



City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

Dorothy J. Eng  
Executive Director

Catherine M. Ryan  
Chair

Angeles L. Eames  
Vice Chair

Darryl L. DePriest  
Emily Nicklin  
Fr. Martin E. O'Donovan

Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660  
(312) 744-5996 (TT/TDD)

*E. M. J.*

Advisory Opinion  
Case No. 93007.A, Representation

[REDACTED]  
[REDACTED]

---

You are an attorney with the [REDACTED] of the City Council. You called this office on [REDACTED] to ask whether you may appear to represent your relative at a hearing before the Firemen's Annuity and Benefit Fund. It is the Board's opinion, based on the facts presented, that the Ordinance does not prohibit you from representing your relative before the Firemen's Annuity and Pension Fund because that fund is not a City agency within the meaning of the Ordinance. Our analysis of your situation under the Ethics Ordinance follows.

**FACTS:** Your relative is an annuitant of the Firemen's Annuity and Pension Fund for [REDACTED] her son, who, you said, is [REDACTED]. Your relative was recently notified that a hearing has been set on a matter relating to her son, and she would like you to represent her. The hearing, you stated, will be conducted in a "quasi-courtroom" manner. You would be appearing for her without pay.

The Fireman's Annuity and Benefit Fund is created by state law, Article 6 of the Illinois Pension Code (40 ILCS 5/6-101 to 226, formerly Ill. Rev. Stat. 1991, ch. 108 1/2, ¶ 6-101 to 226). The fund is created for the benefit of retired or disabled firemen, their family members and survivors. A board of trustees administers the fund: the board supervises deductions and contributions, invests monies, and authorizes payments, and has sole and original jurisdiction for all claims. 40 ILCS 5/6-174, 180, 183 & 185. The board is made up of the City Comptroller, City Clerk and City Treasurer; a Deputy Fire Commissioner designated by the Fire Commissioner; and four members specially elected -- three firemen employed by the City and one annuitant. 40 ILCS 5/6-174.

Although the fund is created by state law, and it is funded in significant part from salary deductions, the City is required by law to make contributions to the funds, as well as to pay administrative costs, for which it must levy taxes. 40 ILCS 5/6-165. The amount that must be



levied is determined by formulae set by the statute; the board of the fund certifies to the City Council the tax to be levied. Id.

The tax levies for the fund come before the [REDACTED], for which you serve as staff. As a staff member, you said, you attend meetings as an observer on the [REDACTED] Annuity and Benefit Fund and the [REDACTED] Annuity and Benefit Fund.

**ISSUE:** The issue is whether § 2-156-090 of the Governmental Ethics Ordinance, which deals with representation of others before City agencies, prohibits you from representing your relative at the hearing before the fund.

**LAW AND ANALYSIS:** Section 2-156-090 of the Governmental Ethics Ordinance, entitled "Representation of Other Persons," states, in relevant part:

(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 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.

The term representation includes an attorney's representation of a client. Subsection (b) of § 2-156-090 deals with persons having an economic interest in representation adverse to the City. Because you will not be paid by your relative to represent her, and you have no actual economic interest in this matter, as defined by § 2-156-010(i) to mean any interest valued or capable of valuation in monetary terms, subsection(b) does not apply to your situation. The Conflict of Interest provision (§ 2-156-080) and Improper Influence provision (§ 2-156-030) also have no application in the absence of an economic interest, as defined by the Ordinance.

Section 2-156-090 addresses the issue of employees representing persons before a City agency. Thus the critical question is whether the Fireman's Annuity and Pension Fund is a City agency. If it is not, then § 2-156-090 does not prohibit you from appearing before it.

This Board has decided, in two other contexts, that annuity and benefit fund boards are not City entities.

In Case No. 87100.E, the Board of Ethics determined, after reviewing the state charter, that the Chicago Policeman's Annuity and Benefit Fund is not a division of City government, and therefore the Board of Ethics has no jurisdiction over the fund and its members do not have to file Financial Interest Statements. In Case No. 89010.A, the Board determined that contracts with the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund are not City contracts for purposes of the Campaign Financing Ordinance, because these funds are not City entities. The Board strongly relied on the Illinois Pension Code provision setting forth the nature of pension funds as separate bodies politic. 40 ILCS 5/22-401. It provides:

Any annuity and benefit fund, annuity and retirement fund or retirement system, heretofore or hereafter created by the legislature of the State of Illinois for the benefit of employees of the State or of any county, city, town, municipal corporation or body politic or corporate...[is a] "pension fund and...a body politic and corporate... .

The Board emphasized, citing Illinois cases, that a body politic is a body of citizens organized to exercise governmental functions, and that it possesses attributes of sovereignty. (See Case No. 89010.A, p.2, and cases cited there.) The Board noted that the sovereignty of the fund and its separateness from the City are underscored by the provision that each pension fund is created for the general welfare of the state, separate and apart from corporate purposes of the state and of any city in which the fund is empowered to operate. 40 ILCS 5/22-402. The Board concluded that the pension funds were not arms or agencies of the City of Chicago, but acted pursuant to the powers of a body politic, given to them by the state statute. Case No. 89010.A, p.3.

The Fireman's Annuity and Benefit Fund is a pension fund as described by the statute on which the Board relied in Case No. 89010.A, and is therefore a body politic and corporate, which possesses attributes of sovereignty. It is not a City agency, or an arm of the City. Therefore a City employee is not prohibited by § 2-156-090(a) from representing someone before the fund. The Board concludes, from the facts presented, that your unpaid representation of your *relative* before the Fireman's Annuity and Benefit Fund is not prohibited by the Governmental Ethics Ordinance.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.

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  
Catherine M. Ryan  
Chair