**CONFIDENTIAL**

June 27, 2006

Ms. [Jane Jones]

[Department of A]

Chicago, IL 606XX

**Re: Case No. 06037.Q**

Dear Ms. [Jones],

This letter confirms the guidance Board staff gave you regarding your service as a non-compensated member of the Board of Directors of [C] , a non-profit entity established to develop the first [O] Cultural Center in the U.S. Based on the facts you presented, staff concludes you that, although the City’s Governmental Ethics Ordinance does not prohibit you from serving as [C] Board member, staff cannot recommend that you continue as a Board member, and advises you to consider that you would be able to provide the highest level of assistance to the organization through your regular City position were you not a [C] Board member.

You are the [title] . In that position, you are responsible for, among other things, coordinating interaction between the City’s [O] community and City government, and working with representatives from other City departments to identify available resources to meet the needs of the community. According to the written job description of your City position you provided us, your are responsible to “[c]onfer and work with ... community representatives to facilitate positive interaction between City government and the community represented... serve as an advocate for the concerns of an identified group or community ... [and] consult and work with city department representatives to identify available resources to meet the needs of the represented community.”

On May 4, you explained to Board staff that you have served for 5 months as an uncompensated Board member of [C] . In September 2005, members of the working committee of [C] approached you to ask for your assistance in this project, and, you explained, on November 29, 2005, the Mayor met with you to discuss the establishment of [C] , and stated that he would definitely like to see the project realized. You also said that, on April 27, 2006, you and several other Board members met with representatives of the City’s Department of [L] to inquire about available sites in the City for developing the cultural center. You then consulted with Board staff about how the Ordinance restricts your ability to assist [C] . Board staff’s conclusions and recommendations, stated in this letter, are based on two sections of the Ordinance.

First, staff advises you that § 2-156-090(a) of the Ordinance, “Representation of Other Persons,” prohibits you from speaking on behalf of [C] , its Board or its membership, or otherwise representing it before any City (except as required by your official City responsibilities). Thus, you would, as long as you serve as both a City employee and a [C] Board member, be prohibited from meeting or otherwise interacting with other City employees on behalf of the organization in your capacity as one of [C’s] Board members. This could in turn impair your ability to fulfill the responsibilities of your City position. Section 2-156-090(a) provides, in relevant part:

**No ... employee may represent ... 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; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment...**

This section prohibits a City employee (such as you), from representing persons other than the City (such as [C] ), in any “formal or informal proceeding or transaction before any City agency” (such as an informal meeting with representatives of the Department of [L] ). The Board has interpreted the term “represent” to include a broad range of activities in which one person acts as a spokesperson for someone other than the City, and seeks to communicate or promote the interests of that party, such as attending or speaking at face-to-face meetings, making telephone calls or signing documents submitted to a City department or agency. Staff notes that the exception to this prohibition allows City employees to perform the duties of their City employment. As you have explained your duties, and as your written job description provides, you would be performing the same functions in your City position–namely assisting [C] in constructing a Cultural Center in the City–that the [C] Board wishes you to do for it. You believe, and our review of your job responsibilities confirms, however, that you would not be serving as a Board member ex officio–that is, as required by your responsibilities as a City employee. In summary, then, this section of the Ordinance prohibits you from appearing before these same City employees, officers or departments while you serve as or in your capacity as a Board member of [C] . Moreover, your service on this organization’s Board at the same time you occupy your City position could create the perception that decisions made by employees or officials from other City departments--in part because of your assistance--were made because of favoritism shown to you or to [C] . This, in turn, could damage the perception of the organization’s, your own, and your department’s objectivity and credibility within the [O] community of Chicago.

Second, § 2-156-020, “Fiduciary Duty,” could also limit your ability to serve as an effective [C] Board member, and impair your ability to serve in your City position. The provision obligates you to use your City position and City time responsibly and in the best interest of the public, and to give undivided loyalty to the City in the discharge of your City duties. Case Nos. 06021.Q; 96032.A; 93041.Q. As a [C] Board member, you also owe a fiduciary duty to the organization. In the event that the organization’s interests were to differ from the City’s (for example, a different community group requests your department’s assistance in building a cultural center, and alleges that [C] has received favored treatment, and the City’s position supports the second organization), you would be required under this section to give your undivided loyalty to the City, and resolve the conflict in the best interest of the City. Were you put in such a position, any decision you make would be subject to criticism, either by your own organization, or by the second group. Moreover, were you to recuse yourself from making such a decision–a decision you would normally be expected to make in your City position--you would in effect be placing your loyalty to [C] ahead of your City responsibilities.

Last, §§ 2-156-060, “City-Owned Property,” and -070, “Use or Disclosure of Confidential Information,” also would apply to your service as a [C] Board member. The former prohibits you from the unauthorized use of City property, including City time, equipment or supplies, to carry out your duties on behalf of [C] or its Board; the latter prohibits you from using or revealing confidential information you have acquired during the course of your City job.

For these reasons, staff concludes that, while the Ordinance does not prohibit you from serving as a [C] Board member, we cannot recommend that you continue in that service. We also advise you to consider that, in the performance of your City responsibilities, you can provide any and all appropriate assistance to the [C] Board and membership without the restrictions imposed upon you by the Ordinance were you also serving as a [C] Board member. Staff’s conclusions and advice are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this letter. If these facts are incorrect or incomplete, please notify us immediately, as any change may alter our conclusions. Please note that other laws or rules may apply to this situation, and that a City department may adopt and impose rules or policies stricter than those contained in the Governmental Ethics Ordinance.

We sincerely appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ordinance. If you have any further questions, please contact us.

Yours very truly,

Steven I. Berlin

Deputy Director

approved:

Dorothy J. Eng,

Executive Director

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