

MEM

June 12, 1991

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

[REDACTED]

**Re: Political Activity
Case No. 91044.A**

Dear [REDACTED]:

On April 11, 1991, you requested an Advisory Opinion from the Board, asking whether or not the Governmental Ethics Ordinance permits you to renew your involvement in two political associations and one community organization. You said you had resigned from all three groups when the Ethics Ordinance took effect in 1987. Based upon the facts you presented, the Board determines, first, that your participation in the primary activities undertaken by the [REDACTED] Association [REDACTED] and the [REDACTED] Coalition [REDACTED] is prohibited by the Ordinance. Second, the Board finds that the Ordinance does not prohibit you from renewing your involvement in the community group, the [REDACTED] Organization, on the condition that your actions on behalf of this organization are in full compliance with the Ordinance. The particular concerns we have about your role in this organization will be explained in this letter.

We appreciate your bringing this matter to the Board's attention and your efforts to follow the ethical standards embodied in the Ordinance. This letter sets forth the facts of your case and the Board's analysis of those facts according to the applicable provisions of the Ordinance.

FACTS: You are a [REDACTED] in the Department of [REDACTED] [REDACTED] In that position you are involved exclusively with [REDACTED]

[REDACTED] You are also a member of the [REDACTED] board. You do not have any involvement with City contracts.

City of Chicago
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Board of Ethics

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On April 11, 1991, you appeared in person at our office and submitted a written request for an advisory opinion from the Board asking whether or not you could renew your participation in these three separate organizations.

The first two organizations, [REDACTED] and the [REDACTED] which you founded in [REDACTED] and [REDACTED] respectively, are aimed at establishing "political empowerment and recognition of [REDACTED] a certain group in the Chicago area." They help specified groups organize as part of political associations, and have representatives speak at various political gatherings. According to your statements, candidates and elected officials seek the endorsement of these organizations. Then the group members--about 500 "family units" in [REDACTED] and about 1,000 "family units" in [REDACTED]--decide which of the candidates to support. The groups then endorse those candidates and collect political contributions from members (which include City contractors) that are paid to the political committees of the candidates they have endorsed.

You told us you resigned your positions with these two organizations in [REDACTED] due to the implementation of the Ethics Ordinance, but that both have asked you to renew your membership with them or return to them in an advisory capacity. You have asked us to render an opinion as to whether either course of action would be permissible under the Ordinance.

When asked what would be involved in an advisory position in relation to these groups, you responded uncertainly, and said this was not at all clear. You said you believed that, basically, you would be directing the groups' actions, relevant to particular situations.

The third group under consideration is the [REDACTED] Organization, formerly the [REDACTED], of which you had been the chairperson since [REDACTED]. It appears to us that, in its present form, the [REDACTED] Organization is not a political association, but primarily a civic group. You described this group in your letter as an organization encompassing the area between [REDACTED], [REDACTED], [REDACTED], and [REDACTED] Avenues. It is involved in a range of activities related to advocating greater responsiveness on the part of public officials to neighborhood needs. It is made up of the people who live within the above area at any given time. When it was active, it would hold monthly meetings at a community church, and try to get things done around the community, like cutting down trees, getting rid of graffiti,

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dealing with sewer, trash, and lighting problems, etc. According to your letter, "on occasions where our alderman or any public official refuses to help us get rid of our graffities, gangs, drug dealing, uncollected garbage, we campaign or find ways to get the official out of office. In the case of a commissioner, we make representations and I sign petitions or complaints on behalf of our organization."

You said that when the Ethics Ordinance was implemented in 1987, you resigned your position in this organization as well, but that it has not accepted your resignation and has become inactive as a result. You would like to resume your position as chairperson of the [REDACTED] Organization if that would be in compliance with the Ethics Ordinance. As such, you would be the one to call the meetings and to organize the particular actions on which the group decides.

You do not have any paid positions with any of the three groups in question.

