

MEH



October 27, 1989.

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



City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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- Albert F. Hofeld
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- Marlene O. Rankin
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Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

Re: [redacted] Case No. 89126.A

Dear [redacted]

At its meeting on October 17, 1989, the Board of Ethics issued the following advisory opinion in response to your inquiry concerning whether or not you may meet with an employee of a fire safety products Company to discuss the purchase of Personal Distress Devices by the Fire Department.

FACTS: *One employee of the Chicago Fire Department (CFD), on behalf of another CFD employee requested an advisory opinion concerning the following situation. On Monday, July 31st, individual "B," a Sales Representative for the fire safety products company, telephoned the CFD employee to arrange a meeting to discuss the sale of Personal Distress Devices (PDD) to the Fire Department. PDDs are alarms worn by firefighters that are activated if a firefighter is incapacitated. According to this CFD employee within about two years every firefighter in the field will be required by federal regulations to wear a PDD. This fact, is well known among firefighters and persons in the fire supply business. Individual "B" sells the PDD for \$129.00 and hopes to sell about 5,000 to the Chicago Fire Department. Thus, the potential value of a contract is substantial.*

Because individual "B" Sales Representative, is also employed by the City as a firefighter, the CFD employee recognizing a possible conflict of interest, deferred the meeting and initiated the request for an advisory opinion from the Board. Further inquiry by the staff revealed that the fire safety products company is a sole proprietorship, owned by the spouse of individual "B" and that individual "B" is a salaried employee whose responsibilities are to "go out and sell and deliver merchandise."



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ISSUES: 1) Whether individual "B" can act as sales representative of this fire safety products company before the City. 2) Whether this fire safety products company can have a contract with the City.

ANALYSIS:

Issue 1:

Several provisions of the Governmental Ethics Ordinance are potentially applicable to the question whether Individual "B" can represent this fire safety products company before the City.

1. **Representation of Other Persons:** Section 26.2-9 states:

No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature . . .

In the past the Board has interpreted the term "representation" to embrace more than mere legal representation by an attorney on behalf of a client. The term applies to any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another. In the present case, individual "B", were he to meet with the CFD employee and pursue the sale of PDDs, would be "representing" this fire safety products company before a City agency, namely, the Fire Department. Furthermore, such a meeting would be part of a business transaction with a City agency. Finally, in deciding whether or not to recommend the purchase of individual "B's" product, the CFD employee would exercise his judgment and discretion. Therefore, the decision would be non-ministerial. Thus, all the criteria being fulfilled, this section of the Ordinance prohibits individual "B" from pursuing the contract with the Fire Department.

2. **Solicitation or Receipt of Money for Advice or Assistance:** Section 26.2-5 states:

No official or employee, or the spouse or minor child of them, 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 or the spouse of 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 part of his or her non-City employment, occupation or profession.

Were individual "B", a salaried employee of this fire safety products company, to continue to pursue a contract with the City Fire Department, he would violate this provision of the Governmental Ethics Ordinance. For "B" to personally seek the contract, advise his wife's company about making the sale, or in any other way assist in securing the contract with the City is a violation of Section 26.2-5. The exclusion clause in the second half of the provision does not apply to individual "B" since his job as a firefighter is not "wholly unrelated" to his services as a salesman of fire safety equipment.

3. Use Or Disclosure of Confidential Information: Nothing in the facts suggests that individual "B" has breached the confidentiality required of City employees. However, he should be aware that his position as a firefighter for the City may make information available to him that is not available to the general public and thus could be used for private gain in the course of his work for his wife's company. The Governmental Ethics Ordinance addresses this issue in Section 26.2-7:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

4. Fiduciary Duty and Use of City-Owned Property: Section 26.2-2 states that "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." This section establishes an obligation for City officials and employees to use their

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City positions responsibly and in the best interest of the public. It prohibits the use of City time and City resources to obtain a personal benefit or to promote a purely private interest. Individual "B's" activities as a Sales Representative for this fire safety products company should be strictly confined to hours when he is not on duty as a firefighter.

