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EMD

March 31, 1993

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

[REDACTED]

*out emp
sister agencies
FICB*

Re: Case No. 93013.Q
Outside Employment

Dear [REDACTED],

On March 25 you called this office to state that we would shortly receive a request from your attorney for a written opinion about whether the Governmental Ethics Ordinance prohibits you from owning and running a construction and construction management company while you are employed by the City in the Department of [REDACTED]. You had spoken earlier with staff seeking advice on this issue. On March 26, we received the attorney's request. The staff is of the opinion, based on the facts you presented, that the City's Governmental Ethics Ordinance does not prohibit you from owning and managing a construction management company while you are employed by the City in the Department of [REDACTED]. However, there are provisions of the Ordinance that restrict your activities and those of your company. We set forth below the salient facts you or your attorney provided, and our analysis based on those facts.

You explained that since January 1 this year you have been working in the Department of [REDACTED]. Your position there is as [REDACTED]. Initially you worked for the Deputy Commissioner on special projects, such as the [REDACTED] and [REDACTED]; on the latter project you handled complaints about [REDACTED] and forwarded the complaints to the Deputy Commissioner. Then, you state, you were on a temporary assignment to work in the [REDACTED] Division. Currently you are working on [REDACTED], a pilot program intended to speed [REDACTED]; you are to ensure that the papers are in order so that the [REDACTED] can proceed rapidly. You state that your current day-to-day duties for the



Case No. 93013.Q
March 31, 1993
Page 2

City consist primarily of reviewing the completeness of paperwork, filing and typing. You report that you have no authority to make City decisions in your job.

You report that you began your construction management company, [REDACTED], in [REDACTED] 1992, while you were employed by another Department [REDACTED]. The company, you state, as yet has no contracts with any governmental entities, but it has been awarded two contracts with private persons. The contracts the company has been awarded are for new construction for the people with whom you are contracting, and are paid for by those people. These contracts, you report, do not involve the City.

You say that you would like to receive federal and state contracts; your attorney asks specifically whether, under the Ordinance, you would be permitted to obtain contracts with entities such as the Chicago Transit Authority (CTA) or the Chicago Housing Authority (CHA). You state that you do not intend to seek City contracts.

You report that in your duties for the City, you make no decisions related to or that would affect your construction business. You also report that you do not have access to information in your City job that would assist you in your construction business.

Although the Governmental Ethics Ordinance does not preclude a City employee from having outside employment or a private business per se, several sections of the Governmental Ethics Ordinance restrict the activities of employees in a job they hold, or business they own or manage, outside their City employment. We set forth the relevant provisions below.

Fiduciary Duty. Section 2-156-020 of the Ordinance, titled "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 section establishes an obligation for City officials and employees to use their City positions responsibly and in the best interest of the public. As a City employee, you must carry out your City duties in the best interests of the City, and must be able to exercise professional judgments free from

Case No. 93013.Q
March 31, 1993
Page 3

outside influence or conflicting duties to another entity, such as to your outside business.

The fiduciary duty provision of the Ordinance also prohibits you from using City time or City resources to obtain a personal benefit or to promote a purely private interest. Thus it precludes you from using City time to conduct the business of your company (see Case Nos. 92014.A, 90015.I and 89126.A) and from using your City position or information available to you because of your City position to obtain a private benefit (see Case No. 92014.A). It prohibits you from using your status as a City employee or employee of the Department of [REDACTED] to assist you in any way in obtaining business or otherwise in carrying out the business of your company (see Case No. 88087.A).

City-owned Property. A related provision, § 2-156-060, prohibits the unauthorized use of City property or resources.

Conflict of Interest and Improper Influence. Two sections of the Ordinance, §§ 2-156-030, entitled "Improper Influence," and 2-156-080, entitled "Conflicts of Interest," prohibit City employees from participating in, or in any way attempting to use their positions to influence, a governmental decision or action in which they have an "economic interest." An "economic interest" means any interest valued or capable of valuation in monetary terms, with certain exceptions, as set forth in the Ordinance, that are not relevant here. (§ 2-156-010(i).)

Under these sections, you would be prohibited from using your position with the City to attempt to influence a City decision involving your company or its business. You have stated that your company will not attempt to obtain City contracts while you are working for the City, and you are not in a position in your City job to influence decisions that would affect your company's business; under that set of facts, your ownership and operation of the construction company would not violate this provision.

