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Michael F. Quirk

Suite 500
740 North Sedgwick Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TTY)

<http://www.ci.chi.il.us>

SIB

CONFIDENTIAL

June 3, 1998

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Re: Case No. 98023.Q

Dear Commissioner

On 1998 you called our office and asked whether the City's Governmental Ethics Ordinance would prohibit "M" the newly named Deputy Commissioner of your department from continuing part-time employment. Subsequently, you furnished our office with a copy of a memo from Deputy Commissioner M and requested that we issue a written response.

Prior to assuming the post of Deputy Commissioner, M was approximately the past years, in addition to his City position,

M has held a part-time job as at place in town, Illinois. Mr. M states that his part-time hours are from 5:30 p.m. to 11:00 p.m. and that, on the average, he works two week nights and Sunday afternoons. He also states that his part-time employment has always been reported to, and approved by, his immediate supervisors, as well as included on his previously filed ethics statements.

It is staff's understanding that in his post(s) with the City, Mr. M does not have, and has never had, occasion to make or participate in any decision regarding or affecting place. Furthermore, it is staff's understanding that the City has no contractual relationship with place; that Mr. M has no ownership interest in place; and that the only income he derives from place are his part-time wages.

It is our opinion, if staff's understanding of the facts is correct, that the Ethics Ordinance does not prohibit Deputy Commissioner M from continuing his part-time employment at place. However, several provisions of the Ordinance, a copy of which is enclosed, restrict his



conduct. In an effort to provide you some guidance, we have summarized these provisions:

Sections 2-156-030 and 2-156-080 of the Ordinance, entitled "Improper Influence" and "Conflicts of Interest" respectively, prohibit him, as a City employee, from participating in, or trying to use his position to influence, any governmental decision or action in which he has an economic interest. For purposes of the Ethics Ordinance, a City employee who is also employed by another entity has an economic interest in that entity by virtue of that employment. Accordingly, Deputy Commissioner M has an economic interest in place by virtue of his employment with it. Thus, the Ethics Ordinance prohibits him from making or attempting to influence any governmental decision or action affecting place .

Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits him from soliciting or accepting money or anything of value in return for advice or assistance on matters concerning the operation or business of the City.

Section 2-156-090, "Representation of Other Persons," prohibits him from representing or acting as a spokesperson for any person or entity other than the City (such as place) in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is discretionary in nature.

Section 2-156-110, "Interest in City Business," prohibits him from having a "financial interest" in any contract, work or business of the City when the cost of that contract, work or business is paid for with funds belonging to or administered by the City, or approved by ordinance. A "financial interest" is defined, in part, as an interest of more than \$2,500 per year, or an interest with a cost or present value of \$5,000 or more (§ 2-156-010(l)). As noted above, however, it is staff's understanding that the City has no contractual relationship with place ; Mr. M has no ownership interest in place and the only income he derives from place are his part-time wages. Therefore, although he would have a financial interest in place -- which he must continue to report annually on his Statement of Financial Interest-- if he were to continue to earn more than \$2,500 per year from his part-time employment, he would not have a prohibited financial interest in City business.

Three other provisions restrict the conduct of City employees in their outside employment. These are: Section 2-156-020, which obligates one to use his City position responsibly and make decisions in his City position free from conflicting obligations to other entities, and prohibits one from using City time, resources, or your position or title to obtain a personal benefit or to promote a private interest; Section 2-156-060, which prohibits one from engaging in any unauthorized use of City property; and Section 2-156-070, which prohibits one from disclosing or using confidential information gained in the course of, or by reason of, City employment.

This staff opinion is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are inaccurate or incomplete, please notify us immediately, as any change in the facts may alter our opinion.

Please be advised that other rules or laws may also apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment; Personnel Rule XXIX, Sections 2 and 4, which provide, respectively, that City employees shall not have any employment or business relationship with any person who is doing business with the City if they exercise contract management authority with respect to that person's City business, and that City employees may not recommend, retain or hire as a City contractor any person with whom they have a business relationship; and Personnel Rule XVIII, Section 1, nos. 43 and 53, which provide that a City employee may be disciplined for failure to comply with Rules XX and XXIX. Also, we remind you that a City department (such as yours) may adopt and impose rules stricter than those contained in the Ethics Ordinance.

Finally, please be advised also that Deputy Commissioner M's part-time employment may be subject to restrictions or limitations under the Mayor's Executive Order. Accordingly, we recommend that Deputy Commissioner M also confer with the Law Department and the Office of the Mayor.

We appreciate your inquiry and desire to comply with the standards embodied in the Governmental Ethics Ordinance. Please contact us if you have any further questions.

Very truly yours,



Dorothy J. Eng
Executive Director

Enclosure

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