

EMUS

ADVISORY OPINION
Case No. 95038.A, Post-Employment

To: [REDACTED]
Date: November 30, 1995

On October 18, you came to the Board of Ethics for guidance on how the Governmental Ethics Ordinance applies to you in your pursuit of a specific post-City job opportunity. This advisory opinion sets forth our analysis of the facts you presented under the relevant provisions of the Ethics Ordinance.

FACTS: You are currently the Director of [REDACTED] for the City's Department of [REDACTED]. You expect to terminate City employment on [REDACTED].

You have been invited to interview for a position with *Company X*, a billing agency based in [REDACTED]. *X* contracts with various health providers, including [REDACTED] Hospital and the [REDACTED] hospitals, to handle certain patients' billing and insurance reimbursement records. *X* has only one contract with the City, under which it provides collection services for the Department [REDACTED] for public aid patients who receive care in the City's clinics. The current term of *X*'s contract with the [REDACTED] Department expires on [REDACTED] 30, 1995. However, you said, the contract term is renewable with the same substantive specifications for one year, beginning on [REDACTED] 1, 1995, and renewable again for another year, also with the same substantive specifications, beginning [REDACTED] 1, 1996. You also said that, based on past practice, the City and *X* likely will not agree on whether to extend or renew the contract until months after November 30, 1995, but until that time will continue to operate under its specifications.

You said *X* is interested in expanding its business in the midwest and may offer you the position of contract administrator. In this position, it is likely you would negotiate and enter into contracts on behalf of *X* and administer already-existing contracts for billing services to various health care providers.

You have been employed with the City since [REDACTED], working with various records and data systems, first in the [REDACTED]



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[redacted] division of the [redacted] Department and, later, in the Department's division of [redacted]. You have served as its Director of [redacted] since [redacted] 199[redacted]. You supervise the staff in the [redacted] Department's [redacted] Division, which manages all billing, reimbursement, and payment procedures for patients who have received care at the City's health clinics. You and your staff deal directly with X in its City contract. Your staff provides computer records of patients' clinic visits to X and forwards to X public aid records pertaining to those visits. X checks these records against its own database to assure that the City requests reimbursement for the maximum number of patients who are eligible for public aid. X also corrects certain billing errors and resubmits the bills to public aid in an attempt to obtain maximum reimbursement. For patients who do not qualify for public aid, X provides the [redacted] Department with lists of those who qualify for grant funds available through [redacted] Department programs. X's payment under the contract is commission-based. It collects a percentage of each bill that is paid by public aid. Your staff cross-checks X invoices to determine the proper payment due to X.

You said that you have met personally with the X account representative every six weeks to discuss progress on various billing projects, developments or changes in public aid policies, and on tracking of invoices and payments.

X has had a series of one-year contracts to provide billing services to the Department of [redacted] since [redacted]. You said you have not participated in the process through which the terms and specifications of these contracts are negotiated, though you have offered recommendations to your department whenever problems arose with X's performance. To the best of your knowledge, there have been no written reports or quarterly reviews of the Department's contract with X.

You said that the only job opportunity you are currently pursuing is with X. You also said that, to the best of your knowledge, it is likely that X will seek only to maintain its current contract with the Department of [redacted], though X may be interested in seeking to provide additional billing services to the Department.

LAW AND ANALYSIS: Post-Employment Restrictions. The provision of the Ethics Ordinance most relevant to your situation is §2-156-100(b), "Post-Employment Restrictions." It states:

No former official or employee shall, for a period of one year after the termination of the official's

EMUS

Case No. 95038.A
November 15, 1995
Page 3

or employee's term of office or 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 official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Section 2-156-010(g) defines "contract management authority" as:

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.

According to these sections, you, as a former City employee, are subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition. You are prohibited for one year after the effective date you terminate City employment from assisting or representing any person in a business transaction involving the City if while a City employee you participated personally and substantially in the subject matter of that transaction. The one-year period of prohibition under Section 2-156-100(b) begins on the effective date your City employment terminates, not on the date you stopped performing particular tasks. You are also permanently prohibited from assisting or representing any person in a contract if while a City employee, you exercised "contract management authority," as defined above, with respect to that contract. See Case No. 94044.A.