The Board's determination in this case focuses on two issues: (1) whether or not your membership or advisory role in the [REDACTED] or the [REDACTED] constitutes "political activity" as defined by the Ethics Ordinance; and (2) whether the Ordinance prohibits you from being chairperson of, or from participating in any way in, the [REDACTED] Organization. Because of the distinct issues raised by the political groups on the one hand, and the [REDACTED] Organization on the other, these two issues will be addressed by separate analyses below.

APPLICATION OF THE LAW IN REGARD TO THE [REDACTED] AND [REDACTED]: The Municipal Code imposes both a general limitation on political contributions (found in the Governmental Ethics Ordinance), which applies to all City officials and employees, and also a more specific limitation on political activity (found in Chapter [REDACTED] of the Municipal Code, governing the [REDACTED] Department), which applies only to certain designated individuals, including employees of the [REDACTED] Department. As an employee of the [REDACTED] Department, you are subject to both the general and the specific restrictions of the political contribution and activity prohibitions.

The relevant part of the general limitation is stated in § 2-156-140(b) of the Ethics Ordinance, entitled "Solicitation or Acceptance of Political Contributions":

No non-elected City employee or official shall knowingly solicit or accept any political contribution from a person

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doing business or seeking to do business with the City. Notwithstanding the foregoing, a non-elected City employee or official who is a candidate for public office may solicit or accept political contributions on behalf of his or her own candidacy from a person doing business or seeking to do business with the City, subject to the same restrictions as are applicable to elected City officials.

In regard to this restriction, you are prohibited from soliciting or accepting any political contribution from a person doing business or seeking to do business with the City. According to your description, the memberships of the [REDACTED] and the [REDACTED] include City contractors. In a telephone conversation with our staff on April 23, 1991, you said most of the members of these groups either are currently doing, or are interested in doing, business with the City. You also said that one of the main purposes of these groups is the collection of and contribution of funds from their members to political campaigns. While § 2-156-140(b) of the Ordinance does not specifically prohibit you from being a member of, or serving as advisor to, these organizations, it does prohibit you from taking part in what you have described as one of the primary enterprises of these groups, i.e., the acceptance of political contributions from persons doing business or seeking to do business with the City.

As an employee of the [REDACTED] Department, you also are subject to § [REDACTED] of the Municipal Code, entitled "Political Activity," which imposes more extensive restrictions. This section states in relevant part:

[REDACTED]

The definition of "political activity" in § 2-156-010(s), in its entirety, reads as follows:

(s) "Political activity" means:

(1) Serving as an officer of a political party, of a political club, or of an organization relating to a campaign for elected office ("organization"); as a member of a national, state or local committee of a political party, club or organization; as an officer or member of a committee of a political party, club or

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organization; or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party, club or organization;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for any political party, political fund, candidate for elected office, candidate for political party office, or any committee thereof or committee which contributes to any of the foregoing;

(4) Organizing, selling tickets to, promoting, or actively participating in a fundraising activity of a public office holder, candidate in an election or political party, political club or an organization;

(5) Taking an active part in managing the political campaign of a candidate for public office in an election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in an election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in an election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in an election;

(9) Driving voters to the polls on behalf of a political party or a candidate in an election;

(10) Endorsing or opposing a candidate for public office in an election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material, or distributing such material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

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(12) Addressing a convention, caucus, rally, or similar gathering in support of or in opposition to a candidate for public office or political party office;

(13) Initiating or circulating a nominating petition for elective office;

(14) Soliciting, collecting, or receiving a political contribution or a contribution for any political party, political fund, candidate for elected office, candidate for political party office, or any committee thereof or committee which contributes to any of the foregoing; or

(15) Paying or making a political contribution or a contribution for any political party, political fund, candidate for elected office, candidate for political party office, any committee thereof or committee which contributes to any of the foregoing.

The specific restriction on political activity stated in § [REDACTED] which is applicable to you as an employee of the [REDACTED] Department, relies on the applicability of the definition of "political activity" in the Ethics Ordinance to the facts in your situation.

