



City of Chicago
Richard M. Daley, Mayor

May 24, 1990

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

[REDACTED]

Board of Ethics
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Executive Director
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Russell Hardin
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Catherine M. Ryan

Re: Outside Employment
Case No. 90020.A

Dear [REDACTED]

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

You requested an advisory opinion from the Board of Ethics recently regarding the invitation you received to teach one or more courses at the [REDACTED] in the 1990-91 school year. The first course, which would be held in the Fall, is a practicum (involving supervised field work) [REDACTED] of their [REDACTED] program. According to [REDACTED], this course is designed to provide training for: (1) [REDACTED] service managers and owners; (2) those seeking employment as [REDACTED] inspectors [REDACTED] and (3) current employees of the [REDACTED] who are seeking promotion. The course would involve your teaching a two and one-half hour seminar one evening per week, and "field work assignments in a public agency ([REDACTED]), working under cooperative supervision or qualified agency personnel and program coordinator." A passing grade in this course is equivalent to obtaining certification, and you would be responsible for all grading.

The second course, which you could teach in the Spring and/or Summer, is a ten-week course entitled [REDACTED] and is required by the City [REDACTED] department for all such employees. [REDACTED] It provides training in [REDACTED], equipment and materials; [REDACTED] and



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██████████ procedures. ██████████
This course is one of three courses required to obtain the
██████████ Certificate.

The Board understands that the requirements for both these
courses, and the standards for obtaining certification at both
the ██████████ Manager level and the Certificate ██████████ level ██████████
██████████ have been set by yourself and ██████████
██████████ department.

██████████ has
agreed to compensate you approximately \$1,000-\$1,200 for the
practicum course, and somewhat less for the Spring ██████████
██████████ course.

██████████ is under contract with the Chicago
Department ██████████ to provide educational and training programs
for ██████████. However, according to ██████████ those
programs are separate from the two courses with which you would
be involved.

The Board has been informed that the responsibilities of the
employees ██████████ are field inspections ██████████
██████████, enforcement of
City regulations upon those industries, verification of all
██████████ certificates, and education of its staff.¹ Your
specific responsibilities ██████████ involve: (1)
supervising office staff and field inspectors for ██████████
██████████ (2) making decisions regarding enforcement of City
regulations, including directly confronting ██████████ in
cases of violations by ██████████ and ██████████ around the
City; and (3) hiring and promoting employees. ██████████
██████████ You are not involved with the application process
for ██████████ certificates. However, if you were to
teach the practicum course, you would in effect be responsible
for the granting of the ██████████ Certificates which are
required for promotion of inspectors within your office.

The facts in your case which particularly concern the Board are
the following. In the Certificate ██████████ practicum, you would be

¹ According to ██████████, training and education of
██████████ personnel is carried out both within the
Department of ██████████ and through training programs offered by the
██████████ College, one summer course of which is covered
by contract.

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accepting payment to teach students who are seeking certification as inspectors, and in effect, you would be granting certification to those who will be applying directly to you either for hire or promotion in the office you supervise. (You also would be involved in supervising those practicum interns who would be placed in your office.) In the [REDACTED] course, you would be teaching students who are or will be working in, managing, and/or owning [REDACTED] services which your office will be inspecting. The issues arising from these facts, for the Board, are that both courses would involve your instructing students in ordinances, regulations and business of the City. And you would be accepting compensation from [REDACTED] Colleges in exchange for providing the school with guidelines concerning City [REDACTED] regulations, and personal instruction in the [REDACTED] certification processes.

APPLICATION OF THE ETHICS ORDINANCE: The section of the Ordinance particularly pertinent to your case is the following.

Section 26.2-5: "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."

The facts of this case indicate that you would be accepting payment from [REDACTED] College in return for assistance on matters clearly concerning the operation of the City. Such assistance consists in: (1) providing guidelines to the school explaining City [REDACTED] inspection regulations in the course of setting class requirements for the Certificate [REDACTED] practicum; (2) providing personal instruction to students regarding [REDACTED] the [REDACTED] inspector certification processes for the [REDACTED] Department [REDACTED] and (3) providing personal instruction to students regarding City ordinances and [REDACTED] inspection procedures.

