

EMU



November 12, 1992

C O N F I D E N T I A L

City of Chicago
Richard M. Daley, Mayor

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Board of Ethics
Dorothy J. Eng
Executive Director

Catherine M. Ryan
Chair

Re: City Employees' Service on SSA Commissions
Case No. 92041.Q

Angeles L. Eames
Vice Chair

Dear [REDACTED],

Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan
Marlene O. Rankin

On October 22, 1992 you called this office with the question whether the Governmental Ethics Ordinance would prohibit a City employee from serving as a member of a commission of a Special Service Area (SSA), and on October 23, you delivered to this office your written request along with some materials describing the SSAs. You are in the [REDACTED] division of the Department of [REDACTED], and explained that you are asking this as a general question, because your division works with SSAs.

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The staff is of the opinion that the Ordinance does not prohibit a City employee from serving as commissioner of an SSA. However, depending on the individual circumstances, service on an SSA commission could severely restrict one's ability to perform one's employment duties for the City, and in some circumstances, could even preclude one from performing those duties. Additionally, City employment would also limit the duties the commissioner could perform for an SSA.

The sections of the Ordinance that impose restrictions on an employee who serves as a member of an SSA Commission include: Section 2-156-080, "Conflicts of Interest," and § 2-156-030, "Improper Influence," which are directed to conflicts involving an economic interest; § 2-156-020, "Fiduciary Duty;" § 2-156-090(a), "Representation of Other Persons;" § 2-156-060, "City-owned Property;" and § 2-156-070, "Confidential Information." The staff's reasoning with respect to the relevant provisions is set forth below. It is based on the facts you discussed in our conversations and the materials you enclosed.



Special Service Areas, created by City ordinance under state "home rule" legislation, are areas, geographically defined, within which a tax for special purposes is levied on real property, typically commercial and industrial property. Under procedures prescribed by the "home rule" legislation, an SSA can be created and the tax for special services levied only with the support of those within the proposed geographical boundaries on whom the tax will fall.

The documents you provided indicate that the SSAs are generally organized to improve commercial development in an area for a limited period of time, and the taxes are authorized to be used for development purposes, such as recruiting business to the area, providing loans and technical assistance, and improving the area's appearance.

There are now 11 (eleven) active SSAs in the City. Most are organized for commercial development, but some Special Service Areas are organized for a more limited purpose, for example, one is organized to finance a parking facility, and one, to finance the Central Area Circulator. SSAs could be organized for other special purposes.

The governing body of an SSA is a commission, whose members serve without pay. The enabling ordinance that creates an SSA prescribes how its commissioners are selected and who is eligible to be selected. The Mayor, with approval of City Council, appoints SSA commissioners, except for those who serve by virtue of their official positions, whether with the City, a transit authority, or other entity. Typically, the Mayor selects members from lists of nominees submitted by the sponsoring organization or organizations of the SSA, such as a local development corporation or chamber of commerce, as designated by the enabling ordinance. Ordinarily those selected are owners or lessees of the property on which the special tax is levied; for several SSAs, the commissioners are required by ordinance to be property owners or lessees within the geographical boundaries. By ordinance, three of the SSA commissions, the State Street Mall, Central Area Circulator, and Belmont-Central Parking Facility, include as members the holders of certain named City positions, or designees, some serving as voting members, others ex officio; for example, the Commissioner of Planning and Development or a designee is a voting member of the Belmont-Central Parking Facility Commission. For City employees who sit on an SSA commission by virtue of their City positions, their SSA service is a duty of their City employment. They speak on behalf of the City in the SSA commission. That is not the case for employees who might

be nominated by a local development corporation, and selected as individuals to be on an SSA commission. It is the situation of these individually selected members that is the subject of your inquiry and this response.

From the information we have reviewed, it appears that although an SSA is a City entity, created by City ordinance, it is organized for its own special purposes, within a limited geographical area; the SSA commissions are independent boards, within the limits set by ordinance, and their members would be expected to serve the interests of the SSA's constituents, not the City as a whole.

