

CONFIDENTIAL

**ADVISORY OPINION
CASE NO. 02041.A
INTEREST IN CITY BUSINESS**

To: [John]
Date: February 19, 2003

On November 20, 2002, you contacted the Board of Ethics by letter. In that letter, you stated that you had been nominated by the Mayor to serve as a member of the City's [Commission X (X)]. You noted that, for the past several years, your law firm, [John, Jack & George], has been retained by the [Department A] [Committee Z] to give legal advice to the Committee on [] contract negotiations that require Committee approval. You also noted, in a subsequent telephone conversation with Board staff, that, on occasion, your law firm has been retained as "outside counsel" by the Office of the Corporation Counsel to represent the City in lawsuits against the City alleging excessive use of force by Chicago police officers. Finally, you noted that for approximately the past five years you have served as a member of the Local Panel of the [Illinois Commission Y (ICY)].

You have asked the Board to advise you whether, under the City's Governmental Ethics Ordinance, you may serve on the [X] if you, and/or your firm, are performing legal work for the [Department A] [Committee Z] and the Office of the Corporation Counsel. You have also asked whether you may serve on the [X] while concurrently serving as a member of the [ICY].

After carefully considering the facts presented and the relevant law, the Board has concluded that the Governmental Ethics Ordinance does not prohibit you from serving on the [X] while performing legal work for the Office of the Corporation Counsel or the [Department A] [Committee Z]. Nor does the Ordinance prohibit you from serving on the [X] while also serving on the [ICY]. The Ordinance does, however, impose certain restrictions (as more fully described herein) on your activities, as a partner in the law firm of [John, Jack & George], as a member of the [X] and as a member of the [ICY]. We set forth below the relevant facts, our detailed analysis of those facts under the Ordinance, and our determinations.

Please note, however, that the Board's determinations are not necessarily dispositive of all issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. Other laws or rules, including State law, may also apply to your situation.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 2

FACTS:

[John, Jack & George]

You are an attorney and managing partner of the law firm of [John, Jack & George]. For the past several years, your firm has been retained by the [Department A] [Committee Z] to give legal advice to the Committee regarding [] contract negotiations that require Committee approval. You stated that you and firm colleagues have advised the Committee regarding contract terms, e.g., rights to a license, fees to be paid, obligations related to performance and liability issues. You stated that your legal advice to the Committee has never related to the issue of zoning. Finally, you stated that, on occasion, your firm has also been retained as “outside counsel” by the Office of the Corporation Counsel to represent the City, in State and Federal courts, in lawsuits against the City alleging excessive use of force by Chicago police officers.

The [Commission X]

Since December 4, 2002, you have served as a member of the City’s [Commission X] ([X]). The Board consists of five members, appointed by the Mayor with the consent of the City Council, who serve for staggered, fixed terms. From the members, a chairman of the board is designated by the Mayor, also with the consent of the City Council. Members may be removed by the Mayor for cause, only following a public hearing. Members are compensated for their service on the board. Their salaries are determined and fixed by the City Council in the annual appropriation ordinance. Currently, the position of [X] chairman is budgeted at a salary of \$18,000 annually; compensation for members is budgeted at a salary of \$12,000 annually. The chair and members are also eligible to participate in the City’s health plan, as well as the City’s pension plan.

The [Commission X] is created under City ordinance and State law (Chapter 2-[], Article 1 of the Municipal Code and 65 ILCS [], respectively).¹ The [X] has authority to decide appeals from any order, requirement, decision or determination made under the [X Ordinance] by the [Administrator], as well as to grant or deny applications for [work]. All decisions and findings of the [X] are final administrative decisions, and are subject only to judicial review under the Administrative Review Law.

The Illinois [Commission Y]

You also serve as a member of the Local Panel of the Illinois [Commission Y]. The Local Panel consists of three members: one appointed by the Mayor of Chicago, one appointed by the Cook County Board President, and a Chair appointed by the Governor. (You were appointed to the Local Panel by the Cook County Board President.) Members serve for four years.

¹The administration of the City of Chicago’s [Ordinance X] is vested in three City offices: the [Department B], the [Department C] and the [Commission X].

