

January 9, 2002

*outside employment
w/ City vendor*

CONFIDENTIAL

[John], [Assistant 1]
[Department 1]
[Address 1]
[Address 2]

**Re: Case No. 01051.Q
Outside Employment**

Dear [John],

In a letter dated [Date], you requested written advice from the Board of Ethics on how the City's Governmental Ethics Ordinance applies to the situation of two of your [Office's] employees, the brothers [Michael and David], who have been offered temporary part-time positions, as [managers], with [Alpha Inc.], a departmental vendor that employs their brother [James].

After careful consideration of the facts that you presented, the purpose and language of the relevant provisions of the Ethics Ordinance, and prior Board opinions, it is Board staff's opinion that the Ordinance does not prohibit [Michael and David] from accepting the offer of part-time outside employment, although it does impose certain restrictions on their conduct, both in their positions with the City and in their employment with [Alpha]. This letter summarizes these restrictions, and we advise the [Department 1, Office 1], and [Michael and David] to be mindful of them.

Facts: [Michael and David] are brothers, both employed by the [Department 1, Office 1]. Your letter describes both men as [managers] in the [Office], holding the title of [Assistant 2]. In their City employment, you said, their day-to-day responsibilities are "limited to the supervision of [Office] day labor trades engaged in various maintenance and construction projects City-wide." As an example, you said that they had overseen the work on the construction of the [Structure A]. You said that this project lasted approximately 10 months, and involved approximately 60 laborers and employees.

You said that [James], the brother of [Michael and David], is the office manager for [Alpha's] Chicago office. You stated that [James] approached his brothers and asked whether they would be available to

perform certain [managerial work] for [Alpha] on weekends and evenings. An e-mail you forwarded to Board staff, from [James] to you, clarified that [Alpha] has two projects on which it would like to employ [Michael and David]. The first project involves reconstruction on the [Agency A's] [plan 1]. [Alpha] is working together with [Beta Corp.] on this project, which involves a [A] contract. The second project involves 20 [structure] rehabilitations along the [plan 2]. On this second project, [James] indicated that [Alpha] is under contract with the [Agency B]. [Michael's and David's] responsibilities on both of these projects would include assisting in the [management of the] design of columns, beams, connections, temporary shoring, foundations, rebar details, and similar elements. [James] stated that this work would not involve "interfacing with any City Departments." These responsibilities, you said, have a limited time frame: at a maximum, four months. You stated that neither the [Department 1], nor, as far as you know, any other City Department, is participating in any manner with either of these projects. [James] also stated that the City is not a party to either of these projects and that, as far as he is aware, the City is not contributing funding to either of these projects.

According to your letter, [Alpha] has contracts with the [Office 1]. You stated that neither [Michael nor David] has or exercises "[manager] consultant oversight" in the performance of their City jobs, and specifically no consultant oversight for any [Alpha's] contracts with the [Office]. Moreover, you confirmed that neither [Michael nor David] have participated in any other kind of work, at all, with respect to any of [Alpha's] City contracts in the course of their City employment.

Law: As in all outside employment cases, several sections of the Ethics Ordinance are relevant to your question. Section 2-156-030(a), "Improper Influence" states that:

(a) No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally.

Section 2-156-080(a), "Conflicts of Interest; Appearance of Impropriety" states that:

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public.

Section 2-156-010(i) defines "economic interest" as "any interest valued or capable of valuation in monetary terms."

These sections prohibit City employees from participating in or influencing governmental decisions or actions in which they have an "economic interest" (as defined) that is distinguishable from that of the public. Interpreting these sections, the Board has concluded that a City employee has an economic interest by virtue of outside, paid employment. (*See, e.g.*, Cases Nos. 98062.A, 94009.A, and 92044.A.) A City employee, such as [Michael or David], is, therefore, prohibited from making, participating in, or attempting to influence any government decision affecting that economic interest. In Case No. 98062.A, the Board stated that the type of governmental decisions that a City employee cannot participate in or seek to influence are those "that are related to or may enhance his or her outside employment."

To ensure that City employees do not make decisions that relate to their outside employment, the Board has looked with great care at any situation in which a City employee's outside employer seeks or has contracts or other dealings with that employee's Department. With respect to this situation, you have emphasized that neither [Michael nor David] is in a position to influence or participate in any City decision or City business that affects or relates to [Alpha]. You stated that the work that [Michael and David] do for the City is unrelated to the work performed under [Alpha] contracts with the [Office]. Therefore, we conclude, so long as neither [Michael nor David] make or participate in making any City or departmental decisions relating to [Alpha] or any of its City work, that Sections 2-156-030 and 2-156-080 do not prohibit [Michael nor David] from their outside employment with [Alpha], as described.

