

*- Alderman; Elected official
- outside employment
- conflicts of i*

CONFIDENTIAL

Honorable [John], Alderman, [X Ward]
City Hall
121 N. LaSalle St.
Room [X]
Chicago, IL 60602

**Re: Case No. 99038.Q
Outside Employment**

Dear Alderman [John],

In a phone call on August 26, 1999, you asked whether you could accept outside employment with the Community Bank of [] ("the Bank"), a bank in your ward. You also asked that our discussion be reduced to writing. As I previously stated, the Ethics Ordinance does not prohibit you from accepting the position as community liaison, although it does impose certain restrictions. Another concern we discussed was whether your dual role as an elected official and community liaison for the Bank would create the appearance or public perception of impropriety. These restrictions and concerns are discussed in this letter.

Facts: You are the Alderman of the [X] Ward in the City of Chicago. You explained that the Community Bank of [] is located in the [X] Ward.

Specifically, you have been offered a position as a community liaison with the Bank. You are not yet aware of what particular duties this will involve. You did not mention what kind of financial remuneration would result from the acceptance of this position.

Law and Analysis: The provisions most relevant to your proposed non-City employment are those governing "Representation," "Conflicts of Interest," and "Improper Influence." Given the paucity of facts presented in this case, it is particularly important to stress that the relevance of each provision addressed in what follows may change when more details are available.

Representation. Section 2-156-090(a) of the Ethics Ordinance prohibits an elected official from representing persons other than the City in proceedings or transactions that come before any City agency, except when that official is appearing without compensation on behalf of his constituents in the course of his duties as an elected official. If, therefore, you accept employment with the Bank, you will be prohibited from representing the interests of the Bank in any transaction before the City.

Conflicts of Interest; Appearance of Impropriety. Section 2-156-080(a) of the Ethics Ordinance prohibits a City official from making, or participating in the making of any governmental decision with respect to any matter in which that City official has an economic interest distinguishable from that of the general public. Economic interest is broadly defined to include "any interest valued or capable of valuation in monetary terms." § 2-156-010(i). The Board of Ethics has held that an official has an economic interest in his outside employment. Advisory Opinion No. 98062.A. Therefore, you are prohibited from making, participating in, or attempting to use your City position to influence City decisions or actions that are related to or may enhance your outside employment with the Bank. Advisory Opinion 98062.A, p. 3.

If your position with the Bank involves financial compensation or payment in the amount of \$2,500 or more in a calendar year, then you will have a "business relationship" with the Bank that will impose several important regulations that are relevant to elected officials of the City. In light of Section 2-156-080(b)(2) of the Ethics Ordinance, if there is a matter pending before the City Council or any Council Committee that pertains to the Bank, you will be required to publicly disclose the nature of your business relationship on the records of proceedings of the City Council. Furthermore, you will be required to notify the Board of Ethics of your relationship as soon as you become aware of the matter. Finally, you will be required to abstain from voting on that matter. In the event that any matter pertaining to the Bank is pending before a City agency other than the City Council, you will be required to disclose the nature of your relationship with the Bank to the Committee on Committees, Rules and Ethics. § 2-156-080(c).

Improper Influence. Section 2-156-030(a) is similar to the provision dealing with Conflicts of Interest in that it prohibits a City official from making or participating in the making of any governmental decision in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally. However, it also adds that an official is prohibited from attempting "to use his position to influence" such governmental decisions. Section (b) adds that officials are proscribed from contacting other City officials and employees with respect to matters involving persons with whom the elected official has a business relationship. Therefore, if you accept outside employment with the Bank, you will be prohibited from various kinds of contact with other City officials and employees about matters pertaining to the Bank, in order to avoid the possibility of improper influence.

It is worth emphasizing that both the section dealing with Conflicts of Interest and the section dealing with Improper Influence in the Ethics Ordinance are concerned with the appearance of impropriety in addition to the actual event of impropriety. Your position with the Bank will give you an economic interest that is distinguishable from the general public interest within your own ward. The rules that govern your conduct in the event that any matter pertaining to the Bank is pending before the City Council are intended to prevent the possibility of any improper influence or conflicts of interest in the decision making process involving such matters. However, even strict adherence to such rules cannot prevent the appearance of improper influence in the public eye. This possibility is mentioned because it is a concern that is clearly relevant to decisions

Case No. 99038.Q
September 7, 1999
Page 3

involving the outside employment of aldermen, but notoriously difficult to apply in a definitive fashion.

As in all inquiries regarding outside employment cases, Board staff takes this opportunity to remind you that you owe a fiduciary duty to the City at all times in the performance of your public duties (§ 2-156-020); you are prohibited from the unauthorized use of City-owned property (§2-156-060); and you are prohibited from using or disclosing confidential information gained by reason of your City employment (§2-156-070).

Conclusion. Based on the foregoing, it is our opinion that the Governmental Ethics Ordinance does not prohibit you from accepting outside employment with the Community Bank of []. However, as stated in this letter, there are standards of conduct to which you must conform if you accept outside employment. While the Ethics Ordinance does not prohibit your outside employment in this situation, whether good ethical judgment advises you to accept the position awaits your own further consideration. In that regard, we urge you to consider whether and how your serving as community liaison of the Bank might create the public perception of a special interest distinguishable from the general public interest of your own ward.

This opinion 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 us immediately, as any change may alter our opinion. Other laws or rules also may apply to this situation.

We appreciate your inquiry and your concern to abide by the standards embodied in the Ethics Ordinance. As previously stated, once the position has been defined, additional discussion may be warranted. If you have any further questions, please do not hesitate to call.

Very truly yours,

[Signature]

Dorothy J. Eng
Executive Director