

**ADVISORY OPINION**  
**Case No. 01009.A**  
**Post-Employment**

To: [ John ]

Date: April 11, 2001

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In a letter dated March 13, 2001 you requested an advisory opinion on how the Governmental Ethics Ordinance would apply to your proposed post-City employment with [ Alpha ], a Chicago-based developer and manager of commercial and residential real estate. In your letter and in a subsequent meeting with staff on March 28, 2001, you described your present responsibilities as [ a project manager ] in [ Department 1 ], as well as your anticipated responsibilities at [ Alpha ]. At your request, staff also interviewed [ Michael ], Vice President and General Counsel of [ Alpha ], on March 30, 2001 about your proposed employment at [ Alpha ].

After careful consideration of the facts presented and the purpose and intent of the Ordinance's post-employment provisions, it is our opinion that the Ordinance would not prohibit you from assisting or representing [ Alpha ] in its business transaction with the City involving the privatization of the management and maintenance of [ Airport X ] terminals. This advisory opinion reviews the facts you and [ Michael ] presented, and sets forth the Board's analysis and determinations.

**FACTS:** First, we detail your responsibilities as a City employee; second, we describe [ Alpha's ] business transaction with the City; finally, we discuss your anticipated responsibilities with [ Alpha ], should you accept an offer of employment there.

Your responsibilities as a City employee: You began City employment in 1992 as a legislative aide to a member of the City Council. In 1996 you transferred to [ Department 1 ], where you served as [ a supervisor ] at [ Airport Y ]. In February 2000 you moved from [ Airport Y ] to [ Airport X ], where you presently work as [a project manager].

You stated that there are four [project managers], including yourself, who work at the [ Airport X ] complex. Together you supervise the maintenance of the "landside" terminal facilities situated west of [ a certain point ]. (The new parking and terminal facilities on the east side of [ that point ] are operated

and maintained by private corporations, a fact that will be addressed in greater detail below.) Landside facilities are those parts of the terminal building and grounds (*e.g.*, passenger drop-off areas, airline concourses and gates) that are accessible to the general public or airport employees without security clearance; they are contrasted with the “airside” facilities (*e.g.*, baggage handling areas, jetways and tarmac), which are accessible only to those with security clearance.

Maintenance of the landside facilities requires the services of tradesmen, custodians and laborers. In your letter to the Board, you described yourself as “a shift manager” of custodians and laborers. You stated that the tradesmen (carpenters, electricians, and plumbers) at [ Airport X ] usually work [ a certain ] shift, and since you are responsible for [ a different ] shift [...], you only supervise their activities if emergency repairs are required during your shift. Most of the time, you said, you supervise thirteen custodians who clean the inside of the airport terminal, and five laborers who sweep and clean the immediate exterior of the terminal. Beyond ensuring that their work is done properly, you schedule their working hours, approve vacation days and overtime, and take appropriate disciplinary measures when necessary—all pursuant to their union labor agreement with the City. You stressed that you do not have the authority to hire or fire employees, and that you do not oversee any City contracts.

[ Alpha’s ] business transaction with the City: In [ ... ] 2000, four bidders responded to the City’s Request for Proposals (RFP) to provide “property management services” for [ Airport X ] terminal buildings. According to [ Michael ], Vice President and General Counsel of [ Alpha ], the City notified [ Beta ] [ ... ] that it had won the bid. [Beta] is a joint venture between [ Gamma ], [ Delta ], and the facilities management group of [ Alpha ].

On March 30, 2001, [ Michael ] stated that although the contract between [Beta] and the City had not yet been finalized, [ Beta ] had [ already ] begun work at [ Airport X ]. He represented that the contract called for [Beta] to manage and maintain the new [ Airport X ] terminal facilities, which are being constructed and/or rehabilitated on an ongoing basis [ ... ]. A new terminal building, situated east of [a certain point], opened [ earlier ] under the management of [ Beta ]. [ Beta ] will also manage and maintain the terminal situated west of [ that point ] once its rehabilitation and expansion is completed [ ... ]; until that time, the City will continue to manage and maintain the terminal. The approximately seventy City custodians and tradesmen who presently work at [ Airport X ] will not lose their jobs when this takes place, though they will be transferred to [ Airport Y ]. You stated that although you could be transferred [ Airport Y ] as well, your job as it presently exists will be eliminated in [ several years], when [Beta] assumes management responsibility for the [ facilities ] situated west of [ the aforementioned point].

[ Michael ] stated that [Beta] has divided its responsibilities under the [ Airport X ] contract among its [ ... ] partners. [ Gamma ] provides the operating engineers; [ Delta ]

provides the accounting, insurance and administrative services; and the facilities management group of [ Alpha ] provides the tradesmen and custodial services. Each partner can hire subcontractors as necessary to provide the aforementioned services. [ Michael ] indicated that [ Beta ] will not be responsible for the [ Airport X ] complex's landscaping or parking (both of which are currently managed by different corporations), nor for the airport's airside operations, which will remain under the control of City, state, and federal authorities in cooperation with the airlines that operate at [ Airport X ].

