

EMWS.

ADVISORY OPINION  
CASE NO. 93038.A  
POST-CITY EMPLOYMENT

To:

Date: January 12, 1994



City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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You are the Director of the X PROGRAM for the Department of \_\_\_\_\_ which up until \_\_\_\_\_ was administered by the Department of \_\_\_\_\_. Because you anticipate leaving City service, you have requested an advisory opinion that provides you with general guidance on the post-City employment provisions of the Governmental Ethics Ordinance as they apply to you. Before taking this job with the City \_\_\_\_\_ years ago, you worked as a real estate developer and you are interested in doing the same kind of work again. In this opinion, we present our analysis of the facts you presented.

The Ethics Ordinance does not prohibit you from accepting any particular employment position upon leaving City service, or from working with any particular developer. Rather, it restricts the activities you may undertake. Based on the reasoning as stated in this opinion, it is the Board's determination that: (1) for one year after leaving City service, you may not assist or represent anyone in any matter involving the City's X program; (2) you are permanently prohibited from assisting or representing any person with respect to any conveyance contracts for which the initial steps were taken while you headed the X program; and (3) you are permanently prohibited from participating in any particular proceeding, with respect to a specific property and applicant, in which you participated while with the City. Our reasoning and analysis follow.

The additional circumstances you presented to us concerning your involvement in the Department of \_\_\_\_\_ loan review committee, and the Board's determination on that issue, is addressed at the end of this opinion.

FACTS: The X Program. The X program, which was established by City ordinance under a state statute of 1990, is designed to encourage the renovation of abandoned property within the City



by making the property available to qualified persons at a reduced cost. Those who acquire property through the program must bring buildings up to code or demolish them within an agreed-upon period of time in order to retain ownership. The process by which a property is listed as abandoned and is ultimately transferred to an eligible person is as follows:

The City compiles a list of abandoned properties, derived in part from inquiries by individuals or community groups. Often the City targets the surrounding several-block area to find properties that appear to be abandoned. To screen them for their status as abandoned properties under the criteria set by state statute, the office reviews the Department of files, and Corporation Counsel is asked to review tax and water bill records. The City publishes a quarterly list of properties that appear to satisfy the criteria for abandonment and solicits applications from those interested in assuming ownership of the properties. The size of that list in any given quarter has ranged from 600 properties to fewer than 50. You estimated there was currently an average of six to eight applicants for each property listed, although some properties have no applicants.

A "Blue Ribbon" Committee, made up of nine members of the housing industry appointed by the Mayor, reviews the list of properties and applicants, makes recommendations for the disposition of each property to a particular applicant, and submits these for approval to the Commissioner and the Mayor. The committee uses a standard set of criteria to evaluate the applicants (called "developers"), but applying these criteria (e.g., ability to complete the job, or community support) necessitates considerable exercise of judgment. The director interviews all the approved applicants, and works out escrow terms with them. In the escrow agreement, each developer agrees either to rehabilitate the structures to remove any Building Code violations, or to demolish the structures, depending upon the plan the applicant submitted to the committee. The escrow terms that are primarily worked out at this time are those governing the timing of repairs or demolition.

After escrow terms are agreed upon, the City drafts individual ordinances conveying the properties to the named developers and submits these to City Council, and, at that time or later, begins legal procedures for the City to obtain the properties. If the City obtains the titles, the properties are conveyed to the developer, free of tax liens or other financial encumbrances.

If the developer does not meet the conditions of the escrow agreement, the property is reconveyed to the City. (The City has the right to ask the escrow agent to record a quitclaim deed that has been signed earlier by the developer.)

The Mayor announced the creation of \_\_\_\_\_, and an intergovernmental committee (now dissolved), working with the Commissioner of the \_\_\_\_\_ Department, established the statement of purpose, structure and procedures of the program.

Your Role in the X Program. The City hired you in \_\_\_\_\_ to head the X program. You modified the basic procedures that were in place, and developed them into the form in which the program currently operates. You now are responsible for coordinating the entire process. You select the buildings to be included in the program, which are then published in the quarterly lists. (\_\_\_\_\_ investigators inspect the buildings and you look at photos of them.) You also review the Department of \_\_\_\_\_ file that is maintained on every building in housing court in an effort to find out if there is active ownership of any of the properties selected. Corporation Counsel carries out the rest of the screening of the properties.

