

EMW'S



ADVISORY OPINION
CASE NO. 96024.A
POST-EMPLOYMENT

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics

Date: [REDACTED]

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On [REDACTED], you asked the Board of Ethics for guidance on how the City's Governmental Ethics Ordinance applies to you in your post-City employment. You were employed with the Department of "D" [REDACTED], and began a position with [REDACTED] Co. ("A [REDACTED]") on [REDACTED]. This advisory opinion sets forth our analysis of the facts you presented under the relevant provisions of the Ordinance.

FACTS: You were employed full-time as a [REDACTED] with D from [REDACTED] through [REDACTED]. In this position, you acted as a project manager, meeting with developers, evaluating their proposals for projects in redevelopment areas of the City, and assisting in the sale of City-owned land to developers. You also served as staff to the [REDACTED] Commission and as a coordinator for the [REDACTED] Program, through which the D [REDACTED] and other departments (such as the Department of [REDACTED]) provide [REDACTED] funds for [REDACTED] improvements ([REDACTED]) to City neighborhoods in order to attract private investment.

On [REDACTED], you left your City employment. On [REDACTED], you began full-time employment with A [REDACTED], a real-estate development company. A [REDACTED] has asked you to work on three projects. In two of them, the #1 [REDACTED] and #2 [REDACTED] redevelopment projects, A [REDACTED] has responded to Requests for Proposals ("RFPs") issued by the [REDACTED] Company ("X [REDACTED]") for subcontractors to construct [REDACTED] housing units [REDACTED] in those areas. In the third, the N [REDACTED] project, A [REDACTED] is developing housing units under the N [REDACTED] program, pursuant to specific contracts it has with the Department of [REDACTED]. You have requested an advisory opinion as to whether the Ethics Ordinance prohibits you from assisting or representing A [REDACTED] in these projects.



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The #1 [REDACTED] and #2 [REDACTED] Redevelopment Projects.
Your proposed participation. 1 X [REDACTED] is the real estate development and management firm authorized by an agreement approved by the U.S. District Court to act as the exclusive developer for all new [REDACTED] public housing units to be built [REDACTED] throughout Chicago. You said that X [REDACTED] plans to issue an RFP for the construction of [REDACTED] housing units [REDACTED] in the [REDACTED] #1 [REDACTED] and #2 [REDACTED] housing projects. A [REDACTED] will be among the companies responding to these RFP's. You said that if A [REDACTED] is one of the companies chosen for either project, you would perform the following tasks for A [REDACTED]: gathering and analyzing title reports, surveys, soil assessments, and dimensions of each of the parcels on which A [REDACTED] will be constructing [REDACTED] housing units. You would also meet with representatives of 1 X [REDACTED] about the design and construction requirements for the units in X [REDACTED]'s agreement with A [REDACTED] (as well as in X [REDACTED]'s redevelopment agreement with the City, in the event A [REDACTED] is awarded construction rights to parcels formerly owned by the City), explain these requirements to the units' builder, [REDACTED] Co. (a sister company of A [REDACTED]), and supervise the construction with respect to those requirements. You stated that you would be asked to carry out these responsibilities with respect to all parcels that A [REDACTED] would be developing in these projects--including those acquired from the City as well as from private owners, and those already owned by [REDACTED].

Your participation in these projects during City employment.
 #2 [REDACTED] redevelopment. You stated that, during your City employment, you did not do, nor were you assigned, any work in connection with either the #2 [REDACTED] redevelopment or any redevelopment projects located in the City's [REDACTED] Redevelopment Plan, which encompasses the #2 [REDACTED] housing project. Your only knowledge of the #2 [REDACTED] project came from informal discussions with D [REDACTED] staff. These facts were confirmed by D [REDACTED]'s former Assistant Commissioner for [REDACTED], [REDACTED].

