

Advisory Opinion

[REDACTED], Interest in City Business

Case No. 06051.A

October 20, 2006

By letter dated [REDACTED], 2006, the [REDACTED]<sup>X</sup> Department asked the Board whether, under the City's Governmental Ethics Ordinance ("Ordinance"), a City employee, [REDACTED]<sup>DOB</sup>, had a prohibited interest in City business and, therefore, had violated Ordinance Section 2-156-110. You enclosed "a summary of facts and some documents" that you later supplemented.

The Board concludes, from the facts recited below, that [REDACTED]<sup>GERT</sup> has a financial interest in City business through [REDACTED]<sup>C</sup> Company's work for the City's Hired Truck Program; and further, her financial interest is attributable to [REDACTED]<sup>DOB</sup>, a City employee, because her interest is **not** the independent occupation, profession or employment of [REDACTED]<sup>GERT</sup> within the meaning of Section 2-156-010(l)(a) of the Ordinance. After careful consideration of the facts you presented, and the relevant law, the Board has determined that [REDACTED]<sup>DOB</sup> violated Ordinance Section 2-156-110 by having a financial interest – in the name of another – in City business by virtue of the participation by [REDACTED]<sup>S</sup> Company in the Hired Truck Program (HTP).

FACTS:

STATEMENT OF FACTS

Except where indicated, the facts in this advisory opinion are pertinent portions of those provided by the [REDACTED]<sup>X</sup> Department. The facts presented are contained in: (i) a "Chronological Summary;" (ii) a recitation of "Documents;" (iii) a textual "Interview" (stated by you as derived from the [REDACTED] interview of [REDACTED]<sup>DOB</sup>); (iv) a recitation from you attached to a letter to Board staff dated [REDACTED], 2006; (v) answers to Board staff questions; and (vi) a set of a series of "Attachments" nominated by you as "A" through "M" (none attached hereto). The facts are set forth as follows.

Background

From your "Chronological Summary," you have provided the Board with the following facts.

[REDACTED]<sup>DOB</sup> (" [REDACTED]<sup>DOB</sup> ") is a Motor Truck Driver for the Department of [REDACTED]<sup>G</sup>. He drives a street sweeper. He began his City service on or about [REDACTED], 1996. He is married to [REDACTED]<sup>GERT</sup> (" [REDACTED] ").

On [REDACTED], 2000, [REDACTED] Company ("Company") was incorporated.<sup>1</sup> The company hauls and dumps construction materials. [REDACTED] is President, Director and Secretary of the Company. [REDACTED], their daughter, is the vice-president. [REDACTED] is 100% owner of the Company. A corporate resolution dated [REDACTED] 2000 lists [REDACTED] as the person with authority to sign and endorse all checks, to borrow money and obtain credit and perform other related functions for the Company. The address for the Company is [REDACTED], Chicago, IL 606[REDACTED]. This address is also the residence for [REDACTED] and [REDACTED].

Shortly after incorporation, the Company applied to the City's Hired Truck Program ("HTP")<sup>2</sup> and also for certification from the City's Department of Procurement Services as a Woman-owned, Minority-owned, and Disadvantaged Business Entity ("WMDBE")<sup>3</sup>. On [REDACTED], 2000, the date of the Company's HTP application, [REDACTED] was listed as a driver for the Company on the Company's Driver Registration form for the Hired Truck Program Application. On [REDACTED], 2001, the Company began working in the HTP.<sup>4</sup>

On [REDACTED], 2003, [REDACTED] Contracts Compliance Officer in the City's Department of Procurement Services, made a site visit<sup>5</sup> to the Company in connection with its application for WMDBE status. [REDACTED] asked [REDACTED] what the name of her company was; she could not provide it to him. When asked "who makes the day-to-day decisions on matters of management, policy and operations of the business?" [REDACTED] replied it was her husband, [REDACTED]. [REDACTED] reported that the phone number for the Company was listed to [REDACTED]; the address for operations was found to be a commercial address that was not the same as the home address; the Company had been issued an ICC license; and that the truck loans were in [REDACTED]'s name. [REDACTED] recommended MBE status but not WBE status.

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<sup>1</sup>Board staff's review of Illinois' Secretary of State's web site lists the Company name as "[REDACTED]" and states that it is not in good standing.

