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ADVISORY OPINION
CASE NO. 94017.A
CONFLICT OF INTEREST

To:

Date: August 23, 1994

On _____, you asked the Board to review whether it was a prohibited conflict of interest under the Ethics Ordinance for Mr. "S" (Subject), a "P" (position) for "B" (Bureau or Division) in the "D" (Department) to have recommended that his tenant, Mr. "T" (tenant), be awarded a non-competitive contract from the City.

The Board determines that it is not a conflict of interest because Mr. S has no economic interest in the decision or matter.

FACTS: On (date), Mr. S submitted a memorandum (the "memo") to the Committee. In it, Mr. S states the reasons for his belief that the City should award a non-competitive procurement contract to Mr. T a computer expert, so that Mr. T can incorporate into D's existing information systems the requirements of "P" (a project), a system developed by Illinois Department corresponding with D, "ID". Mr. T and his wife rent an apartment in a 2-flat building owned by Mr. S and his wife.

To the Board's knowledge, the City has not yet considered the bid.

According to the memo and Mr. S, ID now requires that D use P as a condition of receiving further state funding. Mr. T would be paid \$65 per hour, less than half the market rate for similar services. ID will pay the \$80,000 necessary to retain Mr. T. No City funds will be required. ID has conditioned its expenditure on Mr. T's being awarded the contract; it has already reviewed and approved Mr. T's qualifications. Any changes or delays would, the memo asserts, require ID's approval, and might result in the withdrawal of state funds.

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Mr. T has been a vouchered employee of D since Fall 1993, performing complex computer services for D. He has worked for several months with consultants assigned by ID for P and, Mr. S said, ID feels very strongly that he be retained for this project.

Mr. S told staff that, in Summer 1993, after learning of P's requirements, he attempted to find a consultant for the work by participating in a Request for Information process, coordinated with other D-related providers. However, the only respondents were unavailable or too expensive. He later identified Mr. T as a possible consultant through a professional acquaintance, a D-related consultant who reminded him of Mr. T's recent D-related experience. At that time, Mr. S stated, he knew Mr. T only casually, as they lived in the same building. After interviewing Mr. T, he recommended to his department that it extend a vouchered service contract to him for unrelated computer work. Mr. S stated that both he and Mr. T understood that successful completion of this first project might lead to others.

Mr. S said that before she approved this contract, D's Commissioner inquired about how he knew Mr. T and he told her that Mr. T lived in his building. He does not recall whether she understood their landlord-tenant relationship. In late Fall 1993, Mr. S extended the vouchered service contract to cover a new project, and recommended to ID that it approve Mr. T for P. ID orally agreed to fund D for the work, provided Mr. T performed it. Mr. T began preliminary work on P, but in Spring, 1994, Mr. S was told that D could no longer retain Mr. T through a vouchered employee contract. Mr. S then contacted ID, which sent him a letter confirming that the City intended to retain Mr. T, and that state funding was conditional on that retention. Mr. S then submitted the memo.

After receiving the memo, the Budget Department discovered that Messrs. S and T live at the same address. Mr. S verified that he and his wife rent the other unit of the 2-flat they own to Mr. and Mrs. T, for \$900 per month.

Mr. S's 1994 FIS form discloses that he rents the apartment to Mr. T. He said that he first disclosed the landlord-tenant relationship on this form, and believes Commissioner of D first became aware of this relationship

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around that time as well.

Mr. S stated that he has no business relationship or agreements with Mr. T other than the residential lease, and that neither the lease payments nor the T's' continued occupancy of the other apartment are contingent on whether Mr. S submitted the memo or Mr. T is awarded this contract. He also believes that Mr. T's rent is less than market. He knows that Mr. T has other clients in his consulting business; the City work represents just less than half his volume.

RELEVANT LAW: The relevant sections of the Ordinance, entitled "Improper Influence," and "Conflicts of Interest," state:

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. §2-156-030.

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. §2-156-080(a).

"Economic Interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest." §2-156-010(1).

These sections prohibit City employees and officials from participating in or trying to use their positions to influence a governmental decision or action in which they have an "economic interest" distinguishable from that of the general public.

ANALYSIS: The issue before the Board is whether Mr. S's conduct is prohibited by the Ordinance. To determine this, the Board must evaluate whether Mr. S has an economic interest in the matter that differs from that of the general public.

In past opinions analyzing these sections, the Board has construed "economic interest" generally in the context of dual employment situations. A City employee who is also employed by another entity has an economic interest in that entity, by

virtue of the employment. Thus, if that employee makes a governmental decision affecting that second employer, a conflict of interests arises. Case Nos. 92023.I; 91059.A.

In this case, Messrs. S and T have a lease agreement for the rental of space. Mr. S's interest in his fixed-rent tenant is not analogous under these sections of the Ordinance to an employee's interest in an outside employer. In dual employment relationships, the source of the conflict is that an employee can or can appear to be able to affect his or her current or future position with or compensation from the outside employer, by making decisions that affect that employer's City business. The City employee serves two masters; the Ordinance prohibits this. By contrast, Mr. S stands to gain nothing by the submission of the memo, or by the actual contract award. What he receives--namely, rent--remains the same regardless whether Mr. T receives the contract, and regardless whether Mr. S submits the memo. There is no evidence that Mr. T would move out or be unable to pay his rent were the memo not submitted or the contract not awarded. Moreover, he began work on the same project, at the same rate, some months ago. The proposed contract would merely continue that relationship.

Turning from this particular residential landlord-tenant relationship to Mr. S's interest in the particular matter or decision, the Ordinance prohibits a City employee's participation in any City decision or action in which that employee has an economic interest that differs from the general public's. In this case, Mr. S has an economic interest in his lease income, and in Mr. T as its source. However, without evidence of another independent understanding or agreement by which his continued stream of rental income would be affected by his decision to submit the memo, or by the actual awarding of the contract, he does not have an "economic interest," namely an interest "valued or capable of valuation in monetary terms," in the matter. The Board has no evidence of such an agreement in this case. Rather, Mr. S's only economic interest, namely his lease income, remains the same, is contractually fixed, and is owed regardless whether he submits the memo, or Mr. T receives the contract. Therefore, under the Ordinance, Mr. S does not have an economic interest in the matter.

CONCLUSION: Thus, the Board concludes that, in this particular instance, the Ordinance does not prohibit Mr. S from submitting the memo justifying the award of a non-competitive City contract in favor of his tenant, because, as that term is defined in the Ethics Ordinance, he has no "economic interest"

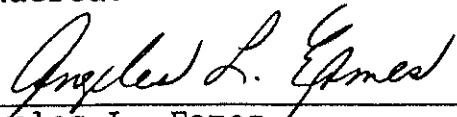
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in the decision or matter.

Our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in the opinion. If the facts presented are incomplete or incorrect, please advise the Board, as a change in the facts may alter our opinion. Other rules or laws also may apply to the situation. We note that a City Department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.



Angeles L. Eames
Vice Chair

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