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**CONFIDENTIAL**

January 16, 2004

[John Smith]

Chicago, IL 606XX

**Re: Post-Employment/Case No. 04001.Q**

Dear Mr. [Smith]:

You are a former City employee who served for three years as an Assistant in the City's Department of [I] . On January 7, 2004, you contacted our office and asked whether the City's Governmental Ethics Ordinance prohibits you from entering into a consulting contract with the City's Department of [K] to train its staff in using [JU] software and assist it in developing [JU] reports. You also asked whether, if the Ordinance would permit this consulting arrangement, it would also prohibit you from having a second, unrelated position as a Managing Director of [GH] , Inc. the company for which you worked before your City employment. Staff concludes that the Ordinance does not prohibit either the consulting arrangement or your employment with [GH] but it does impose certain conditions and restrictions. This letter enumerates the conditions that must be met for your proposed consulting arrangement to comply with the Ordinance, and the restrictions that apply to your employment with [GH]. We also advise you that, although the proposed arrangement would be permissible under the Ordinance, its terms must be reviewed and approved by the Mayor's Office, the Office of Budget and Management and the Commissioner of [K] before becoming effective.

From 1996 to December 18, 200x, when you began your City employment, you were employed by [GH] , a consultant on [p] matters. Throughout your City service (which ended November 30, 200X), you were an Assistant Comptroller in the City's Department of [I] . When you joined the City, you asked [your-then Commissioner] specifically to assign you to matters not involving [p] . During your City service, 100% of your time was spent working on [JU] training and report development for the City's [YRI] System ([JU] being the software for generating reports in [YRI]). You became the City's top [JU] expert, and you designed and taught [JU] and [YRI] classes for City employees, training over 800 City employees to use the program. You said that you also worked closely with [K] staff on training and reports. When the training classes began winding down, you announced your departure from City service. Soon thereafter, several senior [K] managers approached you about continuing this training and assistance for their staff. [K] is now considering hiring you part-time through 2004 as a consultant to complete training and report development.

You also wish to return to a position with [GH], your immediate pre-City employer, and you have also asked whether the Ordinance would prohibit you from having a position as a Managing Director of [GH]. That position and your work in it would be unrelated to [YRI] and [JU]. Rather, you said, it will pertain to [p] transactions with Cook County and the Chicago Public Schools. It is possible, you said, that [GH] may seek business with the City toward the end of 2004 or in 2005). During your three years with the Department of [I], you said, you had no involvement in [p] transactions or matters.

Section 2-156-100(b) of the Ordinance, "Post-Employment Restrictions," imposes a one-year and a permanent restriction on a former City employee's activities. You are, as a former City employee, prohibited, for one year after leaving City service, from assisting or representing any person in any business transactions involving the City if you participated personally and substantially in the subject matter of those transactions during City employment. In addition, you are permanently prohibited from assisting or representing any person as to a City contract if you exercised contract management authority with respect to the contract during City employment.

In previous advisory opinions, the Board of Ethics has determined that, if certain conditions are met, the Ordinance does not prohibit a consulting agreement between the City and a former employee for services that are the same as, or substantially similar to, those the employee performed during City service. Case Nos. 99010.A, 93018.A. The conditions are: 1) the City seeks the services of the former employee and stands to benefit substantially by hiring him or her as a consultant; 2) the former employee enters into the contract as an individual, and does not represent the interests or act as an agent of any other entity in connection with these consulting responsibilities to the City (e.g., the former employee may not enter into the contract or perform the services as an employee or agent of a corporation or firm, even one of which he or she is the sole shareholder or owner); 3) the agreement is written; and 4) the agreement contains language obligating the former employee to act at all times in the City's best interests.

Because the services you would perform for [K] are the same for which you had primary responsibility as a City employee, your proposed arrangement with [K] would violate the Ordinance unless these four conditions are met. You said that [Joan D.], a [K] Deputy Commissioner, and [Henry O.], [K's] Director of Finance, approached you about a possible consulting agreement. However, for this proposal to conform with Board precedent, we advise you to consult with [K's] Commissioner about whether, in his view, [K] should contract for your services. Case No. 99010.A, at 3. Our conclusion, then, is that, provided that conditions (1) through (4) listed in the above paragraph are met, the City's Governmental Ethics Ordinance would not prohibit the proposed consulting agreement between you and [K] as you have described it. However, be advised that, although the consulting arrangement between you and [K] may be permissible under the Ordinance, its terms must be reviewed and approved by the Mayor's Office, the Office of Budget and Management and [K's] Commissioner before becoming effective.

We note that neither the Ordinance itself nor any of the conditions listed above prohibit you from having other post-City employment that is unrelated to your part-time consulting agreement and responsibilities with the City. That is, the requirement that you enter into a consulting agreement with the City as an individual, not as a representative of any other entity, applies only to the work

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you agree to perform for the City. It is not a requirement that you devote 100% of your time exclusively to the City such that you would be prohibited from having other employment, as long as that other employment otherwise complies with the Ordinance's one-year and permanent post-employment prohibitions. You said that your duties for [GH] will involve [p] work, and that as an employee of [GH] prior to your City employment, you did this type of work. You also said that, in your three years as an Assistant [I], you worked on no [p] matters. Based on the facts presented, then, staff concludes that the Ordinance's one-year and permanent prohibitions do not restrict you from performing the duties as Managing Director of [GH] as you have described them. If, however, your duties with ACA (or any other person) differ from those described in this letter, or will involve [JU] [YRI] or other matters on which you worked while a City employee, we advise you to contact us, because the Ordinance's one-year or permanent prohibitions might restrict your ability to perform those duties.

We also remind you that Section 2-156-070, "Use or Disclosure of Confidential Information," also prohibits you, as a former City employee, from using or revealing confidential information acquired through your City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

Our conclusions in this letter address only the application of the City's Governmental Ethics Ordinance to your situation. We also advise you that, as discussed on page 2 of this letter, other laws, City policies or rules also apply. Moreover, our conclusions are based on the facts stated in this letter. If those facts are stated incompletely or incorrectly, please notify us immediately, as any change may alter our conclusions.

We appreciate your inquiry and your concern to abide by the standards embodied in the City's Governmental Ethics Ordinance. If you have any further questions, please contact us.

Yours very truly,

Steven I. Berlin,  
Deputy Director

Approved:

Dorothy J. Eng,  
Executive Director