



12/18/77

ADVISORY OPINION  
CASE NO. 92038.A  
POST-CITY EMPLOYMENT

City of Chicago  
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics  
Dorothy J. Eng  
Executive Director

Date: [REDACTED]

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On [REDACTED] you called the Board office about prospective employment, and staff sent you a set of Board Advisory Opinions. On [REDACTED] you came to this office and requested an opinion about whether your proposed employment as executive director of a not-for-profit [REDACTED] agency would be permissible under the post-City employment restrictions of the Governmental Ethics Ordinance. The agency for which you wish to work has one [REDACTED] contract under which it receives federal money administered by the City department in which you work, the Department of [REDACTED]. From the facts you have presented, as set forth in this letter, the Board finds that your proposed employment does not violate the Ethics Ordinance.

FACTS: The facts you presented are as follows. Currently you are [REDACTED] in the Department of [REDACTED]. You have held this position since [REDACTED], and before that you held essentially the same position in the Department of [REDACTED] since [REDACTED]. You served as a [REDACTED] in the Office of [REDACTED] for about two years before that.

As [REDACTED], you are responsible for three functions for the entire department: (1) you supervise the personnel function of the entire department -- that is, you handle the forms and records, but do not participate in hiring or terminating, except for employees in your own division; (2) you are responsible for office operations for the entire department -- that includes housekeeping, vehicles, telephones, and similar physical or technical matters that keep the department supplied and operating; (3) you supervise the budget process of the whole department and all the program expenditures.

WORKS

You perform the third function by reviewing expenditures against budget as follows: someone (for example, [REDACTED] submits a bill to the department; then someone in the relevant division [REDACTED] then reviews the submission to see if it meets that division's specifications, and if it does, prepares a request for payment and submits it to your division; then someone on your staff looks at the records (on computer) to learn two facts only; first, whether there is a contract under which the payment is being made, and second, whether there is money in the account from which the payment is being made. If the answer to those two questions is satisfactory, your staff has the computer generate the voucher, which you sign. Your division sends the voucher to the Comptroller, who then audits the information, by, for example, looking at the original contracts and the regulations; your division does not audit the information or issue the payment to the developer. You characterized your department's budgetary function as a check and balance -- to ensure, you said, that "no one comes up with a 'ghost agency,'" and to check the availability of funds against the budget.

You do not participate in decision-making about [REDACTED], about what [REDACTED] contracts the department will enter or with whom the department will enter contracts, about setting the budget of other divisions of the department, or about personnel in other divisions of the department. You have no interaction with [REDACTED] agencies or similar entities with whom the department contracts.

In the job you hope to enter, you will be executive director for an [REDACTED] agency located in a particular Chicago neighborhood. You will administer all phases of the agency's program, working under the direction of a Board of Directors. The agency is particularly focused on [REDACTED], which involves [REDACTED]. The agency has a budget of about [REDACTED] million dollars. The source of most of its funds is private. But as a non-profit [REDACTED] agency, it necessarily has and will continue to have extensive dealings with the City. Right now it has a contract with the City for about \$[REDACTED],000 that involves federal funds administered through the City, specifically through the [REDACTED] Division of the Department of [REDACTED].

In your City job, you have had no dealings with this contract, except as part of the expenditure review process described above. In your City job you have had no interaction at all with this agency, and no personal knowledge of the contract. (At the time of your prior City job, as a [REDACTED], the agency did not even exist.)

LAW: The section of the Governmental Ethics Ordinance that deals with employment after leaving a City position is § 2-156-100, entitled "Post-employment Restrictions." It 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.

Section 2-156-010(g) defines "contract management authority:"

"Contract management authority" means 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 these sections, a former City official or employee is subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition, if the person exercised contract management authority over a transaction. It does not appear that you have exercised contract management authority over any matter related to your

proposed employment, so the permanent prohibition does not come into play.

An 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; or from representing anyone in any administrative proceeding involving the City if he or she was personally and substantially involved in the proceeding while a City employee.

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.)

As the Board has interpreted it, the term "representation" applies to a broad range of activities in which one person acts as a spokesperson for another person, seeks to communicate and promote the interests of one party to another, or signs his or her name as representing one party to another, as in the submission of a request or proposal to the City or entering a contract.

**CONCLUSION AND DETERMINATION:** As you describe your proposed new position, you will be assisting the nonprofit [redacted] agency in a business transaction (and possibly multiple transactions) with the City, and anticipate representing the agency in administrative proceedings involving the City.

However, from the facts as you have presented them and as set forth here, the Board concludes that you have not been personally and substantially involved in the subject matter of any transaction in which you will be assisting this agency; nor have you been personally and substantially involved in any proceeding in which you are likely to represent the agency in proceedings involving the City. Therefore, the Board determines that the one-year prohibition of the Governmental Ethics Ordinance does not prevent you from accepting your proposed employment.

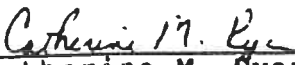
**CONFIDENTIALITY -- LAW AND CONCLUSION:** In addition to the post-employment provisions discussed above, § 2-156-070, governing the use of confidential information, also applies to former City employees. This section states:

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. It is the Board's determination that this provision does not prohibit you from accepting your proposed new employment; however, the Board reminds you that you are permanently prohibited from revealing such information.

The Board's determination in this case is based on the application of the City's Governmental Ethics Ordinance as applied to the facts stated in this opinion. If the facts stated in this opinion are not correct or are incomplete, please notify the Board immediately, because any change in the facts could alter the Board's determination. Also, the Board determination is not applicable to any other rules or laws that may be relevant to your situation.

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

  
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Catherine M. Ryan  
Chair

## NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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.