Interest in City Business. Section 2-156-110 of the Governmental Ethics Ordinance, entitled "Interest in City Business," states in relevant part:

No ... 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

Case No. 93013.Q
March 31, 1993
Page 4

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.....

The term "financial interest" is defined in relevant part as (1) 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, or (2) any interest with a cost or present value of \$5,000 or more (§ 2-156-010(1)).

Under this section, the Board has held that an employee or a company owned by an employee may contract with the City, as long as the value of the contract does not exceed the limits set by this prohibition. (See Case No. 90077.A, in which an employee who was 50 % owner of a company asked whether the company could contract with the City.) The interest of the company is treated as the interest of its owners, prorated by the percentage of their ownership interests (Case No. 90077.A).

This section would permit your company to contract with the City, but only if the value of the City contracts were less than \$5,000 or if they entitled the company to receive less than \$2,500 yearly. Thus this section severely restricts your company's ability to contract with the City, or to enter a contract to be paid with funds administered by the City or authorized by Ordinance.

Authorities such as the CTA and CHA are not City agencies; thus, under the Ordinance your company would be free to contract with the CTA or CHA as long as the funds for the contract are not administered by the City or authorized by Ordinance, and other requirements of the Ordinance are met.

Representation of Other Persons. Section 2-156-090(a) of the Governmental Ethics Ordinance, under the title "Representation of Other Persons," states in relevant part:

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 in which the agency's action or non-action is of a non-ministerial nature;

Case No. 93013.Q
March 31, 1993
Page 5

The term "representation" here applies to a broad range of activities in which one person acts as a spokesperson for another party or seeks to communicate and promote the interests of one party to another. Under this definition, representing others before the City would include actions on behalf of another such as making personal appearances before City agencies; contacting City officials or employees, whether in person, in writing, or by phone; and submitting written requests and proposals to City agencies, employees or officials. (See Case No. 89087.A.) "Representation" includes signing any proposals, contracts, or other documents that are submitted to City agencies. (See Case Nos. 90077.A and 89087.A.) In other words, your signature on documents submitted to a City agency constitutes representation. This provision would prohibit you from representing your company before the City.

Solicitation or Receipt of Money for Advice or Assistance.
Section 2-156-050 of the Governmental Ethics Ordinance, entitled "Solicitation or Receipt of Money for Advice or Assistance," states:

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, or the spouse of 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 part of his or her non-City employment, occupation or profession.

This section prohibits a City employee from accepting money in return for advice or assistance on matters concerning the City's operation or business. However, this section specifically states that an employee, in the course of an outside occupation, may receive compensation for services wholly unrelated to the employee's City duties. (See Case No. 90020.A.)

Case No. 93013.Q
March 31, 1993
Page 6

Thus you are prohibited from offering advice or assistance on the operation or business of the City as part of your services in your construction management business, unless the services are wholly unrelated to your City duties.

Use or Disclosure of Confidential Information. Section 2-156-070, entitled "Use or Disclosure of Confidential Information," states:

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. For purposes of this section, confidential information means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

This provision prohibits you, while you are working for the City or at any time in the future, from using any confidential information to which you may have access in your City job.

If you are faced with a specific issue arising under these sections, please contact us, and we will inform you how these or other sections apply to that situation.

From the facts you have provided, the staff is of the opinion that the Governmental Ethics Ordinance does not prohibit you, as an employee of the Department of [REDACTED], from owning and managing your construction company. However, the staff advises you to limit your activities and those of your company to comply with the Ordinance in the ways discussed in this letter.

The staff opinion in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are inaccurate, please notify us, as any change in the facts may alter our opinion.

Please be advised that other laws or rules may apply to this situation. We note that a City department may adopt restrictions that are more stringent than the restrictions of the Ordinance.

Case No. 93013.Q
March 31, 1993
Page 7

I enclose for your convenience, as we discussed, a copy of the City's Governmental Ethics Ordinance and a copy of the staff summary of restrictions relating to outside employment that was prepared for the seminar recently held for departmental liaisons to the Board of Ethics. If you have any further questions, please contact us.

Sincerely,

Ellen M. W. Sewell
Ellen M. W. Sewell
Legal Counsel

Approved:

Dorothy J. Eng by EMWS
Dorothy J. Eng
Executive Director

enclosures

cc: Kelly Welsh, Corporation Counsel


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