



EMWS

ADVISORY OPINION  
CASE NO. 95006.A  
POST-EMPLOYMENT

City of Chicago  
Richard M. Daley, Mayor

To:

Board of Ethics

Date: March 15, 1995

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On February 10, 1995, you asked the Board of Ethics for a written opinion addressing whether the Governmental Ethics Ordinance will restrict your post-City employment activities. You are a \_\_\_\_\_ in the Department of \_\_\_\_\_. On April 1, you will relocate to \_\_\_\_\_ and begin your new duties as the \_\_\_\_\_ for COMPANY "C", the American subsidiary of a British corporation that owns and operates airports. Although you anticipate that your work for C, will likely not involve the City of Chicago, you have requested that the Board advise you in writing of any appropriate restrictions. We set forth below the facts as you have presented them, our analysis of the Ordinance, and our determinations.

**FACTS:** You have served in your current position for the entire period of your City employment, which extends from December 19 \_\_\_\_\_ through March 1995. You are the \_\_\_\_\_ of airport 1. You administer the day-to-day operation of the airport, including the operation and maintenance of its terminals, runways, parking lots, and security. You supervise approximately 300 Department of Aviation employees.

You receive periodic reports from your staff and other City personnel on the performance and status of vendor contracts. You said that these reports are purely informational, provided to you so that you can run your operation properly. You said you do not have authority to award airport service contracts, select vendors or consultants, or amend the City's vendor contracts, and do not possess sign-off authority for these contracts. You said that on several occasions you were asked to review and comment on specifications in Request for Proposals (RFPs) for contracts involving aviation fuel storage tanks at airport 1, a subject unrelated to your future position.

On April 1, you are scheduled to begin your new position as \_\_\_\_\_ for C



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C is the United States subsidiary of X (formerly known as ). X is a private British corporation that was formed when British airports were privatized in the 1980s. X currently both owns and operates airports in the United Kingdom.

According to you, C represents a recent effort by X to enter the North American airport market. In the future, C anticipates seeking contracts with municipal airport authorities in the three "core services" of the airport industry: retail consulting and overall management, real estate development consulting, and operations management.

You said your new duties will include developing C's long term strategic plan for the airport market in North America. You believe your position will entail targeting North American airports that might benefit from the services offered by C, meeting their representatives, and preparing bids for consulting and operating contracts. You will supervise a staff of approximately six employees.

You said that your work for C will not involve the City of Chicago, or, specifically, the Department of Aviation or *airport 1 or airport 2*. You told staff that the prospect of C seeking a contract with the City in the future is "negligible." Rather, you and C will focus business efforts on other North American airports, particularly those in the United States. The reason for this, you explained, is that currently neither *airport 1 nor airport 2* are seeking new contracts for food, beverage, and retail consulting or management services. According to a city employee, "Ms. Z", who negotiates aviation contracts, the Department of Aviation already has a contract for retail consulting at both airports with M; the contract extends to May 31, 1997, with two one-year extension options. M is due to complete its long-range study for retail planning at *airport 2* in the next year; the City may then put out an RFP for overall retail management services at that facility. The City has never had such a contract at *airport 1*. You said that if the City were to seek an outside contractor to perform overall retail management services at *airport 1*, it would not begin bidding for such services before 1997; such services might be needed for *airport 1's* new terminal, which, Ms. Z said, is approximately four years from construction. *Airport 2* has a consulting contract for real estate development with , which extends to February 29, 1996, with two one-year extension options; *airport 1* has no need for real estate development and thus has no such contract. Finally, you said, the City has no need for outside contractors to manage airport operations because Department of Aviation employees do this. Unless the City privatizes its airport operations

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management, you said, C will not seek to do business with the City in this area. You said you have no reason to believe that the City intends to privatize any more of its airport operations in the foreseeable future.

**LAW AND ANALYSIS:** The sections of the Ethics Ordinance relevant to your case are 2-156-100(b) of the "Post-Employment Restrictions," and 2-156-070, entitled "Use or Disclosure of Confidential Information."

A. Post-Employment Restrictions: Section 2-156-100(b) states:

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 your 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 as:

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.

Under this section, a former City official or employee is subject to two restrictions after leaving City employment -- a one-year prohibition on assisting or representing any person in a business transaction involving the City, if the former employee participated personally and substantially in the subject matter of the transaction, and a permanent prohibition on assisting or representing any person with respect to a contract over which the former employee exercised contract management authority, as defined above. We have held that "assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek as well as perform a contract. (See Case No. 93038.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

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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. 93038.A, 90077.A, 89087.A, and 89018.A.)

You anticipate that your work for C likely will not involve soliciting, negotiating, or administering any business transactions or contracts with the City of Chicago, or, specifically, *airport 1 or airport 2*. However, at your request, the Board advises you of those restrictions to which you are subject, in the event C alters its plans and seeks to enter into business transactions -- operating or consulting contracts -- involving the City.

1. Permanent Prohibition:

The Ordinance permanently prohibits you from assisting or representing any person, including C, in connection with any contract over which you exercised management authority, as defined above, during your City employment. While you receive reports on contracts with certain vendors for specific goods or services, those contracts do not involve overall management of retail and concessionaire operations, real estate, or longer-term planning, such as would be addressed by a consultant like C. The issue before the Board is whether you have exercised contract management authority over any contract with which C, your future employer, may be involved. Given your responsibilities at *airport 1*, and that, as you described it, C will seek future contracts with airport authorities only for services for which the City either has no contract, or is already well-served by outside contractors or by its own employees, or in which you have no involvement, the Board concludes that you have not exercised contract management authority over any contract that C would be likely to seek with the City.