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 3

The [ICY] is created under the Illinois Public[] Act (5 ILCS []). The [ICY] has authority to decide [matters] involving Illinois public employers, their employees and [organizations]. Such matters include representation cases, unfair [practices] and impasse resolutions. All decisions and findings of the [ICY] are final administrative decisions, subject to judicial review in the Illinois Appellate Courts.

APPLICABLE LAW AND ANALYSIS: The provisions of the Governmental Ethics Ordinance that are most relevant to your situation are Sections 2-156-110 (Interest in City Business), 2-156-090 (Representation of Other Persons), 2-156-030 (Improper Influence), 2-156-080 (Conflicts of Interest; Appearance of Impropriety), 2-156-050 (Solicitation or Receipt of Money for Advice or Assistance), 2-156-020 (Fiduciary Duty) and 2-156-070 (Use or Disclosure of Confidential Information).

DISCUSSION:

Threshold Issue: “Appointed Official” v. “Employee”. You have asked the Board whether, under the City’s Governmental Ethics Ordinance, you may serve on the [X] while performing legal work for the Office of the Corporation Counsel and the [Department A] [Committee Z]. You have also asked whether you may serve on the [X] while concurrently serving as a member of the Illinois [Commission Y]. The questions you have posed depend for their answers on whether, for purposes of the Ordinance, you are to be considered an “appointed official” or an “employee” of the City. As noted above, [X] members are compensated for their service to the Board. The Board has not previously opined on the issue of whether an appointed member of a City board or commission, who is compensated for his/her City service, is an “appointed official” or an “employee” of the City, within the meaning of the Ordinance. Therefore, the Board must first address this threshold issue.

Language of the Ordinance. The Ordinance does not contain a definition of the term “appointed official.” Under § 2-156-010 of the Ordinance, the terms “employee” and “official” are defined as follows:

(j) “Employee” means an individual employed by the City of Chicago, whether part-time or full-time, but excludes elected officials and City contractors.

(q) “Official” means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

These definitions, however, are not instructive, as they allow for the possibility that an appointed member of a City board or commission could hold either “employee” or “official” status.

Consultation with Corporation Counsel. In January 2003, the Board consulted with the Office of the Corporation Counsel regarding this issue. After advising the Board that the terms “employee,” and “appointed official,” as used in the Municipal Code of Chicago, are not expressly defined,

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 4

Corporation Counsel recommended that the Board consider the common law distinction between an employee and an independent contractor. "Whether a person is an employee or an independent contractor," wrote Corporation Counsel "is a fact-intensive inquiry that is best treated on a case-by-case basis. While salary and benefits are indicia of employment status, we do not believe those facts should be treated as determinative in all cases."²

Common Law: "Independent Contractor" v. "Employee". Under Illinois common law, a variety of factors in the relationship of the parties are to be considered in determining whether one is an independent contractor or an employee. Although no single factor is determinative, the most important factor is the right to control the manner in which the work is done. Wenholdt v. Industrial Commission, 95 Ill.2d 76, 81, 69 Ill.Dec. 187, 447 N.E.2d 404, 407 (1983). Other factors include the method of payment, the work schedule, the right to discharge, the skill required in the work to be done, whether the worker's occupation is related to that of the employer, who provides the tools, materials or equipment, and who deducts or pays for insurance, social security and taxes. Ragler Motor Sales v. Industrial Commission, 93 Ill.2d 66, 71, 66 Ill.Dec. 342, 442 N.E.2d 903, 905 (1982).

Common Law: "Public Office" v. "Public Employment". Illinois common law also recognizes a substantive difference between "public office" and "public employment." The marks of a public office, as contrasted with public employment, are that the position is created by law, its compensation is fixed by public authority and paid out of the treasury, it entails the exercise of some portion of the sovereign power of the state, and its duties are continuous, without regard to the particular person who holds the office. Wargo v. Industrial Commission, 58 Ill.2d 234 (1974). Characteristics of a "public office," as opposed to a position of employment, include creation by statute or Constitution, exercise of some portion of the sovereign power, a continuing position not vocational or contractual, fixed tenure, an oath, liability for misfeasance or nonfeasance and an independence beyond employees, though not all these factors must be present in order to determine that a position is an office. Midwest Tele., Inc. v. Champaign-Urbana Com., Inc., 37 Ill.App.3d 926 (4th Dist., 1976).

