

AK

March 17, 2005

CONFIDENTIAL

[John Doe]

[Address]

**Re: Case No. 05011.Q
Outside Employment**

Dear [Mr. Doe],

On March 9, 2005, you contacted the Board of Ethics. You stated that [your department head] had requested that you contact the Board to review your outside employment situation under the City's Governmental Ethics Ordinance. On March 10, 2005, Board staff met with you to discuss your situation. Our analysis and conclusions in this matter are set forth below at page four of this letter.

Statement of the Facts. During your March 10, 2005 meeting with Board staff, you stated the following with regard to your City and outside employment:

City Employment. You have been employed as a motor truck driver in City Department A] since 1998. (You were previously employed by the City from [DATE] to [DATE].) For approximately the last two and a half years, you have been assigned to [a particular division of Department A]. You currently are assigned to [the day shift] . Depending upon the season, you operate one of two City vehicles: [] You also are responsible for performing certain minor maintenance of the vehicle(s) you operate. In the winter, you work out of a City garage located at [] during the other seasons, you work in one of five different City wards. In your City job, you do not supervise anyone; you report to either of two motor truck driver foremen. You have no occasion to interact with City contractors or subcontractors in your City job. You have no involvement in the award, negotiation, execution or performance of any City contracts. Specifically, as to the City's Hired Truck Program, you currently have no involvement of any kind in any aspect of that program. (Your only involvement previously in any aspect of that program consisted of "off-loading" debris from your City truck to a truck owned and/or operated by a Hired Truck contractor or subcontractor. Since last year, Department drivers dump debris into "drop boxes" owned and operated by a City contractor, [] .)

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Outside Employment. You and your wife, [], are co-owners of [Trucking Company] ("Company"). You incorporated the business with the State of Illinois in [DATE]. Your wife served as president of [Company] for the first year after its incorporation. Since [DATE], you have served as president and your wife, as secretary. (Before [Company's] incorporation, your wife served as "president" of [Company] when it was a sole proprietorship). [Company's] City business license is currently expired; you are in the process of renewing it. You and your wife have four sons, the oldest of whom is eighteen. None of your children is employed by [Company]. Your home address serves as [Company's] business mailing address. [Company] transports [product]. [Company] currently owns or leases five "tractor" vehicles. The vehicles are housed at a garage located at [Address]. [Company] leases the garage from [Name], a private citizen. In addition to you, [Company] currently employs two other drivers, neither of whom is a City employee. The only restriction or limitation to which your Illinois driver's license is currently subject is a requirement that you wear corrective lenses while operating a motor vehicle.

[Company] currently has transport contracts with three privately-owned entities: [Entity One, Address], [Entity Two, Address] and [Entity Three, Address]. [Company] entered into these contracts in or around April 2004, August 2004 and March 2005, respectively. You have no involvement of any kind in your City job with any of these three entities. Furthermore, to the best of your knowledge, none of these three entities is a City contractor or subcontractor. Much of [Company's] work on behalf of these entities involves picking up [product] from, or delivering [product] to, railroad yards within the City of Chicago. [Company] also transports [product] to/from other areas within Illinois, as well as Wisconsin, Indiana and Iowa. To the best of your knowledge, none of the pick-up or delivery sites is owned or operated by the City of Chicago.

[Company] has never had, and is not currently seeking, contracts or subcontracts with any governmental unit, including the City of Chicago. However, [Company] has applied to the City of Chicago's Procurement Office for MBE/WBE/DBE certification. [Company's] application was denied by the City in [YEAR]. [Company] intends to submit a new application for certification in the very near future. If accorded such status, [Company] does not intend to seek contracts or subcontracts with the City of Chicago; however, [Company] does intend to seek contracts with other governmental units, including the State of Illinois and the Federal government.

On or about February 3, 2005, you requested that [your department head] reassign you from your current shift ([the day shift] to the [night shift]. You have requested this shift change, you explained, in order to be available during the day to run and develop [Company's] business (which you hope will one day provide a source of employment for your four sons). Your request to change shifts is currently pending with [your department head]. In connection with his review of that request, [your department head] requested that you contact the Board to review your outside employment situation under the Governmental Ethics Ordinance. You have authorized Board staff to forward a copy of staff's opinion letter in this matter to [your department head].