According to the Board's interpretation, "assisting" and "representing" a person in business transactions involving the City encompass helping a person to seek a contract as well as helping a person to perform a contract. See Case No. 92035.A.

One-Year Prohibition.

As Director of the Department of [REDACTED]'s Division of [REDACTED], you supervise the Department's billing and reimbursement operations for patients who utilize the City's health care clinics, and have been personally involved in these operations, as described above. Based on the facts you presented, the Board finds that you have participated personally and

EMW

Case No. 95038.A
November 15, 1995
Page 4

substantially in setting up and implementing the Department's patient billing and reimbursement operations and procedures. Thus, you are prohibited, for one year from the effective date you terminate your City employment, from assisting or representing any person in seeking or performing any contract or business transaction that involves the Department's patient billing and reimbursement operations and procedures. You are prohibited not only from assisting or representing X with respect to its current contract, but also from assisting or representing X should it, for example, seek to provide services to the City that involve the Department's patient billing and reimbursement operations and procedures, in addition to those it already provides under its current contract.

Permanent Prohibition.

The Contract's Current Term. Because, you said, during the next year X will likely not pursue any business with the City of Chicago other than maintaining its current contract with the Department of [REDACTED], and the job opportunity you are currently pursuing is with X, the issue is whether you are permanently prohibited from assisting or representing X in performing that contract.

You said that you and the staff you supervise deal directly with X on ongoing contract issues, and that you have met personally with X representatives to discuss these issues. You also have made recommendations to your Department on issues relating to X's performance of that contract. Based on these facts, it is the Board's opinion that in your City job, you are personally involved in, and have direct supervisory responsibility for, the performance of X's City contract, actions that constitute "contract management authority" as defined by the Ordinance. Because you have exercised management authority over X's City contract, you are permanently prohibited under §2-156-100(b) of the Ordinance from assisting or representing any person other than the City, including X, on that contract. You said that the contract's current term ends [REDACTED] 30, 1995, but that the parties will likely operate under its specifications until they extend or renew it, which will likely be after [REDACTED] 30, 1995 but before [REDACTED] 30, 1996.

Contract Extension or Renewal Terms. Whether this permanent prohibition extends to renewals or extensions of the contract beyond its current term is yet unclear, because the terms and conditions of that renewal are not yet known. In any event, if you do accept the X position, as discussed above, you are subject to the one-year prohibition (effective for one year

EMUS

Case No. 95038.A
November 15, 1995
Page 5

from December 29, 1995, or whatever date you effectively terminate City employment) with respect to that contract. And, if the X contract is renewed for a period extending beyond one year from the date you effectively terminate City employment, and X asks you to assist or represent it in connection with its City business, you are advised to seek further guidance then as to the application of the permanent prohibition to your proposed activities.

The Board also emphasizes that, because the X position is the only potential job opportunity that you described to us, our analysis and conclusion as to the Ordinance's permanent prohibition applies only to your assisting and representing X with respect to its current City contract. If another employment opportunity arises, we advise you to seek further guidance from the Board, as this permanent prohibition may apply differently to that situation.

Confidential Information.

The other provision of the Ethics Ordinance relevant to your situation is Section 2-156-070, entitled "Use or Disclosure of Confidential Information." It states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

This section prohibits you, as a former City employee, from revealing or using confidential information you have acquired during the course of your City job.

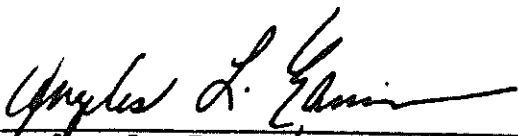
DETERMINATION: Based on the facts presented, we determine that you have participated personally and substantially in setting up and implementing the Department's patient billing and reimbursement operations and procedures. You are thus prohibited, for one year from the effective date you terminate your City employment, from assisting or representing any person, including X, in seeking or performing any contract or business transaction that involves the Department's patient billing and reimbursement operations and procedures. We also determine that, during your City employment, you have exercised contract management authority over X's City contract. Therefore you are permanently prohibited from assisting or

Case No. 95038.A
November 15, 1995
Page 6

representing any person, including X, on that contract. If this contract is renewed or extended for additional terms on the same substantive specifications, you are advised to seek further guidance then as to the application of the permanent prohibition to your proposed activities.

Our determinations in this case are based upon the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those 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 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.



Angeles L. Eames
Vice Chair

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