



2 PLS

ADVISORY OPINION
Case No. 96001.A, Post-Employment

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]
Date: January 8, 1996

Board of Ethics

Dorothy J. Eng
Executive Director

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TT/TDD)

On December 28, 1995, you asked the Board of Ethics for guidance on how the City's Governmental Ethics Ordinance applies to you in your pursuit of a specific post-City job opportunity. This advisory opinion sets forth our analysis of the facts you presented under the relevant provisions of the Ethics Ordinance.

FACTS: You are a licensed architect, and began City employment in [REDACTED] as a Project Manager with the City's Department of [REDACTED], the position you still hold. You have been offered a full-time position with [REDACTED] Development Co. [REDACTED], a real estate development company, as a "Development Manager." In this capacity, you believe you would assist [REDACTED] in managing various residential redevelopment projects, beginning with four that [REDACTED] is currently operating under the New Homes for Chicago program, and perhaps one more, the proposed [REDACTED] #5 [REDACTED] redevelopment. You would be responsible for assuring that the work of [REDACTED] and its subcontractors is done on time and in accordance with the redevelopment agreements with the City.

Since [REDACTED] you have been employed in [REDACTED] as a project manager: one of the Department's (and the City's) liaisons on particular economic projects, whose goal is to facilitate and advocate commercial and residential development within distressed areas of the City. Your responsibilities have included meeting with elected officials, representatives from affected residential and business communities, and interested real estate developers. In addition, you have drafted Requests for Proposals ("RFPs") through which the City seeks proposals from persons interested in redeveloping specific geographic areas, analyzed redevelopment proposals, and monitored the disposition and acquisition of property in affected areas.

You said that [REDACTED] has five ongoing residential redevelopment projects with the City on which you

An American Celebration



EMUS

Case No. 96001.A
January 8, 1996
Page 2

anticipate being asked to work as a development manager.¹ [X] is operating four of these under redevelopment agreements administered by another City department ("D2") under the New Homes for Chicago program (a program that, with certain exceptions, is administered exclusively by [D2]): 1) New Homes for [#1]; 2) New Homes for [#2]; 3) New Homes for [#3]; and 4) New Homes for [#4]. The last proposal, the [#5] redevelopment, you said, is still in the preliminary evaluation phase.

The New Homes Projects. Your proposed involvement. You anticipate that, in your new position, you would monitor construction, sales and closings of units in each of these four redevelopments. In the New Homes for [#4] project, you would also monitor marketing of units by [X]'s non-profit partner, and in the [#1] project, you would also monitor completion of architectural drawings and marketing. These four projects, you said, are operated under redevelopment agreements administered exclusively by the D2. You said your work would likely involve contact with D2 employees, explaining progress of certain aspects of each project, and completing various certification forms.

Your involvement with the New Homes generally during City employment. You said your only knowledge of the New Homes program itself is general, and came about through informational discussions with D and D2 staff, in connection with your work in analyzing a response to an unrelated RFP; that response had a New Homes Component.

Your involvement with the New Homes for [#1], [#2], and [#3] Projects during City employment. During your City employment, you said, you were not involved in the creation or administration of these projects or with the redevelopment of the sites on which they are located. The earlier phases of these projects were administered exclusively by [D2], whose personnel made preliminary site evaluations, negotiated and entered into redevelopment agreements with [X], and coordinated financing.

¹ You told staff that [X] is also operating under a redevelopment agreement with the City for one other project: [#6], located at [redacted]. In addition, [X] is in the process of responding to an RFP that you drafted for residential redevelopment at [#7]. However, you have asked the Board not to address these projects, because you do not anticipate being asked to participate in them as a [X] employee.

EMLS

Case No. 96001.A
January 8, 1996
Page 3

Your involvement with the New Homes for #4 [redacted] Project during City employment. You told staff that this project is located in the [redacted] Conservation Area. Unlike the process in a typical New Homes project, it is your understanding that, because the site is located in the Conservation Area, for this project, D was asked by Alderman [redacted] to draft an RFP for residential redevelopment under the New Homes program. Accordingly, you understand, D sought assistance from D2 [redacted] regarding requirements of the program, drafted an appropriate RFP that conformed to the land use guidelines in the [redacted] area #4 [redacted] Conservation Plan, and then, with the approval of the Community Development Commission ("CDC"), evaluated and recommended a response to be chosen for the project. It is your understanding that D turned over administration of the project to D2 [redacted], which then selected the developer with the approval of the CDC and City Council.