<sup>2</sup>Board staff's review of the City's web site describes the now defunct HTP as follows: "\*\*\*allows three city departments - the Department of Streets and Sanitation and the Department of Water Management - to hire trucking services on an as-needed bases to supplement construction projects and daily operations. The city retains companies that proved specified equipment and operators for its trucking needs."

<sup>3</sup>Board staff's review of the City's web site describes the City's "Minority and Women-owned Business (M/WBE) Procurement Program [as] demonstrat[ing] the City's continued commitment to the success of minority-and women-owned businesses." The web site only provides an application to be certified as a Disadvantaged Business Entity, which appears to be a business with little capitalization.

<sup>4</sup>In response to Board staff's question, you responded by stating that under HTP, once a company filled out the required applications; was eligible under the rules of the Office of Budget and Management ("OBM"); and approved by OBM, it could - as did the Company - on an "as needed" basis (without a written contract) work on jobs for the City Departments. Board staff's search of the City's web site does not disclose the Company (or any formative of the Company's name) in a data base demonstrating it as a City vendor. In response to another Board staff question, you stated that you "did not see anything in the investigative file to indicate that he [REDACTED] was involved in the HTP in his job as a MTD [motor truck driver]." [REDACTED] Email to Board of Ethics, [REDACTED], 2006.

<sup>5</sup>Essentially memorialized in Attachment B ("Schedule A Summary" to [REDACTED] Report).

<sup>6</sup>[REDACTED] concluded that [REDACTED] "has little or no idea about this business. She does not even respond to the questions that I ask" and that she "does little or nothing for this firm."

On [REDACTED], 2004, the Company's application for WMDBE certification was denied by Procurement Services. The results of Procurement's investigation pertaining to this certification indicated that the Company was not a viable certification candidate because "the qualifying female shareholder seems to lack the necessary expertise to operate this type of business" and "applicant firm is reliant on minority male, especially [REDACTED] <sup>BOB</sup> for its operation."

On [REDACTED], 2004, the Company ceased working in the HTP. [REDACTED], 2004, <sup>DON</sup> [REDACTED], Hired Truck Program Manager in the City's Department of Finance (Attachment I), advised [REDACTED] <sup>BOB</sup> that the Company was suspended from the HTP pending further investigation. City payment records (Attachments E - G) reflect that the Company was paid approximately \$330,000 while the Company was in the HTP. The same records disclose that "[REDACTED] <sup>BOB</sup>'s truck" (hereinafter defined and described) was used by the Company in HTP and, between [REDACTED], 2001 and [REDACTED], 2004, generated approximately \$257,000.00 of the foregoing City payment for the Company.

Documents

From your "Documents" recitation, you have provided the Board with the following facts.

A driver registration form in the Company's HTP application lists [REDACTED] <sup>Bob</sup> as a driver with license number [REDACTED]-8003. In the HTP application, where it asks for the driver's license number for the owner ([REDACTED] <sup>GERT</sup>) of the Company, the phrase "does not drive" appears in this section.

The Truck Registration Form section of the HTP application lists [REDACTED] <sup>BOB</sup> as the "name of owner shown on title" for the truck with state license plate number [REDACTED] 19V, leased to the Company.<sup>7</sup>

A notarized Certification Declaration Affidavit for Disadvantaged Business Enterprise (DBE) Minority Business Enterprise (MBE) Woman Business Enterprise (WBE) purportedly signed by [REDACTED] <sup>Gert</sup> lists the Company as owning a 2000 Mack Tractor [REDACTED] 393 (the "Truck").<sup>9</sup>

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<sup>7</sup>An application for vehicle title and registration for a 2000 Mack model RD, Tractor, VIN [REDACTED] 393 has [REDACTED] <sup>Bob</sup>'s name on it. The 2003 and 2005 Illinois Registration Identification Cards for the 2000 Mack Tractor with plate number [REDACTED] 19V and VIN [REDACTED] 393 have [REDACTED] <sup>Bob</sup>'s name and driver's license number on them. A State of Illinois Vehicle Identification Card for a 2000 Mack Tractor Model RD688S VIN [REDACTED] 393 has [REDACTED] <sup>Bob</sup>'s name on it. The certificate of title is also in [REDACTED] <sup>Bob</sup>'s name for this latter truck, [REDACTED] 393. A [REDACTED] <sup>Bob</sup>, 2002 vehicle sticker for the 2000 Mack has [REDACTED] <sup>Bob</sup>'s name and DL ("driver's license") number on it. A 2002 Registration Identification Card for a 2000 Tractor with plate number [REDACTED] 19 V was also in [REDACTED] <sup>Bob</sup>'s name. A [REDACTED] <sup>Bob</sup>, 2001 City vehicle sticker license for a 2000 Tractor, plate number [REDACTED] 19 V, had [REDACTED] <sup>Bob</sup>'s name and DL number on it.

