

MEH



October 31, 1991

CONFIDENTIAL

City of Chicago
Richard M. Daley, Mayor

[REDACTED]

Board of Ethics
Dorothy J. Eng
Executive Director

RE: Case No. 91098.A
Post-Employment
Advisory Opinion

Al Hofeld
Chairman
Angeles L. Eames
Vice Chair

Dear [REDACTED]

Margaret Carter
Darryl L. DePriest
Fr. Martin E. O'Donovan
Marlene O. Rankin
Catherine M. Ryan

On October 4, 1991, you telephoned our office to ask whether a part-time employee of the [REDACTED] Department who resigns from his City employment can be retained as a consultant by the Police Department. This employee is a *doctor* who performs [REDACTED] examinations of [REDACTED] for the department and testifies when the examination results become an issue in an administrative or judicial proceeding. He would perform these same tasks as a consultant. Based upon the facts presented, the Board determines that the post-employment provisions of the Ethics Ordinance do not prohibit this *doctor* from serving as a consultant for the department after leaving City employment. The Board appreciates your department's willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance, and sets forth its reasoning below.

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660

FACTS: You explained that a *doctor* who is a part-time employee of the [REDACTED] Department conducts [REDACTED] examinations of the department's [REDACTED]. He also testifies regarding his examination results if they become an issue in an administrative or judicial proceeding.

Your question is as follows: If this employee resigns from City employment, does the Governmental Ethics Ordinance preclude the Department from hiring him as a consultant to perform the same tasks?

LAW AND ANALYSIS: The relevant post-employment provision of the Governmental Ethics Ordinance, section 2-156-100(b), states:



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. (prior code § 26.2-10(b))

According to this section, a former City employee is subject to two provisions that may restrict his employment after leaving City service: a one-year prohibition and a permanent prohibition. A former City employee is prohibited for one year after leaving City service from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee, and (2) the person's participation in this subject matter or area was personal and substantial. The permanent post-employment prohibition does not apply in this case since the *doctor's* duties as a City employee do not involve contracts.

In his City job, the *doctor* in this case performs examinations of the [redacted] department's [redacted], and testifies regarding the results of his examinations in the event they become an issue in a case. These tasks involve the occupational skills of his profession, skills acquired through his occupational education and training. After leaving City employment, the *doctor* will continue to perform these same tasks on a consulting basis. The Board is of the opinion that his performing these same tasks, which are based upon his occupation skills, does not fall within the intended meaning of the one-year post-employment provisions, and therefore the Board determines that such would not violate those provisions of the Ordinance.

CONCLUSION: The Board determines that the one-year post-employment provisions of the Ethics Ordinance do not prohibit a former City employee who is a *doctor* from working as a consultant with the [redacted] Department performing the same tasks as he performed as a City employee, specifically, conducting [redacted] examinations of [redacted] and testifying as to the results of those examinations, as these tasks are part of his occupation as a *doctor*. The permanent

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post-employment provision does not apply in this case.¹ This opinion relates only to the position and duties described above, and is not applicable to other positions or duties that the *doctor* may consider. If his post-City duties or position should change prior to the one year anniversary of his termination with the City, he should contact the Board.

Again, the Board appreciates your department's willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance. We enclose the Board's procedural rules that apply after it renders a decision, as well as a copy of the Ordinance. If you have any further questions, please do not hesitate to contact us.

Sincerely,



Al Bofenkamp
Chairman

enclosures

cc: Kelly Welsh, Corporation Counsel


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¹ Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented in this opinion are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other rules or laws may apply to this situation.

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this 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 that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

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