

EMWS



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Advisory Opinion
Case No. 94003.A
Financial Interest in City Business

Date: April 6, 1994

You are a City [redacted] and 100% owner of a City-certified Minority and Woman Owned Business Enterprise ("MBE/WBE"). You said that your company will manufacture and distribute [redacted] and related paraphernalia for [redacted]. You stated that your company has not yet had any contracts.

On February 17, 1994, you called our office and requested guidance from the Board on whether and to what extent the Governmental Ethics Ordinance restricts the involvement of your company with City contracts. Specifically, you asked three questions:

- 1) Can your company submit bids for City contracts involving work for the [redacted]?
- 2) Can your company submit bids for City contracts in which the work does not involve the [redacted]?
- 3) Can your company be named as an MBE/WBE on another company's bid for a contract with the City?

You stated that you are not faced with any actual situation yet, but would like guidance from the Board about what you can and cannot do so that you can proceed with your business.

Our analysis of the facts of your case under the Ethics Ordinance follows.

LAW: Section 2-156-110 of the Governmental Ethics Ordinance prohibits a City employee from having a financial interest in City business. Section 2-156-110 states in relevant part:

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.

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.

Under this section, a City employee may not have an interest in any City contract, work, or business when that interest exceeds \$2,500 per year or has a present value of \$5,000 or more.

ANALYSIS: In Case Nos. 90077.A and 88034.A, the Board determined that when a City employee has an ownership interest in a company that has a City contract, that employee has an interest in City business. In these cases the Board advised that the company owned by a City employee could bid on City contracts only when the employee's interest was no more than \$2,500 per year or had a present value of less than \$5,000. The Board finds in your case, too, that your company may bid on City contracts only when the contract does not entitle you or your company to receive more than \$2,500 per year, or when the contract does not have a present value of \$5,000 or more.

Under section 2-156-110 of the Ordinance, whether or not a City contract is related to your own department (the [REDACTED]) does not affect the Ordinance's restrictions on your company's bidding for City contracts. Thus, the answer to your first two questions is the same: you may not bid on City contracts when the contract entitles you or your company to receive more than \$2,500 per year or when the contract has a present value of \$5,000 or more.

To answer your third question, the Board considered whether your MBE/WBE may be named as a joint venture partner on another company's City contract bid, since this is one way a company might be named on another company's bid for a City contract. Under the Governmental Ethics Ordinance, involvement in a City contract as a joint venture partner is subject to the same restrictions as is involvement as a sole contractor. The Board has therefore determined that your company may be named as a joint venture partner only when your company's share of that contract would not exceed \$2,500 per year or have a present value of \$5,000 or more.

Without the facts of a specific situation, the Board is unable to determine whether your company may be named in a capacity

other than as a joint venture partner on another company's bid for a City contract. Should a situation arise that is not resolved by the determinations in this advisory opinion, please feel free to contact the Board for further advice.

CONCLUSION: The board determines, in response to your questions, as follows:

(1) The Ethics Ordinance prohibits your company from holding a contract with the City if that contract entitles you or your company to receive more than \$2,500 per year or if the contract has a present value of \$5,000 or more. Section 2-156-110 of the Ordinance does not prohibit your company from holding a City contract if the contract does not entitle your company to receive more than \$2,500 per year or if the contract does not have a present value of \$5,000 or more.

(2) These restrictions apply to any contract with the City, whether the contract is with the [REDACTED] or with a different department.

(3) The Ethics Ordinance prohibits your company from being named a joint venturer on a City contract when the interest of your company exceeds \$2,500 per year or has a present value of \$5,000 or more. Section 2-156-110 of the Ordinance does not prohibit your company from being named as a joint venturer if your company's interest in the contract does not exceed \$2,500 per year or have a present value of \$5,000 or more.

The Board must be presented with the facts of a specific situation in order to determine whether the Ordinance would permit your company to be named by another contractor on a City contract in a capacity other than as a joint venturer.

Please note that you should observe the following additional provisions of the Ordinance concerning outside employment. Sections 2-156-030, "Improper Influence," and 2-156-080, "Conflicts of Interest," prohibit you from participating in, or trying to use your position with the City to influence, any governmental decision or action affecting your company.

Additionally, section 2-156-020, "Fiduciary Duty," obliges you to use your City position responsibly and in the best interest of the City. This provision requires you to exercise professional judgments free from outside influences or conflicting duties to another entity. It also prohibits you from using City time for your non-City job or for any private benefit.

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Finally, section 2-156-060, pertaining to "City-owned Property," prohibits you from using any City property or resources in your non-City employment or for any private benefit. Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing confidential information you may have acquired during the course of your City job.

We would like to point out that the provisions of the Ordinance relevant to your case do not prohibit you from having contracts with independent municipal corporations, such as the Chicago Park District, the Chicago Transit Authority, the Chicago Housing Authority, the Chicago Board of Education, or City Colleges of Chicago, since these are separate entities from the City. These provisions of the Ordinance also do not prohibit you from having contracts with county, state or federal agencies.

Our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. Please note that a City department may adopt restrictions that are more strict 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.

Catherine M. Ryan by Martin E. Donovan
Catherine M. Ryan
Chair