



EMUS

September 29, 1994

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

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Re: Case No. 94037.Q
Outside Employment

Dear :

On [redacted] you contacted the Board of Ethics seeking advice on whether the Governmental Ethics Ordinance prohibits you from owning a Service X business while you work as an employee for the Department A.

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

After reviewing the Ordinance and applying it to the facts you presented, staff believes that, as long as you comply with certain restrictions imposed by the Ordinance, which are described in this letter, the Ordinance does not prohibit you from owning and operating a Service X business while also serving in your City position with the Department A.

You are a City employee for the Department A. In your City position, you said, you help other Department A employees employees, including those from the Bureau B. Once at the job site, you wait and do not participate in the actual work at the site. The work performed by other Department A employees at the job sites includes many different projects.

You stated that you wish to become the owner of a business, and intend to operate the business two or three hours per week, possibly on Sunday afternoons. This company would, you said, work on Service X projects.

You also believe that these services are not offered by the City, and that your company will not offer any services already provided by the City.

You stated that you intend to operate this company in your Chicago neighborhood, and that you



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will seek as customers owners of private residences and commercial establishments, such as restaurants, in that neighborhood. In order to acquire customers, you stated, you will advertise in two local newspapers. Neither you nor your company anticipate seeking business from any City departments.

Although the Governmental Ethics Ordinance does not prohibit a City employee from having outside employment or a private business per se, several sections of the Ordinance restrict the activities of employees in a business they own or manage outside their City employment. We set forth the relevant provisions below.

The first provision relevant to your situation is §2-156-020, "Fiduciary Duty." The provision obligates you to use your City position in the best interests of the City, and to exercise professional judgments in your City job free from outside influences or conflicting duties to other entities, such as your outside business. You are prohibited from using your status as a City employee with the Department A

to assist you in any way in obtaining customers, or otherwise in carrying out your company's business. However, except for this prohibition, the Ordinance does not restrict your intended use of advertising in local newspapers, because such advertising is a means of soliciting business that is available to all who provide Service X.

This section also prohibits you from using City time or City resources to promote a purely private interest. For example, it precludes you from conducting your business or soliciting potential customers while performing your City responsibilities at a job site. It also prohibits you from using information that you gather through your City position to obtain a private benefit, that is, to benefit your business.

Second, §2-156-060, "City-Owned Property," prohibits you from using City property for your personal economic gain. Thus, for example, you may not use Department A equipment or supplies for your outside business.

Third, §2-156-050, "Solicitation of Receipt of Money for Advice or Assistance," prohibits you from accepting payment in exchange for giving advice or assistance on matters that involve the operation of City business, though you may accept compensation for rendering services that are wholly unrelated to your City responsibilities. Under this section, you may not, for example, accept payment for rendering advice to your customers about, or helping them procure, the various services offered by the Department A. Further,

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this section prohibits you from accepting any payment for services that are rendered by your department. Thus, for example, you may not perform any services that are the responsibility of the Bureau B, including but not limited to projects performed by Bureau B and/or Department A.

Other sections of the Ordinance also restrict your activities. Sections 2-156-030, entitled "Improper Influence," and 2-156-080, "Conflicts of Interest," prohibit you from participating in, or trying to use your City position to influence, a City decision or action in which you have an economic interest. So long as you do not make, participate in or attempt to influence any City or departmental decision affecting your Service X business, these provisions would not restrict your activities with respect to this company.

Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing confidential information that you acquired through your City employment. The Ordinance defines "confidential information" as information that may not be obtained under the Illinois Freedom of Information Act. Thus, you may not benefit your Service X business by using information available only to City employees and not to the general public.

Finally, Section 2-156-110, "Interest in City Business," prohibits you from having any "financial interest" in your own name or in the name of another person, including a business you own, "in any contract, work, or business of the City or in any sale of any article, whenever the expense, price, or consideration of the contract ... is paid for with funds belonging to or administered by the City..." You stated that neither you nor your company intend to seek business with the City. As long as this remains the case, this section of the Ordinance would not limit your activities with your Service X business. However, if your company's plans change with respect to seeking business with the City, we advise you to contact us for further guidance.

From the facts you provided, staff believes that, provided you follow the restrictions outlined above, the Ordinance does not prohibit you from owning and operating a Service X business. However, staff cautions you to limit your activities, and your company's, to comply with the Ordinance in the ways discussed in this letter.

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We are enclosing a copy of the Ordinance so that you may review the provisions cited above. Staff's conclusions are based on the application of the City's Governmental Ethics Ordinance to the facts stated in the letter. If any of the facts are incorrect or incomplete, please notify us, as a change in the facts may alter our conclusion.

Please be advised that other rules also apply to this situation, and that a City department may adopt restrictions that are more strict than those imposed by the Ethics Ordinance. For example, Personnel Rule XVIII, Section 1, no. 43 provides that engaging in a profession, business or investment that results in a conflict of interest with present City employment may result in discharge. Moreover, Rule XX, Section 3 outlines the criteria to be applied to outside employment, and the procedures by which you must submit your request to your supervisor. In any case, we urge you to discuss your outside employment plans with your supervisors.

We appreciate your calling us about this matter, and your willingness to abide by the standards of the Governmental Ethics Ordinance. If, after reading the Ordinance, you have any questions about the law or its application, please do not hesitate to contact us for further guidance.

Sincerely,


Steven I. Berlin
Deputy Director

Approved by:


Dorothy J. Eng
Executive Director

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