



Section 2-156-110: No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract,

For your convenience, I will take the opportunity to explain the Board's application of the relevant section of the Ordinance to programs administered by the City. That section is entitled "Financial Interest in City Business" and reads as follows:

The Board of Ethics is an administrative agency and therefore the does not have the power to determine whether a section of the Ordinance is constitutional, nor to say whether its own decisions are constitutional.

Administrative case law states that an administrative agency cannot rule on the constitutionality of administrative or legislative action. Zetler Coal Co. v. Marshall, 502 F.Supp. 1326, 1330 (S.D. Ill. 1980) (citing Spiegel, Inc. v. F.T.C., 540 F.2d 287, 294 (7th Cir. 1976)); 73 C.J.S. Public Administration Law & Procedure § 65; 2 Charles H. Koch, Jr., Administrative Law & Practice § 9.20.

At the December meeting of ORGANIZATION R, you asked that the Board of Ethics consider the issue of whether the application of the Governmental Ethics Ordinance to federally funded programs which are administered by the City is constitutional.

M E M O R A N D U M

To:

From:

Marilyn E. Harzai
Marilyn E. Harzai
Legal Counsel

Re:

Case No. 90083.0

Date:

January 23, 1991

City of Chicago
Richard M. Daley, Mayor



Board of Ethics

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work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. (prior code § 26.2-11).

"Financial interest" is defined in the Ethics Ordinance as "(1) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit." § 2-156-010(1) (prior code § 26.2-1(1)).

As this section states, a City employee cannot have a financial interest (an interest with a value of \$2,500 per year or \$5,000 jump sum) in any contract, work, or business of the City when the cost of that contract, work, or business is paid for with funds from the City, administered by the City, or approved by ordinance.

Therefore, even though a program may be funded by another source, for example by a federal agency, if the City administers the funds, the program is subject to the limitations imposed under this provision.

Thank you for your question directed to the Board and hope that this response is helpful. We sincerely appreciate your invitation to speak at your meeting, and would enjoy the opportunity to participate again in the future. If you have any further questions, please feel free to contact us.

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