In your letter and in your interview with staff, you stated that you were not involved in any way with the City's contract with [ Beta ] for services at [ Airport X ]. More specifically, you stated that you did not assist in the preparation of specifications for the RFP; you played no role in the evaluation (or the formulation of criteria for evaluation) of those proposals; and you did not consult with or assist in any way the four bidders who submitted proposals in response to the City's RFP. In fact, you stated that you were unaware that the City would privatize the [ airport ] operations until the bid submissions were made public [ ... ].

Your anticipated responsibilities with [ Alpha ]: According to [ Michael ], should you accept employment at [ Alpha ], your title will be Senior Facilities Manager in the facilities management group. Along with several other senior facilities managers at [ Alpha ], you will be responsible for the supervision of [ Alpha's ] sub-contractors for two facilities management contracts. The first, with [ a sister agency of the City ], involves inspection of janitorial services in approximately 650 public [ ... ] buildings throughout the city. The second contract, between the City and [Beta], requires [ Alpha ] (as a partner in the [Beta] joint venture) to provide tradesmen and custodial services to the new and rehabilitated [ Airport X ] terminal buildings. [ Michael ] stated that in relation to the second contract, your role will be to ensure that the airport facilities under [ Beta's ] management are maintained in strict accordance with the requirements of the contract with the City. In so doing, you will oversee the appropriate sub-contracts (with companies that provide tradesmen and custodians) rather than supervising the persons who actually perform the trade and custodial work. You will not oversee aspects of the contract between [Beta] and the City that are managed by [ Gamma ] or [ Delta ].

**LAW:**

Post-employment: Section 2-156-100(b) of the Ethics Ordinance, "Post-Employment Restrictions," states in relevant part:

**No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and**

**substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

To "assist" and "represent" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (*See* Case No. 89119.A.) The Ordinance defines "contract management authority" as:

**personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance. (§2-156-010(g))**

Section 2-156-100(b) of the Ordinance imposes both a one-year and a permanent prohibition on former City employees' post-employment activities. The one-year prohibition applies to business transactions involving the City, in the subject matter of which the former employee participated personally and substantially while employed by the City; this prohibition begins the day an employee leaves City employment, not on the date the employee stops performing a particular task. (*See* Case No. 94011.A.) The permanent prohibition applies to contracts over which a former employee exercised contract management authority. We will analyze in the next section whether the permanent and the one-year prohibitions would apply to your work for [ Alpha ].

#### **ANALYSIS:**

The one-year prohibition: Section 2-156-100(b) of the Ethics Ordinance prohibits you for one year after leaving City employment from assisting or representing [ Alpha ], or any other person, in a business transaction involving the City if you participated "personally and substantially in the subject matter of that transaction" during your City employment. The Board finds the subject matter of the business transaction between [Beta] and the City (of which [ Alpha ] is a party) to be the privatization of the management and maintenance of [ Airport X ] terminals. You represented that during your City tenure, you have not been involved in any aspect of the privatization of the management and maintenance of [ Airport X ] terminals, and that your work as [ a project manager ] has entailed only the direct supervision of custodians and laborers. On the basis of the facts presented, the Board concludes that you participated neither personally nor substantially in the subject matter of the business transaction between [Beta] and the City. We therefore determine that the Ordinance does not prohibit you from assisting or representing [ Alpha ], as a partner in the [Beta] joint venture, in fulfilling its contract with the City to privatize the management and maintenance of [ Airport X ] terminals.

The permanent prohibition: Section 2-156-100(b) of the Ethics Ordinance permanently prohibits you from assisting or representing any person in a contract involving the City if you exercised contract management authority with respect to that contract. You represented that you have had no involvement in the contract between [Beta] and the City to privatize the management and maintenance of [ Airport X ] terminals. Specifically, you stated that you did not assist in the preparation of specifications for the City's RFP, the preparation of any of the bidders' proposals, the evaluation of these proposals, the negotiation of contract terms, or the supervision of [Beta's] performance under the terms of the contract. [ Michael ] also stated that you were not involved in any aspect of the preparation of [Beta's] proposal. On the basis of the facts presented by you and [ Michael ], the Board finds that you did not exercise contract management authority over the City's contract with [Beta] to privatize the management and maintenance of [ Airport X ] terminals. We therefore determine that the Ordinance's permanent prohibition does not apply to your proposed post-employment with [ Alpha ].

**DETERMINATIONS:**

Based on an analysis under laws of the facts you have presented, the Board finds that the Ordinance's post-employment restrictions would not prohibit you from assisting or representing [ Alpha ] in its business transaction with the City involving the privatization of the management and maintenance of [ Airport X ] terminals.

We also remind you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former City employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determination does not necessarily dispose 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. Finally, should the nature or extent of your responsibilities as a City employee change before you leave City employment, you should contact the Board for further review of your case.

**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

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

[ Signature ]

Darryl L. DePriest  
Chair