You told staff that, during your employment with D, you were aware generally of this New Homes for #4 [redacted] RFP, and had reviewed the land use guidelines of the Conservation Plan for two other RFPs you drafted. But, you said, you did not attend meetings with other City personnel, X [redacted], or other interested developers; nor did you draft, discuss, or review RFP-related documents, inspect relevant sites or participate in any City decisions on this project.

The Proposed #5 [redacted] Redevelopment. Your proposed involvement. The last matter on which you have requested guidance is a proposed residential redevelopment in the #5 [redacted] area, located on [redacted] Streets between [redacted] Avenues. The site is part of the [redacted] Conservation Area, in which the City owns approximately 30% of the parcels. X [redacted] is part of a contemplated joint venture with one or two other entities; to date, only these entities have expressed interest in developing the area. While City personnel have met with representatives of these developers, it has made no commitments to them. While there have been no discussions on specific tasks, to the best of your understanding, as a X [redacted] employee, you anticipate being asked to assist the developers in structuring the proposal for residential redevelopment that the developers will present again to the City, in designing units, and in financial planning for the redevelopment.

Your involvement during City employment. You described your involvement as a D [redacted] employee in this proposed redevelopment project as follows: when the interested developers first approached D [redacted] in the Summer of 1994, you and other City representatives attended a meeting with several of their principals, at which they tendered a proposal for residential redevelopment of the area. You

E M U S

Case No. 96001.A
January 8, 1996
Page 4

reviewed the proposal, made a site visit to acquire a better understanding of the area and real estate acquisition issues involved, then discussed your judgments with your superiors. (D) determined that the proposal had various deficiencies, which you communicated on the City's behalf to the developers. In the Summer of 1995, you again met with the principals, who resubmitted their proposal. You have since been assigned project manager for this matter, and have had several meetings with (D) senior staff and other personnel about the City's ongoing concerns, such as income levels of potential residents and the developers' requests for City subsidies. You have met with the developers to communicate these concerns. The City is still discussing these and other concerns with the developers, and has not yet determined whether to issue an RFP, thereby allowing other interested developers to submit proposals, or to enter into a negotiated sale with these developers.

LAW AND ANALYSIS: Post-Employment Restrictions. The provision of the Ethics Ordinance most relevant to your situation is §2-156-100(b), from the section entitled "Post-Employment Restrictions." It states:

(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.

Permanent Prohibition. This prohibition applies if a former employee exercised contract management authority over specific contracts. The facts presented in this opinion do not appear to warrant application of the permanent prohibition to your participation in any of these projects or proposals.

One-Year Prohibition. Under this provision, you, as a former City employee, are prohibited for one year after the effective termination date of your City employment from assisting or representing any person, including (X) in a business transaction involving the City, if, during you City employment, you participated personally and substantially in the subject matter of that transaction. The one-year period of prohibition would begin on the effective date your City employment terminates, not on the date you stopped performing particular tasks. The Board has held that "assisting" and "representing" a person in business

Case No. 96001.A
January 8, 1996
Page 5

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. 92035.A.)

In this case, we must determine whether you participated personally and substantially in the subject matter of the five projects and proposals in which you believe will ask you to assist.

The New Homes for Chicago Projects. In each of these projects, which clearly are business transactions involving the City, you would be assisting in performing work defined by specific agreements it has with the City under the New Homes for Chicago Program. The subject matter of each of these projects is the construction and sale of particular single family homes on specified sites in accord with the requirements of D2's New Homes for Chicago program. Thus the subject matter of the business transactions on which you would work are the construction and sale of single family homes on specified sites, according to the requirements of the New Homes for Chicago program--i.e., the specific projects themselves. See Case Nos. 94022.A, p. 5-6; 92010.A.