<sup>8</sup>The document is executed and notarized, but undated.

<sup>9</sup>The list includes a 2002 Mack Tractor [REDACTED] 115, and a 2002 Mack [REDACTED] 117. (It also states that the Company owns 3 tractors and 3 trailers, presumably those listed.) The Truck, being the 2000 Mack Tractor, [REDACTED] 393 (designation cited in the text), is owned by [REDACTED] <sup>BOB</sup>.

Several Certificate of Liability Insurance documents (and a temporary insurance contract) dated [REDACTED], 2002; [REDACTED], 2002; [REDACTED], 2000; [REDACTED], 2003; and [REDACTED], 2003 list the Company and [REDACTED] as the insured for the Truck.<sup>10</sup> The City is an additional insured. The certificate of title for the Truck is in [REDACTED]'s name.

Pursuant to an equipment lease agreement between Lessor, [REDACTED], and Lessee, the Company, signed by [REDACTED] and [REDACTED] (on behalf of the Company), on [REDACTED], 2000, the Truck was leased to the Company. The lease was to expire [REDACTED], 2005 and was for \$67,705.80 to be paid in 60 installments of \$1,128.43 on the first day of each month. An assumption agreement (Attachment C) signed by [REDACTED] on [REDACTED], 2001, discloses that the Company, through [REDACTED], assumed and agreed to pay [REDACTED]'s obligations of \$60,935.22 on a security agreement pertaining to the Truck. In a Power of Attorney document signed [REDACTED], 2001, [REDACTED] granted to [REDACTED] Equipment Finance the authority to complete the assignment, to sign off as seller and complete any paperwork to release his interest in the Truck.<sup>11</sup>

A Schedule of Heavy Highway Vehicles IRS document (Form 2290<sup>12</sup>) has listed, under vehicles on which the Company is reporting tax, the Truck.<sup>13</sup>

Your Attachment D, Documents, shows that the Company bought (actually was to take delivery on) a new 2002 Mack Tractor Truck on [REDACTED], 2002 for \$73,048.00, VIN [REDACTED] 115.<sup>14</sup> Your documents disclose that [REDACTED] is the person who signed the order agreement on behalf of the purchaser, the Company. According to your records, an order document dated [REDACTED], 2002 shows that [REDACTED] signed as the purchaser for a 2002 Mack, chassis id No. [REDACTED] 15, with the total price listed as \$99,848.00 for truck and trailer.<sup>15</sup>

A 2005 Illinois Registration Identification Card for a 2002 Mack Truck, VIN [REDACTED] 115 bears the name of the Company.

In 2001 and 2002, [REDACTED] and [REDACTED] filed their taxes jointly (married filing joint).

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<sup>10</sup> These Certificates also listed a 2001 Hilbilt Trailer ([REDACTED] 002, \$18,000).

<sup>11</sup> In another assumption agreement signed by [REDACTED] on [REDACTED], 2001, [REDACTED], through [REDACTED], assumed and agreed to pay [REDACTED]'s obligations of \$24,195.17 on a security agreement pertaining to a 2000 Hilbilt Trailer, VIN [REDACTED] 002. In a Power of Attorney document signed [REDACTED], 2001, [REDACTED] granted to [REDACTED] Equipment Finance the authority to complete the assignment, to sign off as seller and complete any paperwork to release his interest in the latter Hilbilt truck.<sup>1</sup>

<sup>12</sup> Board staff's review of the Internal Revenue's web site describes Form 2290 as a "use" tax reporting return filed under certain circumstances by "heavy" truck owners.

<sup>13</sup> The VINs listed are [REDACTED] 115, [REDACTED] 393 and [REDACTED] 117.