The Board concurs with Corporation Counsel's submission that, while compensation and eligibility for benefits are indicia of employment status, the determination of whether one is an "employee" of the City is a fact-intensive inquiry, best treated on a case-by-case basis. In this case, the [X] is

²In addition to commenting on the Municipal Code and common law, Corporation Counsel made the following observation as to State law: "...[T]he Illinois Local Government Tort Immunity Act treats all officers, agents, servants, employees and members of boards, commissions and committees as employees. 745 ILCS 5/1-201. The purpose of the Act, however, is to create a range of immunities greater than that available at common law. Thus, it may not provide a useful definition in the context you address, where the Ordinance draws a distinction between the terms 'employee' and 'official'."

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 5

created under both the Municipal Code of Chicago and under State law. Its members are appointed by the Mayor with the approval of the City Council, and may be removed by the Mayor only for cause, following a public hearing. They serve for fixed terms, and have duties of a continuing nature. Their salaries are determined and fixed by the City Council in the annual appropriation ordinance. The Board has authority to decide appeals of administrative zoning decisions, as well as to grant or deny variations and special uses, and its decisions are subject only to judicial review under the Administrative Review Law.

Based on these factors—the authority that creates the [X], the process by which members are appointed to serve, the fixed nature of their term of service, the independent powers and duties of the Board’s members, the process by which their decisions may be reviewed, and the process by which members may be removed—the Board determines that, as a member of the [Commission X], you are an “appointed official” of the City, not an “employee,” for purposes of the Governmental Ethics Ordinance.

A. Section 2-156-110 (Interest in City Business)

You have asked the Board to advise you whether, under the City’s Governmental Ethics Ordinance, you may serve on the [X] while you, and/or your law firm, advise the [Department A] [Committee Z] on [] contract matters, and serve as “outside counsel” to Corporation Counsel in suits against the City alleging excessive force by Chicago police officers. There is nothing in the Governmental Ethics Ordinance that *per se* prohibits an appointed official from contracting, directly or indirectly, with the City to provide legal advice and/or representation to the City. The Ordinance does, however, impose certain restrictions on the interest which an appointed official may have in a City contract. Specifically, Section 2-156-110 provides:

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,...whenever the expense, price or consideration of the contract, work, [or] business...is paid with funds belonging to or administered by the City, or is authorized by ordinance... No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

“Financial interest” is defined, in relevant part, at Section 2-156-010(l) as:

any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more....

For purposes of discussion, it is assumed that your interest in [John, Jack & George]’s contracts with the [Department A] [Committee Z], and with the Office of the Corporation Counsel, constitute, in each instance, a “financial interest,” within the meaning of Section 2-156-010(l). Under the “Interest in City Business” provision, an appointed official may have a “financial

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 6

interest” in a City contract, provided the matter is “wholly unrelated” to the official's City duties and responsibilities. The issue the Board must address, therefore, is whether the matters on which your law firm advises the City are “wholly unrelated” to your City duties and responsibilities as a member of the [X].

As a member of the [X], you are responsible for deciding appeals from any order, requirement, decision or determination made under the [X] Ordinance by the [X] Administrator, as well as granting or denying applications for [X work]. On the facts presented, it appears that there is no interrelationship, of any kind, between your duties and responsibilities on the [X] and the legal advice that your law firm provides to the [Department A] [Committee Z] with regard to [] contract negotiations. Because the matter is “wholly unrelated” to your duties and responsibilities on the [X], the Board determines you are not prohibited from having a “financial interest” in your firm’s contract with the Committee to perform that legal work. On the facts presented, it also appears that there is no interrelationship, of any kind, between your duties and responsibilities on the [X] and your firm’s service as “outside counsel” to Corporation Counsel in suits against the City alleging excessive force by Chicago police officers. Again, because the matter is “wholly unrelated” to your duties and responsibilities on the [X], the Board determines you are not prohibited from having a “financial interest” in your firm’s contract with the Office of the Corporation Counsel to perform that legal work.

