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**ADVISORY OPINION
CASE NO. 01030.A
Post Employment**

To: [Mary]

Date: July 11, 2001

In a letter dated June 28, 2001, you requested an advisory opinion from the Board of Ethics regarding your post-City employment. As a City of Chicago employee, you worked as the [] in the [Department] from [date] to [date]. On [date], you resumed private practice as a partner at [a law firm], where you provide legal advice and counseling services to the firm's clients. In your request, you asked the Board specifically to address whether the post-employment restrictions of the City's Governmental Ethics Ordinance would prohibit you, either permanently or for a period of one year, from assisting or representing [Company Alpha] in connection with increasing air¹ and runway capacity at O'Hare International Airport.

After careful consideration of the information you submitted and the relevant law, the Board concludes that neither the permanent nor one-year prohibition contained in Section 2-156-100(b) of the Ordinance prohibits you from assisting or representing [Alpha] in business transactions involving the City that relate to increasing air traffic and/or runway capacity at O'Hare International Airport. We set forth below the specific issues you asked the Board to address, the relevant facts as you have presented them, our analysis of the matter under the Ordinance, and our determination.

ISSUES PRESENTED: In your request, you asked the Board to address the following issues:

1. Whether you are permanently prohibited from assisting or representing [Alpha] in connection with increasing air and runway capacity at O'Hare Airport.

¹In conversation with Board staff, you stated that the term "air capacity," as used in your letter, means air traffic capacity. Accordingly, the Board will consider the term "air capacity" synonymous with "air traffic capacity" in this advisory opinion, and will use the terms interchangeably.

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2. Whether you are prohibited for one year from assisting or representing [Alpha] in connection with increasing air and runway capacity at O'Hare Airport.

FACTS: In your letter, you provided us with information regarding your pre-City employment, your work as [a City employee] in the [Department], and your post-City employment as a partner at [a law firm]. The relevant facts with respect to these positions are set forth below.

Pre-City Employment

Prior to starting work for the City in [date], you practiced law as a partner at [a law firm] in Chicago. During your tenure at [the law firm], you worked on a variety of matters for [Alpha], including the representation of [Alpha] in the lawsuit commonly referred to as the [] litigation. You stated that at issue in that suit was whether the Illinois Department of Transportation ("IDOT") was required to grant the City a certificate of authorization for all "landside improvements" at O'Hare Airport, which you described as "... any improvements that are made to the physical plant of the facility. . . ." You further stated that the [] litigation "had no relationship to O'Hare expansion or additional runways."

[City Employment]

A. Human Services Work²

From [date] to [date], you were employed by the City as the [] in the [Department]. During your tenure as [], you said your work focused almost exclusively on human services issues, including anti-predatory lending, hate crimes, homelessness, the earned income tax credit, welfare, transportation as it related to people on welfare, the creation of a state park and various women's rights issues. You stated that you regularly researched and wrote memoranda on these issues for the [Department personnel], and you served as the [Department head's] liaison to various human services and child welfare agencies. You said you also worked with the Governor's Office to put together a joint City-State federal agenda to promote funding for various projects, including increasing the Medicaid reimbursement formula, the Wacker Drive improvements, local school construction, and the Argonne National Laboratory.

²You stated that the human services work that you did for the City, as described herein, did not involve any aspect of aviation or O'Hare Airport.

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B. Aviation-Related Work

During your tenure as [] in the [Department], you said you also were involved in some aviation-related matters. However, you stated that you were only “peripherally and minimally involved” in such matters. The aviation-related matters in which you acknowledged involvement are as follows:

1. Shortly after joining the [Department], you were asked by counsel representing the City in the [] litigation, described above, to inquire of the Governor’s Office whether IDOT would interpret its regulations to require the City to seek a certification of authorization to make “landside improvements.” You stated you made the inquiry as requested, but the Governor’s Office declined to state a position on the inquiry.
2. Around [date], you were invited by the [Department supervisor], [], to begin attending meetings related to aviation issues. You said that “[t]hese meetings focused on the status of issues concerning aviation.” Although these meetings were held roughly once a month, there was not a standing date and time for such meetings. The meetings were usually attended by the Chief of Staff, Director of Regional Issues [], Chief of Management [], the Commissioner of Aviation, members of the Commissioner’s staff, and occasionally the City Commissioner of the Environment and consultants. You stated that, during your tenure as [], you attended approximately 50 percent of these meetings, and usually did not stay through their entirety.³ Around [date], you stopped attending these meetings altogether.

