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ADVISORY OPINION  
Case No. 96036.A

[REDACTED]

City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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You are the [REDACTED] in the Office of Cable Communications (the "Cable Office"). Under the City's Cable Communications Ordinance (the "Cable Ordinance"), chapter 4-280 of the City's Municipal Code, your office assists the City Council in granting franchises for the operation of cable television systems, and assists the Cable Commission in assuring that the City's Cable franchisees comply with the terms of their franchises.

On [REDACTED], you requested an advisory opinion on how the post-employment provisions of the City's Governmental Ethics Ordinance apply to [REDACTED] (X), the former [REDACTED]. Mr. [REDACTED] (X) left City employment effective [REDACTED] 1, 1996, and is now employed by [REDACTED] (A) Cable [REDACTED] as Director of Human Resources/Governmental Compliance. Pursuant to a [REDACTED]-year franchise agreement with the City that expires on [REDACTED], [REDACTED] (A) holds one of the City's six non-exclusive franchises to operate a cable television system.

Based on the facts presented in this opinion, we have determined that, until [REDACTED] 1, 1997, Mr. [REDACTED] (X) is prohibited from assisting or representing [REDACTED] (A) (1) with its current franchise agreement, through the life of that agreement; and (2) until [REDACTED] 1, 1997, from seeking or performing any business transactions that involve the City and its regulation of cable franchises. Our analysis follows.

**FACTS:** We will first describe Mr. [REDACTED] (X)'s responsibilities for [REDACTED] (A), as he has explained them, then his responsibilities during City employment, as you, Mr. [REDACTED] (X), and [REDACTED] (Y), a Contract Coordinator in your office, have explained them.

Mr. [REDACTED] (X)'s responsibilities at [REDACTED] (A). Mr. [REDACTED] (X) sent the Board a written description of his responsibilities at [REDACTED] (A), which we attach as Exhibit A. He explained his responsibilities, which we summarize here:

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Human Resources/Personnel Administration. Mr. X is responsible for personnel administration at (A), which has about employees, and he directly supervises a staff of employees. His duties include scheduling vacations, administering performance evaluations for all (A) employees, supervising training, signing off on hiring and termination decisions, and administering health and leave benefits.

Outside attorneys/insurers. Mr. X said he is also responsible for supervising (A)'s relations with outside attorneys and insurers, and monitors progress of pending lawsuits which involve claims against (A) related to personal injury or property damage. He said that, in the event a subscriber were to allege conduct indicating a violation of the City's Cable Ordinance, the complaint would normally be handled through (A)'s Customer Service Division, not through Human Resources/Governmental Compliance, and he would have no responsibilities with respect to these complaints.

New business opportunities. Mr. X is responsible for analyzing the products and services, such as voice/video data response systems, that (A) may offer as a result of recent regulatory changes in the industry under the federal Telecommunications Act of 1996. He will be responsible for interpreting regulations as they are passed by the Federal Communications Commission ("FCC"), assembling a product development and marketing team, negotiating any appropriate manufacturing and marketing subcontracts or licenses, and identifying potential customer markets for whatever new products and services (A) will offer. He believes that the Cable Office, as currently established, would not have jurisdiction over (A) with respect to these new products and services.

Illinois Cable Television Association. Mr. X is (A)'s liaison to the Illinois Cable Television Association, a statewide group of cable operators, producers, and regulators that meets periodically to discuss developments in the industry.

Governmental Compliance. Mr. X said he will be responsible for assuring that (A) complies with all relevant federal, state, and municipal laws and regulations. This includes laws governing electronic surveillance of employees ((A) monitors telemarketing calls made by its sales representatives), and approving copyright filings, clearances, and royalty payments. In addition, Mr. X said he must maintain knowledge of current FCC regulations, and monitor (A)'s compliance with federal equal employment opportunity and affirmative action regulations. He will gather and review the data compiled by (A)'s Human Resources staff and Purchasing Department that are relevant to these laws, then

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reformat the data so that [A]'s parent company in [REDACTED] can make required annual FCC filings. These filings cover [A]'s hiring of employees and subcontractors, and any complaints made against [A] for violation of relevant regulations.