There are two other sections of the Ordinance that the Board staff has considered with respect to the situation of [Michael and David]. Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance" states that:

No official or employee, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as a part of his or her non-City employment, occupation or profession.

With respect to outside employment situations, this section prohibits City employees from accepting payment in return for advice or assistance on the operation or business of the City. Specifically, the Board has applied this provision to cases where, conceivably, City employees, in their outside employment, were benefitting by using knowledge that was not publicly available and was not "wholly unrelated" to their City duties and responsibilities. (*See, e.g.*, Case No.

91103.A in which the Board determined that Section 2-156-050 did not prohibit a City employee who worked as a building inspector for the City from accepting outside employment as a lecturer on the topic of particular kinds of inspections.) It is your understanding that [Alpha] intends to employ [Michael and David] on two projects for which they would be providing [management of the] design for columns, beams, connections, temporary shoring, and foundations of [structures]. Based on this description of their duties, it appears that [Michael and David] will be performing work for which they are qualified, based on their education and their status as [managers]. You confirmed that the expertise that enables them to do this work for [Alpha] is not uniquely or specifically related to the work they perform, or have performed, in their City employment, or to any City-specific [managing] standards or regulations. Therefore, we conclude that this outside employment, as described, does not constitute the receipt of money for assistance on matters concerning the operation or business of the City, in the sense prohibited by Section 2-156-050. However, we advise you that [Michael and David] are prohibited from soliciting or accepting anything of value from [Alpha] in return for advising or assisting [Alpha] in any aspect of [Alpha's] City work with your department.

In addition to the provisions on "Conflict of Interest" and "Money for Advice," [Michael and David] should be aware of the "Employment of Relatives provision, Section 2-156-130, particularly sub-section (b), which states that

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

Under this provision, [Michael and David] are prohibited from exercising contract management authority over any City work performed by [Alpha], which employs their brother [James]. You stated that neither [Michael nor David] exercise "consultant oversight" for any of [Alpha's] City contracts, nor do they participate in any other kind of work with respect to those contracts. So long as this remains the case, it is Board staff's opinion that [Michael's and David's] conduct is not in violation of Section 2-156-130(b).

Other Restrictions: In addition, several other provisions of the Governmental Ethics Ordinance may restrict certain aspects of [Michael's and David's] outside employment. Section 2-156-020, "Fiduciary Duty," states: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." Pursuant to this provision they owe their primary loyalty to the City. This provision obliges them to use their City position responsibly and in the best interests of the public, and to exercise their professional judgment and City responsibilities free from conflicting duties to outside entities or clients. (Case No. 99009.A) Section 2-156-060, "City-Owned Property," prohibits them from using any City property or

resources in their non-City position, and prohibits them from performing outside employment duties on City time. Finally, Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits them from disclosing any confidential information obtained through their City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

In conclusion, it is Board staff's opinion that while the Governmental Ethics Ordinance does not prohibit [Michael and David] from accepting a temporary, part-time outside employment position with [Alpha Inc.], it does place restrictions on their conduct, both within their City job and their outside employment. Specifically, they are prohibited from:

- making (or using their position to influence) any City governmental decision or action that affects [Alpha] or their employment with [Alpha] (§ 2-156-030; § 2-156-080); and
- accepting anything of value in return for advising or assisting [Alpha] on matters concerning the City's operation or business as part of their employment with [Alpha] (§ 2-156-050); and
- using their City position or City resources for the purposes of their outside employment with [Alpha] (§ 2-156-020); and
- using or permitting the unauthorized use of any City property, resources or time for their outside employment with [Alpha] (§ 2-156-060); and
- using confidential information to benefit [Alpha] or their outside employment with [Alpha] (§ 2-156-070).

Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but it 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.

We appreciate your department's sensitivity to the standards embodied in the Ethics Ordinance and eagerness to comply with them. If you have any further questions, please do not hesitate to contact us.

Very truly yours,

[Signature]

Case No. 01051.Q
December 12, 2001
Page 6

Dorothy J. Eng
Executive Director

cc: [Michael], [Department 1]
[David], [Department 1]

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