

ADVISORY OPINION
Case No. 98062.A, Outside Employment

To: [John Smith]

Date: December 16, 1998

In a letter dated November 4, 1998, you asked for our opinion on whether [Jane Doe], a member of your staff who is employed by [Alpha Corporation (“Alpha”)] as a part-time announcer on [WXYZ], a local radio station owned by [Alpha], would have a conflict of interest if she performs certain responsibilities in her City job. You listed those responsibilities in your letter. Based on the facts presented, the Board concludes generally that, although the City’s Governmental Ethics Ordinance does not prohibit [Ms. Doe] from having outside employment with [Alpha] *per se*, it does impose certain restrictions on her conduct. The Ordinance prohibits her, as long as she is employed by [Alpha], from: 1) making, participating in or attempting in any way to use her position to influence City decisions or actions that are related to or may enhance her employment with WXYZ or [Alpha]; and 2) advising or assisting [WXYZ, Alpha], or any [Alpha]-owned entity, in return for compensation, on any matters related to [a specific City event], including preparing applications to be [the City event’s] media sponsor. Following and consistent with these general conclusions, the Board also makes specific determinations on the responsibilities about which you asked. Additionally, the Board brings to your attention that, if WXYZ or any other [Alpha] entity even pursues sponsorship [of the City event], [Ms. Doe’s] employment with [Alpha] could give the appearance that she has a conflict of interests, or that she is being compensated in return for assistance on [City event] matters, or that [Alpha] entities receive preferential treatment regarding [City event] matters.

What follows is a brief statement of facts, and then our analyses of both the restrictions the Ordinance imposes on [Ms. Doe] generally and the prohibitions it imposes on her regarding the specific responsibilities you listed.

Facts: [Ms. Doe] is a Program Coordinator in [Department A]. Her primary task is to oversee the organization, promotion and production of the [City event], with certain responsibilities, including those you listed. She recently accepted a part-time paid position as a morning announcer with [WXYZ], a local radio station with [the same music format as the City Event]. You and [Ms. Doe] confirmed that [Alpha] is the entity that actually compensates her. [Ms. Mary Roe], Vice President of Personnel and Community Relations at [WXYZ], told staff that [Alpha] owns [WXYZ] and four other local radio stations (including KW/WW,

with partly the same format as [WXYZ]), and holds the federal broadcasting licenses for these stations, although each station has its own General Manager and operating budget. Both you and [Ms. Doe] said that [WXYZ] may apply to be official media sponsor of the 1999 [City event]. A committee of persons in your department, which would include [Ms. Doe], selects the official sponsor. [Ms. Doe] said that the official sponsor receives publicity in the form of signage and other acknowledgments. To date, no station has applied to be media sponsor of the [City event].

In your letter, you list specific responsibilities [Ms. Doe] might be assigned in her City job, and ask whether she would have a conflict by performing them if she continues her outside responsibilities with Chancellor. We discuss these in the following section.

Law, Analysis and Conclusions: While the Ordinance does not per se prohibit City employees and officials from having outside employment, it does impose restrictions on the conduct of City employees who engage in outside employment. As in all outside employment cases, several sections of the Ordinance are relevant to [Ms. Doe's] situation. The first two are section 2-156-030(a), "Improper Influence," which states:

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(;

and section 2-156-080(a), "Conflicts of Interest; Appearance of Impropriety," which states:

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.

Section 2-156-010(i) defines an "economic interest" as "any interest valued or capable of valuation in monetary terms . . ."

These sections prohibit City employees or officials from making, participating in or in any way attempting to use their City positions to influence a City or governmental decision or action in a matter in which they have an economic interest (as defined) that is distinguishable from that of the public. Interpreting these sections, the Board has concluded that, "if [a City] employee ... receives an economic interest by virtue of his or her outside employment, and that economic interest is affected by his or her government decision, then a conflict of interests arises." Case No. 91059.A. p. 3.

Following Board precedent, [Ms. Doe] has an economic interest by virtue of her outside, non-City paid employment with [Alpha Corporation]. Case Nos. 94009.A; 92023.I; 92044.A. In

