

CONFIDENTIAL
ADVISORY OPINION
[John Smith]
Case No. 08051.A
December 17, 2008

You were Deputy Commissioner of the Department of [A] (“A”), leaving your City employment on xxxx, 2008. You are currently a Business Development Manager for XYZ. On xxxxx, 2008, you requested a written advisory opinion from the Board of Ethics (“Board”) addressing how the City’s Governmental Ethics Ordinance (“Ordinance”) would restrict your post-City employment. You began your City career in 19xx as Alderman [Jones’s] assistant, thereafter becoming Assistant Commissioner/Project Manager in the Department of [P] (“P”), Deputy Commissioner of P, Managing Deputy Commissioner of P and Deputy Commissioner of A. As discussed in the opinion, the Board has determined that the post-employment provision of the Ordinance prohibits you, for a period of one year from the date you left City service, that is, until xxxx, 2009, from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) with respect to securing partially or fully vacant improved or unimproved real estate for the purpose of preventing theft, vandalism and unauthorized occupation under the City’s [Special] Program. You have already advised Board staff that you shall not engage in any work involving the City until xxxx, 2009.

FACTS:

Current Employment

You are the Business Development Manager, Government Affairs, North America for XYZ, the U.S. affiliate of XYZ Holdings Ltd. (collectively “XYZ”), which is an international company offering products and services to secure - from theft, vandalism or occupation - the vacant real estate of its clients. Your employer has requested that, among other duties, you approach City employees and elected officials, anticipating that as a result of your efforts it would obtain contracts with the City. You asked whether, under the Ordinance’s Post-Employment provisions, you would be able to represent and assist XYZ in obtaining and performing contracts with the City.

City Employment

In your City career you had various assignments, but those relevant here involved vacant property and demolition related to vacant property. You began as Alderman [Jones’s] assistant, remaining in that position from 1993-1995, then you became Assistant Commissioner/Project Manager in P from 1996-1997, Deputy Commissioner of P from 1997-2003, Managing Deputy Commissioner of P from 2003-2006 and Deputy Commissioner of A from 2006 to xxxx, 2008, when you left City service.

You said that you had learned from your work at Alderman [Jones's] office about the adverse affect of "bad" buildings on the surrounding area and the City. You started in P as Assistant Commissioner, acting also as a project manager, and in charge of the [Special] program ("Program"). You said that managing the Program was your main City assignment in P. You also stated that, occasionally, you were on site with your staff or independent contractors attempting to solve problems. You reported to the Mayor's Chief of Staff, among other things. The Program's goal was to demolish vacant/dangerous structures in the City (unless reparable). You were in charge of generating and sending monthly reports to the Chief of Staff. You explained to Board staff that there were two procedures to accomplish a demolition: (i) through court proceedings; or (ii) through the fast-track process. You explained that you managed the inspectors of buildings in order to determine whether a building were vacant and/or dangerous; the inspectors wrote a building report with photographs; the department's supervisory staff, including you, made recommendations - internally - whether to demolish the building; and the Chief P Inspector then made the decision whether to demolish. However, you could review and modify that decision.

You said that, if it were the appropriate type of property for demolition, *e.g.*, certain size, number of units, *etc.*, as categorized under the P Ordinance, then, in conjunction with the Department of C ("C"), your staff would begin the court process; then normal litigation procedures would ensue; and either an order for demolition would be issued to the City, or an order issued to the owner to perform repairs, or to the owner to board up and secure the building. If there were a demolition order, your staff would send general specifications, *e.g.*, "two story brick with basement" at a certain address and adding any special conditions, if needed, to the Department of D ("D") so that D would issue, typically, a Request for Qualifications ("RFQ"). Once an award was made by D, you and the Commissioner of P would sign a "proceed letter," directed to the successful demolition bidder and your staff people would obtain and give a City permit to that demolition bidder to proceed with demolition. The successful bidder would then perform without further approval or review by you or your staff. It would have its master agreement with D and would incorporate your staff's specifications into that agreement, performing the demolition. Thereafter, a P inspector would ensure that "clean fill" was placed on the now empty land and photograph the area so that the City could process payment to the demolition company. After that, your staff would advise C that the demolition was complete so that C could file a City lien (in order to collect costs from the owner). Further, your staff participated in a committee that prioritized the foreclosure of City liens on the property after the demolition.

