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**ADVISORY OPINION**

**CASE NO. 01046.A  
Financial Interest in City Business**

City of Chicago  
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Board of Ethics

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To: [Mary ]

Date: November 14, 2001

On October 1, 2001, [Mary ], the [Department 1's ] administrator of the City's [Rebate Program

] asked Board staff whether the Governmental Ethics Ordinance prohibits a City employee, from a Department other than [Department 1 or 2 ], from serving as a contractor on a construction project under the City's [Rebate Program ] as that program is described in this opinion. Because no Board precedent existed on point, staff advised [Mary ] that the Department, or one of the other parties involved in the project, should ask the Board for an advisory opinion. On October 16, 2001, [Mary ] informed the Board that the City employee had dropped out of the project. She stated that the [Department 1 ] still wanted an advisory opinion on this issue, as she believed the situation would likely arise again. On October 22 the Board received the Department's request for an opinion.

After careful consideration of the facts presented, the purpose and language of the "Representation" and "Interest in City Business" provisions of the Ordinance, and prior Board opinions, the Board concludes that the Ordinance does not prohibit a City employee, from a Department other than [Department 1 or 2 ] from serving as a contractor on a construction project under the City's [Rebate Program ], as that program is described in this opinion.

**FACTS:** The [Rebate Program ]. The [Rebate Program ], which is administered by the City's [Department 1 and 2 ], offers rebates to the owners of commercial and industrial buildings who are willing to complete qualified [repairs projects ].<sup>1</sup> Owners of qualified buildings may receive up to \$5,000 in rebates for each qualified tenant space. The maximum rebate amount per application is

<sup>1</sup>Participation in this program is limited to work on commercial and industrial buildings that results in [renovation, repairs and installation

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I. Interest in City Business.

The Board first addresses whether a City employee would have a prohibited financial interest in City business by serving as a contractor under the [Rebate Program ] as described herein. Sec. 2-156-110 (Interest in City Business) states, in relevant part:

**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, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.**

"Financial interest" is defined, in relevant part, at Section 2-156-010(1) of the Ordinance 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, or any interest with a cost or present value of \$5,000.00 or more.<sup>3</sup>

Property owners who participate in the [Rebate Program ] enter into an agreement with the City. The contractors who work on [Rebate Program ] projects enter into an agreement with the property owners, and are paid directly by them; the contractors receive no compensation from the City. Proof of payment by the owner is a condition precedent to the owner receiving his or her rebate from the City. In the Board's view, therefore, as the contractor has a contract with the owner of the property—not with the City—his or her position is analogous to that of a sub-contractor on a City project.

The Board has previously considered the issue of whether a subcontractor on a City project has a financial interest in City business within the meaning of the Ordinance. In Case No. 93033.A, the Board found that a prime contractor, who was paid with funds administered by the City, had a financial interest in City business. However, the Board went on to conclude that while a subcontractor, who would be paid directly by that prime contractor, may have a financial interest in the business of the prime contractor, the such interest does not translate into a financial interest in City business for the subcontractor. In contrast, in Case No. 97019.A, the Board determined that a subcontractor who was identified on a prime contractor's City contract bid documents did have a financial interest in a City contract. In that case, the Board found that if the participation of particular subcontractors<sup>4</sup> is a component in the City's consideration of a contract award, such

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<sup>3</sup>As noted in footnote 2, while [Mary ] was unsure of the exact amount of the City employee's compensation, she confirmed that it was over \$5,000. For the purposes of this opinion, therefore, the employee's compensation will be considered to be a "financial interest," as defined.

<sup>4</sup>In that case, the prime contractor was required to hire as a subcontractor an entity that had been certified by the City as a Woman or

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consideration gives those subcontractors an interest in the City contract. (Id. at pg. 4) The Board also found that the subcontractor, by virtue of being listed on the bid proposal, had certain rights under the contract. Specifically, the Board noted that the subcontractor had the right to arbitration by a City representative if the prime contractor failed to meet its contractual obligations. (Id. at pg. 5.)

In this case, the City employee is listed on an application for a project paid for, in part, by funds administered by the City. However, in contrast to the situation in Case No. 97019.A, where City officials gave "...substantial consideration to the subcontractors included on the prime contractor's bid proposal," in the instant case, the identity of any particular contractor or construction firm in the project is given minimal consideration by Program staff. Instead, Program staff focuses on whether the estimate provided by that contractor is reasonable. The Board also notes that in this program, unlike the program in Case No. 97019.A, the employee is not identified in the agreement between the City and the building owner or given any right to arbitration in that agreement. Moreover, the City employee must be paid by the owner before the owner is eligible to receive any rebate from the City. For the reasons stated, and consistent with its opinion in Case No. 93033.A, the Board concludes that payment of a rebate in excess of \$5,000 to a property owner under the City's [Rebate Program ], as described in this opinion, does not give rise to a financial interest in City business in the contractor retained by the property owner to perform the work. Therefore, the Board determines that Sec. 2-156-110 of the Ordinance does not prohibit a City employee, from a Department other than [Departments 1 or 2 ], from being retained as a contractor on a project under the City's [Rebate Program ] as described in this opinion.

