

**ADVISORY OPINION**  
**CASE NO. 01053.A**  
**Outside Employment**

To: [John ], Foreman of Electrical Mechanics  
[The Department ]

Date: January 17, 2002

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You are employed by the City's [Department ] as a Foreman of Electrical Mechanics. You are also the co-owner (with your wife) of [Alpha ], a communications consulting firm specializing in the sale and service of two-way communications systems to licensed users. On December 11, 2001, you requested an opinion from the Board of Ethics on what restrictions, if any, the Governmental Ethics Ordinance would place on [Alpha's ] ability to bid on a Request for Proposal ("RFP") issued by Cook County Hospital for electronic equipment to be used in the emergency room of the hospital. On December 27, 2001, you met with Board staff to discuss your request, at which time you stated that you no longer intended to bid on the RFP, due to changes in its requirements. However, you stated that you were still interested in pursuing outside employment opportunities, specifically as a consulting engineer and vendor to licensed two-way radio users. You have asked the Board what restrictions, if any, the Ordinance would place on your proposed outside employment as a consultant and vendor to hospitals in the Chicago Trauma Care Network.

After careful consideration of the information that you submitted and the relevant law, the Board determines that the Governmental Ethics Ordinance does not prohibit you from selling walkie talkies or pagers to hospitals, or from contracting to perform maintenance or consulting service to the two-way radio system used to communicate between hospitals. However, the Ordinance does prohibit you from accepting payment or anything of value in return for advice or assistance on the installation, maintenance, and operation of City owned and/or maintained emergency communication equipment. The Board further determines that the Ordinance prohibits you from accepting payment or anything of value in return for advice or assistance on the operation and maintenance of hospital communications consoles linked to the City's [Department ]. The Ethics Ordinance also place other restrictions on your activities, both as a City employee and in your outside employment. The Board advises you to be mindful of these restrictions, which are discussed in detail below.

**FACTS:**

1. Your City Duties. You are licensed to practice electrical engineering by

the State of Illinois and are a licensed professional design engineer. As Foreman of Electrical Mechanics for [the Department], you supervise nine employees, who are responsible for the installation and maintenance of electronic equipment used for police, fire, emergency medical services (“EMS”), and hospital communications in the City of Chicago. This equipment includes police and fire mobile data radios, digital voice logging recorders used to record all 911 telephone calls, and console electronics used by call takers and dispatchers. In your City position, you are also responsible for supervising the technicians responsible for the maintenance of the City’s EMS Trauma radio system, an integral component of the Chicago Trauma Care Network, which provides victims of traumatic accidents with the most rapidly available treatment and transport to specialized Trauma Centers throughout the city. Specifically, with regard to the EMS Trauma radio channels, you supervise the technicians who maintain the Motorola Digitac voting system at the 911 Center, which you described as the “brains” of the City’s Emergency Communications System. The six hospitals<sup>1</sup> that are part of the Chicago Trauma Care Network have consoles connected to a Motorola Digitac Voter at the 911 Center. Hospitals contract with a communications contractor to maintain these consoles, which are owned by the hospitals themselves.

The only City-owned equipment at area hospitals are antennae on the roofs of some hospital buildings and radios receivers housed inside the mechanical engineering room of some hospitals. The radio receivers are wired to special leased phone lines from Ameritech. The leased phone lines connect radio receivers to the 911 Center. The strategic placement of radio antennae and receivers throughout the City provides the police and fire departments with enhanced reliability to be able to reach their emergency personnel. This equipment is maintained by City crews under your supervision.

Because of the large number of different City departments, other institutions and private contractors responsible for operating and maintaining the various communications components that make up the EMS Trauma radio system, problems that arise may be located in any of the equipment, phone lines or connections at the OEC center or the individual hospitals linked to the radio system. You stated that since you have a system-wide perspective, you are often called in to solve such problems. In some cases, this involves you going to the hospital to check its equipment and its link-up to the City’s system. You stated that while these site visits are unusual, and are not part of your job description, you can reasonably foresee occasions when such visits would be necessary.