The only provision in the section which permits accepting money for assistance in City business depends on those non-City services being "wholly unrelated" to the official's City duties

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and being part of his non-City profession. Clearly, this is not applicable in your case. In teaching the Certificate [redacted] practicum, your responsibilities (i.e., training current and future [redacted] inspectors for the City)--especially your grading of students' performances in the course, which is equivalent to the granting of that certificate--would be directly related to the duties you perform as an official of the City, (i.e., to hire and promote [redacted] inspectors in your office). And in both the practicum and the [redacted] courses, you would be instructing students in City ordinances, [redacted] regulations and certification which, in your City job, you are directly responsible for enforcing.

OTHER APPLICABLE PROVISIONS OF THE ETHICS ORDINANCE: Because one of the purposes of the Ethics Ordinance is to protect City officials and employees from the appearance of impropriety, the Board also finds the following sections of the Ordinance relevant to your case.

Section 26.2-9 states that no 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."

As the Board has interpreted it, the term "representation" here 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. 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.

While your teaching these courses in itself would not violate Section 26.2-9, in the Board's estimation, it would place you in a position in which improper representation could easily occur. Since you would be acquainted with many of those seeking hire and promotion in the [redacted] by virtue of instructing and grading them in the classroom, you are likely to have access to information regarding their expected performance on the job which would not otherwise be available to you. The Board is concerned that the outside employment you propose would

enable you to support or endorse certain applicants for hiring and promotion before other officials in your department, or to represent ██████████ personnel before your department in regard to inspection or certification regulations. (Decisions you may make regarding enforcement of regulations for ██████████ might allow an appearance of compromise simply because of your prior teacher-student relationship with some persons in the industry.) In addition, given your capacity as a City ██████████ official, this outside employment has the potential to place you in a position to represent ██████████ Colleges to the ██████████ Department in regard to other educational and training programs they may have to offer the City.

To summarize this particular issue, it is the judgment of the Board that the employment you are considering has the potential to create the appearance of impropriety because of the possibility of, and opportunity for, improper representation in hiring and promotion as well as regulation enforcement decisions.

Section 26.2-3: "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."

Section 26.2-8: "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."

These sections prohibit influence or participation in any governmental decision in which the official has an economic interest. That is, they explicitly justify a finding of improper influence in governmental decisions or a conflict of interest only on the basis of a distinguishable economic interest.

Since the courses you would be teaching are not covered by the ██████████ College's contract with the ██████████ Department, accepting such employment would not constitute an economic interest which could affect the governmental decisions you would be making in your City position. Again however, the Board finds that the appearance of impropriety or conflict of interest cannot be ruled out, given the facts in this case.

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Section 26.2-2: Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

In cases of outside employment, this section prohibits City officials from using City time in the pursuit of their non-City jobs or for any other private interest. Since you would teach at the [REDACTED] in the evenings, this would not be a problem in your case. However, this section also obligates City officials to perform their City duties with complete loyalty to the City's interest and not to be influenced by any conflicting interests. In this provision also the Board finds reason to caution you regarding the appearance of impropriety.

IN CONCLUSION: Based solely on the facts provided by yourself, [REDACTED], and [REDACTED] the Board of Ethics finds that the outside employment you are considering is prohibited by Section 26.2-5 of the Ethics Ordinance. Accepting money for assistance on matters concerning the operation of the City, whether to students or the school itself, is clearly in violation of the Ordinance.

While the other provisions of the Ethics Ordinance mentioned above do not explicitly prohibit the outside employment you are considering, the Board advises you that such employment would provide the opportunity for, and possibility of, improper influence and representation. It could easily create the appearance of impropriety which, in the Board's judgment, should be avoided by all City officials and employees. Specifically, given your City job description, these proposed teaching positions could give the appearance of influencing your governmental decisions with respect to: (1) enforcement of [REDACTED] regulations regarding [REDACTED] (2) hiring of personnel in the [REDACTED] and (3) promotion of [REDACTED] inspectors currently employed in your office.

Please note that this letter considers only the application of the Governmental Ethics Ordinance of the City of Chicago to the facts provided. If you have reason to believe that other laws may apply to the situation, please consult the Corporation Counsel. You should also be aware that nothing in the Governmental Ethics Ordinance prohibits a City department from adopting rules more stringent than the Ordinance.

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

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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 15 days of the date of this letter.

If you have any further questions, please do not hesitate to contact the staff of the Board at 744-9660.

Sincerely,

Albert Hofeld
Chairman


cc: 

JGJ: 90020.L