B. Section 2-156-090 (Representation of Other Persons)

At your request, the Board has addressed the issue of how your service on the [X] impacts on your law firm’s continued representation of the [Department A] [Committee Z] (on [] contract matters) and of the City (as “outside counsel” in suits alleging excessive force.) You have not asked the Board to address the issue of how your service on the [X] impacts on your ability, or your firm’s ability, to represent persons other than the City. However, given that the Ordinance does impose certain limitations on such representations by appointed officials, the Board deems it appropriate to also address those limitations in this opinion. Specifically, Section 2-156-090 of the Ordinance provides:

(a) 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 nonministerial nature . . .

(b) 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.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 7

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

The Board has interpreted the term “representation” to apply to a broad range of activities in which a person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another, including making personal appearances before City agencies on behalf of others. (*See* Case No. 91047.A.)

1. Representation Before City Agencies

a. *Representation Before the [X]*

You serve as an appointed official of the [X]. Clearly, matters that come before the board on which you serve are not “wholly unrelated” to your duties and responsibilities as a member of that board. Therefore, under Section 2-156-090(c), you are prohibited from personally representing any person other than the City before the [X].

Note, however, that although you are prohibited from personally undertaking representations before the [X], you are not prohibited from having an economic interest in such representations. Thus, other [John, Jack & George] attorneys are not prohibited, by virtue of your service on the [X], from undertaking representations before it.³ (*See* Case No. 91041.A, wherein the Board determined that although an appointed official, who was also an attorney and a partner in a law firm, could not represent a client before the same City commission on which he served, another attorney in the firm was not prohibited from undertaking the representation. *See* also Case No. 89091.A, wherein the Board determined that the Representation provisions of the Ordinance “[do] not prohibit an appointed official from having an economic interest in representation via other members of his law firm, even if those representations are not ‘wholly unrelated’ to [the appointed official’s] City duties and responsibilities.”)

b. *Representation Before Other City Agencies*

Under Section 2-156-090(c), you are also prohibited from personally representing any person other than the City before any other City department or agency, unless the matter is “wholly unrelated” to your City duties and responsibilities as a member of the [X]. Whether a particular matter before another City agency or department is

³However, (as discussed below in Part C of this opinion) to avoid even the appearance of impropriety, i.e., the appearance that your firm derives an improper advantage by virtue of your position on the [X], the Board advises you to recuse yourself from any [X] matter in which your firm has undertaken representation of a client.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 8

“wholly unrelated” to an appointed official’s City duties and responsibilities is a fact-intensive determination. By way of illustration, in Case No. 89091.A, an attorney, who served as Chair of the City’s Plan Commission, asked what restrictions the Governmental Ethics Ordinance placed on his law firm’s representation of a client (who was seeking an amendment to a special use permit) before the City’s Zoning Board of Appeals. The Board determined that although other members of the firm could represent the client before the Zoning Board of Appeals, the appointed official himself was prohibited, under Section 2-156-090(c), from doing so, because the matter was not “wholly unrelated” to his duties and responsibilities as Chairman of the Plan Commission. The Board concluded that the matter was not “wholly unrelated,” on the basis of 2 criteria: 1) both the representation and the appointed official’s service involved the same subject matter, namely, zoning; and 2) there was a “general interrelationship on the subject matter” between the Plan Commission and the Zoning Board of Appeals, i.e., zoning matters that went before one agency frequently became the business of the other. Therefore, should you, in the future, wish to undertake personally the representation of a person other than the City before any other City agency or department, we recommend that you contact the Board for guidance as to whether the matter is “wholly unrelated” to your duties and responsibilities on the [X].

2. Representation In Judicial Or Quasi-Judicial Proceedings In Which The City Is A Party

Under Section 2-156-090(c), you, as an appointed official, are also prohibited from personally representing any person other than the City, 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, unless the matter is “wholly unrelated” to your City duties and responsibilities as a member of the [X]. Again, should you, in the future, wish to undertake personally the representation of a person whose interest is adverse to that of the City, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party, we recommend that you contact the Board for guidance as to whether the matter is “wholly unrelated” to your duties and responsibilities on the [X].