<sup>14</sup> In addition, on [REDACTED], 2002, the Company bought a 2003 Mack Trailer, R/S Body, VIN [REDACTED] 283 for \$26,800.

<sup>15</sup> In addition, you have stated that Documents also show that the company bought a 2003 Hilbilt Dump Trailer on [REDACTED], 2002.

Interview

From your "Interview" recitation, taken from an [REDACTED] L DEPARTMENT ( "[REDACTED]" ) interview, you have provided the Board with the following facts.

In a sworn, transcribed question and answer statement he gave to the [REDACTED] L, on [REDACTED] 2005, [REDACTED] BOB stated that he is his wife's advisor and consultant for the Company and that he drives for the Company since she has 10 other contracts besides the City. [REDACTED] BOB stated that his wife is the sole owner of the Company. [REDACTED] BOB acknowledged that [REDACTED] GERT knows very little about trucks and that he knows about trucks. [REDACTED] BOB also stated [REDACTED] GERT knows very little about companies. When asked, "So you do the running of the business?" [REDACTED] BOB answered, "right ... I'm her personal advisor and I can advise her on everything, see, I'm her consultant ... but the final decision is up to her and her attorney." [REDACTED] BOB was referring to the registered business agent [REDACTED] MR. T.

[REDACTED] BOB stated that his wife is really ill and that her sickness is affecting her mind. [REDACTED] BOB stated that [REDACTED] GERT is very forgetful. In his [REDACTED] L statement<sup>16</sup>, [REDACTED] BOB stated that they started noticing his wife's illness about three years ago but that she's getting worse. [REDACTED] BOB also stated that her illness is spreading to her brain and that he is in the process of taking over the board of directors because "as long as I control the board, I control the company." When asked if he helped [REDACTED] GERT out with the day-to-day handling of all the business and the paperwork, [REDACTED] BOB stated he couldn't help her out with the day-to-day operations because he was in the City street sweeper for eight hours.

The Company worked for the Departments of Water Management, Transportation and Streets and Sanitation. [REDACTED] BOB stated the Company has three trucks and leases trucks when on bigger jobs. When the trucks needed to be fixed, [REDACTED] BOB would drive the trucks to Mack and either he or another driver would pick them up when finished. [REDACTED] BOB acknowledged that he would take the trucks to Jiffy Lube or somewhere similar for oil changes on the weekend. [REDACTED] BOB stated that he had more involvement with the Company when it came to the non-City of Chicago contracts. He acknowledged that he made the decision to let a former City employee work for the Company and that his wife had no input on that. When asked how [REDACTED] GERT could be coherent enough to make decisions, [REDACTED] BOB replied "I would advise her. I was her personal advisor and her consultant and I wouldn't advise her on anything wrong. If I told her something, then she could just about bet on it when it comes to trucks or drivers."

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<sup>16</sup> Unless otherwise stated, all statements attributed to [REDACTED] BOB are from the transcribed statement he gave to the [REDACTED] L on [REDACTED], 2005.

<sup>BOB</sup> [REDACTED] acknowledged that even in 2001 and 2002, when <sup>GERT</sup> [REDACTED] was of sound mind, he would sometimes get calls from the City if a truck was needed from the Company. <sup>GERT</sup> [REDACTED] was the contact at other times. He said he would be contacted about the whereabouts of a driver or "something." When asked why the City would know to contact him at all if he wasn't involved with the Company, he stated that the City would contact <sup>GERT</sup> [REDACTED] and that she would contact him. He said, in 2001, <sup>GERT</sup> [REDACTED] would call on his cell phone for decisions or advice. She would ask him where the truck drivers were. *"She didn't have walkie-talkies to locate these drivers. I had walkie-talkies in the trucks where I can call over the radio and find out. I let them know ... they're looking for you over there."*

<sup>BOB</sup> [REDACTED] stated that he was the one who dropped off at the City the application papers for certification as a Woman-owned, Minority-owned, and Disadvantaged Business Entity. <sup>BOB</sup> [REDACTED] also stated that he took paperwork downtown to the HTP.

<sup>BOB</sup> [REDACTED] stated that he might have obtained some City stickers for the trucks which would be in his name. <sup>BOB</sup> [REDACTED] stated that the trucks are in the Company's name.

<sup>BOB</sup> [REDACTED] stated the Company had two full-time employees and approximately ten other employees.