According to your statements, both of these associations endorse candidates, collect and contribute funds to political party and public office candidates, and have their representatives speak at political gatherings--all activities included in the definition of political activity. Given that these are the primary activities of both these associations, we find it extremely unlikely that a member of these groups would not also be engaged in these activities. Even an advisory position with the [REDACTED] or [REDACTED] would leave you involved in matters defined as political activity, since it appears that such a position would keep you in a 'managing' role in relation to these associations. It is our determination, therefore, that your involvement with the [REDACTED] and the [REDACTED], either as member or advisor, falls within the definition of political activity in § 2-156-010(s), which is prohibited by § 2-92-410.

APPLICATION OF THE LAW IN REGARD TO THE [REDACTED] ORGANIZATION:

Unlike the [REDACTED] and the [REDACTED], political endorsement and support is not the purpose of the [REDACTED] Organization.

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You have described it to us as a community improvement block club. In regard to this group, the prohibition cited above against soliciting or accepting political contributions, § 2-156-140(b), does not apply because, according to your statement, the [REDACTED] Organization is not involved in soliciting or accepting political contributions at all.

Likewise, applying the specific restriction on political activity to the [REDACTED] Organization, it appears from your description that this group is not a "political club or organization," and does not engage in any of the activities included in the definition of political activity, § 2-156-010(s). For example, in regard to specific questions about the activities of this group, you said that the [REDACTED] Organization: (1) does not solicit contributions from any City contractors for any reason; (2) is not involved with collecting or making contributions to political campaigns; (3) does not handle any funds for any political party, committee or candidate; (4) does not participate in any fundraising for any office holder, candidate, political party or organization; (5) does not endorse or oppose candidates in advertisements or distribute any political material; (6) does not address political gatherings in support of or opposition to any candidates; and (7) does not transport voters to the polls on behalf of any party or candidate.

Therefore, we find that the actions you undertake in relation to your participation in, and chairmanship of, the [REDACTED] Organization are not included in the definition of political activity (§ 2-156-010(s)).

The Board is concerned, however, that you be informed adequately as to what kinds of activities constitute "political activity" so that no violation of the law occurs in the future in relation to your participation in the [REDACTED] Organization. Please be aware that the activities you undertake in relation to your chairmanship of this group are not subject to the political activity prohibition ([REDACTED] of the Municipal Code only so long as you do not participate in any action that is included in the "political activity" definition in § 2-156-010(s) of the Ethics Ordinance, quoted above.

There are two other provisions of the Governmental Ethics Ordinance that are relevant to your involvement with the [REDACTED] Organization. These are the sections regarding representation of other persons, and fiduciary duty.

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The representation provision, § 2-156-090, states that:

[n]o 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

As the Board has interpreted it, the term "representation" here applies to a broad range of activities in which one person acts as a spokesperson for another person 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. "Representation" also includes signing any proposals, contracts, or other documents that are submitted to City agencies. (See Case No. 89087.A.) In other words, the mere appearance of a City employee's signature on documents submitted to a City agency constitutes representation.

This definition also applies to the representation of not-for-profit organizations, such as the community group in question. However, it does not prohibit a City employee from speaking out in the context of a community meeting at which he or she is present. (See Case No. 89144.A.)

Applying the representation provision and past Board decisions to the [REDACTED] Organization, it is difficult to judge whether or not your involvement with, and especially your chairmanship of, this group would be prohibited. This is due to the fact that you have expressed your role in this group in diverse ways. On the one hand, you said you have not represented it before any City agency. You said whenever you call a City official, you do so about a particular problem that needs to be remedied (such as a broken street light or clogged sewer), and you do this on your own behalf, not as a representative of the group. On the other hand, in your letter to this office, you stated that "in the case of a commissioner, we make representations and I sign petitions or complaints in behalf of our organization."