C. **Section 2-156-030 (Improper Influence) and Section 2-156-080 (Conflicts of Interest)**

Section 2-156-030 provides, in relevant part, as follows:

(a) 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. . . .

Similarly, Section 2-156-080 provides, in relevant part, as follows:

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 9

(a) No official or employee shall make or participate in the making of any government decision with respect to any matter in which he has any economic interest distinguishable from that of the general public. . . .

The term “economic interest” is defined in Section 2-156-010(i) as “**any interest valued or capable of valuation in monetary terms . . .**”

As a City appointed official, then, you are prohibited from making, or attempting to use your City position to influence, the making of any City decision if:

1. you have an *economic interest*, distinguishable from its effect on the public generally, *in the decision*; or
2. you have an *economic interest*, distinguishable from that of the general public, *in the matter* with respect to which the decision is made.

As a partner in [John, Jack & George], you have an economic interest, distinguishable from that of the general public, in representations undertaken by your firm, for which the firm receives, or expects to receive, compensation. *See* Case No. 89091.A. Although your firm’s representation of a client on a matter before a City agency would not *per se* give you an “economic interest in the City decision” on that matter, or an “economic interest in the matter” before that City agency, within the meaning of Sections 2-156-030 and 2-156-080, you would, nevertheless, have an “economic interest in the representation” of that client. Therefore, to avoid even the appearance of impropriety, i.e., the appearance that your firm derives an improper advantage by virtue of your position on the [X], the Board advises you to recuse yourself from any [X] matter in which your firm has undertaken representation of a client.⁴

D. Section 2-156-050 (Receipt of Money for Advice or Assistance)

In Part B (above) of this opinion, the Board determined that although you, personally, are prohibited from undertaking certain representations by virtue of your service on the [X], other [John, Jack & George] attorneys are not. Here, in Part D, the Board considers a related question: although you may not personally undertake such representations, may you advise or provide assistance on these matters to persons other than the City, for example, your [John, Jack & George] colleagues? Section 2-156-050 of the Ordinance provides, in relevant part:

⁴Note, however, that if your firm’s fee agreement with a party to a matter before a City agency were contingent on the City’s decision or action on that matter, you might have an “economic interest in the City decision” on that matter, or an “economic interest in the matter” before that City agency, within the meaning of the Ordinance, that would obligate you, as a matter of law, to recuse yourself.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 10

No official or employee . . . 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 . . . 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.

In Case No. 91041.A (referred to also in Part B.1.a., above), the Board addressed the issue of whether an appointed official's law firm could represent a client before the same City commission on which the appointed official served. The Board determined that, although the law firm could represent a client before that commission, the appointed official was prohibited, under Section 2-156-050, from giving advice or assistance to the firm's client, or to any attorneys in his law firm, regarding the operation or business of that commission.

Under Section 2-156-050, then, you, as an appointed official of the [X], are prohibited from receiving anything of value, including money, favors, services or promise of future employment, from any person other than the City, in return for giving advice or assistance on matters concerning the operation or business of the City, unless the advice or assistance is "wholly unrelated" to your City duties and responsibilities as a member of the [X]. This prohibition includes, but is not limited to, advising or assisting [John, Jack & George] colleagues or clients regarding the operation or business of the [X].⁵

E. Section 2-156-020 (Fiduciary Duty)

In addition to the issue of how your service on the [X] impacts on your law firm's continued representation of the [Department A] [Committee Z] (on [] contract negotiations) and of the City (as "outside counsel" in suits alleging excessive force), you have asked the Board whether, under the Governmental Ethics Ordinance, you may serve on the [X] while while concurrently serving on the Local Panel of the Illinois [Commission Y] ([ICY]).

There is nothing in the Ordinance that *per se* prohibits your concurrent service on the [X] and the [ICY]. However, under Section 2-156-020 of the Ordinance, you, as an appointed official of the City, owe a fiduciary duty to the City at all times in the performance of your public duties. This section obligates you to use your City position responsibly and in the best interest of the City. It also requires you to exercise professional judgments free from outside influences or conflicting duties to other entities. Given that the jurisdiction and responsibilities of the [X] and the [ICY] are significantly different, the possibility that your duties will conflict seems remote. Nevertheless,

⁵As noted above (in Part B. 1 b. of this opinion), whether a particular matter is "wholly unrelated" to an appointed official's City duties and responsibilities is a fact-intensive determination. Consultation with the Board regarding any specific matter is recommended.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 11

should a conflict arise between your duties to the [X] and your duties to the Local Panel, we advise you to recuse yourself from any involvement in that matter.