past cases involving City employees, like [Ms. Doe], who had outside employment with persons that had or sought business with their City departments, the Board determined that conflicts of interests would or did arise. See Cases 94009.A; 92044.A; 92023.I; 91059.A. In these cases, the outside employment itself was or would be related to or enhanced by decisions these employees would or did make in their City jobs. Following this reasoning, the Board's opinion is that [Ms. Doe] is prohibited from participating in, making or attempting in any way to use her City position to influence any City decisions or actions that will be related to or enhance her employment with [Alpha]. Many of the decisions [Ms. Doe] would make in her City job—including selecting [City event] sponsors—involve organizing, promoting and producing the [City event], and would certainly affect the interests of [Alpha] if any of its stations apply to sponsor the [City event]. But, more importantly, some of these decisions or responsibilities—for example, selecting a [Alpha] station as official media sponsor of the [City event]—are related to, and may enhance (or certainly appear to enhance), her outside employment as an announcer with it. Accordingly, the Board determines that the Ordinance prohibits [Ms. Doe] from: 1) making, participating in or in any way attempting to use her City position to influence departmental or committee decisions concerning applications [WXYZ] or any other [Alpha] entity may file to be media sponsor of the [City event]; 2) participating in, making or in any way attempting to use her City position to influence any decisions to purchase advertising from [WXYZ] or any other [Alpha] entity; 3) meeting and corresponding with [WXYZ] or any other [Alpha] entity regarding possible donation of advertising, promotions and space or equipment for [City event]-related or other events; and 4) while acting pursuant to her responsibilities in her City job, selecting or booking interviews for herself or you if they will be broadcast on [WXYZ], or any other [Alpha] entity. These correspond to responsibilities numbers 2, 3, 4 and 8 in your letter.

Also based on the facts in this opinion, it appears to the Board that the following responsibilities of [Ms. Doe] in her City job are not related to or would not enhance her outside employment, and thus the Board determines that the Ordinance does not restrict her from: 1) selecting and negotiating performers' fees for the [City event], [honorary reception] or [special breakfast]; 2) soliciting and negotiating sponsorship for the [special breakfast] or selecting invitees for the [honorary and special breakfast] receptions, provided that she does not invite any [Alpha] entity and that no [Alpha] entity has applied to be the [special breakfast's] sponsor; 3) attending meetings and corresponding with non-media sponsors regarding the [City event]; 4) selecting merchandise vendors for the [City event] art fair; 5) selecting and booking interviews for herself or you on radio or television shows other than those to be broadcast on a [Alpha] -owned station; or 6) mentioning the Mayor, the [City Event] or other departmental programs on the air during her radio show. These correspond to responsibilities numbers 1, 4, 5, 6, 7 and 8 in your letter.

Additionally, Section 2-156-050 of the Ordinance, "Solicitation or Receipt of Money for Advice or Assistance," is relevant to [Ms. Doe's] situation. It states:

No official or employee, or the spouse or minor child of any 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.

This provision prohibits a City employee or official from accepting anything of value, including money, favors, services or promises of future employment, in return for advice or assistance on matters concerning the City, although acceptance of compensation from an outside employer for services that are wholly unrelated to the employee's or official's City responsibilities is permitted. See Case No. 93021.A, p. 3. Accordingly, the Board determines that this section prohibits [Ms. Doe] from accepting anything of value (including salary or a promise of future employment) in return for advising or assisting any person, such as [WXYZ] or [Alpha] entity, in any matter related to the [City event], including a media sponsorship application. This section does not otherwise prohibit [Ms. Doe] from performing the responsibilities described in your letter, but she must take care not to advise or assist [Alpha] or any of its stations with respect to [City event] matters.

In any event, you said that, in her City job, [Ms. Doe] would be expected to make or participate in many decisions regarding promoting and producing the [City event], including, to the degree allowed, selecting Event sponsors. Thus, we bring to your attention that, even if [Ms. Doe] exercises that care, were [WXYZ] or any [Alpha] entity to even pursue [City event] sponsorship, [Ms. Doe's] continued employment with [Alpha] could give rise to an appearance that she has a conflict of interests, or is being compensated in return for assistance on [City event] matters, or that [WXYZ] or other [Alpha] entities receive preferential treatment regarding [City event] matters, including sponsorship (particularly if [Ms. Doe] reads announcements on [WXYZ] regarding the [City event]).

Finally, we also advise you that three additional sections of the Ordinance apply to [Ms. Doe's] outside employment, as they do in all situations in which City employees or officials have outside employment. Section 2-156-020, "Fiduciary Duty," obligates her to use her City position responsibly and in the best interests of the City, and to exercise professional judgments free from conflicting duties to other entities, such as [Alpha] or [WXYZ]. It also prohibits her from using City time for a non-City job or for any private benefit. Section 2-156-060 prohibits her from any unauthorized use of City property or resources in her non-City employment, and section 2-156-070 prohibits her from using or disclosing, other than in the performance of her official City duties, confidential information gained in the course of or by reason of her City job.

The Board's opinion in this case is not necessarily dispositive of all the issues relevant to this case, and is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in the opinion. If the facts presented are inaccurate, please notify us, as a change in facts may change our conclusions and opinions. We also note that other rules, regulations, policies or broadcasting protocols may apply to this case. Also, we remind you that Personnel Rules XVIII, Section 1, no. 43, and XX, Section 3, may impose additional restrictions on employees engaged in outside employment, and that any City department, such as yours, may impose restrictions that are more stringent than those imposed by the Ethics Ordinance.

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, and 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.

Darryl L. DePriest
Chair