Of related interest is Section 26.2-6 entitled, "City-Owned Property," which states that "No official or employee shall engage in or permit the unauthorized use of City-owned property." This provision restricts individual "B" from using City resources including, but not limited to, materials, tools, supplies, and equipment for any sort of private gain, including the advancement of his wife's business.

Issue 2:

Having determined that the Governmental Ethics Ordinance prohibits individual "B" from personally representing his wife's business before the City, it is a further question whether the Ordinance also prohibits this fire safety products company from obtaining a contract with the City. First, all City contracts must be negotiated, entered into and performed in compliance with the Governmental Ethics Ordinance. Section 26.2-43 provides:

Nothing in this chapter shall preclude the City from maintaining an action for an accounting for any pecuniary benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

If it were determined that individual "B" would have a financial interest in a contract between the City and this fire safety products company the contract would not comply with the Ordinance. Section 26.2-11, entitled "Interest in City Business" states:

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. . . .

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The definition of "financial interest" is crucial to the application of this provision of the Ethics Ordinance. Section 26.2-1(1) states:

"Financial Interest" means (i) any interest as a result of which the owner receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% 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 any interest of the spouse of an official or employee which interest is related to the spouse's independent occupation, profession or employment; . . ."

Individual "B" products company has informed the Board in writing that this fire safety is his wife's business. It has been certified by the Purchasing Department as a Women's Business Enterprise, owned solely by the spouse of "B". Thus, as long as her interest in any City contract is related to her independent occupation, that interest will is hers alone.¹ In these circumstances, this fire products co. may seek and be awarded a City contract.

CONCLUSIONS:

1) The Board of Ethics advises that the Chicago Fire Department should not meet or deal with individual "B" concerning the purchase of PDDs or any other equipment sold by this fire safety products company. because a) Section 26.2-9 prohibits individual "B" from representing this fire safety products company before the City, and b) Section 26.2-5 prohibits individual "B" from assisting this fire safety products company in matters concerning

¹However, if "B's" spouses' company received a contract with the City, it would be possible that individual "B" as a salaried employee of this fire safety company could nonetheless, acquire a prohibited financial interest in his wife's company's contract. If, for example, more than \$2,500 of individual "B's" annual salary from this fire safety prod. co. had its source in a successful contract with the City, individual "B" would have a financial interest in City business. In such circumstances, he would violate the Governmental Ethics Ordinance and be subject to its penalties and sanctions.

City business. Furthermore, individual "B" is subject to the strictures concerning the use of confidential information and City property, and the obligations entailed in owing a fiduciary duty to the City. In making this recommendation the Board is not accusing individual "B" of violating the Ordinance. Rather, the Board believes that his further pursuit of this contract would lead to violations.

2) For the reasons stated under Issue 2 above, the Governmental Ethics Ordinance does not necessarily prohibit individual "B's" spouse business (albeit through another sale representative) from seeking and receiving a contract with the City. To protect her own interests, she should take care to comply with all provisions of the Governmental Ethics Ordinance that apply to City contractors and their employees.

3) Finally, the close relation between "B's" wife's business and her husband's City occupation could result in an appearance of impropriety that the Chicago Fire Dept. may choose to avoid. As the preamble of the Governmental Ethics Ordinance states, the City's Ethics Ordinance was established in order to engender and preserve confidence in City government. It has been the consistent opinion of the Board that this is best achieved by avoiding the appearance of impropriety as well as actual impropriety itself. Consequently, you may adopt a stricter policy than the Ethics Ordinance requires, i.e., you may decide not to deal with this fire safety products company and to obtain your PDDs through another supplier.

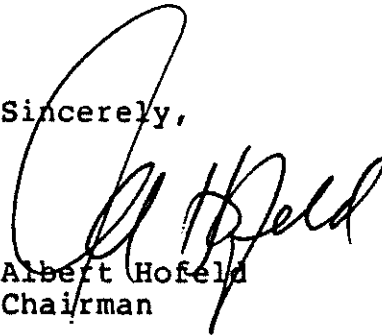
RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

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

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Should you have any questions, please contact the Board of Ethics
at 744-9660.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "A. Hofeld".

Albert Hofeld
Chairman

BS: 89126.L3