The City is deeply involved in the activities of the SSAs. The Department of Planning and Development works with local organizations or property owners in the initial organization of an SSA; the Department of Law drafts the enabling ordinance, which specifies how the money raised is to be spent, and how the commission members are to be selected; the Department of Planning and Development reviews the budgets of the SSAs to ensure that they use their tax levies in the manner authorized; and the Comptroller's office distributes the tax levies, collected by the county. Other departments might be involved in more peripheral ways.

The sections of the Governmental Ethics Ordinance titled "Conflicts of Interest," § 2-156-080, and "Improper Influence," § 2-156-030, do not prohibit an employee from serving on the commission of an SSA. They do prohibit an employee from participating, in his or her City position, in decisions over matters in which the employee has an economic interest. These provisions of the Ordinance would therefore prohibit an employee who owns property within an SSA, by virtue of that economic interest, from participating in City decisions affecting the SSA.

Section 2-156-020, entitled "Fiduciary Duty," states: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." This provision establishes an obligation for City employees to use their positions responsibly and in the best interests of the public, and not to use their City positions, time or resources for private purposes -- whatever those private purposes may be. The fiduciary duty to the City obliges a City employee to exercise professional judgments free from conflicting duties or obligations to another entity.

The provision on fiduciary duty to the City does not prohibit employees from serving as commissioners of SSAs. However, the fiduciary obligation could severely limit the action of a person serving in both capacities, as an employee and a commissioner, if the employee were in a City position in which he or she could influence decisions affecting the SSA. In some instances employees might be able to recuse themselves, and withdraw from performing duties of their City jobs that could affect the SSA; in other instances, recusal would not be an option, and an employee would be forced to resign from one of the two positions. (See Case No. 91078.A, p.4, for a discussion of recusal.)

Another section of the Ordinance that would limit a City employee's ability to function as an SSA commissioner is Section 2-156-090(a). That section, "Representation of Other Persons," states in pertinent part that "No ... employee may represent ... any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment...."

The term "represent" as used in this section of the Ordinance, and interpreted by the Board, applies to any activity in which someone acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another. Under this definition, representing others before the City would include, but is not limited to, actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and signing or submitting proposals, contracts or other documents to City agencies, employees or officials on behalf of others.

Therefore, a City employee voluntarily serving as an SSA commissioner would be prohibited from undertaking any conduct that would constitute representing the SSA before any City agency, including signing any documents, or making any telephone contacts. An employee undertaking such conduct could be subjected to employment sanctions, and could potentially jeopardize the interests of the SSA. It is important to emphasize that this provision applies equally to all City employees, whether or not they have the ability to influence decisions about SSAs in their City jobs.

Finally, two other provisions of the Ordinance would be relevant to the conduct of an employee serving on the

commission of an SSA. Section 2-156-060 titled "City-owned Property," prohibits an employee from engaging in or permitting unauthorized use of City property or resources, whether to assist the SSA or for other purposes, and § 2-156-070, entitled "Confidential Information," prohibits an employee from using or revealing any confidential information gained by reason of City employment.

In conclusion, it is staff's opinion, based on the reasoning set forth, ~~that~~ the Ordinance does not prohibit an employee from serving on an SSA commission. However, depending on the circumstances, the Ordinance could not only seriously restrict the employee's ability to carry out his or her City duties, but also limit the employee's ability to act on behalf of an SSA commission.


This staff opinion is based on the application of the City's Governmental Ethics Ordinance to the facts provided. If these facts are incorrect, please notify us, because a change in the facts may alter our opinion. The staff reminds you that the Governmental Ethics Ordinance does not preclude the City, or a City department, from establishing more restrictive rules for the conduct of its employees than those of the Ordinance.

We appreciate your bringing this matter to us for guidance, and your desire to assure that the ethical standards embodied in the Ethics Ordinance are followed. If you have any further questions, please contact us.

Sincerely,


Ellen M. W. Sewell
Legal Counsel

Approved:


Dorothy J. Eng
Executive Director

cc. Kelly Welsh, Corporation Counsel