



E. J. Walsh

ADVISORY OPINION
CASE NO. 93017.A
INTEREST IN CITY BUSINESS

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Date: [REDACTED]

Board of Ethics

Dorothy J. Eng
Executive Director

Catherine M. Ryan
Chair

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan

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

You are a City employee, and you wish to obtain City loans or City-administered loans of over a million dollars to rehabilitate several buildings you own that are in need of significant repair. Under previous opinions of the Board, section 2-156-110 of the Governmental Ethics Ordinance prohibits an employee from having a "financial interest" in City business, and loans such as the ones you are seeking from the City would create such a financial interest, prohibited by the Ordinance. On [REDACTED] and [REDACTED], you spoke with Board of Ethics staff and requested that the Board grant you a waiver and permit you to obtain City rehabilitation loans, even though they do constitute a prohibited financial interest in City business. You make your request based on the following grounds: (1) when you purchased the buildings, you relied on the expectation of your ability to get City loans when you needed them, (2) your inability to get loans is causing you undue hardship, and (3) allowing you to receive the loans would greatly benefit your community as well as yourself.

In addition to meeting and conversing with staff on several occasions, you met with the Board at its meeting of [REDACTED], [REDACTED]. After carefully considering the relevant law and all of the facts presented by you and by staff, the Board can only conclude that, as a City employee, you are prohibited from receiving a rehabilitation loan that would constitute a financial interest in City business. Although the Board recognizes the difficulty of your situation, it believes that section 2-156-110 does not allow for an alternative interpretation in your case. We set forth the facts as we know them and our analysis below.

FACTS: You have been a City of Chicago [REDACTED] [REDACTED] for [REDACTED] years. You own [REDACTED] multi-unit buildings, purchased between 1982 and 1991 [REDACTED] [REDACTED], for which you seek rehabilitation loans



from the City. These buildings, which comprise more than 200 units, are located in the vicinity of [REDACTED] Avenue and [REDACTED] Boulevard, the neighborhood in which you were born and raised. You indicated that you own other buildings as well. You stated that you do not recall how much you paid for these [REDACTED] buildings. Some of them are vacant; all are less than 50 percent occupied. You said that the buildings were all either in housing court when you purchased them or soon went into housing court [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

When you first purchased the buildings, you thought you would be able to rehabilitate them without assistance from the City, repairing them one unit at a time as they became vacant. You believed, however, that City loans would be available if you needed them. You stated there were numerous applicable City rehabilitation loan programs available at the time you bought most of your properties. In particular, you knew that a fellow City employee [REDACTED] had received a loan from the City for \$100,000 in about 1980 for a building located near one of your own buildings.

You stated that you wanted to provide decent housing and that you were unsatisfied with simply repainting the units. Eventually, you found that you could not keep up with the work on your buildings, and you turned to the City for loans. It was then that you learned that the loans were no longer available to you.

You stated that you first went to the Department of Housing ("DOH") sometime between [REDACTED] and [REDACTED] and then returned a year or two later. On those visits, you spoke with [REDACTED], who worked on multi-unit loans. You said that on your first visit Mr. [REDACTED] told you that you would qualify for a loan of approximately \$20,000 per unit. You did not apply for the loan at that time because you felt that it was more than you needed, and you still believed you could do the rehabilitation work on your own. On your second visit you learned about a "50-50" grant program in which the City would provide a grant that would match private funds secured for rehabilitation. You stated that this program ended shortly after your second visit to the DOH and that you did not apply for it.

You stated that you returned to the DOH to apply for loans in approximately [REDACTED], and it was then that you first learned that

you are ineligible for loans because you are an employee of the City. (The actual date is probably later since, the Ethics Ordinance did not go into effect until 1987.) Mr. [REDACTED] was no longer with the City at that time. You stated that you visited the DOH a number of times after [REDACTED] and that the people you spoke with were always encouraging about your qualifications for getting loans, until they learned you were an employee of the City. You stated that you were consistently informed that you are ineligible for the loans you seek because you are a City employee. You have never actually completed an application for a loan with the City.

There is one building that you purchased [REDACTED], after you learned that you are ineligible for loans from the DOH. You explained that you did so because it was connected to two buildings you already owned and was rapidly deteriorating. You feared that it would cause your property to deteriorate more quickly, and you hoped to rehabilitate the whole set of buildings.

You stated that you currently need a total of approximately eight million dollars to bring your properties up to code standard. Without funding from the City, you do not believe it will be possible to rehabilitate your buildings. You have been working with at least three organizations other than the City in your efforts to obtain the means to rehabilitate your buildings, but offers of loans or labor from all three depend on obtaining City funding. You would need well over a million dollars from the City.

Over the past two years, you have been in contact with the [REDACTED], a mortgage banking firm that provides financing for multi-family housing in Chicago. According to [REDACTED], you have been putting together an application for a loan for rehabilitating three of your buildings. However, [REDACTED] can lend only up to 80 percent of the value of the unit after rehabilitation and that sum would not be sufficient to fund the rehabilitation needed. The remainder is generally provided by the DOH through rehabilitation funds for multi-family housing. Ms. [REDACTED] stated that in order to get any funding for a project, one must secure enough funds to complete the project. It is difficult to get partial funding for a project. Ms. [REDACTED] said that you would be a good candidate for loans. She also said that if you could rehabilitate your buildings, it would make a significant difference to the community in which they are located.

You have also been working with [REDACTED] Bank on a rehabilitation loan for one of your buildings. You stated that [REDACTED] Bank has offered you a loan of \$570,000. However, as with the [REDACTED] loan, you would require additional funding from the City in order to complete the rehabilitation, and the Bank is not willing to loan you the money unless you can secure sufficient funding to complete the project.

