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June 25, 1993

C O N F I D E N T I A L

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

[REDACTED]
[REDACTED]
[REDACTED]
320 North Clark Street,
Chicago, Illinois 60610

Re: Case No. 93020.Q
Post-City Employment

Dear [REDACTED]

On June 7, 1993, [REDACTED]

[REDACTED] requested a letter from the Board of Ethics staff about the post-employment provisions of the Governmental Ethics Ordinance. Mr. [REDACTED] said that several employees of the Department of [REDACTED] will be choosing early retirement and that the department would like guidelines for future business interactions with its former employees. An issue of particular interest is whether the department is allowed to contract directly with former employees as private consultants. Mr. [REDACTED] requested that our written response be sent to you. On June 17, you confirmed his request in a telephone conversation with staff.

This letter sets forth the relevant sections of the Ethics Ordinance and provides explanations of these sections, including definitions of key terms. Because there is no specific situation in question, we can only provide general information. If, in the future, you have questions about a specific situation, please feel free to contact us for further guidance.

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.

As defined in the Ordinance, the word "person" includes any corporate entity as well as any individual. (§ 2-156-010(r).)

The phrase "contract management authority" is defined in section 2-156-010(g) 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.

According to the Board's interpretation, "assisting" and "representing" a person in business 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. 89119.A.) The term "representation" here 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. Representing others 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, on behalf of another

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person, any proposals, contracts, or other documents that are submitted to City agencies. (See Case Nos. 90077.A, 89087.A, and 89018.A.)

Subsection 2-156-100(b), which probably will be most relevant to former employees of your department, subjects a former City employee to two restrictions on employment after leaving City service: a one year prohibition and a permanent prohibition.

A former City employee is prohibited for one year after leaving City service 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. In recent cases, "subject matter of the transaction" has been interpreted as referring to the specific project. This means that a former employee may not assist or represent any person on any project with which the former employee was personally and substantially involved while with the City. (See case no. 92010.A.)

For example, the Board has previously determined that a former City employee who has worked on City street and bridge projects while employed by the City is not prohibited from assisting or representing another person on future City street and bridge projects in general. The former employee is prohibited only from assisting or representing any person on those specific street or bridge projects on which he or she worked while employed by the City. (See case nos. 92032.A and 92022.A.) However, the Board has not eliminated the possibility that there may be situations in which the Board may interpret "subject matter of the transaction" more broadly than the specific project. (See case no. 92032.A, page 4.) Please feel free to call us for guidance if you are unsure in a specific situation whether transactions involve the same subject matter.

Under the permanent prohibition of subsection (b), a former City employee is permanently prohibited from assisting or representing any person on a contract if, while a City employee, he or she exercised "contract management authority" with respect to that contract. Contract management authority includes personal involvement in or direct supervisory responsibility for the execution of a contract or the formulation of a City contract--including the negotiation of

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contract terms; the planning, development, or evaluation of proposals; or the selection of vendors. (See case no. 93005.A.)

Subsection 2-156-100(a) also imposes a permanent prohibition. However, it probably will not affect most former employees of your department. This section prohibits any former employee from assisting or representing any person other than the City in any judicial or administrative proceeding involving the City, if the former employee participated personally and substantially in that proceeding as a City employee.

As you know, the Board has recently addressed the specific issue of whether the post-employment provisions prohibit a department from contracting directly with former employees as private consultants. In the advisory opinion for case no. 93018.A, which was sent to you earlier, the Board determined that "the Ethics Ordinance does not prohibit consulting agreements between the City and its former employees when the following conditions are present: (1) the City seeks the services of the former employee and stands to benefit by hiring the former employee as a consultant, and (2) the former employee does not represent the interests of any other entity in connection with his or her consulting responsibilities to the City." (p. 2)

An additional section of the Ordinance that is relevant to former City employees is 2-156-070, entitled "Use or Disclosure of Confidential Information." It states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment.

This section prohibits current and former officials and employees from revealing confidential information they may have acquired during the course of their City job.

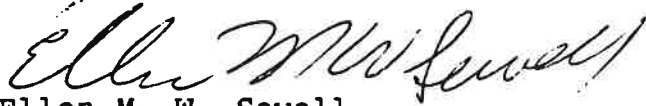
Finally, we note that other laws or departmental rules may apply to a post-employment situation and that a City department

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may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

We appreciate your department's concern to abide by the ethical standards embodied in the Ethics Ordinance and hope you find this letter helpful. If you have additional questions about the information provided in this letter or if, at some time in the future, you have questions about specific circumstances involving former employees, please feel free to contact us.

Sincerely,


Ellen M. W. Sewell
Legal Counsel

Approved:


Dorothy J. Eng
Executive Director

cc: 

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