2. Your Outside Employment. In your capacity as owner of [Alpha \_\_\_\_\_], you are a radio communications consultant specializing in the sale and service of two-way communications systems to licensed users. [Alpha \_\_\_\_\_] also specializes in wireless communications system design, specifically of radio towers and communications consoles. You stated that there are hundreds of thousands of legally licensed two way radio users in the U.S., although their numbers are

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<sup>1</sup>Per the Chicago Fire Department, the six hospitals are Children’s Memorial, Christ, Cook County, Illinois Masonic, Mt. Sinai, and University of Chicago

diminishing due to the influence of the cellular phone now commonly available. It is your intention to offer your services as a consulting engineer and vendor of equipment to properly licensed two way radio users. Specifically, these services would consist of providing maintenance and repair service to owners of communications consoles, radio towers, and other two-way radio equipment, and the sale of walkie-talkies and pagers to customers. Potential customers would include construction firms, public utilities, taxi cabs, messenger and delivery services, manufacturing companies, private security agencies, and paging companies. You stated that hospitals are a very small market and represent a very small percentage of the two way radio users. Your business with hospitals would consist primarily of selling hand-held communications equipment (i.e., walkie-talkies) and providing of maintenance services for communications consoles and inter-hospital radio channels.<sup>2</sup>

**LAW, ANALYSIS, AND CONCLUSIONS:** In your capacity as [Alpha ], it is your intention to offer your services as a consulting engineer and vendor of equipment to properly licensed two way radio users. For the purposes of this opinion, the Board addresses the application of the Ordinance to your proposed outside employment as a consultant and vendor to hospitals in the Chicago Trauma Care Network.

**Receipt of Money for Advice or Assistance:** Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," states:

**No official or employee . . . shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as a part of his or her non-City employment, occupation or profession.**

This section prohibits you from accepting payment or anything of value in return for advice or assistance on the operation or business of the City, although acceptance of compensation from an outside employer for services that are wholly unrelated to an employee's City responsibilities and rendered as a part of his or her non-City employment is permitted. (See Case No. 98062.A, Pg. 4)

The [Department ] is responsible for the installation, maintenance, and operation of electronic equipment used for police, fire, EMS, and hospital communications in the

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<sup>2</sup>This is a simplex, or direct, radio channel used by one hospital to call another hospital directly on a voice radio channel. This system is used primarily for disasters and when telephone service may not be available. The City of Chicago has no responsibility for the operation, maintenance, or servicing of any of these systems.

City of Chicago. This equipment includes police and fire mobile data radios, digital voice logging recorders used to record all 911 telephone calls, and console electronics used by call takers and dispatchers, as well as radio antennae and receivers located at remote sites throughout the City and suburbs. The [Department] is also responsible for receiving calls, responding to calls, and dispatching police, fire, and EMS services to callers. The Board concludes, therefore, that the installation, maintenance, and operation of emergency communication equipment, as well as the response to emergency calls, constitutes the "operation or business of the City." As Foreman of Electrical Mechanics for [Department], you are, in general, responsible for the installation and maintenance of electronic equipment used for police, fire, EMS, and hospital communications in the City of Chicago. Therefore, you are prohibited from accepting payment or anything of value in return for advising or assisting on the installation, maintenance, and operation of City owned and/or maintained emergency communication equipment, as such advice or assistance cannot be considered to be "wholly unrelated" to your City duties.

Specifically, you stated that one of the services [Alpha ] could potentially provide to hospitals would be maintenance service to hospital communications consoles. While the consoles are owned and maintained by the hospital, they are linked to the [the Department] on a City-owned radio channel through the Motorola Digitac Voting System. The link between the individual hospitals and the 911 Center is an integral part of the City's Emergency Communications System, and depends largely on the proper use and functioning of the communications consoles at the individual hospitals. If these consoles are not properly operated and maintained, the [Department] will be unable to fulfill its responsibilities. Therefore, the Board concludes that the operation and maintenance of communications consoles linked to the City's [Department ] also constitutes the operation or business of the City. Given that one of your primary City duties is to supervise the technicians who maintain the Motorola Digitac Voting System at the City's 911 center, advice or assistance concerning these communications consoles cannot be considered to be "wholly unrelated" to your City duties. Therefore, the Board determines you are prohibited from accepting payment or anything of value in return for advice or assistance on the operation and maintenance of hospital communications consoles linked to the City's [Department ].