Mr. X [REDACTED] confirmed that [A] is also required, by its franchise agreement and the Cable Ordinance, to submit to the Cable Office quarterly reports of its compliance with all relevant federal equal employment and affirmative actions as well as with those stated in [A]'s franchise agreement. He said that he understands that he will be responsible for reformatting the data sent to [REDACTED] for the federal filings and then submitting the required filings to the Cable Office. Mr. Y [REDACTED] told staff, and Mr. X [REDACTED] confirmed, that past Cable Office filings were made by [REDACTED] who was [A]'s Director of Human Resources before Mr. X [REDACTED].

Leased Access/Municipal Programming. Mr. X [REDACTED] is responsible for supervising [A]'s performance of its obligations to provide broadcast channels to producers of both "leased access" and local governmental or "municipal" programming, as explained below.

Leased access. Federal law obligates [A] to provide up to 5 channels for "leased access" users such as local advertisers. The City's Cable Ordinance and [A]'s franchise agreement also require that [A] provide two channels to leased access users, but they are pre-empted in this respect by federal law. The FCC sets lease rates [A] charges these users. Mr. X [REDACTED] told staff that he will review leased access applications and approve or decline them, and negotiate and supervise the performance of lease agreements. He said that the criteria for making these decisions are set by federal law, though [A]'s franchise agreement obligates it to act in accordance with federal law. Thus the City could bring an enforcement action against [A] for failure to uphold these requirements, as this would constitute a material breach of [A]'s franchise agreement. He said that federal law also requires that [A] maintain a public file containing its standard lease application and contract, all filed leased access applications, and all signed contracts for leased access. He will be responsible for maintaining this file, and for handling FCC audits.

Municipal programming support. The City's Cable Ordinance and [A]'s franchise agreement also require that [A] provide two channels for the use of City programming, without charge to the City or to [A]'s subscribers, and to provide at least one full-time employee to staff the City's production facilities, under the City's direction. Mr. X [REDACTED] said that [A] has two employees who fulfill this obligation, and they

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are under his direct supervision. Thus, he will supervise their performance, resolve any disputes with the City about their duties or qualifications, and administer their performance reviews. This would entail speaking with Cable Office personnel who work closely with them. Mr. X [REDACTED] said that he has not been asked to perform any other services with respect to (A) [REDACTED]'s obligation to provide municipal programming support.

Refranchising. (A) [REDACTED]'s franchise agreement with the City expires on [REDACTED]. Under the Cable Ordinance, (A) [REDACTED] must, by [REDACTED], make a formal written request to the City Council to hold a meeting to determine the advisability of renewing the franchise. You told us that, as of [REDACTED], 1996 (A) [REDACTED] has submitted a request to the City to renew its franchise.

Both you and Mr. X [REDACTED] also told staff that there are two procedures under which (A) [REDACTED]'s franchise may be renewed: the "informal" and the "formal," both outlined in §626 of the federal Cable Communications Act of 1984. Under the "informal process," a cable operator may at any time submit a proposal to renew its franchise, and the franchising authority may, at any time, grant or deny the proposal after affording the public adequate notice for comment. You and Mr. X [REDACTED] explained that, as currently understood, this informal process could result in a renewal of (A) [REDACTED]'s obligations under its current agreement, or, if the City determines, the parties could modify the current franchise agreement or renegotiate an entirely new agreement. Mr. X [REDACTED] told staff that, based on his knowledge of renewals completed under the informal process in some Chicago suburbs, he believes that this process will result in a new contract between (A) [REDACTED] and the City.

Under the formal process, the franchising authority or cable operator may, during the six month period ending [REDACTED], commence a renewal proceeding that affords the public opportunity to identify future cable-related needs and review the franchisee's performance. After the proceeding, the cable operator may submit a renewal proposal, containing specific material requested by the franchising authority. Public hearings will then begin; they will consider such issues as the cable operator's performance record and its financial, legal, and technical ability to provide services. The cable operator has the right to provide evidence and question witnesses.

Mr. X [REDACTED] said that, before he joined (A) [REDACTED], senior company officials held discussions about how to seek renewal of the Chicago franchise, and he has not taken part in (A) [REDACTED]'s decision to seek franchise renewal. He understands that he will be responsible only

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for advising (A) on performing its new franchise agreement, and that he will not be asked to assist (A) in preparing for renewal or appearing in any hearings at which the renewal will be considered.

