

MEH



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[REDACTED]
C O N F I D E N T I A L

[REDACTED]
[REDACTED]
[REDACTED] Department
[REDACTED]
[REDACTED]

FICB
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Re: Outside Employment
Case No. 90053.Q

Dear [REDACTED]

This letter is in response to your inquiry to the Board of Ethics regarding the propriety of [REDACTED] Department personnel accepting employment by [REDACTED] CORPORATION A [REDACTED] to perform training on a temporary basis. Based on the facts as they have been presented, this employment is not prohibited by the Governmental Ethics Ordinance (Chapter 2-156 of the Municipal Code of Chicago). The main issues in this situation which pertain to the Ethics Ordinance will be set out in this letter. Our decision in this matter is based on the facts as presented. If they are incorrect, please notify us immediately, as any change in the facts may alter our decision.

The relevant facts of this case, as they have been presented to the Board by yourself, [REDACTED] INDIVIDUAL X [REDACTED], and INDIVIDUAL Y [REDACTED], are the following. The City of Chicago and CORPORATION A are negotiating a three-year contract (with an optional two-year extension) for the sale of [REDACTED] to be used by [REDACTED] Department. Four systems will be installed [REDACTED] in the first phase of the installation process, and then nine more systems will be installed [REDACTED]. Initial installation of the equipment is scheduled for mid-October.

[REDACTED] department personnel in [REDACTED] will need to be trained in the use of this new equipment. For the sake of high-quality results in the training process CORPORATION A proposes to hire five [REDACTED] CITY EE'S ON NON-CITY TIME [REDACTED] CORPORATION A who are already skilled. [REDACTED] calculates a maximum of 312



hours will be necessary for the initial training of personnel for all 13 system sites. An additional 156 hours will provide follow-up training at those same sites to ensure the systems are being used properly. With these hours divided among five EMPLOYEES, CORPORATION A has determined that each individual trainer will work no more than 93.6 hours per year.

CORPORATION A expects to compensate these EMPLOYEES at a rate of \$25.50 per hour (time and a half wages). At a maximum time commitment of 93.6 hours each, compensation for each individual trainer is to be no more than \$2,386.80 per year.

APPLICATION OF THE ETHICS ORDINANCE: The main issue in this case centers on the fact that these EMPLOYEES will be deriving an interest from a City contract. Section 2-156-110 (prior code §26.2-11) "FINANCIAL INTEREST IN CITY BUSINESS" states:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

"Financial interest" is defined in the Ethics Ordinance as "(i) 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; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit."

Since CORPORATION A's contract with the City provides for continual installation of this equipment for three years (with an optional two-year extension), these EMPLOYEES could be employed in the same position again in subsequent years. Therefore, the "financial interest" cap relevant to this case is \$2,500 per year.

CORPORATION A has calculated the maximum benefit to each EMPLOYEE to be \$2,386.80 per year. Further, to insure that the \$2,500 annual cap will not be violated, the company has agreed to limit the number of hours per year that each EMPLOYEE can work. This limit will be included in the employment contract the company will hold with each EMPLOYEE. Therefore, under this section, these

EMPLOYEES] may accept the employment by CORPORATION A since it does not constitute a "financial interest" derived from City funds.

The present case also clearly complies with the provisions of the Ordinance governing the fiduciary duty of City employees and proper use of City property. These provisions are:

FIDUCIARY DUTY, and CITY-OWNED PROPERTY (\$2-156-020, \$2-156-060; prior codes \$26.2-2, \$26.2-6):

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

No official or employee shall engage in or permit the unauthorized use of City-owned property.

The first provision cited above precludes the use of City time and City resources to obtain a personal benefit or to promote a purely private interest; and the second prohibits the unauthorized use of City property in an employee's non-City employment or for any private benefit. Since the EMPLOYEES [REDACTED] in this case would be employed by CORPORATION A ON NON-CITY TIME [REDACTED] and since their use of the [REDACTED] EQUIPMENT [REDACTED] in CORPORATION A's training program clearly will be authorized by the City, neither of these sections of the Ordinance come into play.