However, you are not prohibited by this section of the Ordinance from selling walkie talkies or pagers to hospitals for use in intra-hospital communication, or from contracting to perform maintenance or consulting service to the two-way radio system used for inter-hospital communication. Should the facts change concerning these activities change, we advise you to contact the Board for further guidance.

**Improper Influence/Conflicts of Interest:** The Ordinance sections pertaining to improper influence and conflicts of interest are Sections 2-156-030, "Improper Influence," and 2-156-080, "Conflicts of Interest," state, respectively:

**Section 2-156-030(a): No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally.**

**Section 2-156-080(a): No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public.**

These sections prohibit City employees from making, participating in or in any way attempting to use their City positions to influence, a governmental decision or action in a matter in which they have an “economic interest” that is distinguishable from that of the public. An “economic interest,” as defined in Section 2-156-010(i), is any interest valued or capable of valuation in monetary terms and includes compensation received from your outside employment (See Case No. 98062.A).

As the Ordinance provisions concerning money for advice or assistance on City business, discussed above, prohibit you, *qua* [Alpha ], from soliciting or accepting payment or anything of value in return for 1) advice or assistance on the installation, maintenance, and operation of City owned and/or maintained emergency communication equipment, or 2) for advice or assistance on the operation and maintenance of hospital communications consoles linked to the City’s [Department], the Board need not address those proposed activities under these two provisions of the Ordinance. We do advise you, however, that by virtue of your ownership interest in [Alpha ], (as well as your employment with it) you have, within the meaning of the Ordinance, an economic interest in that firm and its business that is distinguishable from that of the general public. Under the Ordinance, therefore, you are prohibited from making, participating in making, or attempting to use your City position to influence any City decision or action that would affect that interest. (See Case No. 01042.A, where the Board found that the City employee owner of an inspection company had an economic interest in that company, and was therefore prohibited from making any governmental decisions that would affect that interest.)

Your other proposed activities as a consultant and vendor to hospitals in the Chicago Trauma Care Network--namely the sale of walkie talkies or pagers to hospitals for use in intra-hospital communication and the provision of maintenance and consulting services to the two-way radio system used for inter-hospital communication--are not matters over which you are likely to have any opportunity to make any City decision or action, although you would have an economic interest in such activities. Therefore, these activities, as you have described them to the Board, would not be prohibited under these Ordinance provisions. Again, should the facts change, we advise you to contact the Board for further guidance.

**Other Restrictions:** In addition to the provisions described above, several other sections of the Governmental Ethics Ordinance may restrict certain aspects of your outside employment. Section

2-156-020, "Fiduciary Duty," states: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." Pursuant to this provision you owe your primary loyalty to the City. This provision obliges you to use your City position responsibly and in the best interests of the public, and to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities or clients. (Case No. 99009.A.) The fiduciary duty provision of the Ordinance also prohibits you from using your City position to obtain private benefits, such as using your City employment or title to solicit clients for business or to promote the interests of your business or of the clients of that business. (Case No. 99009.A.)

Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from disclosing any confidential information obtained through your City employment in connection with your private business. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. This prohibition extends to any information not available to the public that would allow you to identify potential clients for your business.

Section 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, without authorization.

Section 2-156-110 "Interest in City Business" prohibits you from having a financial interest in any contract, work or business of the City 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.

**DETERMINATION:** The Board determines that Sec. 2-156-050 of the Governmental Ethics Ordinance prohibits you from accepting payment or anything of value in return for advice or assistance on the installation, maintenance, and operation of City owned and/or maintained emergency communication equipment. The Board further determines that Sec. 2-156-030 of the Ordinance prohibits you from accepting payment or anything of value in return for advice or assistance on the operation and maintenance of hospital communications consoles linked to the City's [Department                      ].

The Board also advises you that you cannot:

- make (or use your position to influence) any City governmental decision or action in which you have an economic interest distinguishable from its effect on the public generally;
- use your City position or City resources to obtain a personal benefit or to promote a purely private interest ;

- use confidential information to benefit your private business;
- use your City title or identify yourself as a City employee when soliciting business;
- use or permit the unauthorized use of any City property or resources for any private benefit, including your non-City employment.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

**RELIANCE:** This 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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

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Darryl L. DePriest  
Chair