You further explained that demolition might occur without a court order. To begin this fast track process, your staff would file notice about demolition of certain vacant property in the Sun-Times, serve all interested parties (after performing title work to determine those parties) about such demolition, and post large signs on the property, so the public knew your fast track process had begun. Thirty days after the last of those acts was completed, one of your inspectors would visit the

site to determine if the building were still “open,” *i.e.*, vacant or dangerous, then you sent the owner a second notice and, thereafter, internally processed papers for demolition as if a court order had been issued. Your staff, however, filed its own liens, and then sent the paperwork to C for foreclosure proceedings.

You explained that the work you performed on vacant property was also part of the Program. The City’s strategy was to tear down vacant buildings, or put pressure on the owner to repair the building. You explained that, when you began your responsibility for the Program, the property in which the City was interested generally included: (i) existing improved vacant property (ii) property that had already become vacant after a demolition; (iii) unimproved vacant property; and (iv) property that became vacant/distressed (after you began managing the Program). You were not involved in (ii) or (iii).

In describing your involvement with the vacant property portion of the Program, first, you said that you managed the inspectors as you earlier described in connection with the demolition part of the Program. Second, you explained that an owner of property under the jurisdiction of the Program could perform repair to the vacant property on his or her own, or per court order. Third, because vacant land arising out of a City-caused demolition was the “rule” (“vacant/demo”), nevertheless, you were responsible to ensure the “board up” of a vacant (and thus not demolished) building; because boarding up was less frequent, you explained that it was lower on the priority list of departmental work for you, your staff and the City. As with demolition, the procedure for a board up required an RFQ that resulted in what you termed “an open contract,” so that the board up work was accomplished “by purchase order...as needed,” as, after the contract bid out, typically one company did all the work and would be “on call.” One of your staff would give general specifications to D for the board up of a door, window or any other openings, and D would issue, as with demolition, an RFQ, obtaining a successful bidder that would then have a City contract. You did not sign off on those RFQs necessary for D to complete a City contract with a successful bidder, only the Commissioner performed that task. Thereafter, as you explained, if a court order for a board up issued, then one of your staff members was advised and called the successful bidder to order a board up and gave the address; if, however, an Alderman called P about the board up of certain property, then you would be the one to tell your staff member to call the outside company. Once the board up was complete, the company would take a photograph and send it to you or your staff as evidence of the completed work in order to obtain its payment. The board up consisted of plywood on the first floor only because the then-existing ordinance’s only technical requirement was to state what type of screw fastener was to be used.

Later in your tenure, a Vacant Property ordinance was passed so that an owner could register the property, obtain insurance, and board up the building, but only for a secured building to which nothing else could be done, and which building was not subject to demolition. Your staff inspected the building to force owners to actually perform the board up under this ordinance, but the ordinance was difficult to enforce (though the building was shown in your records to be a board up); you

explained you tried to have the inspectors perform re-inspections to determine owner compliance (or to request another P's division, [Conservation], to "keep an eye" on occupied buildings, *e.g.*, secured vacant buildings, or otherwise occupied buildings, but you were not directly involved in [Conservation]). You explained there is now a New Ordinance, which is different because it requires owners to maintain the building, and, if it is broken into, then the City can enforce the ordinance; if a further six months passes, then P must secure the vacant building. You explained you were not involved in either ordinance's promulgation or passage.