Mr. (X) [redacted]'s Responsibilities On (A)'s Franchise During City Employment. Mr. (X) [redacted] began his career with the Cable Office in [redacted], shortly after the City's initial Requests for Proposals were answered by cable operators interested in obtaining franchises. He said he reviewed proposed construction schedules in the responses, served as a liaison to the City's outside engineering consultants, then assisted in drafting the actual franchise agreements, including the City's agreement with (B), (A)'s predecessor-in-interest. He also said that he participated in negotiating the (B) franchise agreement, and appeared before the City Council, which approved the agreement. He then served as a Contract Coordinator, where he administered (B)'s performance of its agreement, reviewed complaints against (B) and the quarterly reports it filed to show compliance with equal employment opportunity and affirmative action requirements, and reviewed annual reports of its performance. He also regularly prepared and presented reports on (B)'s performance to the Cable Commission, and reviewed quarterly financial statements submitted to the Cable Commission to verify rate payments to the City.

Between [redacted] and [redacted], (B) transferred its franchise rights and agreement to (A). (B) submitted an application to the Cable Office for approval of the transfer, and Mr. (X) [redacted] reviewed it. He said that he also redrafted the form application given to (A), reviewed the revised application it submitted, and assisted the Cable Administrator, [redacted], in preparing and presenting a report to the Cable Commission on the transfer, recommending that the Commission approve it. The report was based on information provided to Cable Office by outside legal and financial consultants that the City had retained, and Mr. (X) [redacted] had been in regular contact with these consultants about the transfer.

In 19 [redacted] Mr. (X) [redacted] became [redacted]. After that, Mr. (X) [redacted] said, and you and Mr. (Y) [redacted] confirmed, that he advised (A)'s Contract Coordinator on issues arising from the Cable Office's annual compliance reviews of (A)'s required filings and (A)'s performance of its obligations to provide services for local producers, and he also reviewed (A)'s filings on equal employment, affirmative action, and subscriber rates. In 19 [redacted], he advised the Cable Commission on how to resolve (A)'s claim that the [redacted] Corporation (a nonprofit corporation created under the Cable Ordinance to promote community involvement in cultural and educational matters and social service) had underutilized its channel, and prepared a report advising the Cable

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Commission to find that the channel was underutilized. Mr. X [REDACTED] also was responsible for verifying the accuracy of franchise fees collected from [REDACTED] A [REDACTED], and served as your office's consultant to the Department of Revenue on an audit it conducted of the franchise fees paid by [REDACTED] A [REDACTED] and another franchisee.

In [REDACTED] 19 [REDACTED], Mr. X [REDACTED] prepared two memoranda for you, though he was not assigned to do so. In them, he discussed franchise renewals generally, noting that the disclosure requirements of the City's Cable Ethics Ordinance will apply to the renewal process, and suggested several consultants that the City may retain to assist in the process.

You told staff that, to your knowledge, at various times during his City employment, Mr. X [REDACTED] worked extensively in all of the regulatory activities the City performs with respect to the its cable franchises. These activities include: assisting the Cable Commission and City Council in negotiating and granting franchises and transfers of franchises; monitoring compliance by franchisees of the terms and conditions of the Cable Ordinance and their franchise agreements; resolving disagreements among franchisees; and auditing franchisee records and filings pertaining to equal employment opportunity, affirmative action, franchise fees, and leased access, municipal utilization, and related programming requirements.

LAW: The provision of the Ethics Ordinance most relevant to Mr. X [REDACTED]'s employment with [REDACTED] A [REDACTED] is Section 2-156-100(b), entitled "Post-Employment Restrictions." It 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.

This section prohibits Mr. X [REDACTED], as a former City employee, for one year following termination of his City employment, from assisting or representing [REDACTED] A [REDACTED] or any other person in a business transaction involving the City if he participated personally and substantially in the subject matter of that transaction during his City employment. The Board has interpreted "representation" to cover a broad range of activities in which one person acts as a spokesperson for another, including making appearances before City

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agencies on behalf of non-City parties, contacting City officials by phone or letter on behalf of others, and signing petitions and proposals submitted to City agencies for review. This section's prohibition against "assisting or representing" a person in any business transaction involving the City includes seeking as well as performing a business transaction or contract. See Case Nos. 89119.A, p. 8; 92035.A, p. 6 (conduct that led to submission of proposal to City department, after former City employee should reasonably have become aware that likely outcome of his conduct was submission of such a proposal, constituted assisting another person in a transaction involving the City).

