

Aldermen  
Representation

Xxxx, 2005

**CONFIDENTIAL**

Alderman John Smith  
xxxxxxxxxx  
Chicago IL 606xx

Re: Case No. 05032.Q

Dear Alderman Smith:

On xxxxx, 2005 you asked the Board to address whether and how you, an attorney and an alderman, would be limited by the provisions of the Governmental Ethics Ordinance. You currently are the attorney representing a client in a law suit against the Chicago Transit Authority ("CTA"). On xxxxx, 2005, you spoke to Board staff providing facts about the law suit, and the extent to which you, as an alderman, have official exposure to, or control over, the CTA. Staff has reviewed the facts and Board precedent. Staff's conclusion is that the Ordinance does not prohibit you from your legal representation of a client in a law suit against the CTA. However, as set forth below, you are cautioned that there are restrictions related to your continued legal representation of your client in the law suit against the CTA.

You are the attorney for the plaintiff, xxxxxxxx, who was injured while riding a CTA bus. Xxxx fell and fractured xxxxxxxx. Xxx had entered the bus and was still standing when the bus driver began moving the bus into traffic. The driver stopped the bus suddenly. Your client fell, causing the injury. The cause of the sudden stop is alleged to be a car that suddenly crossed in front of the bus. Your client has sued the CTA; the CTA driver; and the driver of the car that crossed in front of the bus. The case is pending in court. You stated that no extraneous facts that implicated the City were - or likely to be - a part of the law suit, e.g.: (i) potholes; (ii) change or problem with street lights or traffic lights; or (iii) configuration of traffic on the streets. Therefore, it is highly unlikely the City will become a third-party defendant in the law suit.

You explained that, as a result of a periodic resolution from the City Council's Transportation Committee, upon which you serve, Mr. Frank Kruesi, President of the CTA Board, or his nominee, makes a presentation to the Committee about the state of the CTA, solicits questions from, and directs questions to, that Committee. You characterized these appearances as a political initiative on the part of the CTA; moreover, you said that neither you, nor your committee, vote on any item discussed at these presentations; finally, you stated that neither you or the committee have any control over the CTA.

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You stated that the City makes - and has made for many years - a \$3,000,000.00 contribution to the CTA, though the CTA is funded by State sales tax. You did not know the genesis of the payment. You do know that, historically, the money is paid by the City to the CTA. In searching for what you characterized as a "nexus" between the City Council and the CTA, you stated that the City Council votes on bus stop ordinances, including ordinances related to the contract(s) with the vendor supplying bus stop kiosks, or any other item that would be placed in the public way, whether or not at a bus stop. The CTA recommends, using its own criteria, where bus stops should exist. In addition, you said that the members of the CTA Board are Mayoral appointees upon which the City Council votes.

Based on the facts you presented and clear precedent, staff concludes that the Ordinance does not prohibit you from your legal representation of a client in a law suit against the CTA. However, as set forth below, you are cautioned that there are restrictions related to your continued legal representation of your client in the law suit against the CTA. As an attorney, you must zealously pursue your client's best interests. But, at the same time, you are an alderman of the City, elected and duty-bound to use your best judgment in, among other things, approving agreements, budgets, Ordinances and policies that promote the City's best interests, including, generally, policies that minimize the City's exposure and liability and, therefore, you cannot give undivided loyalty to the City in the exercise of your official duties. *See* Case No. 03027.A p. 6 (decided upon §2-156-020).

Accordingly, you are cautioned about several scenarios that may arise. First, should your client enter into a settlement agreement with the CTA, you would, then, have an economic interest in the CTA, until the settlement agreement were fully discharged. Should you acquire an economic interest in the CTA by way of a settlement agreement, upon any CTA matter coming before the City Council or Council Committee, you should disclose your interest and advise this Board. §2-156-080(b)(1). Second, if the facts change respecting the City so that it becomes either a party to the law suit, or becomes obligated to, or its interests aligned with, any of the defending parties in the law suit, you should advise this Board immediately in order that Board staff may revisit its conclusions herein. §2-156-020; §2-156-090(b); and §2-156-080(b)(2). And, third, if, during the pendency of the law suit, a CTA matter that includes your client comes before City Council, or a Council Committee upon which you serve, you should recuse yourself from considering that matter. §2-156-030(b).

Staff's conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other City rules or policies may also apply. In addition, Illinois State law and the Illinois Rules of Professional Conduct (for attorneys) may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions.

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On behalf of the Board, we express our sincere appreciation of your willingness to abide by the standards embodied in the Ordinance. Please contact us with any questions.

Sincerely,

Richard J. Superfine  
Legal Counsel

Approved by:

Dorothy J. Eng  
Executive Director