You said that the earlier work done by City personnel in all of these projects, except New Homes for #4 , was performed by D2 personnel. They made preliminary site evaluations, negotiated and entered into agreements with under the requirements of the New Homes for Chicago program, coordinated financing, and have administered construction of actual units. You said that you were not and would not have been expected to be involved in these matters. Moreover, although D was involved in issuing an RFP in 's remaining project, New Homes for #4 , and in creating and maintaining the Area #4 Conservation Plan, to whose land use guidelines the RFP had to conform, you took no part in D's work on this RFP.

Based on the facts you presented, it is the Board's opinion that, during your City employment, you have not been personally and substantially involved in the construction and sale of single family homes on sites specified in the agreements, under the New Homes for Chicago program, that has for the New Homes for #1 project, the New Homes for #2 project, the New Homes for #3 project, or the New Homes for #4 project. The Board concludes, therefore, that the Ordinance's one-year prohibition does not restrict you from assisting or representing in these four New Homes for Chicago projects.

The Proposed #5 Redevelopment. You believe you would be assisting in structuring its proposal to the City for residential redevelopment of the #5 area, and

E M U S

Case No. 96001.A
January 8, 1996
Page 6

assisting its personnel in related architectural and financial matters. With respect to this proposed project, the work that you have performed as a [D] employee, as well that performed by other [D] personnel and the interested developers, is directed toward the residential redevelopment of the [#5] area by these or other developers. Residential redevelopment of the area is the goal of the proposal that [X] and its possible joint venture partners have submitted, and cannot be accomplished without substantial City action. The subject matter of the business transaction involving the City in which you have been asked to assist [X], then, is the residential redevelopment of the [#5] area. See Case No. 92035.A.

Since [redacted] you have met several times with principals of the interested developers to communicate certain requirements that the City has for redevelopment of the area, reviewed the proposal submitted by the interested developers, and visited the site itself. Additionally, as the project manager, a position you have held for several months, you have formed and discussed judgments with other [D] personnel and the developers about how the City wishes the redevelopment to proceed, and have an understanding of the City's position on various issues critical to whether these or any other developers' proposal goes forward.

Based on the facts you presented, the Board concludes that you have participated personally and substantially in the residential redevelopment of the [#5] area. Thus, you are prohibited, for one year following the effective date you terminate City employment, from assisting or representing any person, including but not limited to [X] or a joint venture of which it is a part, in seeking or performing any contract, proposal or project for the residential redevelopment of the [#5] area.

Confidential Information. The other provision of the Ethics Ordinance relevant to your situation is Section 2-156-070, "Use or Disclosure of Confidential Information." This section prohibits you, as a current or former City employee, from using or disclosing confidential information you have acquired during the course of your City position.

DETERMINATIONS: Based on the facts you presented, the Board determines that you have not participated personally and substantially in the subject matters involved in [X]'s four ongoing projects under the New Homes for Chicago program: New Homes for [#1], New Homes for [#2], New Homes for [#3], and New Homes for [#4]. Therefore, nothing in the Ethics Ordinance prohibits you from assisting or representing [X] in these four New Homes for Chicago projects.

Case No. 96001.A
January 8, 1996
Page 7

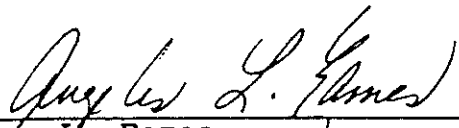
The Board also determines that you have participated personally and substantially in the subject matter of the remaining transaction in which **X** has asked you to assist: namely, the residential redevelopment of the **#5** area. Thus, you are prohibited, for one year following the effective date you terminate City employment, from assisting or representing any person, including but not limited to **X** or a joint venture of which it is a part, in seeking or performing any contract, proposal or project for the residential redevelopment of the **#5** area.

Finally, you do not anticipate being asked to participate in two other matters **X** has involving the City: **#7**, and **#6**, and have asked the Board not to address them. Thus, we make no determinations as to the Ordinance's applicability to your participation in these matters. If you are asked to participate in either of these matters, we advise you to seek further guidance from the Board, as the Ordinance's post-employment prohibitions would almost certainly restrict your participation in them.

Our determinations in this case are 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 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.

Thank you again for bringing this matter to our attention. If you have any further questions, please contact us.



Angeles L. Eames
Vice Chair