Similar to the demolition procedure under the Program, as to boarded up buildings, you said inspectors would periodically re-inspect to ensure that the building continued to be secured or else to put it back into the "vacant/demo" system of the Program. In addition, if you or your staff received a complaint about a vacant building, then appropriate staff would inspect that building to determine if you should make it part of the overall "vacant/demo" program. You explained that you also referred buildings occasionally to the Department of E's [Facility] program, and, at that point, that department would take "ownership" of the issue and attempt to process a legal transfer for purposes of the rehabilitation of the building.

You explained that some of your other work included attending community group meetings, speaking to the media and attending internal City meetings. Sometimes you would participate in special projects, such as obtaining a survey from the Department of [F] for your review in order to help you in moving the Program's demolition process along.

You said that when you were at A, you were on a committee, associated with the Mayor's Office, through which you were worked on a new manual in connection with the City's demolition process. After a change in the Mayor's Chief of Staff, you were requested to reorganize the languishing City demolition program. In addition, as to City-owned properties, you would "send" those properties - when appropriate - to P in order that the department complete the demolition of a vacant building.

You stated that, during your City tenure, XYZ has never had - and does not now have - a City contract. You advised staff that about 19xx a representative of the newly-opened XYZ Chicago office came to P and introduced himself to you; thereafter, until you were hired by XYZ, neither you or P had any other communication with XYZ. You further explained that any demolition or board up contracts in which you may have been involved while at the City have expired and, as to the one or two that have been "rewritten," you said that they are new contracts, rewriting having been accomplished without your involvement in any manner. In addition, XYZ never had - and does not now have - a City matter of any kind, including any administrative or other hearings or proceedings. You stated that, while you were in City service, on occasion, one of your staff might appear at an administrative hearing involving an owner who did not comply with a court order to board up and secure a vacant building.

LAW AND ANALYSIS:

Post-Employment. Section 2-156-100(b), “Post Employment Restrictions,” of the Ordinance states, in relevant part:

No former...employee shall, for a period of one year after the termination of the employee’s...employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the...employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Permanent Prohibition: A former City employee is permanently prohibited from assisting or representing any person on a contract if he or she also exercised “contract management authority” over that contract while employed by the City. “Contract management authority,” defined in Section 2-156-010(g):

means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

In connection with both the demolition and vacancy portions of the City’s Program, your staff prepared specifications for D, which would obtain vendors to perform demolition or board up services for the City. You also advised Board staff that all contracts containing such specifications have terminated. Moreover, you said that there were one or two such contracts that were “rewritten,” but that you had no involvement with said rewritten contracts. You authorized us to speak with P. A deputy commissioner from P advised Board staff that one board up contract was still extant upon you leaving P and City service, but was then rewritten in xxxx 2008. Accordingly, the Board concludes that the Ordinance’s permanent post-employment restriction does not prohibit you from assisting or representing XYZ in any City contract that it may seek or acquire for its services as described herein.

One-Year Prohibition. Under the first clause of Section 2-156-100(b), you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including XYZ, its parent, subsidiaries, affiliates or clients) in any business transaction involving the City if you participated personally and substantially in the subject matter of that transaction as a City employee. Accordingly, we first assess whether there are “business transaction(s) involving the City” on which you have been asked to assist XYZ, then their “subject matter(s),” and finally, whether you “participated personally and substantially” in those subject matter(s) during your City employment. You will be prohibited from assisting or representing any person in those transactions

for one year, after leaving City employment, if: (i) they involve the City; and (ii) you participated personally and substantially in their subject matter.

You told Board staff that “[y]our employer has requested that, among other duties, you approach City employees and elected officials, anticipating that as a result of your efforts it would obtain contracts with the City.” Clearly, any such contract would be a “business transaction involving the City.”

