.3185(3), particularly the "investigation" language. She was involved with a lot of investigations in her tenure. I think the language is directed to investigation conducted in the course of deciding whether to enter into a contract, but the same concerns of a potential of "feathering one's own nest" could exist where the investigation was in the course of seeing if a contractor had misbehaved. So, I thought it best for her to get an opinion. Let me know if you think it needs to go formal.

-----Original Message-----

From: Melinda Miguel [mailto:mmiguel94@icloud.com]
Sent: Thursday, June 08, 2017 3:21 PM
To: Doss, Virindia <DOSS.VIRLINDIA@leg.state.fl.us>
Subject:

It was a pleasure speaking with you today.

Per our conversation, I would like to request an ethics opinion on whether I may be able to engage in a contract for consulting services with Our Kids, Inc., the lead agency for community based care for Miami-Dade and Monroe counties with the Florida Department of Children and Families (DCF), given my statutory role as Chief Inspector General in the Executive Office of the Governor (s. 14.32, F.S.).

This may come up again given the scope of my former position, but in this particular instance, I played a role in 2011 in issuing a final Whistle-blower report under s. 112.3187-112.31895, F.S., where Our Kids, Inc., was the entity under review by the DCF Inspector General under s. 20.055, F.S.

I look forward to any questions you may have in researching this matter. I thank you for your assistance and really appreciate your opinion on this to ensure my full and continued compliance with Florida's ethics laws.

Please let me know if you need any further information.

Respectfully,

Melinda M. Miguel
850.566.3818

1. What are the names of the entities that you would work for?

It is contemplated that Melinda Miguel Solutions, LLC, of which Melinda Miguel is the President and CEO and only member, may contract with Casey Family Program for a limited scope engagement where Melinda Miguel ["I" from here forth] would assess some organizational elements of Our Kids, Inc.

Melinda Miguel Solutions, LLC may receive compensation from Casey Family Programs [not Our Kids, Inc. or the Florida Department of Children and Families (DCF)].

Casey Family Program is a national operating foundation focused on foster care and child welfare. Based in Seattle, Washington, Casey Family Programs works in 50 states, the District of Columbia and Puerto Rico. They have offices in Arizona, California, Colorado, the District of Columbia, Georgia, Idaho, New York, Texas, and Washington to influence long-lasting improvements to the safety and success of children, families and the communities where they live. Jim Casey, the founder of United Parcel Service, established Casey Family Programs in 1966 to help improve the safety and success of vulnerable children and their families across America.

To my knowledge, prior to this potential consulting opportunity, I have had no prior dealings with Casey Family Program. My indirect contact with Our Kids, Inc. through the Department of Children and Families (DCF) Office of Inspector General (OIG)¹, was when Our Kids, Inc. was part of an investigation by a DCF OIG investigation in 2011. I served as Chief Inspector General in the Executive Office of the Governor² from January 2007 to November 2010 and again from February 2011 to April 2017. My role in this investigation is specified below.

2. What would your consulting involve (what would you do in working for the entities)?

A potential limited scope engagement between Melinda Miguel Solutions, LLC and Casey Family Programs would involve assessing organizational structure, finances, and certain operations and providing recommendations to the incoming Executive Director of Our Kids, Inc., for a fee paid by Casey Family Programs [not Our Kids, Inc. or DCF] to Melinda Miguel Solutions, LLC.

No contract of any kind has been executed to date.

¹ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0020/Sections/0020.055.html

² http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0014/Sections/0014.32.html

3. Would your consulting/work involve any contracts (or the content/subject matter of any contracts) regarding which you had involvement or played a role in your capacity as a State of Florida employee? If so, please elaborate, including describing your involvement/role, identifying the contracts and generally describing them, and stating which State agencies and private entities are parties to or are involved with the contracts.

The possible consulting engagement would involve an assessment of certain operations of Our Kids, Inc., to be paid for by Casey Family Programs to Melinda Miguel Solutions, LLC.

The Department of Children and Families contracts with Our Kids, Inc. as the community based care provider in Miami-Dade and Monroe Counties. Our Kids, Inc. was the subject of an investigation in 2011 conducted by the Department of Children and Families (DCF) Inspector General when I was the Chief Inspector General in the Executive Office of the Governor. This investigation was conducted by the DCF IG based on allegations received from "Whistle-blowers".³

My role is described below and the relevant section of statute is also included.

Governing Directives

Section 112.3189(8), F.S. states "Final reports required under this section must be reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or Chief Inspector General) and must include:

- (a) A summary of the information with respect to which the investigation was initiated.
- (b) A description of the conduct of the investigation.
- (c) A summary of any evidence obtained from the investigation.
- (d) A listing of any violation or apparent violation of any law, rule, or regulation.
- (e) A description of any action taken or planned as a result of the investigation, such as:
 1. A change in an agency rule, regulation, or practice.
 2. The restoration of an aggrieved employee.
 3. A disciplinary action against an employee."