#1 [REDACTED] redevelopment. During your City employment, you said, you assisted in selling [REDACTED] parcels of City-owned real estate to 1 X [REDACTED] for construction of [REDACTED] housing units in the #1 [REDACTED] redevelopment. In order to acquire land on which to construct [REDACTED] housing, 1 X [REDACTED] approached the City concerning City-owned land available for purchase in the #1 [REDACTED] Area, in which the [REDACTED] units will be built. In [REDACTED], you were assigned by D [REDACTED] to compile a list of [REDACTED] parcels of City-

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owned land for sale in that Area and to provide the list to [REDACTED] X [REDACTED]. You included on the list all available parcels zoned for residential uses. [REDACTED] X [REDACTED] identified [REDACTED] parcels it was interested in buying and communicated that information to you. You said the [REDACTED] parcels represent approximately 25% of the total land to be used in the #1 [REDACTED] redevelopment. The rest of the land needed either belongs to [REDACTED] already, or will be purchased from private owners. You stated that you did no work and had no assignments in connection with any other parcels to be used for the construction of [REDACTED] housing in the #1 [REDACTED] redevelopment.

Along with representatives of the Law Department, you then met with [REDACTED] X [REDACTED] officials and attorneys to discuss the procedure required for [REDACTED] X [REDACTED]'s purchase of the land, which would include presentations to the [REDACTED] Commission and the City Council's Housing and Real Estate Committee. You told staff that, at this meeting, there was no discussion or negotiation of specific requirements for any eventual redevelopment agreement between the City and [REDACTED] X [REDACTED]. You prepared a staff report to the [REDACTED] Commission concerning the sale, and were present at the [REDACTED] Commission meeting at which the sale was considered. Though you had prepared to make a presentation in favor of the sale to the [REDACTED] Commission, no presentation was necessary. Additionally, you said, you prepared an ordinance package for the Mayor's Intergovernmental Affairs Office, so that, if the [REDACTED] Commission recommended the sale, an ordinance approving the sale could be introduced to the City Council. A [REDACTED] memo from [REDACTED] D Commissioner [REDACTED] to representatives from Intergovernmental Affairs, the Law Department, and the Budget Office in connection with the sale ordinance identifies you and Mr. [REDACTED] as the City's "contact persons" for the #1 [REDACTED] redevelopment, and states that you "are knowledgeable about this project and will be prepared to testify at the appropriate Committee hearing."

You stated that you do not know at this time which if any parcels A [REDACTED] will be developing if chosen to construct [REDACTED] units in the #1 [REDACTED] redevelopment project. You also said that design plans for the #1 [REDACTED] units are not yet detailed, but that the sale of these [REDACTED] parcels has been approved by the City Council, and it remains for the City to negotiate and enter into a redevelopment agreement with [REDACTED] X [REDACTED] to define [REDACTED] X [REDACTED]'s rights and responsibilities in developing these parcels (e.g., with respect to minority participation). You also said that, were you to have stayed on as a [REDACTED] D employee, you would likely have been assigned to assist in negotiating this redevelopment agreement. Mr. [REDACTED] told staff that the City will reserve the rights to repossess the property

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if the units are not developed in accordance with the agreement, and to inspect the units and issue certificates of completion before they are occupied. He also said that 'X [REDACTED] will be required, in a separate proceeding, to submit designs for approval by the [REDACTED] Commission of all the [REDACTED] parcels to be developed in the #1 [REDACTED] project.

You said, and Mr. [REDACTED] confirmed, that you did not participate in general policy decisions concerning the City's involvement in the [REDACTED] redevelopments overall, the [REDACTED] housing program, or whether the City should sell property to [REDACTED]. You stated that your only participation in any [REDACTED] project was your work in connection with the City's sale of the parcels for the #1 [REDACTED] redevelopment to 'X [REDACTED].

The N [REDACTED] Project. Your proposed participation. You stated that A [REDACTED] is currently developing single-family homes in the [REDACTED] area under an agreement administered by the City's Department of [REDACTED]. The agreement was entered in conformance with the [REDACTED] program, under which the City provides land on which to develop [REDACTED] homes, and subsidizes the developers and purchasers of the homes. You stated that A [REDACTED] has asked you to monitor ongoing construction and complete and submit required title, survey, and environmental review documentation to the Department of [REDACTED] in connection with the performance of A [REDACTED]'s redevelopment contract under the [REDACTED] program.

Your participation in this project during City employment. You stated that during your City employment you did not work on nor were you assigned to any projects in the [REDACTED] area, or any projects under the [REDACTED] program. Mr. [REDACTED], your former supervisor in the [REDACTED], confirmed this.

