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CONFIDENTIAL

May 21, 2008

[REDACTED]
[REDACTED]
[REDACTED]
Chicago, IL 60606

Re: Case No. 08015.Q

Dear [REDACTED]

This letter confirms the guidance Board staff gave you regarding your continued service as a non-compensated member of the Board of Directors of The [REDACTED]. On May 5, you asked whether the City's Governmental Ethics Ordinance would prohibit or restrict you from continuing to serve as a non-compensated Board member of the [REDACTED] partner, [REDACTED] has a contract with the Department [REDACTED] to assist travelers and visitors at [REDACTED] airport. We advised you [REDACTED] that, while the Ordinance does not prohibit you from continuing to serve as a [REDACTED] board member, we cannot recommend that you continue serving, and suggested that you consider that, if no longer a [REDACTED] Board member, you would be able to provide the highest level of assistance to both [REDACTED] and its partner [REDACTED] through your position as the Commissioner of the Department [REDACTED]. A short recitation of the relevant facts and our analysis follow.

The Department [REDACTED] entered into a contract with [REDACTED] on [REDACTED] 2007; the contract's expiration date is [REDACTED] 2013; its stated price term is \$[REDACTED]. Under it, [REDACTED] is obligated to assist travelers and visitors to [REDACTED], under the direction of the [REDACTED] and/or his designee. This assistance includes staffing an office at the airport, providing 30 to 50 active volunteers to give direction and referral services to travelers, immigrants and refugees and an ombudsperson for distressed travelers, plus crisis intervention counseling, etc. See Exhibit 1 of the Contract, entitled "Scope of Services and Time Limits for Performance."

On [REDACTED] date, the Mayor appointed you to be [REDACTED] B. You also serve as an unpaid Board member of [REDACTED], and have for several years. [REDACTED] is a social service organization, but it also comprises an "umbrella" of related social service organizations, including [REDACTED]. It "partners" with these organizations, and, according to [REDACTED] its President (whom you gave us permission to consult), provides [REDACTED] with management services under contract. [REDACTED] and [REDACTED] he said, are separate non-profit corporations, with their own Executive Directors, but are both part of the [REDACTED] "family" of organizations. He said that there is little periodic review that [REDACTED] would have of its partner organizations' contracts or performance, but it does undertake some review for its Annual Report, public brochures and other materials. [REDACTED] Annual Report indicates that [REDACTED] Executive Director,

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[redacted], is a member of [redacted] Executive Leadership Team. [redacted] said, though, that the contract between the two organizations for management services is the only actual contractual relationship between them.

Given that [redacted] has a [redacted] year, \$ [redacted] contract with your department, and that you or your departmental staff will be interacting with [redacted] and its personnel on a regular basis and managing its performance, there would be, at a minimum, an appearance of impropriety if you continue to serve on the Board of Directors of the organization of which [redacted] is an official and integral part, and which contracts with [redacted] to provide with management services. In Board staff's view, although the Ordinance does not prohibit you, or any City employee, from serving on the Board of a non-profit such as [redacted], the restrictions to which you will be subject as [redacted] Commissioner were you continue serving are such that we cannot recommend that you continue as a Board member.

Most importantly, § 2-156-020 of the Ordinance, entitled "Fiduciary Duty," imposes a duty of loyalty on all City employees. It states:

Official and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This provision, of course, obligates you, as a City employee, to use your City position responsibly and in the best interest of the public. But, more pointedly to your situation, it requires you to give undivided loyalty to the City in the discharge of your official duties, free from any conflicting duties or obligations owed to any other entity. See Case Nos. 06037.Q; 06021.Q; 96032.A; 93041.Q.; 92012.Q. As a [redacted] Board member, you owe a fiduciary duty to the [redacted]. While this "dual duty" would not itself prohibit you from serving as [redacted] Board member while simultaneously exercising your responsibilities as the City's [redacted] Commissioner, we caution you about the "tightrope" on which you would need to "walk." In the event that [redacted]'s or [redacted]'s interests were to differ from the City's (for example, in the event of a contractual dispute between the department and [redacted] or a lawsuit arising from the conduct of an [redacted] volunteer or employee at the airport, in which the City could be or is named as a defendant), you would be required to give your undivided loyalty to the City, and resolve the difference in the best interest of the City. Were you still a [redacted] Board member, your decisions might well be criticized no matter what they are. Moreover, on daily basis, in your City position—one of high public visibility—you are officially accountable and responsible for managing all contracts of the Department [redacted], including this \$ [redacted] year contract with [redacted] a contract obligating it to interact directly with the traveling public at [redacted]. Any decisions or recommendations you would approve or make to your staff regarding [redacted] contract specifically, or more generally with respect to the manner in which travelers are treated by airport personnel and how they experience their stay at O'Hare, might well be scrutinized, likely with the presumption that you favor [redacted], or that your Board membership with [redacted] is influencing your decisions or airport policies. And, as we recognized in Case No. 06037.Q, even were you to recuse yourself from making or approving decisions affecting [redacted]—decisions you would normally be expected to make, approve, or be accountable for, in your City position [redacted] Commissioner—you would subject yourself to the criticism that you are, in effect, placing your loyalty to [redacted] and its partner [redacted] ahead of your City responsibilities, and thereby limit your effectiveness as [redacted] Commissioner.

Handwritten annotations: "OP" (multiple instances), "multi-", "B", "D", "OP's", "OP", "OP", "OP".

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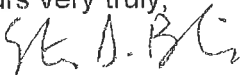
Two other provisions, §§ 2-156-060, "City-Owned Property," and -070, "Use or Disclosure of Confidential Information," also apply to any City employee who serves on the Board of any private organization. The former prohibits you from the unauthorized use of City property, including City time, equipment or supplies, to carry out your duties on behalf of [REDACTED] or its Board; the latter prohibits you from using or revealing confidential information you have acquired during the course of your City job.

For the reasons stated above, Board staff advises you that, while the Ordinance does not prohibit you from serving as a [REDACTED] Board member while you are also the Commissioner of [REDACTED], we cannot recommend that you continue in that Board service so long as you are the [REDACTED] Commissioner, or so long as this contract is in effect. We also advise you to consider that, in performing your duties as [REDACTED] Commissioner, you would be able to provide any and all appropriate assistance to [REDACTED], or its partner [REDACTED], without the restrictions imposed upon you by the Ordinance, were you not serving as a [REDACTED] Board member.

Staff's conclusions and advice are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If these facts are incorrect or incomplete, please notify us immediately, as any change may alter our conclusions. Please note that other laws or rules may apply to this situation, and that a City department may adopt and impose rules or policies stricter than those contained in the Governmental Ethics Ordinance.

We sincerely appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ordinance. If you have any further questions, please contact us.

Yours very truly,



Steven I. Berlin
Acting Executive Director