The provision also permanently prohibits Mr. (X) [REDACTED] from assisting or representing a person, such as (A) [REDACTED], in performing a contract if, during City employment, he exercised "contract management authority" with respect to that contract. "Contract management authority" is defined in §2-156-010(g) 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.

Additionally, §100(a) of the Ordinance provides:

No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office of employment.

Under this section, Mr. (X) [REDACTED] is permanently prohibited from assisting or representing (A) [REDACTED] or any other person in any proceeding involving the City--such as proceedings before the City Council or Cable Commission--if he participated personally and substantially in the proceedings while a City employee.

**ANALYSIS:** POST-EMPLOYMENT RESTRICTIONS. Based on the facts presented in this opinion, we will first make conclusions about Mr. (X) [REDACTED]'s work with the Cable Office both generally and on (A) [REDACTED]'s franchise. Then, as Mr. (X) [REDACTED] has identified his specific responsibilities as (A) [REDACTED]'s Director of Human Resources/Government Compliance, we will apply the Ordinance's permanent and one-year prohibitions to these responsibilities.

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General Factual Conclusions. Permanent Prohibition/Contract Management Authority. The facts presented in this opinion indicate that, from the inception of [REDACTED] B's franchise agreement in 1983, and throughout his City employment, Mr. (X) [REDACTED] had personal involvement in or direct supervisory responsibility for formulating and overseeing performance of this agreement, first by [REDACTED] B, and then by [REDACTED] A after it assumed the franchise obligations. He assisted in drafting the agreement, supervised both cable system operators' performance under it, evaluated and helped coordinate the transfer of the franchise to [REDACTED] A, and advised both Cable Office staff and the Cable Commission on issues related to [REDACTED] A's performance of its contractual obligations. For these reasons, the Board concludes that Mr. (X) [REDACTED] exercised contract management authority over [REDACTED] A's franchise agreement with the City. He is therefore prohibited from representing or assisting [REDACTED] A with its current franchise agreement through the life of that agreement. See Case No. 90069.A, p. 6 (employee who had supervised approval process on a franchise transfer, headed Cable Commission meetings, and presented the Cable Office's recommendations to the Cable Commission exercised contract management authority over cable franchise agreement, and was prohibited from "representing and assisting [his new employer] with its franchise agreement with the City through the life of the agreement").

One-Year Prohibition. As a general matter, Mr. (X) [REDACTED] is prohibited from one year from the date he left City employment (until [REDACTED] 1, 1997), from assisting or representing [REDACTED] A in any business transaction involving the City if he participated personally and substantially in the subject matter of that transaction during City employment. Because of the breadth of Mr. (X) [REDACTED]'s responsibilities with the Cable Office, we can make conclusions about the subject matter in which he participated personally and substantially while with the Office; the question is whether the specific transactions on which [REDACTED] A has asked him to work involve that same subject matter.

The facts presented here indicate that, during Mr. (X) [REDACTED]'s City employment, he advised the Cable Commission or other Cable Office personnel on or personally administered nearly every aspect of [REDACTED] A's franchise relationship with the City, as defined in its franchise agreement and in the Cable Ordinance. Mr. (X) [REDACTED]'s responsibilities at the Cable Office show that he participated personally and substantially in the regulation by the City of its cable franchises. Thus, we conclude that, for one year following termination of Mr. (X) [REDACTED]'s City employment, i.e. until [REDACTED] 1, 1997, he is prohibited from assisting or representing [REDACTED] A in seeking or performing any business transactions that involve the City and its regulation of cable franchises. See Case No. 90069.A (former City employee who supervised the work of the Cable Office



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on matters involving cable franchisees agreements and advised the Cable Commission with respect to the transfer of a franchises "was personally and substantially involved in ... cable communications as it relates to the City," and for one year could not assist or represent his new employer in "cable communications as it relates to the City").

DETERMINATIONS: Application of the Post-Employment Prohibitions to Mr. X [REDACTED]. Accordingly, we will now make general determinations about how the permanent and one-year prohibitions apply to Mr. X [REDACTED], and then apply these prohibitions to each of Mr. X [REDACTED]'s specific responsibilities.

