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ADVISORY OPINION
Case No. 96007.A, Post-Employment

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]
Date: [REDACTED]

Board of Ethics
Dorothy J. Eng
Executive Director

On [REDACTED] the Board of Ethics received your request for an advisory opinion on the application of the City's Governmental Ethics Ordinance to your post-City employment. This opinion sets forth our analysis of the facts you presented under the post-employment provisions of the Ordinance.

Angeles L. Eames
Vice Chair
Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan

FACTS: You were employed with the City for [REDACTED] months. You began your position as [REDACTED] to Dept. A [REDACTED] on [REDACTED] and resigned on [REDACTED]. On [REDACTED] you began working for Co. Z [REDACTED], a private developer who has specialized in affordable housing [REDACTED]. You said Co. Z [REDACTED] is expanding by adding market-place housing projects to its business, and has hired you to join its development team. You stated that you do not yet know what title or position you will hold with Co. Z [REDACTED] or on what particular projects you may be asked to work, but you expect you may be asked to help develop both affordable and market-rate housing projects. You said your duties probably will include working up budgets for development projects, and possibly locating properties available for Co. Z [REDACTED] to buy. These may include properties outside as well as inside the State of Illinois.

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Co. Z [REDACTED] has been awarded City funding through Dept. A for its affordable housing development projects in the past. You said you are not aware of what, if any, current Co. Z [REDACTED] development projects have received funding through Dept. A but you expect Co. Z [REDACTED] may be interested in applying for more funding in the future.

The City's job description of your position as [REDACTED], which you provided in writing to the Board, characterizes your duties as administrative and clerical in nature. You were responsible for handling [REDACTED] correspondence, maintaining the

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[REDACTED] assignment rosters, coordinating and preparing the agendas and meeting materials for [REDACTED] and distributing monthly updates on Dept. A programs and activities to other City agencies.

As [REDACTED], you said you were involved with Dept. A affordable housing projects only to the extent that you (1) composed informational letters on [REDACTED] behalf about Dept. A programs (including affordable housing programs) to those who wrote to the department with general inquiries, (2) coordinated weekly [REDACTED] meetings at which housing projects were discussed, and (3) attended weekly [REDACTED] meetings at which such projects were discussed.

You stated that the purpose of the [REDACTED] meetings was to allow the Commissioner to review the week-to-week operations of the department, as well as departmental policies and priorities, with the deputy commissioners. You had no advisory responsibility in these meetings; your duties were to coordinate the agendas, distribute the meeting materials to those attending the meetings, and maintain the roster of assignments the Commissioner delegated to the deputy commissioners. No particular loan applications or development proposals were discussed at these meetings, and no official votes were taken on any matters.

You described the [REDACTED] meetings as designed to advise the Commissioner; [REDACTED] reviews and gets feedback from relevant staff on new or ongoing department projects and loan applications. This committee is responsible for the initial evaluations of specific housing development proposals. You explained that general overviews of proposed projects are presented to the committee by the Relationship Managers from the Developer Services Division of Dept. A. After discussion by committee members on the feasibility of the proposals presented, they make recommendations to the Commissioner, which [REDACTED] forwards to the External Loan Review Committee. You said that, while no official votes are taken at the [REDACTED] meetings, those present are asked to share their views with the Commissioner. You said you were asked by the Commissioner to attend these meetings for general informational purposes, to keep you up to date with department procedures and projects. You had no advisory responsibilities or any tasks with respect to these meetings or with respect to carrying out any of the programs or projects discussed in them.

You told us that you did not attend any meetings of the External Loan Committee or any other meetings at which private developers were present, and that you made no personal contacts on behalf of the City with private developers. You said you had no decision-making authority over, and no responsibility for carrying out any aspect of, the department's affordable housing projects, or any other programs, projects, or contracts. You noted that Dept. A is not involved in the area of market-rate housing, so you had no contact with development of market-rate housing in the course of your City job.

You also told us you did not participate in any City decisions involving Co. Z [redacted]. One proposal from Co. Z [redacted] was discussed at two meetings of the [redacted] at which you were present. In [redacted] the committee considered and recommended approval on a mortgage loan proposal from Co. Z [redacted] involving one of its affordable housing projects [redacted]. In [redacted] the committee also recommended approval on a tax-credit allocation on the same project. You said you attended these meetings but did not participate in the discussion about the Co. Z [redacted] project. You also said this project has been completed and there is no possibility of your being asked by Co. Z [redacted] to work on it.

You have an Administrative Master's degree from the School of Social Services Administration at [redacted] and your work there focused on affordable housing.

LAW AND ANALYSIS: POST-EMPLOYMENT. Former City employees are not prohibited by the Ethics Ordinance from working for any particular new employer upon leaving City service, but they are restricted in the activities they may perform for that employer. Section 2-156-100(b) of the "Post-employment Restrictions" states:

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

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[REDACTED]

According to this section, a former City official or employee is subject to two restrictions on employment after leaving City service, a one-year prohibition and a permanent prohibition. A former City official or employee is prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if while a City employee he or she participated personally and substantially in the subject matter of that transaction. Under the permanent prohibition, a former City employee is permanently prohibited from assisting or representing any person in a contract if, while a City employee, he or she exercised "contract management authority" with respect 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 the facts you presented, it does not appear that you exercised contract management authority in your City position. Therefore, it appears that you would not be subject to the permanent prohibition with respect to any contracts in your post-City employment.

However, you are subject to the one-year restriction. Under this provision, you are prohibited for one year after leaving City service from assisting or representing any person, including Co. Z [REDACTED] 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 this prohibition begins on February 29, 1996, the date your City employment was terminated.

According to the Board's interpretation, "assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (See Case No. 89119.A.) The Board has interpreted "representation" to mean acting as a spokesperson for another person or seeking to communicate and promote the interests of one party to another, whether by making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, or submitting proposals, contracts or other documents to City agencies, employees or officials on behalf of others.

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You told us you may be asked to work for Co. Z [redacted] in the areas of both affordable housing and market-rate housing, but you do not know on what particular projects you may be asked to work. Because the Board was given no specific transaction to consider at this time, we cannot give you a determination as to how the one-year prohibition applies to you in matters involving Co. Z [redacted] and the City. Due to the nature of your City position, it is conceivable that you were personally and substantially involved in certain matters that would subject you to the one-year prohibition. While your City duties were administrative and clerical in nature, you did have a role in, and regularly attended, senior management meetings in your department at which high-level decisions affecting a wide range of department policies and programs were discussed. Therefore we advise you that, if you are asked by Co. Z [redacted] or any other employer to work on a business transaction involving the City within the one-year post-employment period, you should return to the Board for an opinion on whether your proposed conduct would violate the Ordinance. If you do not seek an opinion from the Board at that time, your conduct, if prohibited under the post-employment provisions, could seriously jeopardize your position as well as the business relationship your employer has with the City.

CONFIDENTIAL INFORMATION. You are also subject, as a former City employee, to Section 2-156-070 of the Ethics Ordinance, entitled "Use or Disclosure of Confidential Information," which states:

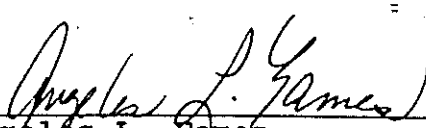
No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential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

This section prohibits you from using or revealing confidential information you may have acquired during the course of your City job.

Our conclusion in this case is 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 the Board immediately, as any change

in the facts may alter our opinion. Other laws or rules also may apply to this situation.

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