II. Representation. The Board next addresses the issue of whether a City employee's participation in the [Rebate Program ] process violates the representation provision of the Ordinance. 2-156-090 (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 nonministerial nature.**

The Board has, in the past, interpreted representation to mean "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." (See Case No. 90035.A.) In previous cases, the Board has concluded that one "represents" another by, e.g., acting as a spokesperson or advocate for another; seeking to communicate and promote the interests of one party to another; making telephone contact with City employees and officials on behalf of another; submitting written requests

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contracts. (See Case Nos. 88142.A, 93045.A, and 96032.A.) The Board has also previously found that an action in which a City employee exercises judgement and discretion is "nonministerial." (See Case No. 89126.A)

As noted above, when applying for the [Rebate Program ], building owners must submit two estimates from contractors to Program staff. Although Program staff's role in reviewing the contractors' estimates submitted by the building owner is limited to a determination that such estimates are reasonable, Program staff does have the discretion to reject such estimates. Therefore, the Board concludes that such review is a nonministerial action involving the City. The question, therefore, is whether a City employee who prepares a construction estimate—which is then submitted to the City by a building owner as part of an application under the [Rebate Program ]—is engaged in representation within the meaning of Section 2-156-090(a).

In the [Rebate Program ] process, the contractor has no personal contact with any City employee or agency with regard to his estimates, nor does he submit any documentation directly to the City. Instead, it is the property owner who submits the documents and meets with City employees and officials concerning these estimates. The Board concludes that, when a contractor takes no action to promote the interests of himself or his company before a City agency and when all interaction with City officials and employees concerning these estimates is undertaken by the building owner, such contractor is not engaged in representation. Therefore, the Board finds that Section 2-156-090(a) of the Ordinance does not prohibit a City employee from preparing a construction estimate which is then submitted to the City by a building owner as part of an application under the [Rebate Program ], as that program is described in this opinion.

If Program staff finds the estimates submitted by the property owner to be reasonable, the property owners and selected contractor must attend a meeting with Program staff to review federal regulations regarding prevailing wage requirements. This meeting is purely informative in nature, held solely to keep the building owner and the contractor apprised of these federal regulations. In contrast to their responsibilities in review of the cost estimates, the Program staff in this instance exercise no discretion. In the absence of the exercise of such discretion by Program staff, the Board concludes that their action is of a ministerial nature, and that the contractor, by attending this mandatory meeting with City officials is not engaged in representation within the meaning of the Ordinance. Therefore, the Board finds that Section 2-156-090(a) of the Ordinance does not prohibit a City employee from attending a meeting with Program staff to discuss federal regulations governing the [Rebate Program ], as is described in this opinion.

Based on the forgoing, the Board determines that Representation provision of the Ordinance does not prohibit a City employee from serving as a contractor on a construction project under the City's [Rebate Program ] as that program is described in this opinion.

III. Other Restrictions.

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Sections 2-156-030, "Improper Influence," and 2-156-080, "Conflicts of Interest," prohibit a City employee, from participating in, or in any way attempting to use his or her City position to influence a City governmental decision or action in any matter in which he or she has an economic interest distinguishable from that of the general public. In a recent opinion, the Board considered the case of a City employee who had accepted a part-time, paid position with a non-City company. (Case No. 98062.A.) The Board concluded that the City employee had an economic interest by virtue of her employment with the company and determined that she was "prohibited from participating in, making or attempting in any way to use her City position to influence any City decisions or actions that will be related to or enhance her employment" with this company. Thus, if a City employee is employed part-time by a building owner under the [Rebate Program ], as that program is described in this opinion, he or she would have an economic interest in that employment, and would be prohibited, under the Ordinance, from making or in any way attempting to use his or her City position to influence a City governmental decision that would be related to or would enhance that employment.

Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits a City employee from accepting payment or anything of value in return for advice or assistance on the operation or business of the City. However, this provision does not prohibit an employee from accepting compensation for services that are wholly unrelated to his or her City duties and responsibilities and are rendered as part of his or her non-City employment. Section 2-156-060, "City-Owned Property," prohibits an employee from using any City property or resources in his or her non-City position, or for any private benefit, without authorization. Section 2-156-070, "Use or Disclosure Of Confidential Information," prohibits an employee using or revealing, except in the performance of his or her City duties, confidential information gained in the course of his or her City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

**DETERMINATION:** Based on the facts presented, the Board determines that the Ordinance does not prohibit a City employee from serving as a contractor on a construction project under the City's [Rebate Program ] as that program is described in this opinion.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

**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

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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.

**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 and circumstances that are the basis of the request, and (3) be received by the Board within fifteen days of the date of this opinion.

[Signature]

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Darryl L. DePriest  
Chair