You stated that, based upon your best recollection, the matters that were discussed at the meetings you did attend were:

- a. the status and number of homes near O’Hare Airport being soundproofed;
- b. the effect of O’Hare Airport on storm sewer systems in adjacent communities;
- c. the status of bathroom cleanliness at O’Hare Airport in response to complaints;

³In conversation with Board staff, you stated that the total number of meetings that you attended was between 8 and 10. In those meetings that you attended, you stayed for approximately 20% of each meeting. You said that, except for the topic of bathroom cleanliness at O’Hare Airport, you were mainly a listener at the aviation meetings and minimally participated in discussions of issues that were addressed at the meetings.

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- d. the release by the Mayor of Park Ridge of a report on the impact on the environment of automobile and bus traffic at O'Hare Airport;
- e. the "green airport" and emissions trading initiative, which involved a proposal to establish O'Hare Airport as the "greenest" airport in the world; and
- f. the "World Gateway" program, which you described as "the name of a plan for the remodeling and upgrading of the landside physical structures at O'Hare Airport."⁴ In conversation with Board staff, you stated that you attended approximately 3 aviation meetings during your City tenure where the "World Gateway" program was discussed. However, such discussions were essentially 20-second status reports given by others at the meetings. You stated that you neither were involved in any substantive discussions regarding the "World Gateway" program nor had any decision-making role in it.

Finally, you stated that, during your tenure as [], none of the aviation meetings that you attended involved discussions of matters relating to increasing airport capacity or runways at O'Hare Airport.

C. Issue of Additional Air Traffic and Runway Capacity at O'Hare Airport

You stated that it was not until late May 2001 that the City began to focus on the issue of additional air traffic and runway capacity at O'Hare Airport. At that time, a demand was made by Illinois Senator Richard Durbin that the City develop a plan by July 1, 2001 to address the issue. Around May 21, 2001, the Mayor announced the formation of a working group to help prepare the City's plan. You said that you had no input into the formation of the working group; you were not asked to join, or made part of, the working group; and you had no involvement whatsoever in developing the plan proposed by the working group. As of the date of your request for a Board opinion, you had not seen the working group's plan and were not familiar with its content other than through media references. Further, in conversation with Board staff, you stated that, following Senator Durbin's demand, you did not have any discussions with the [Department head] or anyone in the [Department] regarding additional air capacity and runways at O'Hare Airport. In addition, you did not attend any City meetings, and neither drafted nor reviewed any memos concerning the issue. Also, at no time during your tenure as [] were you involved in the formulation, drafting, execution or supervision of any agreements or contracts of any kind relating to O'Hare Airport.

⁴The City, in its promotion of the "World Gateway" program, described the "World Gateway" program as a program that calls for the development of two new passenger terminals, the reconfiguration of an existing terminal, and two new customs facilities to provide connections for domestic and international passengers. It also stated that "[t]he World Gateway Program . . . is not designed to change flight tracks or increase aircraft operations."

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Post-City Employment as Partner at [the Law Firm]

On [date], you resumed your employment as a partner at [the law firm], where you provide legal advice and counseling services to the firm's clients. [Alpha], as one of the firm's clients, has asked you to advise, consult, and lobby the State and/or City on its behalf on the issue of additional air traffic capacity and runways at O'Hare Airport. Your ability to represent [Alpha] in this capacity under the Ordinance is the issue on which you request a Board opinion.

APPLICABLE LAW AND ANALYSIS:

Section 2-156-100(b). The provision of the Governmental Ethics Ordinance that is most relevant to your request is Section 2-156-100(b), entitled "Post-Employment Restrictions," which provides:

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.

Under Section 2-156-100(b), a former City employee is subject to two employment restrictions after leaving City service: a permanent prohibition and a one-year prohibition. Both of these prohibitions are discussed in further detail below.

