



August 13, 1990

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

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Chicago, Illinois

ADVISORY OPINION
Re: Representation of Other Persons
Case No. 90035.A

Dear [REDACTED]

Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

On June 28, the Board received your request for an advisory opinion regarding the propriety of City officials representing City of Chicago employees in Worker's Compensation claims. You requested: "In light of the recent Illinois Supreme Court decision in the case of Alderman Edward R. Vrdolyak, could you kindly advise me of the propriety of the following persons undertaking to represent City of Chicago employees with Worker's Compensation Claims [sic]: (A) Member of City Council; (B) Member of advisory boards or commissions of the City of Chicago; and (C) Member of any decision making board or commission of the City of Chicago."

First, we wish to clarify that the Board of Ethics may render an opinion as to the applicability of the Ethics Ordinance, Chapter 26.2 of the Municipal Code of Chicago, to City employees, elected officials and appointed officials. The Board does not have the ability to rule on the application of the Disciplinary Rules as did the Illinois Supreme Court in In re Vrdolyak, Docket No. 68665 (1990).

Second, please note that while your request distinguishes between City boards and commissions on the basis of whether or not they are "advisory" or "decision-making," the Ethics Ordinance does not make a distinction between advisory and decision-making boards and commissions. In this regard, the Board considered the issue concerning who may represent City employees in Worker's Compensation cases in relation to (1) members of City Council, and (2) members of any City board or



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commission (most of whom are appointed¹), whether or not the board or commission has authority to make binding decisions.

APPLICATION OF THE ETHICS ORDINANCE:

I. Representation of Other Persons

Section 26.2-9 sets forth the standards with which aldermen and appointed officials must comply with regard to the representation of others.

Subsection (a) is inapplicable to the issue at hand because it limits "the representation of any person other than the City in any formal or informal proceeding or transaction before any City agency . . ." The Industrial Commission, the administrative agency that hears Worker's Compensation claims, is not a City agency, but a State agency.

Subsection (b) states:

No elected official or employee may have an economic interest in the representation of any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

As the Board has interpreted it, the term "representation" applies to any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another. Since the Industrial Commission is an administrative agency of the State which conducts hearings, evaluates evidence, and renders opinions, hearings before the Commission are quasi-judicial proceedings. Moreover, when one represents a City employee in an Industrial Commission hearing, the adversary is necessarily the employer, the City.

Section 26.2-9(b) was intended to permit elected officials and employees to represent persons in cases against the City as long as they had no economic interest in the representation, such as compensation in any manner by the client. However, the Illinois Supreme Court's decision in Vrdolyak prohibits an alderman who is a lawyer from representing a City employee in a Worker's Compensation case.

¹ There may be some members of boards or commissions who may be employees as defined by the Ethics Ordinance. To the extent this may be the case, a different analysis may be applied.

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The Board is required to follow the law as set forth by the Illinois Supreme Court, and the Ethics Ordinance may be applied only to the extent it does not conflict with that Court's decisions. Therefore, in light of Vrdolyak, City Council members who are lawyers, as lawyer-legislators, may not represent City employees in Worker's Compensation actions against the City.

Subsection (c) applies to appointed officials:

No appointed official may represent any person in the circumstances described in subsection ... (b) unless the matter is wholly unrelated to the official's City duties and responsibilities.

In the case of appointed officials - such as those appointed to City boards or commissions - this provision of the Ordinance permits representation of City employees in Worker's Compensation cases as long as matters involved in that representation are wholly unrelated to that official's City duties and responsibilities. Therefore, under the Ethics Ordinance, the determination that an appointed official may represent a City employee before the Industrial Commission must be made on a case-by-case basis focusing on whether or not the matter is in fact wholly unrelated to the official's City responsibilities.

II. Fiduciary Duty

Section 26.2-2 of the Ethics Ordinance imposes a fiduciary duty on all officials and employees. It 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 aldermen and members of boards and commissions to give, within lawful limits, undivided loyalty to the City of Chicago in the discharge of their public duties. In these public duties, they must be able to exercise professional judgments free from outside influence or conflicting duties to another entity. This duty is based upon the position of the person as an alderman or commission or board member, and is distinct from the fiduciary duty owed by attorneys to their clients.

Although under the Ethics Ordinance both aldermen and members of boards and commissions are "officials," the scope of their respective public responsibilities and therefore their duties to the City are different. City Council members legislate on all

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areas of City government. Therefore, they owe a very broad fiduciary duty to the City. In addition, because City Council members are elected officials, chosen by the public, they are accountable to the public's trust in a way much more expansive than are members of boards and commissions. When a City Council member, who is a lawyer, represents a client in a Worker's Compensation case against the City, he or she faces an irresolvable conflict between competing fiduciary duties. Consequently, Section 26.2-2 prohibits aldermen who are lawyers from representing City employees in Worker's Compensation actions.

In contrast to the responsibilities of aldermen, the public responsibilities of members of boards and commissions are limited to a narrow range of interests and purposes which are defined by the functions of their boards and commissions. The fiduciary duty owed to the City by these members is limited to their City responsibilities. Thus, Section 26.2-2 could permit appointed officials to represent City employees in Worker's Compensation matters as long their representation would not affect or impair the judgment they must exercise as City officials. Determinations in these situations would have to be made on a case-by-case basis.

III. Conclusion

City Council Members:

- (1) In light of the Supreme Court's holding in Vrdolyak and Section 26.2-9(b) of the Ethics Ordinance, City Council members who are lawyers are prohibited from representing clients in Worker's Compensation cases against the City.
- (2) Section 26.2-2 of the Ethics Ordinance prohibits aldermen-lawyers from representing clients in Worker's Compensation cases against the City. Such representation would involve them in an irresolvable conflict between competing fiduciary duties to the City and to their clients.

Members of City Boards and Commissions:

- (3) Under Section 26.2-9(c) of the Ethics Ordinance, members of boards and commissions who are lawyers are not prohibited from representing clients in Worker's Compensation cases against the City as long as the representation is wholly unrelated to their City duties and responsibilities. Determinations must be made on a case-by-case basis.
- (4) Section 26.2-2 of the Ethics Ordinance could permit members

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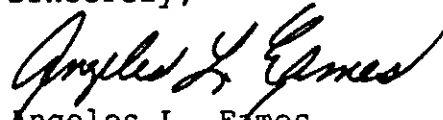
of boards and commissions who are lawyers to represent clients in Worker's Compensation cases as long as their representation would not affect or impair the judgment they must exercise as City officials. Determinations must be made on a case-by-case basis.

RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

RELIANCE: This advisory 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 which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

If you have any questions, please contact the staff of the Board of Ethics at 744-9660.

Sincerely,



Angeles L. Eames
Vice Chair

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