

**ADVISORY OPINION**  
**CASE NO. 98052.A**  
**Post-employment**

To: [ ]

Date: November 18, 1998

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You were Assistant Commissioner [ ] in [Department 1] until you retired from City employment on June 20, 1998. In a letter of October 21, 1998, you asked the Board of Ethics for an advisory opinion on whether, under the Governmental Ethics Ordinance, you could accept employment with [Alpha Co.], a [computer systems] consulting firm in Chicago, and work on this firm's possible contract with the City's [Department 2].

The Board concludes that the Ordinance does not prohibit you from accepting employment with [Alpha]; however, the Ordinance does impose certain restrictions on the work you can do on this firm's possible contract with [Department 2].

This advisory opinion contains the facts you presented, as well as facts staff gathered from other City personnel. The opinion also presents our analysis and determinations.

**FACTS: Your City background.** You were employed by the City of Chicago for 31 years, first in [Department 3] (now [renamed Department 2]), and then in [Department 1], from which you retired on June 20, 1998. Your City work has consistently been in the area of [computer systems], whether as a programmer, analyst, or systems administrator. While you were with [Department 1], you held the positions of [ ] Administrator and then, until your retirement, Assistant Commissioner [ ].

[Alpha]'s contract with [Department 2]. You are now seeking employment with [Alpha Co.], a firm that specializes in consulting on [computer systems]. During the summer of 1998, [Alpha] answered an RFQ ("request for qualifications") issued by [Department 2] and is currently listed as a vendor qualified to advise the department on [computer systems]. You said that [Department 2] may soon hire [Alpha] to provide [computer systems] support in connection with a larger project that encompasses both [Department 2] and [Department 1], namely, the effort to replace the existing computerized [ ] billing and collection system.

The [ ] billing and collection system conversion project. The existing computerized [ ] billing and collection system, which you helped

develop and install, has been in place since 1986. The system stores billing and collection data in a mainframe computer housed in [Department 2]. [Department 2], you said, has been responsible for [Department 1]'s billing and collection since this computerized system was put in place; its responsibilities have included maintaining the database in the mainframe and sending out and collecting [ ] bills. Two years ago, [Department 2] and [Department 1] discovered that the current system will be affected by the "Year 2000" computer problem. Rather than adjusting the existing system to solve this problem, [Department 2] and [Department 1] decided to install a new billing and collection system that will take advantage of newer computer technology and will not be affected by the Year 2000 problem.

[Beta Co.], a company that specializes in computer systems for municipal [ ] services, was hired by [Department 1] as the primary contractor to design and install the new system. [Beta] and a team of subcontractors, which includes a software installation and training firm, a hardware manufacturer, a bill collection firm, and a data-entry service, among others, will install the new system. You said [Alpha] is not a subcontractor of [Beta], nor does it have any other relationship with [Beta] (e.g., as a subsidiary or affiliate). Once the new system is in place, [Beta] and its subcontractors will take over the functions that [Department 2] now performs for [Department 1], including maintaining the billing and collection database and sending out and collecting [ ] bills. The contract between [Beta] and [Department 1] is still being negotiated. However, according to an interim agreement, the new billing and collection system is scheduled to be in place by July 1, 1999.

Your work for [Alpha]. As noted, [Department 2] may soon call upon [Alpha] to provide [computer systems] support in connection with the [ ] billing and collection system conversion project. If you are hired by [Alpha] and work on their contract with [Department 2], you said you would advise [Department 2] and [Department 1] personnel, as well as [Beta], on converting the current billing and collection system to the proposed new system. For example, you said your responsibilities for [Alpha] would be to advise [Department 2] and [Department 1] about whether particular pieces of new software are necessary, in light of the functions the new system would need to perform. You also said you would advise [Beta] about the general specifications and functions of the existing system, in order to facilitate the conversion to the new system. You are uniquely qualified to provide this kind of advice, you said, because you are one of a small number of people who helped develop and install the existing system.

Your participation in the [ ] billing and collection system conversion project. While you were Assistant Commissioner [ ], you were on a committee that reviewed and edited the request for proposals ("RFP") for the [ ] billing and collection system conversion project. In this process you reviewed and edited the project specifications included in the RFP. For example, you reviewed the requirements the RFP stipulated for the new system, such as calculating bills [ ], calculating penalties on overdue bills, and allowing for discounts if overdue bills are paid within 21 days. After the RFP was issued, you evaluated the responses to it, including [Beta]'s proposal.