A. Permanent Prohibition

Under Section 2-156-100(b), you, as a former City employee, are permanently prohibited from assisting or representing any person, such as [Alpha], in any contract over which, as a City employee, you exercised "contract management authority." Section 2-156-010(g) of the Ordinance defines the term "contract management authority" as follows:

"Contract management authority" means 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.

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You stated that, during your tenure as [], you had no involvement in the formulation, drafting, execution or supervision of any agreements or contracts of any kind relating to O'Hare Airport. Based on that representation, it is the Board's opinion that you did not have "contract management authority" over contracts of any kind relating to O'Hare Airport, and, therefore, are not prohibited under the Ordinance's permanent prohibition from assisting or representing [Alpha] in business transactions involving the City that relate to increasing air and runway capacity at O'Hare Airport.

B. One-Year Prohibition

Under Section 2-156-100(b), you, as a former City employee, are prohibited for one year after leaving City service from assisting or representing any person, such as [Alpha], in a business transaction involving the City if, during your City employment, you participated personally and substantially in the subject matter of the transaction. The one-year period begins on the date your City employment terminated, not on the date you stopped performing particular tasks. (*See* Case No. 97025.A, p. 3.)

The Board, in past cases, has determined that "assisting" and "representing" a person in a business transaction involving the City encompasses helping a person to seek a contract as well as to perform a contract. (*See* Case Nos. 92035.A, p. 6; 89119.A, p. 8.) The term "representation" applies to a broad range of activities in which one person acts as a spokesperson for another person or seeks to communicate and promote interests of one party to another. (*See* Case No. 93038.A, p. 5.)

The issue that you presented to the Board is whether you are prohibited for one year from assisting or representing [Alpha] in connection with increasing air and runway capacity at O'Hare Airport. The one-year prohibition in Section 2-156-100(b) would apply if you, as [], participated personally and substantially in matters concerning increasing air and runway capacity at O'Hare Airport. As such, when determining whether the one-year prohibition applies to you in the situation you describe, the matters that you worked on relating to aviation or O'Hare Airport during your tenure as [] are the most relevant aspects of your City employment that must be considered.

In this case, while you did attend meetings on matters involving aviation, none of the discussions at these meetings addressed issues concerning air and runway capacity at O'Hare Airport, and your participation in those aviation matters that were discussed was only cursory. Further, the facts presented show that, although you were still a City employee when the City began to address the issue of increasing air and runway capacity at O'Hare Airport, you had no participation in the matter. You had no input into the formation of a working group created to address the specific issue regarding increasing air and runway capacity at O'Hare Airport; you were not asked to join or made part of the working group; and you had no involvement whatsoever in developing the work product

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of plan of the working group. As of the date of your request for a Board opinion, you had not seen the working group's plan and were not familiar with its content other than through media references. Further, you did not have any discussions with the [Department head] or anyone in the [Department] regarding additional air capacity and runways at O'Hare Airport, did not attend any City meetings, or draft or review any memos concerning these issues.

Based on the facts that you have presented, it is the Board's opinion that you did not participate personally and substantially in matters involving increasing air and runway capacity at O'Hare Airport during your City employment. Therefore, based on these facts, the Ordinance's one-year, post-employment restriction does not prohibit you from assisting or representing [Alpha] in business transactions involving the City that relate to increasing air traffic and/or runway capacity at O'Hare International Airport. Please note that, in the event that the scope of your representation of [Alpha] broadens to include matters that are not the subject of this opinion, you should contact the Board for advice with respect to that representation.

Section 2-156-070. Finally, we remind you of Section 2-156-070 of the Ordinance, entitled "Use or Disclosure of Confidential Information," which provides:

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.

Under this section, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of their City service.

DETERMINATION: Based on the facts that you have presented, the Board determines that neither the permanent nor one-year prohibition contained in Section 2-156-100(b) of the Ordinance prohibits you from assisting or representing [Alpha] in business transactions involving the City that relate to increasing air traffic and/or runway capacity at O'Hare International Airport.

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 Ordinance.

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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.

[signature]

Darryl L. DePriest
Chair

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