<sup>BOB</sup> [REDACTED] stated that he was never paid for the work he did for the Company. However, an Illinois Department of Labor Certified Transcript of Payroll shows that <sup>BOB</sup> [REDACTED] of [REDACTED], Chicago, IL 606 [REDACTED] was paid \$400 from the Company's payroll dated [REDACTED], 2001.

## LAW

The City of Chicago Governmental Ethics Ordinance Section 2-156-110, entitled "Interest in City Business," states in relevant part:

**Except with respect to the participation of Eligible Persons in Eligible Programs, no elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City...**

Section 2-156-010(l) of the Ordinance, in relevant part, defines "Financial Interest" as follows:

**"Financial Interest" means (i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more; or (iii) any interest representing more than 10 percent of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any interest of the spouse or domestic partner of an official or employee which interest is related to the spouse's or domestic partner's independent occupation, profession or employment...**

#### ISSUES

Does <sup>BOB</sup> [REDACTED], wife, <sup>GERT</sup> [REDACTED], have a financial interest in City business? If so, is her financial interest in City business attributable to <sup>BOB</sup> [REDACTED] – as an interest held in the name of another – or is that financial interest related to <sup>GERT</sup> [REDACTED]'s independent occupation, profession or employment?

#### ANALYSIS

Currently, and during the relevant time period, <sup>BOB</sup> [REDACTED] was a City employee. Under Section 2-156-010(l) of the Ordinance, a financial interest means any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year, or any interest with a cost or present value of \$5,000.00 or more. City records indicate that, between <sup>BOB</sup> [REDACTED], 2001 and <sup>BOB</sup> [REDACTED], 2004, the Company received payments from the City totaling approximately \$330,000.00 for services rendered by the Company to the City under HTP. As the 100% owner of the Company, <sup>GERT</sup> [REDACTED] (<sup>BOB</sup> [REDACTED]'s spouse) has – and between <sup>BOB</sup> [REDACTED], 2001 and <sup>BOB</sup> [REDACTED], 2004 had – a financial interest in City business.

**The Spouse's Independent Occupation Exception.** In several previous decisions, the Board has outlined the requirements for a business to fall under the spouse's independent occupation exception. Case Nos. 88069.A and 91052.A, cited in Case No. 98021.A, together establish a four-part test for determining whether the exception applies:

- 1) the City employee may not have an ownership interest in the business;
- 2) the City employee may not have any legal or financial control over the business;
- 3) the business may not be of a type which could reasonably be construed as relying upon expertise and experience related to the employee's City responsibilities; and
- 4) the City employee may not participate in the management of, or be employed by, the business.

An application of these criteria to the facts you have presented establishes the following:

1) Ownership interest: <sup>BOB</sup> [REDACTED] had – and continues to have -- no ownership interest in the Company.

2) Legal or financial control: The facts you presented to the Board include that: (i) the Company has three trucks; (ii) <sup>BOB</sup> [REDACTED] owns one of the three trucks; (iii) <sup>BOB</sup> [REDACTED] leases that Truck to the Company; (iv) during the period the Company was in HTP, the Company used the Truck for HTP work, which generated approximately \$257,000.00 for the Company (of approximately \$330,000.00 paid by the City to the Company under HTP); (v) the City is an additional insured on certificates of insurance on the Truck evidencing insurance benefits to <sup>BOB</sup> [REDACTED] and the Company; (vi) the Truck is listed in an Internal Revenue Service (“IRS”) form filed by the Company; (vii) on behalf of the Company, <sup>BOB</sup> [REDACTED] signed a purchase order on <sup>BOB</sup> [REDACTED], 2002 for the acquisition of a new truck; (viii) <sup>BOB</sup> [REDACTED] stated that he was in the process of taking over the Company’s board of directors in order to gain “control”; (ix) the spouses’ address is the same as the Company’s address; and (x) the Company’s telephone number was listed to <sup>BOB</sup> [REDACTED].

