

EMLS



ADVISORY OPINION
CASE NO. 94019.A
POST-EMPLOYMENT

City of Chicago
Richard M. Daley, Mayor

To:

Board of Ethics

Date: August 23, 1994

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Executive Director

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Chair

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You are a former "P" position of the Department of "D" having resigned your position in 199-. On 1994, you requested an advisory opinion from the Board of Ethics. You said you intend to become a developer of affordable housing in the City, and you seek Board advice about how the post-employment provisions of the Ethics Ordinance might affect your future business transactions involving the City of Chicago or any of its agencies.

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The Board has carefully reviewed the information you provided about your proposed development activities and the programs you administered while at the Department of D. The Ordinance imposes certain restrictions that could affect your potential business transactions involving the City. The restrictions are described below. They establish the conditions on which you may participate in Department of D programs as a private developer. We set forth here the facts as you have presented them, our analysis of the Ordinance applied to your situation, and our conclusions.

FACTS: You served as P of D from , 1989 until , 199-, when you left City service. Before entering City employment as P, you worked for 14 years at , a non-profit organization engaged in activities related to neighborhood revitalization and affordable housing.

During your tenure as P, you were responsible for a wide variety of programs, including programs used by developers of affordable housing for land acquisition and financing. You said you would like to use some of these programs as a private developer. These programs are discussed below, along with a description of your involvement as a City employee.

1. Multi-Family Housing Rehabilitation

This program provides second mortgages for developers seeking to buy, rehabilitate, or



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construct buildings with rental apartments for low- and moderate-income families. Funds for the program come from a Community Development Block Grant.

You estimated that about 25 loan applications received approval each year during your two-and-a-half years as P. As P, you evaluated the loan analysis and drafted or reviewed an ordinance memorandum to City Council for final approval. The loans were second mortgages made to help developers "finance the gap" between primary mortgages from financial institutions and the equity of the developer. You believe that most of these loan agreements between the City and the developers are still in force.

You said that you would like to apply for the Multi-Family Rehabilitation low-interest loans in order to develop new projects that will provide rental units for low- and moderate-income families. You said you do not wish to work on any preexisting projects for which the City provided loans under this program.

2. Low-Income Housing Tax Credits

The federal government provides Chicago with an allocation of Low-Income Housing Tax Credits. In exchange for receiving one of these tax credits, the developer agrees to comply with low-income rental restrictions for a minimum of 15 years. The developers are able to use the tax credits to raise equity by selling these credits in a limited partnership.

You estimated the federal government provided Chicago with approximately \$4.5 million in tax credits annually during your City employment. These credits were awarded to approximately 25 projects each year. As P, you directly supervised the person who was responsible for preparing the tax allocation plan and analyzing the applications for those credits.

You informed staff that you wish to apply for tax credits from the City for new development projects. You said you do not wish to work on any projects for which the developers received or applied for such credits while you were P.

3. Urban Renewal

As P you served on the Urban Renewal Board. This five-member board, appointed by the Mayor, evaluated specific development proposals to acquire, condemn, dispose, or lease properties located in designated conservation or redevelopment areas. The Urban Renewal Board was staffed by Department of D staff,

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Since you left the Department of D the Urban Renewal Board has been reorganized as the Community Development Commission (CDC). You informed staff that your future development projects might require approval by the CDC, but that any projects you will bring to the CDC will not involve any proposals that came before the Urban Renewal Board during your tenure on it .

4. New Homes for Chicago

The New Homes for Chicago program, developed under your leadership as P of D , subsidizes the acquisition of City-owned property and construction costs. The program aims to develop affordable single-family housing. It received 12 applications during your tenure. As P , you evaluated the four applications that had been approved by staff.

You said you do not want to apply for the New Homes for Chicago subsidies as a private developer at this time. You did mention it, however, as one of the City's affordable housing programs in which at some point you may wish to participate.

5. Tax Reactivation Program

The Tax Reactivation Program provides developers access to tax-delinquent properties with the potential to be developed into affordable housing. The Cook County Scavenger Sale, held every few years, makes properties available that are at least five years delinquent in tax payment. Through the Tax Reactivation Program, the City, at the Scavenger Sale, enters a "no-cash" bid on behalf of a developer in the amount of taxes owed for a property. The developer then gives appropriate notices and perfects title through the judicial process. As P , you supervised the screening of developers for participation in this program.

You believe that you might want to acquire property through Tax Reactivation as a private developer. You stated you do not wish to work on projects for which land was acquired through the Tax Reactivation Program while you were P .

