

ADVISORY OPINION
CASE NO. 01005.A
Representation

To: [John]
[Department 2]

Date: March 21, 2001

On February 15, 2001 you wrote to the Board and requested an opinion as to whether Section 2-156-090 of the Governmental Ethics Ordinance prohibits Chicago [Department 1] [Managers] [Bob] and [Bill] from representing themselves and/or fellow [employees] in a lawsuit filed against the City in Circuit Court. It is the Board's opinion, based on the facts presented, that while the Ordinance does not prohibit [Bob] and [Bill] from representing themselves and/or other [employees] in the litigation, it does prohibit them from having an economic interest in that representation. The Board's analysis follows.

FACTS

The following facts were included in your February 15 letter:

On [Date], a class action, [Smith] v. Chicago, [00 CH 0000], brought by two putative classes of plaintiffs, Chicago [Department 1] [managers] and [staffers], was filed in the Circuit Court of Cook County. Both classes allege that recent changes in [payments] constituted a breach of collective bargaining agreements between the City and two [groups], both of which are affiliates of the [Association 1]. Chicago [Department 1] [managers] are represented by [Group 1] and [staffers] are represented by [Group 2]. These [groups] are separate entities with separate memberships and separate sets of [group] officials.

The lawsuit was filed by [Chicago Department 1] [Manager Bob], an attorney, who is a member of the [Group 1] and holds the position of [Chairman] in that organization. In addition, [Chicago Department 1] [Manager Bob] is listed as "of counsel" in the complaint. [Manager Bill] also is an attorney and a member of the [Group 1], and holds the position of [V.P.] in that organization. It also appears that [Bob] and [Bill] are members of the putative class of [manager] plaintiffs.

Neither the [Group 1] nor the [Group 2] is reimbursing the City for the costs of the salaries of [group] officers at this time. Furthermore, the [Department 2] has no knowledge, at this point in the litigation, whether plaintiffs' attorneys receive, or will receive, additional compensation or benefits from the unions or from their clients for their work on this case.

LAW

Section 2-156-090 of the Governmental Ethics Ordinance provides, in relevant part:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction *before any City agency in which the agency's action or non-action is of a nonministerial nature*; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official. (Emphasis added.)

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding *before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City*. (Emphasis added.)

“Economic interest” is defined at 2-156-010(i) of the Ordinance as “...any interest valued or capable of valuation in monetary terms.”

ANALYSIS AND DETERMINATIONS

Under subsection (a) of Section 2-156-090, an employee is prohibited from either representing, or having an economic interest in the representation of, any person other than the City before any City agency in which the agency's action or non-action is of a nonministerial nature. Given that the forum for the instant litigation is the Circuit Court of Cook County, which is not a City agency, the dual prohibitions of subsection (a) are not implicated.

Under subsection (b) of Section 2-156-090, an employee is prohibited from having an economic interest in the representation of any person in any judicial proceeding before any court in which the City is a party and that person's interest is adverse to that of the City. Clearly, the instant litigation constitutes a judicial proceeding before a court to which the City is an adverse party. Therefore, although Section 2-156-090(b) does not prohibit [Bob] and [Bill] from representing themselves and/or other [employees] in the instant circuit court litigation, it does prohibit them from having an economic interest in that representation.

“Economic interest” is defined at 2-156-010(i) of the Ordinance as “...any interest valued or capable of valuation in monetary terms.” Therefore, if, in addition to their City salaries and benefits, [Bob] and [Bill] are receiving, or are entitled to receive, compensation or some other interest capable of valuation in monetary terms, for their representation of plaintiffs in the instant litigation, they would have an economic interest in the representation, within the meaning of Section 2-156-090(b). And, absent superceding authority, such an interest in the representation would constitute a violation of the City’s Governmental Ethics Ordinance. *See* Case No. 93007.A in which the Board determined that an employee who was not being paid to represent a person in litigation against the City before a non-City agency did not have an economic interest in the representation within the meaning of Section 2-156-090(b).

Our determinations are 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 Ethics Ordinance.

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