<sup>BOB</sup> [REDACTED] leased the Truck, which he owned, to the Company, which owns two others. That Truck generated the majority of the monies paid by the City to the Company under HTP. The City protected itself as an additional insured in connection with liability involving the Truck. The IRS required a certain use tax form that demonstrated <sup>BOB</sup> [REDACTED]’s Truck was used by the Company. The Company and residence (for <sup>BOB</sup> [REDACTED] and <sup>BOB</sup> [REDACTED]) share an address; and the Company’s telephone number is listed in <sup>BOB</sup> [REDACTED]’s name. On behalf of the Company, <sup>BOB</sup> [REDACTED] acted as its agent in the purchase of a new truck for the Company. <sup>BOB</sup> [REDACTED] evinced intent to control the Company through his statement that he desired to take over the Company’s board of directors.

Accordingly, <sup>BOB</sup> [REDACTED] contributed substantially to the Company’s equipment inventory and revenues; held himself out as an agent or prospective agent of the Company (or placed himself in a position in which a third party might believe he gave the appearance of being the Company’s agent); and has been – and held himself out to be - an actual agent of the Company. Under the facts you presented, <sup>BOB</sup> [REDACTED] has exercised both legal and financial control over the Company.

3) Reliance upon expertise and experience related to employee’s City responsibilities: The facts you presented to the Board include that: (i) <sup>BOB</sup> [REDACTED] is a City Motor Truck Driver; (ii) drives a street sweeper; (iii) has been employed by the City since 1996; (iv) the Company hauls and dumps construction materials; (v) in its application to participate in HTP, <sup>BOB</sup> [REDACTED] is listed as the Company’s driver; (vi) in response to the Company’s application to participate in WMDBE, the City denied the request essentially because “*the qualifying female shareholder seems to lack the necessary expertise to operate this type of business...and applicant firm is reliant on minority male, especially* <sup>BOB</sup> [REDACTED] *for its operation*”; (vii) <sup>BOB</sup> [REDACTED] stated that <sup>BOB</sup> [REDACTED] knows very little about trucks and that he knows about trucks; and (viii) <sup>BOB</sup> [REDACTED] further stated “If I told her <sup>BOB</sup> [REDACTED] something, then she could just about bet on it when it comes to trucks or drivers.”



<sup>BOB</sup> [REDACTED] is a City Motor Truck Driver – driving a street sweeper since as early as 1996 – and the Company provides the services of trucks that haul and dump construction materials. One of the Company's drivers is <sup>BOB</sup> [REDACTED]. The rationale for the City's denial of the Company's WMDBE application was that the Company's trucking operation is dependent upon <sup>BOB</sup> [REDACTED] <sup>BOB</sup> [REDACTED] stated that he was knowledgeable about trucks and that, in her business, his wife, <sup>BOB</sup> [REDACTED], could depend upon what he told her about trucks and truck drivers.

Accordingly, <sup>BOB</sup> [REDACTED]'s expertise and experience as a City Motor Truck Driver is virtually identical to the business of the Company; and the business of the Company is the type of business that could reasonably be construed as relying upon <sup>BOB</sup> [REDACTED]'s expertise and experience as a City Motor Truck Driver.