In connection with “subject matter,” you stated that you are the Business Development Manager, Government Affairs, North America for XYZ, which is an international company offering “products and services to secure - from theft, vandalism or occupation - the vacant real estate of its clients.” Accordingly, the Board concludes that the subject matter in this case is securing partially or fully vacant improved or unimproved real estate for the purpose of preventing theft, vandalism and unauthorized occupation. You would be prohibited for one year from engaging in work involving the subject matter of a City contract if you were substantially and personally involved in that subject matter while in City service.

In your City career, among other things, you advised Board staff that you were “in charge of the [Special] program [~~“Program”~~]. [You said that] managing the Program was your main City assignment in P[.]”¹ where you spent most of your City tenure. Moreover you explained that “[t]he Program’s goal was to demolish vacant/dangerous structures in the City (unless reparable)...[and that]...[t]he City’s strategy was to tear down vacant buildings, or put pressure on the owner to repair the building.” In order to achieve the latter, you were directly responsible to (i) manage the inspectors (as you earlier described in connection with the demolition part of the Program); and (ii) ensure the “board up” of a vacant (and thus not demolished) building. To ensure performance of the “board up,” one of your staff would give general specifications to D for the board up of a door, window or any other openings, and D would issue, as with the demolition portion of the Program, an RFQ, obtaining a successful bidder that would then have a City contract. Thereafter, as you explained, if a court order for a board up issued, then one of your staff members was advised and would call the successful bidder to order a board up and gave the address; if, however, an Alderman called P about the board up of certain property, then you would be the one to tell your staff member to call the outside company. Once the board up was complete, the company would take a photograph and send it to you or your staff as evidence of the completed work in order to obtain its payment. Accordingly, the Board concludes that, in your City tenure, you were “personally and substantially” involved in securing partially or fully vacant improved or unimproved real estate for the purpose of preventing theft, vandalism and unauthorized occupation. Thus, you are prohibited for one year from the date you left City service from assisting or representing XYZ or anyone with respect to securing partially or fully vacant improved or unimproved real estate for the purpose of preventing theft, vandalism and unauthorized occupation under the City’s [Special] Program.

¹Quote from your modification to Board staff recitation of facts.

Other Relevant Ordinance Provisions:

Lobbying, Section 2-156-210 et seq. (Lobbyist Registration). You stated that “[y]our employer has requested that, among other duties, you approach City employees and elected officials, anticipating that as a result of your efforts it would obtain contracts with the City.”

Article 3 of the Governmental Ethics Ordinance, Section 2-156-210 et seq., regulates lobbying of City employees and officials and requires lobbyists to register and file semi-annual activity reports with the Board of Ethics. The term “lobbyist” is defined in relevant part at Section 2-156-010(p) of the Ordinance as “*any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any [City] legislative or administrative action...*”

Please be advised that it is highly likely you would be deemed to be a lobbyist under the Ordinance if you engage in conduct on behalf of your clients as you have described to Board staff. Obviously, whether you would be acting as a lobbyist within the meaning of the Ordinance would depend upon the particular conduct in which you engage.

Confidential Information, Section 2-156-070 (Use of Disclosure of Confidential Information). The Board takes this opportunity to remind you of your permanent prohibition from disclosing the City’s confidential information as set forth in Section 2-156-070 of the Ordinance.

DETERMINATIONS: Based on the facts presented, the Board determines that the post-employment provision of the Ordinance prohibits you, for a period of one year from the date you left City service, that is, until xxxx, 2009, from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) with respect to securing partially or fully vacant improved or unimproved real estate for the purpose of preventing theft, vandalism and unauthorized occupation under the City’s [Special] Program. We note here that you have already advised Board staff that you shall not engage in any work involving the City until xxxx, 2009. The Board also determines that you have not exercised contract management authority over any City contract that XYZ may obtain with the City and, therefore, the Ordinance’s permanent prohibition does not restrict you from assisting or representing XYZ (or any other person) in any City contract XYZ is seeking once the one-year prohibition has passed.

The Board’s determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other rules or laws may also apply to your situation. We also note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

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RELIANCE: This opinion may only be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz

Chair