You said you engage in no screening of the applicants before their applications are sent to the Blue Ribbon Committee. You sit in on the committee, but have no voting power and make no recommendations as to which applicants should be awarded which properties. You attend the meetings to provide the committee with any factual information it may require about the properties and applicants under consideration.

Once the Blue Ribbon Committee has selected the applicants to receive properties, and the applicants are approved by the Mayor and \_\_\_\_\_ Commissioner, you meet with each person selected to work out an agreement. You supervise the process by which the conveyance ordinances are written and sent to City Council, facilitate the legal process of securing title to the properties, and supervise the transactions connected with removing any financial encumbrances on the properties. Although the Law Department primarily handles these matters, you work with that department. Once the City gains ownership, you supervise the transfer of the properties to the recipients. You have no involvement in the actual work done to the properties. If the developer defaults on the agreement, either by failing to remove the Building Code violations or failing to complete the demolition by the date agreed upon, you have the

authority either to grant an extension to the developer or to have the property reconveyed to the City.

You also were responsible for developing the financing policy that accompanies the program. Financing for developers, as well as for the operating budget of the program itself, comes from Community Development Block Grant funds, which are administered through the Department of . . . . . While funding for developers is not administered through the program itself, and you have no involvement in the distribution of those funds, you set up the policy governing what types of loans developers could get, and the criteria and conditions under which loans could be made to them.

You have no authority to sign agreements--that authority is with the Department Commissioner. You sign only internal documents, such as orders to board up a building.

In summary, you are involved in nearly every aspect of the program: you participated substantially in setting the policies that govern its operation, and you coordinate every stage of the process, from the selection of properties to be included in the program to the approval of the development accomplished on each property. There are only two aspects of the process over which you have no authority: the selection of which applicants are to receive properties, and the granting of loans to applicants.

You told us that up until the program was administered by the Department of . . . . . but that it was to be transferred to the Department of . . . . . on that date, as that department was thought to be better equipped to handle the program as a whole. You said you believed your title and responsibilities would remain the same, but you also requested guidance as to whether your potential involvement in Department of . . . . . loan programs might affect your post-City employment opportunities.

Future Plans. You are tentatively planning to leave City employment sometime this year and are requesting guidance about what kinds of activities the Ethics Ordinance prohibits you from doing. Before taking your job with the City, you worked as a real estate developer, and wish to return to the same kind of work. You said you are interested in working on properties that qualify for government subsidies under affordable housing programs, which provide financing to keep rent levels down or, as under the program, to keep acquisition costs low. You may be working on your own behalf or with a development company or partnership, and are likely to find yourself working with

someone who participated in the program while you directed it. You may even be asked to work on properties acquired under the program. You will, almost certainly, be interested in applying for a variety of government subsidy programs on behalf of yourself or other developers.

**LAW AND ANALYSIS: POST-EMPLOYMENT**

Section 2-156-100 of the Ethics Ordinance, entitled "Post-employment Restrictions," states:

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

"Assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (See Case No. 89119.A.) The term "representation" applies to a broad range of activities in which one person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another. Under this definition, representing others before the City would include actions such as making personal appearances before City agencies on behalf of others; making telephone contact with City employees and officials on behalf of others; and submitting written requests and proposals to City agencies, employees or officials on behalf of others. "Representation" also includes signing any proposals, contracts, or other documents that are submitted to City agencies. (See Case Nos. 90077.A, 89087.A, and 89018.A.)

One-Year Prohibition

You are prohibited by § 2-156-100(b) for one year after leaving City service from assisting or representing any person in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction while you worked for the City. You have not presented a specific post-employment situation, but seek general advice. To provide such advice, we must decide in what "subject matter" you have participated personally and substantially while working for the City.