F. Section 2-156-070 (Use or Disclosure of Confidential Information)

Finally, we remind you of Section 2-156-070 which provides:

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 pursuant to the Illinois Freedom of Information Act, as amended.

Under this section, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of their City service.

DETERMINATIONS: Based on the facts presented, the Board determines as follows:

1. as a member of the [Commission X], you are an “appointed official” of the City, for purposes of the Governmental Ethics Ordinance;
2. under Section 2-156-110, you are not prohibited from having a “financial interest” in a contract between [John, Jack & George] and the [Department A] [Committee Z] to provide legal advice to the Committee on [] contract negotiations that require Committee approval, because the matter is “wholly unrelated” to your duties and responsibilities as a member of the [X];
3. under Section 2-156-110, you are not prohibited from having a “financial interest” in a contract between [John, Jack & George] and the Office of the Corporation Counsel to serve as “outside counsel” on behalf of the City in suits against the City alleging excessive force by Chicago police officers, because the matter is “wholly unrelated” to your duties and responsibilities as a member of the [X];
4. under Section 2-156-090(c), you are prohibited from personally representing any person, other than the City, before the [X];
5. under Section 2-156-090(c), you are prohibited from personally representing any person other than the City before any other City department or agency, unless the matter is “wholly unrelated” to your City duties and responsibilities as a member of the [X];
6. under Section 2-156-090(c), you are prohibited from personally representing any person, other than the City, in any judicial or quasi-judicial proceeding before any administrative

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 12

agency or court in which the City is a party and that person's interest is adverse to that of the City, unless the matter is "wholly unrelated" to your City duties and responsibilities as a member of the [X];

7. under Sections 2-156-030 and 2-156-080, you are prohibited from making, participating in, or trying to use your City position to influence any City governmental decision or action in which you have an economic interest distinguishable from that of the general public; to avoid even the appearance of impropriety, i.e., the appearance that your firm derives an improper advantage by virtue of your position on the [X], the Board advises you to recuse yourself from any [X] matter in which your firm has undertaken representation of a client;

8. under Section 2-156-050, you are prohibited from receiving anything of value, including money, favors, services or promise of future employment, from any person other than the City, in return for giving advice or assistance on matters concerning the operation or business of the City, unless the advice or assistance is "wholly unrelated" to your City duties and responsibilities as a member of the [X]. This prohibition includes, but is not limited to, advising or assisting [John, Jack & George] colleagues or clients regarding the operation or business of the [X];

9. the Governmental Ethics Ordinance does not *per se* prohibit you from concurrently serving on the [X] and the Local Panel of the Illinois [Commission Y]. However, under Section 2-156-020, you owe a fiduciary duty to the City at all times in the performance of your public duties. Should a conflict arise between your duties to the [X] and your duties to the Local Panel, we advise you to recuse yourself from any involvement in that matter; and

10. under Section 2-156-070 of the Ordinance, you are prohibited from using or disclosing, other than in the performance of your official duties and responsibilities as a member of the [X], or as may be required by law, confidential information gained in the course of, or by reason of, your position as an appointed official of the City.

Please note that the Board's determinations in this matter are based on the facts as stated in this opinion. If there are material facts or circumstances which were not before the Board in its deliberations in this matter, you may request reconsideration of the opinion. Any request for reconsideration must: 1) be in writing, 2) explain the facts and circumstances that are the basis for the request and 3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Please note also that the Board's determinations are not necessarily dispositive of all issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. Other laws or rules, including State law, may also apply to your situation.

CONFIDENTIAL

Case No. 02041.A

February 19, 2003

Page 13

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

[Signature]

Darryl L. DePriest

Chair

I:\Redactions\Redacted Opinions\02041-AO.redact.wpd