

MEH



December 20, 1990

City of Chicago
Richard M. Daley, Mayor

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

Board of Ethics

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

**Re: Case No. 90077.A
ADVISORY OPINION**

Dear

On November 16, 1990, you telephoned to ask whether your company, *Company X* may bid on City contracts. The Board has determined that *Co. X* may not bid on City contracts if the contracts amount to a financial interest in City business. Additionally, you are advised that the company may bid on City contracts within these limits, but you, or any other City employee, may not represent the company. The following is a more detailed explanation of the Board's opinion in this matter.

FACTS: Briefly, the facts of your situation as we know them are as follows. You and another *City employee* in the *Department* are the sole shareholders of *Co. X*. The company was incorporated on *with you* and *the other City employee* comprising the board of directors at the time of incorporation. The company provides *and* services. *Co. X* regularly employs other individuals including some City employees. You want to know if *Co. X* can contract with a City department. Thus far, *Co. X* has not sought any City contracts. Therefore, you do not know with which departments you would be working but you stated that *Co. X* would not be interacting with *Your City Department*. It is your belief that bids for City jobs are made on a per job basis, usually for a one year period, and that the services would be provided on an hourly rate.

LAW: There are two sections of the Ordinance that are relevant to this question. Section 2-156-090(a) (prior code § 26.2-9(a)) states:



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No elected official or 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; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

As the Board has interpreted it, the term "representation" here applies to any activity in which a 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 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 submitting written requests and proposals to City agencies, employees or officials on behalf of others.

In addition, § 2-156-110 (prior code § 2.26-11) 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 § 2-156-010(1) (prior code § 26.2-1(1)) of the Ethics Ordinance as 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 any interest with a cost or present value of \$5,000 or more.

Under this section, an employee may engage in non-City business as long as such business does not constitute a "financial interest," so defined, derived from City funds.

ANALYSIS: Beginning with this latter issue, the concern here involves interest in City business. In past cases (See Case Nos. 90073.Q, 88129.A), the Board has ruled that an individual who is a City employee or official may have a contract or second job with the City as long as that contract or job did not constitute a financial interest in City business -- that is, as long as the

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employee's or official's interest is less than \$2,500 per year or a present value of \$5,000 in a lump sum.

Companies owned by City employees are also subject to this limitation. In such cases, the interest is measured in terms of the amount of the contract, work, or business pro rated by the percentage of the City employee's ownership in the company. This best represents the value of the contract, work, or business to the employee.

In the situation which you raise, Co.X may contract with the City to the extent that any one City employee/shareholder does not have an interest in excess of that provided in the Ordinance. In this case, you and your co-owner each own 50% of the company. Therefore, Co.X may bid on City contracts for a maximum amount of \$5,000 per year or a contract with a present value of \$10,000, which amount multiplied by your 50% ownership interest would give you an interest of \$2,500 per year or an interest with a present value of \$5,000.

not current law. FMS 7/7/95
~~On the issue of financial interest in City business, the Board also points out that any City employees who are employed by Co.X also are prohibited from having a financial interest in City business through their employment with Co.X. In other words, they may not earn more than \$2,500 per year or a one time lump sum payment of \$5,000 by assisting Co.X in fulfilling its contracts with the City.~~

The other issue relevant to your situation is that of representation. In previous cases concerning representation of others, the Board has determined that the prohibition against representation of another includes signing any proposals, contracts, or other documents which are submitted to City agencies. (See Case Nos. 89087.A, 89018.A) In other words, the mere appearance of a City employee's signature on documents submitted to a City agency constitutes representation.

In this case, this means that if you or your co-owner sign the contract bids on behalf of Co.X, it would be seen as representing another person, Co.X, in a transaction before a City agency. As City employees, both you and your co-owner are prohibited from representing Co.X before a City agency by means of personal appearances, telephone calls, or written documents. Specifically, any contract bids or other documents presented to any City agency from Co.X may be signed only by persons who are not subject to the Governmental Ethics Ordinance.

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CONCLUSION: *Co.X* may not apply for City ^{see p. 3}
contracts if you or your partner's interests in the contracts, ~~or~~
~~the interest of any City employee or official working for Co.X~~, ^{EMAS}
exceeds the limit set by the prohibition against financial ^{9/4/85}
interest in City business as previously stated above. In
addition, be advised that no City employee or elected official
may represent *Co.X* before any City agency; nor may any
appointed official do so, unless the matter being represented is
wholly unrelated to their City responsibilities.

Thank you for your inquiry. We enclose a sheet which sets forth
the Board's procedural rules after it renders a decision. If you
have any questions, please feel free to contact us.

Sincerely,


Albert Hofeld
Chairman

Enclosure

tl:90077.L

NOTICE OF RECONSIDERATION AND RELIANCE

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 this 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.