Recent cases have limited "subject matter" under the Ordinance to a project or something similar. In some cases, the project in question has referred to the former employee's proposed work on specific buildings (Case No. 92010.A) or on the repair of a particular street (Case No. 92022.A). In other cases, the project at issue was much broader, such as in Case No. 92022.A where the projects that the Board interpreted as the "subject matter" of the former employee's City job included the Central Area Circulator Project and the Lake Shore Drive Relocation. The  program is much broader than a narrowly defined project such as a particular street repair, but is comparable in breadth to a large project such as the Central Area Circulator.

It is the Board's opinion that the "subject matter" with which you are personally and substantially involved in your City employment is the  program as a whole. If your activity were focused on a particular phase of the  program (e.g., the selection of properties, or the City acquisition process), it might be reasonable to find that you have been personally and substantially involved only in the narrower subject matter of that phase. However, the facts presented to us indicate that you have been substantially involved in all phases of the  program -- in setting basic procedural and financial policies, selecting properties, facilitating the transfer of the properties to qualified recipients, and deciding whether to allow developers more time than permitted by the escrow terms to bring a structure up to code. Further, your extensive knowledge of the workings of this program was gained only through your City employment and cannot be attributed to your occupational skills as a real estate developer.

Based on these facts, it is our opinion that the Ordinance prohibits you, for one year after leaving City service, from assisting or representing any person in any matter involving the City's  program, including but not limited to applications to the City for participation in the program

itself and for -related financing. Under a previous Board decision (Case No. 89095.A), you are not only prohibited from representing others, but also from representing yourself in any matter involving the X program.

#### Permanent Prohibition

Contract Management Authority. Under the permanent prohibition of § 2-156-100(b), you are permanently prohibited from assisting or representing any person with respect to a contract if, while a City employee, you exercised "contract management authority" with respect to that contract. The issue before the Board here is what aspects of your participation in the process constitute "contract management authority."

Section 2-156-010(g) defines "contract management authority:"

"Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

The Ethics Ordinance permanently prohibits you, after you leave City service, from assisting or representing any person with respect to those contracts you supervised under the X program that convey the properties from the City to the developer. In cases where no conveyance contract eventuates from the initial steps, there would be no permanent prohibition.

Because there will be any number of properties at every stage of the X process at whatever time you leave City employment, the Board had to determine at what point in that process your actions constitute contract management authority.

The process followed for each property is described in detail above. It is the Board's opinion that even the early stages of the process are steps in the creation of the contracts to convey the properties to the developers, and that, even at the earliest stages, you have "personal involvement in" and "direct supervisory responsibility for the formulation" of any conveyance contract that results. After the developer is selected from among the applicants, you negotiate escrow terms, and that negotiation and the activities following clearly fall within the terms of the Ordinance definition of "contract

management authority." Finally, in exercising your authority to decide if escrow terms are met by the time specified, you are exercising "supervisory responsibility for the . . . execution of a City contract" and are engaged in "supervision of performance."

It is our opinion, based on this analysis of the facts presented, that after leaving City service, you are permanently prohibited from assisting or representing any person with respect to those conveyance contracts, including those still in process, for which the initial steps were taken while you headed the X program as a City employee. The conduct prohibited would include, but not be limited to, assistance in performing the contract.

Judicial or Administrative Proceeding. You are also permanently prohibited, under § 2-156-100(a), from assisting or representing any person other than the City in a judicial or administrative proceeding involving the City if you participated personally and substantially in that proceeding during your City employment. It is our opinion that "administrative proceeding" here should apply to the process through which an applicant is selected to obtain a particular property and the property is conveyed to that applicant. It would follow that you are prohibited from participating in any such proceeding, with respect to a particular property and applicant, in which you participated while with the City. As a practical matter, we note that, in the circumstances described here, this prohibition is not likely to cover any conduct that is not also prohibited by subsection (b).

CONFIDENTIAL INFORMATION

Section 2-156-070 of the Ordinance, entitled "Use or Disclosure of Confidential Information," also is relevant to former employees. It states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.



This section prohibits you from revealing any confidential information you may have acquired during the course of your City job.