An additional organization that is interested in your efforts to rehabilitate your buildings is [REDACTED], [REDACTED]. [REDACTED] is a non-profit agency that, among other things, works with small businesses, especially minority contractors, to provide jobs for the un- and underemployed in the community in which your buildings are located. [REDACTED], the [REDACTED] of [REDACTED], stated that she contacted you a little more than a year ago with the concept of using her organization to provide the labor for rehabilitating your buildings. She said that you were very receptive and that you agreed to allow [REDACTED] to set up a training program for employees for your rehabilitation projects. However, this also depends on your ability to get funding for the rehabilitation of your buildings. Ms. [REDACTED] stated that she might be able to find outside sources to provide the funds to begin the training program, but this would be difficult. It would also entail higher overhead and result in less money being invested in the community. Ms. [REDACTED] informed the Board that it would greatly benefit the community if you were permitted to receive loans from the City to rehabilitate your buildings, not only in terms of improving the buildings themselves, but also by providing jobs for community residents.

You stated that you should be permitted to receive rehabilitation loans from the DOH because, when you purchased your buildings, you relied on the expectation of your ability to get City loans when needed. You believe there should be a "grandfather" clause for those who purchased buildings prior to the existence of the Ethics Ordinance.

In addition, you stated that if you are not permitted to receive these loans you will be unable to correct the building code violations for which you have been cited in housing court. If you do not correct the code violations, you may face [REDACTED] jail terms. You believe that you may also soon become the subject of criminal investigations for your ownership of substandard rental properties. You believe the City is putting you in a no-win situation by both prosecuting you for housing code violations and making it impossible for you to secure funding to correct the violations because you are a City employee. You also stated that if you cannot make the

buildings habitable, you stand to lose the properties. You said that you have tried and continue to try to sell some of your properties, but, thus far, you have not been successful. You stated that you currently have contracts for two properties but that it is uncertain whether they will go through. You also said that you are being forced to sell these properties for far less than what they are worth. Based on these claims, you argue that the Board should allow you to obtain DOH loans because enforcement of the prohibition against a financial interest in City business is causing you undue hardship.

Finally, you believe that prohibiting you from receiving DOH loans is counterproductive. You argue that in addition to making extra income for yourself, your ability to rehabilitate your buildings would significantly help the community. You stated that, as a City employee, you are required to live within the City, but, at the same time, the prohibition against your holding a financial interest in City business prevents you from improving the community in which you live. You stated that you could have put your money into a deferred compensation plan but that instead you chose to invest in your community, and now you are being punished for it.

On [REDACTED], [REDACTED], you hand-delivered a letter from Alderman [REDACTED] to the Board's executive director. In her letter, Alderman [REDACTED] recommends that you be made eligible for City rehabilitation funds. Because you are not affiliated with the DOH, she believes that your eligibility for loans from the DOH would not pose a conflict of interest.

LAW AND ANALYSIS: The relevant section of the Governmental Ethics Ordinance is 2-156-110, entitled "Interest in City Business." It states in relevant part:

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 or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

The term "financial interest" is defined in relevant part as (1) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year, or (2) any interest with a cost or present value of \$5,000 or more (§ 2-156-010(1)).

In case no. 89121.A, the Board determined that section 2-156-110 prohibits City employees from having a financial interest in loans administered by the City, as well as loans funded by the City. In certain previous cases (nos. 90028.A, 90029.A, 90033.A, and 90040.A, 90062.A, 92002.A), City employees were allowed to continue in programs or receive additional loans that constituted a financial interest in City business. However, in these cases, the City had already admitted the employees into City housing or loan programs. In reasonable reliance on the City's having admitted them into a program, the employees invested significant time and resources (including resources from the City program) in their homes. The facts of those cases indicate that without the City's having first admitted them into a program, the employees would not have invested their time and resources. If they had not been allowed to continue in the program, or had been denied the additional loans, they would have lost all that they had invested in reliance on the City. The Board applied equitable principles to permit the employees to continue in the program or obtain continued funding.

In the absence of facts that show (1) an employee was admitted into a City loan or other assistance program or given City approval for assistance, and (2) the employee expended resources in reasonable reliance on the City's having admitted the employee into a loan or other assistance program, this Board has found that City-administered loans of over \$5,000 to City employees are prohibited by the Ordinance. For example, in case no. 90057.A the Board held that an employee's expenditure of time in attempting to obtain a loan, after a City official had said the employee was eligible, was not sufficient to permit the employee, on equitable principles, to obtain a City loan, because the employee was not able to point to specific sums he lost or would lose as a direct result of being denied the loan.

In your situation, you had apparently hoped and expected that City funds might be available when you needed them, but you did not make the initial investments, or later investments in upkeep, in reliance on the City's having promised you funds or admission into a loan program. In fact, quite the reverse -- you had hoped to be able to sustain your investment without aid from the City, and even purchased one building long after you knew that you were not eligible for City loans.

CONCLUSION: Having reviewed this matter as stated, the Board determines that, as a City employee, you are prohibited from receiving rehabilitation loans funded or administered by the DOH that would constitute a financial interest in City

business. While we recognize that your situation is causing you severe hardship and that your aim is to help your community as well as yourself, section 2-156-110 of the Ethics Ordinance does not allow for an alternative interpretation in your case. If City employees are to be permitted to receive loans in excess of \$5,000 funded or administered by the City, legislative action by the City Council would be required.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.

Catherine M. Ryan
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.