Permanent Prohibitions: As we have concluded, Mr. X [REDACTED] exercised contract management authority over [REDACTED]'s franchise agreement with the City. Accordingly, we determine that he is prohibited from assisting or representing [REDACTED] with its current franchise agreement with the City through the life of the agreement. This prohibition includes rendering advice or assistance to [REDACTED] or representing it before any City agency, including the City Council, your department, or the Cable Commission, with respect to any issue arising under [REDACTED]'s current franchise agreement, including, but not limited to the following specific responsibilities:

- (1) assisting [REDACTED] in preparing or submitting to the Cable Office (or any other City agency), any records, reports or filings that it is specifically required to make or keep under its franchise agreement, including but not limited to: reports on forms supplied by the Cable Commission, such as job applicant flow logs, promotion, demotion, termination and transfer logs and training activity and apprenticeship program reports; equal employment opportunity, affirmative action, minority or women-owned business enterprises filings and reports, such as quarterly and annual reports, summaries of complaints, contracts or subcontracts, and business enterprise plans and related utilization analyses;
- (2) representing or assisting [REDACTED] with respect to issues arising solely under [REDACTED]'s obligations in its franchise agreement to provide services to persons who lease access to time, including advising [REDACTED] or representing it before the City as to these obligations; and
- (3) resolving any disputes with the City about the duties or qualifications of the employees [REDACTED] supplies (as required by its franchise agreement) to work with the Cable Office with respect to [REDACTED]'s obligation to provide municipal programming support.

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One-Year Prohibitions: We have concluded that, during his City employment, Mr. (X) participated personally and substantially in the City's regulation of cable franchises. Accordingly, we determine that, until 1, 1997, he is prohibited from assisting or representing (A) in seeking or performing any business transactions involving the City and its regulation of cable franchises. As to his specific identified responsibilities with (A), this one-year prohibition applies to:

- (1) assisting, representing, or advising (A) in connection with renewing its franchise with the City, under any procedures or related proceedings commenced and conducted pursuant to municipal or federal laws or regulations<sup>1</sup>; and
- (2) assisting, representing, or advising (A) in connection with any lawsuits or other claims or allegations against it that involve the City's Cable Ordinance.

Following the rationale of Case No. 90069.A, Mr. (X) is not prohibited from performing activities that are not so interrelated to (A)'s City business that they constitute assisting or representing (A) with either its franchise agreement or with business transactions involving the City and its regulation of cable franchises. These include: his personnel administration responsibilities; his responsibilities with respect to (A)'s relationships with its outside attorneys and insurers, including monitoring progress of pending personal injury or property damage claims or suits; his responsibilities with respect to new products and services (A) may offer as a result of recent changes in federal laws and regulations; his responsibilities as (A)'s liaison to the Illinois Cable Television Association; his responsibilities for assuring that (A) complies with all federal and state laws and regulations; and his responsibilities with respect to leased access procedures and users, except to the extent those responsibilities solely involve (A)'s contractual obligations under its franchise agreement.

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<sup>1</sup> We note that no actual proceedings have been commenced with respect to (A)'s franchise renewal; the facts presented also indicate that Mr. (X) has not participated personally and substantially in preparations for whatever proceedings will be conducted. For these reasons, the permanent prohibition of §100(a) would not apply. However, (A)'s franchise renewal is a business transaction in whose subject matter Mr. (X) did participate and substantially during his City employment, thus the Ordinance's one-year prohibition does apply.

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Should you have any questions about whether Mr. (X) [REDACTED] is prohibited by the Ordinance from performing any specific tasks not addressed this opinion, please feel free to contact us.

Our determinations in this case are based on 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 determinations. Other laws or rules may also apply to this situation.

**CONFIDENTIAL INFORMATION:** The Board also advises you that §2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits Mr. (X) [REDACTED], as a former City employee, from using or disclosing confidential information he acquired in the course of his City employment.

**RELIANCE:** This opinion may be relied upon by any person involved in: (1) the specific transactions or activities with respect to which this opinion is rendered; and (2) any specific transaction or activity that is indistinguishable in all its material respects from the transaction or activity with respect to which the opinion is rendered.

  
Acting Vice Chair  
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