You said that any contract C would seek with the City would be for either overall retail management at *airport 2*, or real estate development consulting overall, or for operating the airports themselves. However, you did not participate in drafting or evaluating any RFQ or RFP for any of the existing contracts for services that C might possibly bid on: namely, the contract for retail consulting at each airport, and the contract for real estate consulting at *airport 2*. You did not negotiate or award these contracts, nor do you possess the authority to amend them. The

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City currently has no contract for overall retail management services at either airport. Moreover, as Ms. Z confirmed, even were C to seek a contract in any of these areas with the City, the City would most likely initiate a wholly new RFP process after you leave City employment, and you would not be involved in it. Thus, for these reasons, the Ordinance's permanent prohibition would not prohibit you from assisting C with respect to any future contract in these areas.

2. One Year Prohibition:

A former City official or employee is prohibited for one year after terminating City employment from assisting or representing any person in a business transaction involving the City, if, while a City employee, he or she participated personally and substantially in the subject matter of that transaction.

a. Retail Consulting and Management

You have not participated in formulating or evaluating the RFP for the Department's retail consulting contract with M, did not assist in selecting the consultant, and have not coordinated projects or communicated with M. You receive only periodic reports from staff on the progress of specific contracts with individual retail vendors -- these do not pertain to longer-range retail planning or consulting or overall retail management. As stated above, airport 1 has no overall retail manager, and the City would not likely begin advertising for bids for these services for one for at least two years. In addition, you said, and Ms. Z confirmed, that you have had no involvement in overall retail consulting or management issues involving airport 2. On these facts, staff concludes that you have not participated personally and substantially in overall retail consulting or management at either airport 1 or airport 2 during your City employment. Though you do not expect your new employer to pursue any business transactions or contracts involving the City in this area in the next few years, the Board advises you that the one year prohibition does not restrict you from assisting or representing any person, including C, in connection with business transactions or contracts for airport retail consulting or management services at either airport 1 or airport 2.

b. Real Estate Consulting

During your City employment, you have not been involved in contracts for airport real estate development consulting. You have never participated in the formulation or evaluation of any RFP in this area. As you told staff, airport 1 has no need for those services because of its location, thus you have been involved

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neither with real estate development at *airport 1* nor with any consulting contract for these services. Furthermore, you have not participated in any aspect of and have no authority with respect to the contract for real estate development consulting services at *airport 2*. You said that City airport real estate development consultants are hired at the direction of the Deputy Commissioner for Real Estate, Planning, and Development in the Department of Aviation. On these facts, the Board concludes that you have not participated personally and substantially in real estate development consulting at either *airport 1 or 2* during your City employment. Though you do not expect your new employer to pursue any business transactions or contracts involving the City in this area, we advise you that the one year prohibition does not restrict you from assisting or representing any person, including C, in connection with business transactions or contracts for real estate development consulting services at either *airport 1 or 2*.

c. Operations Management

You stated that your duty is to administer the day-to-day operations of *airport 1*; You are responsible for the operation and maintenance of the terminals, runways, parking lots, airport safety and security, and for supervision of Department of Aviation employees at *airport 1*. In contrast to overall retail management, in which you have not been involved, and to both retail and real estate development consulting, which involve long-range planning, you have administered the actual day-to-day operations at *airport 1*. Were the City to privatize management of operations at *airport 1*, and were C or any other person to seek a contract to take over those functions, your expertise and knowledge of the facility would be relevant. The Board concludes that you have participated personally and substantially in the management of operations at *airport 1*. The Board is aware, based on your conversations with staff, that C will not likely be seeking any contracts to manage airports in North America for the foreseeable future. Notwithstanding this, the Board advises you that you are prohibited for one year from the effective date on which you leave City employment from assisting or representing any person, including C, in seeking or performing any business transaction or contract for managing operations at *airport 1*.

B. Confidential Information: Section 2-156-070, entitled "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from revealing confidential information you acquired in the course of or by reason of your City employment. Confidential information, for purposes of this section, is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

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**DETERMINATIONS:** Based on the facts as you presented them, the Board concludes that you did not exercise contract management authority over any current consulting contracts for airport retail and real estate development; and did not exercise contract management authority over any contracts for overall airport retail or operations management. The Ordinance's permanent prohibition does not restrict you from assisting or representing any person, including C, from seeking or performing a future contract for retail or real estate consulting or for overall retail or operations management at *airport 1 or airport 2*. However, we conclude that you are prohibited for one year from the effective date on which you leave City employment from assisting or representing any person, including C, in seeking or performing any business transaction or contract for operations management at *airport 1*. We also conclude that the Ordinance's one year prohibition does not restrict you from assisting or representing any person, including C, in connection with business transactions or contracts involving either airport retail management or consulting, or real estate development consulting at *airport 1 or airport 2*.

**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. If the facts are incomplete or incorrect, please notify the Board, as a change in the facts may alter our 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.

Catherine M. Ryan  
Catherine M. Ryan  
Chair

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