According to past decisions of the Board, any telephone contacts or written requests you may make with City officials on behalf of the organization, as well as your signature on such petitions, could constitute "representation," which is

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prohibited by this section. On the other hand, any citizen, including a City employee, is entitled to speak out on his or her own behalf.

In our analysis, the way in which your contacts with City officials occur determines whether or not your activities in relation to the [REDACTED] Organization are prohibited by the representation provision of the Ethics Ordinance. Our determination is that your chairmanship of the [REDACTED] Organization is not prohibited by § 2-156-090 as long as your contacts with City officials are not made on behalf of the organization. We advise you to avoid any circumstances in which you would be representing the [REDACTED] Organization to the City. Such activities would include making personal appearances before City agencies or officials on behalf of the group, making telephone contacts with or submitting written requests and proposals to City agencies or officials on behalf of the group, and signing proposals or other documents that are submitted to City agencies on behalf of the group. Actions such as these would constitute improper representation and are prohibited by the Ordinance.

The other section of the Ordinance that is relevant to your involvement in the [REDACTED] Organization is § 2-156-020, entitled "Fiduciary Duty," which states:

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

This section establishes an obligation for City employees to use their City positions responsibly and in the best interest of the public. Within lawful limits, a City employee must give undivided loyalty to the City of Chicago in the discharge of his or her public duties. The employee must be able to exercise professional judgments free from outside influence or conflicting duties to another entity.

In applying this section to your involvement in the [REDACTED] Organization, we find that the inconsistencies in your various descriptions of that involvement raise questions regarding the potential for putting the group's interests over those of the City. For example, in the past, when the group received no remedy to a problem from a public official, you said it took political action to replace that official. Another question concerns your statements describing the actions you would take in situations where "going through channels" proves ineffective. For example, in a telephone

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conversation with Board staff, you stated that when 'going through channels' (like calling your alderman) does not produce any response to a particular problem, you go straight to the [REDACTED] who does the work in question, [REDACTED]
[REDACTED]

It is our determination that your participation in, and even your chairmanship of, the [REDACTED] Organization is not prohibited by the fiduciary duty requirement of the Ordinance as long as the actions you take on behalf of the community are also in the best interest of the City. In the kind of community involvement you have described to us, there is the potential for situations to arise in which the interest of the organization may conflict with the interest of the City. As a City employee, you are obligated by the fiduciary duty provision of the Ordinance (§ 2-156-020) to act in the best interest of the City.

CONCLUSION: (1) In relation to your proposed membership in the [REDACTED] and the [REDACTED] we determine that your activities as a member would constitute political activity as defined in § 2-156-010(s), thereby subjecting you to the prohibition against such activity in § [REDACTED] of the Municipal Code.

Regarding your request for an advisory role with these two groups, it is our determination that, here again, your activities as advisor would constitute political activity (§2-156-010(s)), thus subjecting you to the restriction on such activity in § [REDACTED] of the Municipal Code.

(2) As for your participation in, and chairmanship of, the [REDACTED] Organization, we find that such involvement (a) is not covered by the provision governing political contributions (§ 2-156-140(b)), and (b) does not fall within the definition of political activity (§ 2-156-010(s)).

It is the Board's determination that your filling the role of chairperson for the [REDACTED] Organization is not in violation of the Ordinance on the condition that you do not participate in any activities prohibited by the provisions of the Ordinance governing not only political contributions and

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political activity, but also representation of other persons, and fiduciary duty, as outlined above.¹

Thank you again for bringing this matter to the Board's attention. We enclose a sheet which sets forth the Board's procedural rules after it renders a decision. For your information, we also enclose a copy of the Ethics Ordinance. If you have any further questions regarding this matter or some related issue, please do not hesitate to contact us.

Sincerely,



Albert Hofeld
Chairman

enclosures

cc: Kelly Welsh
Corporation Counsel

jjg/91044.L

¹ Our determination in this case is based upon the facts as presented in this letter. If they are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our decision.

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this 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 that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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.