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E M U S

August 30, 1994

CONFIDENTIAL

Ms.
Department of
121 N. LaSalle St.
Chicago, IL 60602

Re: 94030.Q, Gifts

Dear Ms.

On 1994, you contacted our office and inquired whether the Ethics Ordinance prohibited City employees from accepting an offer from Ameritech for reduced cellular rates. This letter confirms our telephone conversation of

After reviewing this matter in light of past Board opinions, staff concluded that the Ameritech offer constitutes a sales promotion and is not a gift. As a result, the Ethics Ordinance does not prohibit City employees from accepting the Ameritech offer, as it has been described.

According to a letter signed by *Ms. X*, an Ameritech Corporate Account Manager, Ameritech is offering City employees cellular equipment at reduced prices, and reduced service rates, if the employee accepts the offer by August 31, 1994. The letter was received in the City's Department of and was not addressed to any person by name. Ameritech's offer is not limited to a particular stratum of employees. In a telephone conversation with staff, *Ms. X* indicated that Ameritech would like to reach the largest possible number of employees.

Ms. X stated that Ameritech offers the same reduced rates to all State of Illinois employees, to employees of other municipal governments, and to employees of numerous large corporations.

The relevant provision of the Ordinance in this situation is § 2-156-040(c), entitled "Offering, Receiving and Soliciting Gifts or Favors," which states:

(c) No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or



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employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50) provided, however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

The Ordinance defines gift in § 2-156-010(m) as:

any thing of value given without consideration or expectation of return.

The Board has held that the acceptance of an offer that is extended as part of a sales promotion is not a gift under the Ordinance. The primary question in this case is whether Ameritech's offer constitutes a sales promotion. In Case No. 93015.A, the Board established the two elements of a sales promotion: (1) the offer is extended to the public or a market of similarly situated persons, and (2) acceptance of the offer will provide an economic benefit to the offeror, indicating that the purpose of the offer is to create a sale and/or expand business. Case No. 93015, pp.3-4; see also Case Nos. 87118.A and 88039.A. Because acceptance of a promotional offer benefits the offeror, the sales promotion is an exchange transaction, not a gift. Further, under Board precedents, a discount is a kind of sales promotion if it is generally available, and the discount is not significantly greater than that offered to others in similar buying situations. Case Nos. 93015.A. p.4, and 88039.A.

In this case, according to the facts stated by Ms. X, Ameritech extends the same offer of reduced cellular rates to a market of similarly situated persons, specifically, to all State of Illinois employees, to employees of other municipal governments, and to employees of large corporations, markets similar to that of City employees or employees of a particular City department. Further, this offer is not focused on City employees who can affect decisions relating to Ameritech, reinforcing the conclusion that the offer is directed to a market, and is intended to promote business, rather than affect City decisions. See case No. 93015, p. 4.

Second, acceptance of this offer will provide an economic benefit to Ameritech. In this offer, acceptance provides an immediate economic benefit to Ameritech, in the form of the new customers. Acceptance is also an inducement to future business -- having become a customer, the customer is situated to

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continue to use Ameritech's cellular phone service in the future, and thus continue to pay fees for the service.

Therefore, because, according to the facts presented, this offer fulfills the criteria of a sales promotion, staff concludes that Ameritech's offer of reduced cellular equipment prices and service rates constitutes a sales promotion and not a gift, as defined by the Ordinance. As a result, the gift provisions of the Ordinance do not prohibit a City employee from accepting Ameritech's offer.

The Ordinance does prohibit City employees and officials from accepting anything of value, whether or not it is part of a sales promotion, if it is accepted or offered with mutual understanding that the recipient's official actions will be influenced. § 2-156-040(b). Where the facts indicate, however, that an offer is extended as part of a sales promotion, as is the case here, there is an inference that the offer does not involve an attempt to influence a City decision, and that its acceptance does not reflect a mutual understanding that the recipient's official action or decision on a matter of City business would be influenced. Case no. 93015.A, p.5. Where, as here, the offer is a sales promotion, we would have to find specific evidence indicating a mutual understanding in order to find that subsection(b) prevented City employees from accepting the offer. Case No. 93015.A, pp. 5-6. There is no such evidence in this case. Therefore, from the facts as presented, the staff concludes that subsection(b) does not prohibit a City employee from accepting this offer from Ameritech.

Staff's conclusions are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other rules or laws may be applicable to the situation. If any of the facts are incorrect or incomplete, please notify us, as a change in the facts may alter our conclusion.

We appreciate your bringing this matter to our attention, and your willingness to abide by the standards embodied in the

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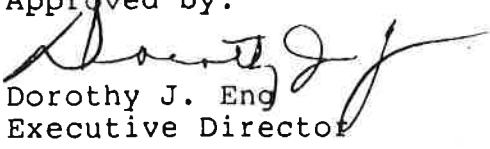
Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,



Ellen M.W. Sewell
Legal Counsel

Approved by:



Dorothy J. Eng
Executive Director

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