**CONCLUSION:** The Ethics Ordinance does not prohibit you from accepting any particular employment position upon leaving City service, or from working with any particular developer. Rather, it restricts the activities you may undertake. Based on the reasoning as stated in this opinion, it is the Board's determination that: (1) for one year after leaving City service, you may not assist or represent anyone in any matter involving the City's program; (2) you are permanently prohibited from assisting or representing any person with respect to any conveyance contracts for which the initial steps were taken while you headed the program; and (3) you are permanently prohibited from participating in any particular proceeding, with respect to a specific property and applicant, in which you participated while with the City. The Ordinance also prohibits you from revealing any confidential information acquired during your City tenure. If a specific factual situation arises for which this opinion does not provide clear guidance, we advised that you seek further assistance from the Board at that time.

Please be advised that, while you are working for the Department of , the same provisions of the Ordinance described in this opinion also are applicable to any other responsibilities you take on during your City employment.

DEPARTMENT OF LOANS


On you called the Board office with additional facts regarding new duties you have begun performing in your City job as a member of the Department. You said that the program was physically moved into the Department of in although the move was not official until the start of You said that, since you have been a participating member of a departmental committee of about twenty people--senior staff and departmental loan officers--that reviews applications for loans administered through various loan programs. This committee determines which loan applications are to be submitted for approval to City Council. You are a voting member of this committee. Since you have been attending these meetings, the committee has made recommendations on applications to the Multi-Family Housing Loan Program and, as you recall, the Low-Income Tax Credit Allocation Program.

In applying the post-employment provisions of the Ordinance to these additional facts, the Board concludes that your involvement with this committee, as you have described it to us, constitutes personal and substantial participation in those loan programs for which loan applications were submitted to, and considered by, the committee during the meetings you attended as a voting member. Therefore, it is our determination that the Ordinance prohibits you, for one year after leaving City service, from assisting or representing any person in any matter involving the Multi-Family Housing Loan Program, the Low-Income Tax Credit Allocation program, and any other Department of \_\_\_\_\_ program that came before the committee at the meetings you attended as a City employee.

Please be advised that your service on this committee is considered personal and substantial participation in any loan program for which applications come before the committee. Therefore, your continued service on the committee will subject you to further restrictions.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

  
\_\_\_\_\_  
Catherine M. Ryan  
Chair



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Richard M. Daley, Mayor

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*ZMU*

March 9, 1994

**C O N F I D E N T I A L**

**Re: Case No. 93038.A  
Post-Employment  
RECONSIDERATION**

Dear

On the Board of Ethics received your request for reconsideration of one aspect of the determination made in your case on 1994.

At the meeting, the Board concluded that, based on your service on the Department of Internal Loan Committee, the Post-Employment provisions of the Ethics Ordinance (§ 2-156-100(b)) restricted you, for one year after leaving City service, from assisting or representing anyone in any matter involving the Multi-Family Housing Loan Program, the Low-Income Tax Credit Allocation Program, and any other Department of program that came before the committee at the meetings you attended. The Board's determination was based on the understanding that you were a voting member of the Department of Internal Loan Committee at the time that applications for these programs came before the committee for consideration.

In your letter and subsequent telephone conversations with Board staff, you made it clear that you were not a voting member of the committee until During and you attended the committee's meetings as an observer, in anticipation of officially joining the Department of in at you did not have any decision-making authority over loans discussed at those meetings. Since when you became a voting member of the committee, you attended only one meeting, in which no loan proposals or applications were considered. You resigned your position with the City, effective and did not attend any further meetings of the committee.



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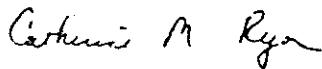
In light of these new facts, we conclude that your involvement with the Department's Internal Loan Committee, as you have described it to us, does not constitute personal and substantial participation in any of the loan programs for which applications were considered by the committee during the meetings you attended as a City employee. Therefore, it is our determination that the Ethics Ordinance does not restrict you from assisting or representing any person in matters involving the Multi-Family Housing Loan Program, the Low-Income Tax Credit Allocation Program, or other Department programs that may have come before the committee during your attendance.

Once again, we remind you that our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

**RELIANCE:** This Board opinion in response to your request for reconsideration may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

We appreciate your bringing this situation to our attention. If you have any further questions about this or any other matter, please contact us.

Sincerely,



Catherine M. Ryan  
Chair

cc: Susan Sher, Corporation Counsel

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