In its proposal, you said, [Beta] stated it would use [ ] software and either [ ] or [ ] hardware for the new system. The proposal also listed [Beta]'s subcontractors and described who would be responsible for various aspects of the project. For example, you said, under the proposal, [Gamma Co.] would install the software, [Beta] itself would back up the customer information database, [Delta Co.] would print the [ ] bills, and [Kappa Co.] would collect on past due accounts.

By means of a formal, unanimous vote in which you participated, the committee on which you served ultimately recommended to [Department 1] Commissioner [ ] that [Beta] be selected as the vendor for the project. The Commissioner accepted the committee's recommendation. After you retired, contract negotiations with [Beta] began and are still underway.

**LAW AND ANALYSIS:** 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.**

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))**

This section of the Ordinance imposes both a one-year and a permanent prohibition on former City employees' post-employment activities. The one-year prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. We analyze in turn each prohibition as it applies to the facts you presented.

The one-year prohibition. Under the Ordinance's one-year prohibition, you are prohibited for one year after you left City employment from assisting [Alpha], or any other person, in any business transaction involving the City if you participated personally and substantially in the subject matter of the transaction while you were employed by the City. Based on the facts of the case, particularly in light of the fact that you helped select the vendor for the conversion project, it is clear that during your City employment you participated personally and substantially in the City's effort to replace

the current [ ] billing and collection system. The facts also indicate that replacing this system would be the subject matter of [Alpha]' possible contract with [Department 2]. The Board therefore concludes that, under the Ordinance's one-year prohibition, you are prohibited for one year from the time you left City employment, or until June 20, 1999, from assisting or representing any person, in the conversion of the City's [ ] billing and collection system. This would include assisting or representing [Alpha] in its possible contract with [Department 2] to advise that department, as well as [Department 1] and [Beta], on replacing the existing system.

The Permanent Prohibition. Under the Ethics Ordinance, a former City employee is permanently prohibited from assisting or representing any person in any contract involving the City if he or she exercised contract management authority with respect to that contract.

As noted, the Ordinance's definition of contract management authority includes "preparation of specifications" and "evaluation of bids or proposals" (§ 2-156-010(g)). You helped prepare the specifications in the [ ] billing and collection system RFP; you evaluated the proposals, including [Beta]'s, submitted in response to that RFP; and you participated in the recommendation of [Beta] to the Commissioner. Thus, for purposes of the Ethics Ordinance, you exercised contract management authority with respect to the contract between [Beta] and [Department 1] that will ensue from that RFP and the proposal [Beta] submitted. Under the Ordinance, therefore, you are permanently prohibited from assisting or representing any person, including [Beta] or its subcontractors, in that contract.

The critical question for our analysis is whether the work you would do for [Alpha]— which, as you said, would include advising [Beta] on the current [ ] billing and collection system—would constitute assisting [Beta] in its contract with [Department 1]. In previous opinions, the Board found that "assisting" or "representing" a person in a business transaction involving the City encompasses helping a person perform a contract. (See Case Nos. 89119.A, 92035.A.) It is the Board's opinion that your advice to [Beta], even though you would be an employee of [Alpha] while providing it, would help [Beta] perform its contract with [Department 1], particularly given your expert knowledge of the existing system. The Board therefore concludes that, under the Ethics Ordinance, you are permanently prohibited from assisting or representing [Alpha] in its possible contract with [Department 2], to the extent that doing so includes advising [Beta] on installing the new [ ] billing and collection system.

Confidential Information. Please be advised that, as a former City employee, you also are subject to Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," which states:

**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.**

**DETERMINATION:** The Board determines that, under the Ethics Ordinance, you are prohibited for one year from the time you left City employment, or until June 20, 1999, from assisting or representing any person in the conversion of the City's [ ] billing and collection system. This would include assisting or representing [Alpha] in its possible contract with [Department 2]. The Board also determines that, under the Ordinance, you are permanently prohibited from assisting or representing any person in the contract between [Beta] and [Department 1] that will ensue from the RFP you helped prepare and the proposal [Beta] submitted in response to it. This would include assisting or representing [Alpha] in its possible contract with [Department 2], to the extent that doing so includes advising [Beta] on installing the new [ ] billing and collection system.

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.

**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.

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Darryl L. DePriest  
Chair