OTHER APPLICABLE PROVISIONS OF THE ETHICS ORDINANCE: While the following provisions do not apply to the employment in the present case as it has been described to us, we want you to be informed of situations which have the potential to occur in cases of non-City employment and which the Ordinance clearly prohibits.

MONEY FOR ADVICE OR ASSISTANCE (\$2-156-050; prior code \$26.2-5):

No official or employee ... 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.

This section prohibits a City official or employee from accepting outside employment if the employment includes giving advice or assistance on the operation or business of the City. According to the facts of the present case, it appears there will be no occasion for the EMPLOYEES [REDACTED] to advise CORPORATION A [REDACTED] about [REDACTED] department or other City procedures.

USE OF CONFIDENTIAL INFORMATION (§2-156-070; prior code §26.2-7):

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment.

Under this section, officials and employees holding non-City positions must be careful to avoid using or revealing confidential information they may have acquired during the course of their City employment.

REPRESENTATION OF OTHER PERSONS (§2-156-090; prior code §26.2-9):

No ... employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency.

Applied to the present case, [redacted] department personnel may not act as a spokesperson for ^{CORPORATION} or try to communicate and promote any future interests of the company to the City. "Representing" others before the City includes such actions as making personal appearances before City agencies on behalf of others; making telephone contact with City employees and officials on behalf of others; and submitting written requests and proposals to City agencies, employees or officials on behalf of others.

IMPROPER INFLUENCE, and CONFLICTS OF INTEREST (§2-156-030, § 2-156-080; prior code §26.2-3, §26.2-8):

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.

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.

These sections prohibit employees from holding non-City jobs if they try to use their City positions to influence governmental decisions or actions in which they have an economic interest arising from that outside employment. This situation should not

arise in the present case since these EMPLOYEES will not be in a position to participate in or influence subsequent contracts for departmental equipment. Neither will they be in the position to make any decisions regarding maintenance of the equipment since these training positions are completely separate from the maintenance service the company will be providing. These EMPLOYEES are to perform "preventative maintenance" only on the equipment, and are not to participate in any maintenance as provided in Section 3.03.B.2(g) and Exhibit 11 of the proposed contract.

CONCLUSION: According to the facts as presented here, the temporary employment of CITY EMPLOYEES by Government to train department personnel in the use of these systems--as described in Section 3.03.B.2(d-f) of the proposed contract--is not prohibited by the Ethics Ordinance. Although this case will not be presented officially to the Board for an advisory opinion, the staff of the Board is satisfied that this employment, as proposed, does not present any unresolved issues regarding the Ordinance. Again, please notify us immediately if any of the facts presented here are incorrect, as any change in the facts may alter our decision.

Also, in order to avoid any unforeseen problems which may arise from this situation once the training program is underway, we advise you to inform the EMPLOYEES who will be hired of these particular rules:

1. In their employment by Government they may not earn more than \$2,500 per year (\$2-156-110; prior code \$26.2-11).
2. In this outside employment, they may not advise or in any way assist any Corporation personnel on any matter related to City business (\$2-156-050; prior code \$26.2-5).
3. They may not use or reveal confidential information gained in the course of, or by reason of, their position with the City (\$2-156-070; prior code \$26.2-7).
4. They may not represent, or have any economic interest in representing, any of their non-City business contacts before any City agency (\$2-156-090; prior code \$26.2-9).

Please note that this letter considers only the application of the Governmental Ethics Ordinance to the City of Chicago to the facts provided. If you have reason to believe that other laws may apply to the situation, please consult the Corporation Counsel. You also should be aware that nothing in the

[REDACTED]

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Governmental Ethics Ordinance prohibits a City department from adopting rules more stringent than the Ordinance.

As of September 26, INDIVIDUALS X and Y [REDACTED] were notified of the Board staff's response to this case. If you have any further questions, please contact Jennifer Jesse or Marilyn Hanzal at the office of the Board at 744-9660. Thank you very much for the careful attention you have given to this matter.

Sincerely,



Dorothy J. Eng
Deputy Director

cc:

[REDACTED]

Kelly Welsh
Corporation Counsel
City of Chicago

jgj:90053.L1