6. Activities not undertaken as P of D

In your letter requesting an advisory opinion, you listed other means of acquiring property or financing a development project that do not involve programs you administered while P of D. You presented the following as additional activities you might undertake: (a) direct acquisition from private owner; (b) acquisition of City-owned land through the Department of General Services; (c) acquisition through the Chicago Abandoned Properties Program; (d) equity raised through tax credits issued by the Illinois Housing Development Authority; (e) first mortgage

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financing from a private lender; (f) subordinate financing from the City's HOME allocation; and (g) bond financing from the Illinois Housing Development Authority.

LAW: Section 2-156-100 of the Governmental 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.

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.

ANALYSIS: You left City employment almost _____ years ago. Therefore, the one-year restriction, set forth in §2-156-100(b), is not applicable to your circumstances. The only relevant post-employment provisions are the permanent prohibitions as stated in paragraphs (a) and (b) above.

Under subsection (a), you are permanently prohibited from assisting or representing any party other than the City in an administrative or judicial proceeding involving the City if you participated personally and substantially in that proceeding during your City employment. You stated that some specific development proposals submitted to the Department of *D* while you were *P* may possibly still be pending before the Department. If there are such proposals or projects still pending so that there are ongoing

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proceedings, § 2-156-100(a) permanently prohibits you from participating in any such ongoing proceeding involving the City, unless you are acting on behalf of the City.

Subsection (b) permanently prohibits you from assisting or representing any person with respect to a contract in a business transaction involving the City if while a City employee, you exercised "contract management authority" over the contract.

"Contract management authority" under the Ordinance includes the evaluation of proposals resulting in City contracts and direct supervisory responsibility over the formulation of City contracts. Your description of your activities in the five programs discussed shows that as P you evaluated or exercised direct supervisory responsibility over the Department's staff and its evaluation of the development proposals that resulted in contracts under these programs. Therefore, you exercised contract management authority and are subject to a permanent prohibition with respect to those contracts.

Although you indicated that you do not intend to assist or represent anyone with respect to the ongoing contracts resulting from specific development proposals considered during your tenure as P that sought Multi-Family Housing Rehabilitation loans, Low-Income Housing Tax Credits, Urban Renewal approval, Tax Reactivation, or New Homes for Chicago subsidies, it is important that you understand that the permanent prohibition applies to all contracts over which you exercised contract management authority while employed by the City, regardless of the department or the program under which it originated. This means that you cannot assist or represent any person, including yourself, in a business transaction involving the City, with respect to any City contract that resulted from a proposal that you evaluated or over whose evaluation you exercised direct supervision while you were P of D.

Accordingly, we conclude that you are not prohibited by the Ethics Ordinance from participating in Department of D programs, including these five programs that you supervised while you were P, so long as you comply with the permanent prohibitions affecting ongoing contracts and administrative proceedings, as set forth in this opinion.

In addition, the Ordinance does not affect your ability to assist or represent others in programs that do not entail transactions involving the City, such as acquisition from private owners, mortgages from private lenders, or financing through the Illinois Housing Development Authority; or in programs in which you were not at all involved while with the City -- you mentioned the HOME

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program, the Chicago Abandoned Property Program, and purchase of land through the Department of General Services.

The Board also notes that under § 2-156-070, you have a continuing obligation not to use or disclose any confidential information that you gained through your City position.

CONCLUSION: From the facts presented and the reasoning stated in this opinion, the Board determines that the Ordinance imposes the following permanent prohibitions: (1) you are permanently prohibited from assisting or representing any person other than the City in any ongoing proceeding, with respect to a specific property and applicant, in which you participated as P of the Department of D, § 2-156-100(a); and (2) you are permanently prohibited from assisting or representing any person, including yourself, in a business transaction involving the City, with respect to any City contract that resulted from a proposal that you evaluated or over whose evaluation you exercised direct supervisory responsibility while you were P of the Department of D, § 2-156-100(b). This permanent prohibition includes, but is not limited to, all ongoing contracts resulting from specific development proposals considered during your tenure as P that sought Multi-Family Housing Rehabilitation loans, Low-Income Housing Tax Credits, Urban Renewal approval, Tax Reactivation, or New Homes for Chicago subsidies. The Ordinance also prohibits you from revealing any confidential information gained from your City employment, § 2-156-070. As to other participation in Department of D programs, it is the Board's opinion that the Ordinance does not prohibit you from participating in Department of D programs, including the programs you supervised while you were P, so long as you comply with the permanent prohibitions described in this opinion.

RELIANCE: Other rules or laws may apply to this situation. Our determinations in this case are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this Advisory Opinion. 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.



Angeles L. Eames
Vice Chair