LAW AND ANALYSIS: Post-Employment Restrictions. Section 2-156-100(b). The provision of the Ethics Ordinance most relevant to this situation is Section 2-156-100(b), entitled "Post-Employment Restrictions." It 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 his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a

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contract this prohibition shall be permanent as to that contract.

This section imposes both a one-year and a permanent prohibition on certain activities of former City employees after they leave City employment. It prohibits you, for one year following the effective date you left City employment, from assisting or representing A [REDACTED] or any other person in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment. The Board has interpreted "representation" to cover a broad range of activities in which one person acts as the spokesman for another: it includes making appearances before City agencies on behalf of non-City parties, contacting City officials by phone or letter on behalf of other persons, and signing petitions and proposals submitted to City agencies for review. This section's prohibition refers to "assisting or representing" a person in any business transaction involving the City, and it encompasses helping a person to seek as well as perform either a business transaction involving the City or a contract. See Case Nos. 89119.A, p. 8; 92035.A, p. 6.

It also permanently prohibits a former City employee, such as you, from assisting or representing a person in a particular contract if, while a City employee, he or she exercised "contract management authority" with respect to that contract.'

The Permanent Prohibition of § 2-156-100(b). Based on the facts presented, the Board determines that you did not exercise management authority on any contracts associated with the developments on which you anticipate working for A [REDACTED]. However, your description of your City work indicates that you may have exercised such authority with respect to other contracts on which you do not anticipate being asked to work. Thus, the Board advises you that, while the permanent prohibition does not apply to the developments on which you have been asked to assist A [REDACTED], you should seek further advice from the Board if you are asked to work on any projects or transactions not addressed in the Board's opinion, as this permanent prohibition may apply to contracts associated with them.

'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."

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The One-Year Prohibition of § 2-156-100(b). To determine whether the Ordinance's one-year prohibition applies to your proposed work for A [redacted], we will first identify the business transactions involving the City in which you would be assisting or representing A [redacted]. Then, we will identify the subject matter of those transactions, and finally, address whether you "participated personally and substantially" in those subject matters during your City employment.

The transactions involving the City and their subject matters. N [redacted]. The tasks you have been asked to perform in A [redacted]'s N [redacted] project--supervising construction and compliance with the terms of A [redacted]'s agreement with the City--are similar to those addressed in Case No. 96001.A, in which we applied these post-employment restrictions to a former employee asked to work on housing developments also under the [redacted] program. Because the project is defined by a contract with the City, under the requirements of the City's [redacted] program, we conclude that the transactions on which you have been asked to assist or represent A [redacted] are business transactions involving the City. Following Case No. 96001.A, we conclude that the subject matter of these transactions is the construction and sale of [redacted] homes in the [redacted] area, under the requirements of the [redacted] program.

#2 [redacted]; #1 [redacted]. You have also been asked by A [redacted] (a potential [redacted] subcontractor) to work on the development of [redacted] housing units in the #1 [redacted] and #2 [redacted] redevelopment areas--transactions that involve the City. You are not being asked to participate in all phases of these developments. You would supervise construction of housing units to assure compliance with the design and building requirements of A [redacted]'s agreement with [redacted] X [redacted] and [redacted], and, possibly, of [redacted] X's agreement with the City. You would also manage the process by which construction progress is reported to [redacted] X [redacted] and possibly the City. The construction issues on which you will work are defined by the particular agreements governing the units' construction specifications. Accordingly, the Board concludes that the subject matters of the business transactions on which you would assist A [redacted] in these [redacted] redevelopments are planning for and managing construction of [redacted] residential units in: 1) the #1 [redacted] redevelopment area; and 2) in the #2 [redacted] redevelopment area, pursuant to the terms of relevant agreements involving A [redacted], [redacted] X [redacted], [redacted] and the City.

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Personal and Substantial Participation.

#2 [REDACTED]; N [REDACTED]. Based on the facts presented, the Board concludes that, during your City employment, you did not participate personally and substantially in either the construction and sale of [REDACTED] homes in the [REDACTED] area under the requirements of the [REDACTED] program, or in planning for or managing construction of [REDACTED] residential units for [REDACTED] in the #2 [REDACTED] redevelopment area. We therefore conclude that the Ordinance's one-year post-employment restriction does not restrict you from assisting A [REDACTED] or any other person in these transactions.