4) Employee or management role: The facts you presented to the Board include that: (i) <sup>BOB</sup> [REDACTED] is not – nor has he been - an employee of the Company; (ii) <sup>BOB</sup> [REDACTED] is a City Motor Truck Driver; (iii) the Company's business is hauling and dumping construction materials; (iv) <sup>BOB</sup> [REDACTED] is married to <sup>BOB</sup> [REDACTED] who is the 100% owner of the Company; (v) the spouses' address is the same as the Company's address; (vi) the Company's telephone number was listed to <sup>BOB</sup> [REDACTED]; (vii) in its application to participate in HTP, <sup>BOB</sup> [REDACTED] is listed as the Company's driver; (viii) when the City's Contracts Compliance Officer responded to the Company's WMDBE application by asking <sup>BOB</sup> [REDACTED] "who makes the day-to-day decisions on matters of management, policy and operations of the business," <sup>BOB</sup> [REDACTED] replied that it was her husband, <sup>BOB</sup> [REDACTED]; (ix) as a result of the foregoing, the City denied the request essentially because "the qualifying female shareholder seems to lack the necessary expertise to operate this type of business...and applicant firm is reliant on minority male, especially <sup>BOB</sup> [REDACTED] for its operation"; (x) <sup>BOB</sup> [REDACTED] was sent the City's letter suspending the Company from participating in HTP; (xi) <sup>BOB</sup> [REDACTED] leased the Truck to the Company; (xii) the Company used the Truck in its HTP work; (xiii) the Company's HTP application stated that the owner (<sup>BOB</sup> [REDACTED]) "does not drive"; (xiv) in an <sup>BOB</sup> [REDACTED], 2001 assumption agreement, the Company agreed to pay <sup>BOB</sup> [REDACTED]'s Truck loan obligations; (xv) on behalf of the Company, <sup>BOB</sup> [REDACTED] signed a purchase order on <sup>BOB</sup> [REDACTED], 2002 for the acquisition of a new truck; (xvi) <sup>BOB</sup> [REDACTED] stated that he is his wife's [<sup>BOB</sup> [REDACTED]'s] advisor and consultant for the Company and that he drives for the Company; (xvii) <sup>BOB</sup> [REDACTED] stated that <sup>BOB</sup> [REDACTED] knows very little about trucks and that he knows about trucks; (xviii) <sup>BOB</sup> [REDACTED] stated that he was in the process of taking over the Company's board of directors in order to gain "control"; (xix) when the trucks needed to be fixed, he would drive them to the place of repair and then pick them up; (xx) he would take the trucks to Jiffey Lube on the weekend; (xxi) <sup>BOB</sup> [REDACTED] unilaterally made a driver hiring decision; (xxii) sometimes <sup>BOB</sup> [REDACTED] would receive calls from the City on HTP work via <sup>BOB</sup> [REDACTED]; (xxiii) to locate drivers for <sup>BOB</sup> [REDACTED], <sup>BOB</sup> [REDACTED] would use the radio in the "truck" he was driving; (xxiv) <sup>BOB</sup> [REDACTED] filed the paperwork for the HTP and WMDBE applications; (xxv) <sup>BOB</sup> [REDACTED] may have purchased City stickers for Company trucks; and (xxvi) there is a State Company payroll record dated March 30, 2001 showing payment to <sup>BOB</sup> [REDACTED].

Accordingly, though not an employee, <sup>Bob</sup> [REDACTED] is <sup>GERT</sup> [REDACTED]'s advisor and consultant on the Company's management, policy and operation (as stated by both spouses and confirmed by the City in its denial of WMDBE), and drives for the Company (as well as the City). The spouses' residence and the Company share an address. <sup>Bob</sup> [REDACTED] leases his Truck to the Company; delivers Company legal papers; has hired at least one driver solely on his own; has purchased at least one truck on behalf of the Company; has received at least one City correspondence directed to him; continually ensures servicing of the Company's trucks; provided for the Company to assume his Truck payments; is in the process of gaining board of directors' control; sometimes (indirectly) received City calls (during the HTP period) regarding the Company; and, at least once, is disclosed on State records as a Company payee. <sup>Bob</sup> [REDACTED] is not merely "involved" in the Company; he has assumed an advice and consultant (tantamount to management) role, acts as an agent for the Company and participates in its business interests and operations.

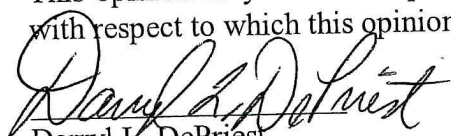
### DETERMINATION AND RECOMMENDATION

The Board concludes, from the <sup>G</sup> facts recited above, that <sup>GERT</sup> [REDACTED] has a financial interest in City business through <sup>G</sup> [REDACTED] Company's work for the City's Hired Truck Program; and further, her financial interest is attributable to <sup>Bob</sup> [REDACTED], a City employee <sup>GERT</sup> because her interest is **not** the independent occupation, profession or employment of <sup>GERT</sup> [REDACTED] within the meaning of Section 2-156-010(1)(a) of the Ordinance. After careful consideration of the facts you presented, and the relevant law, the Board has determined that <sup>Bob</sup> [REDACTED] violated Ordinance Section 2-156-110 by having a financial interest – in the name of another – in City business by virtue of the participation by <sup>G</sup> [REDACTED] Company in the Hired Truck Program (HTP). Accordingly, under Ordinance Section 2-156-410, the Board recommends that <sup>Bob</sup> [REDACTED] department consider the imposition of disciplinary sanctions, up to, and including, discharge from City employment.

Our determinations do not necessarily dispose of all issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other City rules or policies, or other laws, may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

### RELIANCE

This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

  
Darryl V. DePriest  
Chair