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Relevant City Laws and Rules. Neither the City's Governmental Ethics Ordinance (Chapter 2-156 of the Municipal Code) nor the City's Personnel Rules *per se* prohibits a City employee from engaging in outside employment or having outside business interests. However, **both** the Governmental Ethics Ordinance and the Personnel Rules impose restrictions on City employees who have employment or business interests outside of City government.

Personnel Rules. City Personnel Rule XX, Section 3, directly addresses the issue of outside employment. That Rule gives City department heads authority to "...either approve or disapprove" any employee's request to engage in outside employment. That same Rule also mandates that:

1. "[any outside employment] shall not interfere with the efficient performance of the employee's duties";
2. "[any outside employment] shall not involve a conflict of interest";
3. "[any outside employment] shall not occur during the employee's regular or assigned working hours";
4. "no employee granted permission to engage in outside employment shall work at said outside employment for a longer period of time than stated in his or her request for permission..."; and
5. "any employee accepting outside employment shall make arrangements with the outside employer to be relieved from his or her duties if and when called for emergency service by the City."

Governmental Ethics Ordinance Provisions. The following provisions of the Governmental Ethics Ordinance are most directly relevant to the issue of your outside employment/business interests:

Sections 2-156-020 (Fiduciary Duty) and 2-156-060 (City-Owned Property) obligate you, as a City employee, to always act in the best interest of the City in the performance of your City duties and prohibit you from using City property, including City time, City equipment or your City job title/position for non-City purposes.

Section 2-156-030 (Improper Influence) and Section 2-156-080 (Conflicts of Interest) prohibit you, as a City employee, from making, participating in making, or attempting to influence any City governmental decision with respect to your outside employment or business interests.

Section 2-156-110 (Interest in City Business) prohibits you, as a City employee, from having a "financial interest" in your own name or in the name of any other person in any contract or work of the City. "Financial interest" is defined in relevant part as: (1) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; or (2) any interest with a cost or present value of \$5,000 or more.

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Section 2-156-111 (Prohibited Conduct) prohibits you, as a City employee, or your spouse or any entity in which either of you has a financial interest from soliciting, applying for or receiving a loan from any person doing, or seeking to do, business with the City.

Section 2-156-050 (Money for Advice) prohibits you, as a City employee, from soliciting or accepting money, or any other thing of value, in return for advice or assistance on matters concerning the operation or business of the City, unless it is wholly unrelated to your City duties and responsibilities.

Section 2-156-070 (Use of Confidential Information) prohibits you, as a City employee, from using or revealing confidential information gained during, or by reason of, your City employment.

Section 2-156-090 (Representation of Other Persons) prohibits you, as a City employee, from representing your outside employer or business in any proceeding or transaction before any City agency. The term "represent" has been interpreted by the Board to include the following: making personal appearances before City agencies on behalf of others; making telephone contact with City employees or officials on behalf of others; signing or submitting proposals, contracts or other documents to City agencies; making contact with employees or officials on behalf of others; as well as acting as a spokesperson for another or seeking to communicate and promote the interests of one party to another.

Analysis and Conclusions. Based on the facts you presented, summarized above, Board staff concludes that neither your current ownership of, nor employment with, [Company] violates the City's Governmental Ethics Ordinance. However, staff's opinion is limited to the application of the City's Governmental Ethics Ordinance to the facts recited in this letter. Staff's opinion is not dispositive of all issues relevant to your situation. You have requested that [your department] reassign you from [the day shift to the night shift]. You have requested this shift change, you explained, in order to be available during the day to run and develop [Company's] business. Under Personnel Rule XX, the decision to grant or deny your request is at the sole discretion of [your department head]. In making that decision, [your department head] must apply the criteria established in Rule XX (set forth above on page three of this letter) and conclude, among other things, that your outside employment will not "interfere with the efficient performance of [your] City duties"; that your outside employment will not "involve a conflict of interest"; that your outside employment "will not occur during [your] regular or assigned working hours"; and that you have made arrangements to relieve yourself of your outside employment duties "if and when [you are] called for emergency service by the City." Furthermore, in making his decision on your request, [your department head] should consider the potential for any appearance of impropriety, e.g, an appearance that approval of your shift-change request would effectively render your City employment secondary to the development of your private business interests.

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Finally, please note that staff's opinion is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion. We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. The full text of the Ordinance may be found at www.cityofchicago.org/Ethics. If you have any further questions, please do not hesitate to contact us.

Very truly yours,

Michael Haggerty
Deputy Director

Approved by:

Dorothy J. Eng
Executive Director

cc: [Department Head]

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March 31, 2005 (12:22PM)