#1 [REDACTED]. The Board concludes, however, that you did participate personally and substantially during your City employment in planning for and managing construction of [REDACTED] residential units in the #1 [REDACTED] redevelopment area. You were one of two City employees specifically designated by the D [REDACTED] as knowledgeable about the City's involvement in the #1 [REDACTED] project. You assisted in the City's sale to X [REDACTED] of [REDACTED] City-owned parcels for use in constructing [REDACTED] units, provided a list of City land available for this construction, met with representatives of X [REDACTED] to discuss the sale procedure and the City's construction requirements for the parcels generally, drafted a report to the [REDACTED] Commission and other City employees concerning the sale and its purposes, and prepared an ordinance package so that the City Council would understand the purposes of the sale and approve it. Based on these facts, we conclude that your participation in the sale of these [REDACTED] parcels constitutes personal and substantial participation in the planning for construction of [REDACTED] housing units for [REDACTED] in the #1 [REDACTED] redevelopment area. Thus, § 2-156-100(b) prohibits you, for a period of one year from the effective date of termination of your City employment, from assisting or representing A [REDACTED] or any other person in planning or managing the construction of residential units in the #1 [REDACTED] redevelopment area.

The Permanent Prohibition of § 2-156-100(a): #1 [REDACTED]. Section 2-156-100(a) of the Ethics Ordinance also is relevant to your possible work for A [REDACTED] on the #1 [REDACTED] redevelopment. This section permanently prohibits any former City employee from assisting or representing any person other than the City "in any administrative proceeding involving the City or any of its agencies, if the employee participated personally and substantially in the proceeding during City employment." From the facts presented, we conclude that during your City employment, you participated personally and substantially in

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proceedings before the [REDACTED] Commission and the City Council concerning the sale of the [REDACTED] parcels of City-owned land to [REDACTED] X [REDACTED]. The Board has previously found that "the [REDACTED] Commission's consideration of development proposals, projects and applications clearly qualifies as 'administrative proceedings involving the City'" for purposes of § 100(a). Case No. 94001.A, p. 4. Thus, under § 100(a), you are permanently prohibited from assisting or representing A [REDACTED], [REDACTED] X [REDACTED] or any person other than the City in the above-mentioned proceedings before the [REDACTED] Commission or the City Council on the sale of those [REDACTED] parcels. However, from the facts presented, we conclude that during your City employment, you did not participate personally and substantially in proceedings before the [REDACTED] Commission and/or the City Council on the redevelopment of parcels already owned by [REDACTED]. Thus, the restriction in § 2-156-100(a) does not permanently prohibit you from participating in any proceedings for development of those [REDACTED]-owned parcels. As discussed above, however, for one year you are prohibited under § 2-156-100(b) from assisting or representing A [REDACTED] or any other person in planning or managing the construction of residential units in the #1 [REDACTED] redevelopment, and that prohibition includes assisting or representing A [REDACTED] or any other person in all proceedings relating to construction of [REDACTED] residential units on all parcels, including those owned by [REDACTED].

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

DETERMINATIONS:

One-Year Prohibition. The Board determines that the Ordinance's one-year provision prohibits you from assisting or representing A [REDACTED] or any other person in planning or managing construction of residential units in the #1 [REDACTED] redevelopment area. The Board also determines that the one-year provision does not prohibit you from assisting or representing A [REDACTED] or any other person in the N [REDACTED] development project or in the #2 [REDACTED] redevelopment.

Permanent Prohibition. The Board determines that, under the permanent prohibition of § 2-156-100(a), you are prohibited from assisting or representing A [REDACTED], [REDACTED] X [REDACTED] or any person other than the City in proceedings before the [REDACTED] Commission

or City Council concerning the sale of the [redacted] parcels of City-owned land to [redacted] X [redacted].

Other Projects. The Board advises you that, if asked to assist or represent A [redacted] or any other person in projects or business transactions involving the City which the Board has not specifically addressed, you should seek the Board's guidance at that time, because the Ordinance's one-year and permanent prohibitions may restrict your participation in those projects or transactions.

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.

Daryl L. Delius
Acting Vice Chair