Section 112.3189(9)(b), F.S. states "Upon receiving a final report required under this section, the Chief Inspector General shall review the report and determine whether the report contains the information required by subsection (8). If the report does not contain the information required by subsection (8), the Chief Inspector General shall determine why and note the reasons on an addendum to the final report. (c) The Chief Inspector General shall transmit any final report

³ <http://www.tbo.com/news/florida/probe-dcf-contractor-unintentionally-misspent--in-miami-208599>

under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the Chief Inspector General to the Governor, the Legislative Auditing Committee, the investigating agency, and the Chief Financial Officer.”

My involvement included review of the report in 2011 prepared by the DCF Inspector General and assessing the report for compliance of said report with the requirements in s. 112.3189(8-9), F.S.⁴ I also evaluated some of the information gathered by the DCF OIG and compared their reported findings to available policies established by the DCF. I have not had any personal involvement in the award or re-award of any contract between the DCF and Our Kids, Inc.

I am bound by professional standards in the conduct of my work. This was the case when I served as the Chief Inspector General. These professional standards specify that I cannot assume an operational or managerial decision-making role for agency operations. I attest that I had no procurement, operational or managerial decision-making role regarding any DCF contract(s).

4. What role did you play in issuing the final Whistle-blower report regarding Our Kids, Inc.?

My involvement included review of the report prepared by the DCF Inspector General and assessing the report for compliance of said report with the requirements in s. 112.3189(9), F.S. I also evaluated some of the information gathered by the DCF OIG and compared their reported findings to available policies established by the DCF. I also signed the final letters to distribute the DCF OIG report to the named parties as required under s. 112.3189(9), F.S.

I am bound by professional standards in the conduct of my work. This was the case as the Chief Inspector General. These professional standards specify that I cannot assume an operational or managerial decision-making role for agency operations. I attest that I had no procurement, operational or managerial decision-making role regarding any DCF contract(s).

5. Did this report involve a contract to which Our Kids, Inc. was a party? If so, what, generally, was Our Kids, Inc., responsible for doing under the contract? If so, is that particular contract still in-force, or has it been replaced by a new contract? If replaced, did your Whistle-blower role have anything to do with the new contract?

The Department of Children and Families (DCF) contracts with Our Kids, Inc. as the community based care provider in Miami-Dade and Monroe Counties. The

⁴ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0112/Sections/0112.3189.html

DCF Inspector General conducted the investigation and prepared the final report of findings in 2011. My role relative to the DCF OIG report is describe above.

I do not have knowledge of whether this particular contract is still in force. I have no knowledge of whether my ministerial role for the distribution of the final report as outlined in s. 112.3189(9), F.S. had any bearing on any new contract. The DCF OIG made recommendations to the management team at the DCF and, if action was taken on any these recommendations could be determined through the DCF. I have no knowledge of whether my role had any bearing on any actions subsequent to the issuance of the DCF OIG report or if any actions were taken.

I am bound by professional standards in the conduct of my work. This was the case as the Chief Inspector General. These professional standards specify that I cannot assume an operational or managerial decision-making role for agency operations. I attest that I had no procurement, operational or managerial decision-making role regarding any DCF contract(s).

6. As a State employee, did you play any role in designing or awarding any contract regarding which you will be working in your capacity as a consultant?

No. I had no role in designing, awarding or managing the DCF contract with Our Kids, Inc. or with any contract in which I may be working in my capacity as a consultant.

That is, did you have any procurement role regarding any such contract? I have not had any procurement role whatsoever in any contract regarding which I may be working as a consultant. If so, please elaborate?

I attest that I had no procurement, operational or management role with any DCF contract(s).

I am bound by professional standards in the conduct of my work. This was the case as the Chief Inspector General. These professional standards specify that I cannot assume an operational or managerial decision-making role for agency operations. I attest that I had no procurement, operational or managerial decision-making role regarding any DCF contract(s).

7. Did your Whistle-blower role, or any other role as a State employee, alter or impact the provisions (content) of any contract regarding which you will be working in your capacity as a consultant? That is, for example, did your Whistle-blower role cause or relate to the procurement or alteration of any contract regarding which you will be working in your capacity as a consultant? If so, please elaborate?

I do not have any knowledge of whether my role in the review and distribution of the final DCF OIG report had any bearing on any actions by the DCF subsequent to or because of the issuance of the DCF OIG report. The recommendations contained in the investigative report were made by the DCF OIG. My role is as described above. Any subsequent work conducted on or reaction to the DCF OIG report would need to be verified with the DCF.

I am bound by professional standards in the conduct of my work. This was the case as the Chief Inspector General. These professional standards specify that I cannot assume an operational or managerial decision-making role for agency operations. I had no procurement, operational or managerial decision-making role regarding any DCF contract(s).

DRAFT