

EMW5



ADVISORY OPINION
CASE NO. 96052.A
POST-EMPLOYMENT

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics

Date: [REDACTED]

Dorothy J. Eng
Executive Director

Angeles L. Eames
Vice Chair

Eileen T. Corcoran
Darryl L. DePriest
Emily Nicklin
Martin E. O'Donovan
Michael F. Quirk

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TTY)
<http://www.ci.chi.il.us>

On [REDACTED], you wrote to the Board of Ethics, confirming an earlier telephone call, to ask for guidance on how the City's Governmental Ethics Ordinance applies to you in your post-City employment. You were a [REDACTED] with the City Department [REDACTED] at the time you left your City job in [REDACTED]. You now work for [REDACTED] (X), a planning, development advisory and real estate consulting firm that has a retainer contract with your former department. You have asked us to address projects under this and another contract that (X) [REDACTED] is seeking with the City. Some of these projects involve tax-increment financing districts, a topic on which you worked in your City job.

The Board has concluded that the Governmental Ethics Ordinance does not prohibit you from assisting or representing (X) [REDACTED] in connection with the contracts and projects you have asked us to address; however, the Ordinance does subject you to specific permanent and one-year restrictions. The Board's advice is set forth in this opinion, along with the facts as you presented them to us and the Board's analysis.

FACTS: From [REDACTED] through [REDACTED], you were employed by the [REDACTED] Division of the Department [REDACTED] ("CD"), first as a [REDACTED] and later as a [REDACTED]. Before that, from [REDACTED] until [REDACTED], you had worked under [REDACTED]. In (CD), you were assigned both to the [REDACTED] "P" Planning District and to the Tax-Increment Financing (or "TIF") Unit. In each of these units you were a member of a team, which was under the management of a senior staff person.

In the [REDACTED] "P" District, your duties included community-outreach activities, such as representing (CD) at community meetings and making presentations about (CD) projects to community groups and local business organizations. You also served as a liaison between



Please Recycle!



(CD) and local, non-City agencies (such as [REDACTED] and the [REDACTED]), coordinating City work required by those agencies, or helping seek City funds to assist in their projects.

Tax-increment financing is a tool for financing development. In the Tax-Increment Financing Unit, you participated as one of five staff persons in planning and developing tax-increment financing districts, or "TIF districts." A TIF district is an area of land that is eligible for certain development incentives, including subsidies and/or various City-conducted improvements. These incentives are intended to foster greater economic activity, yielding an increase in local tax revenue from that district. Subsidies and improvements are funded either through the increase in tax revenue (on a "pay-as-you-go" basis), or through the issuance of bonds, which are then retired by means of the tax-revenue increase.

Municipalities are authorized by the state law to designate TIF districts. State law provides criteria for a geographic area's eligibility, along with standards for TIF-district redevelopment. These criteria and standards are the same for any municipality in the state. In order to qualify, an area must meet the state's definition of a "blighted" or a "conservation area." Also, a municipality must show that TIF assistance is both necessary (development will not happen without it) and sufficient (the resulting development will be enough to finance the improvements). The City has authority to designate its own TIF districts, and does so by City Council ordinance, at the recommendation of (CD). The initial suggestion that a TIF district be created may be made to the City by a private developer, by (CD) itself, or by another City or non-City agency. Along with demonstrating eligibility, the City must also prepare a redevelopment plan, stating the City's goals and policies for the district for the course of its existence (23 years, you said, by state law), and setting up a budget with general categories of expenditure and revenue.

The City often hires independent TIF consultants to prepare the necessary eligibility studies and redevelopment plans. You said that these consultants are chosen by the Deputy Commissioner of the [REDACTED] Division, and that you did not assist in the process by which they were hired. The consultant gathers the information demonstrating eligibility under state criteria, including projected balance sheets estimating expenditures and tax-revenue increase on the basis of its redevelopment plan. In drafting the plan, the consultant must consider the aims held for the area by (CD) and other City departments, as well as concerns of the Community Development

EAWS

EMUS

Case No. 96052.A

[REDACTED]

Page 3

Commission, City Council and community groups. You said that these considerations can vary significantly from area to area.

After an area has been designated a TIF district, it is the responsibility of [CD]'s TIF Unit (of which you were a member) to manage the development of the district, including acquiring property and coordinating City improvements. Your work focused on district development. You reviewed specific requests from developers for funding; researched the experience and qualifications of potential developers; negotiated redevelopment agreements; and monitored individual developments and improvements funded with TIF money. You were project manager over the [REDACTED] #1 [REDACTED] and the [REDACTED] #2 [REDACTED] TIF districts, and also worked on redevelopment agreements affecting properties in the [REDACTED] #1 [REDACTED], [REDACTED] #2 [REDACTED], [REDACTED] #3 [REDACTED], [REDACTED] #4 [REDACTED], and [REDACTED] #5 [REDACTED] TIF districts.

You said that while you were primarily involved in the development phase of TIF districts, you also occasionally assisted in establishing TIF districts: you provided [CD]'s TIF consultants with factual information needed to conduct eligibility studies and to draft redevelopment plans; you coordinated efforts between consultants and the Law Department to insure that state requirements were being met; and you attended City Council meetings at which TIF districts were approved. You did not yourself conduct the studies or draft the plans.

You emphasized the differences between the initial phase of drafting a redevelopment plan for a TIF district, and the later phase of managing the district's development. A redevelopment plan is formulated at the outset, in general terms, usually without reference to any specific developers, and expresses long-term goals and possibilities for a district; its drafting is carried out primarily by consultants, who, although they tailor each plan to the particular conditions and projected conditions of an area, rarely deal with individual developers. As each redevelopment plan is for a new district, what the consultant needs above all, you said, is to understand the state law. After a TIF district is in place, then the task becomes to put development in motion. It involves different activities and interacting with different people than the initial planning phase. The [CD] decides that certain kinds of projects are needed, it buys property, and it enters into and monitors agreements with specific developers or property owners for TIF subsidies in connection with specific projects. You noted that, although you occasionally assisted in the TIF planning phase of a TIF district, you had minimal input into the decision to pursue TIF designation of a district, or into [CD]'s policies governing the designating of TIF districts. You said that you had much greater input into decisions about individual developments in a

EMWS

district (e.g., to what kind of use a given parcel of land should be put, or what kind of balance to establish between high- and low-income housing within a residential development).

You now work as an Associate for [redacted] a consulting firm specializing in planning, development and real estate matters. You told us that [redacted] (X)'s clients include both private and public entities, including the City of Chicago. You are currently assigned to a project outside the state.

[redacted] (X) currently has a contract with the City under (CD)'s "p" program. In this program, the City has entered contracts with teams of consultants (about half-a-dozen) for two- to three-year retainers to be used for discrete projects as needed. [redacted] (X) is part of a three-member team led by "Y" [redacted], which is in the first year of a three-year retainer contract to perform planning and design work for (CD) on a project-by-project basis. So far, under the "p" [redacted] program, the team has been hired to work on four projects:

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted] "#6" TIF - eligibility study and redevelopment plan

The first three do not involve TIFs, and are unrelated to any other responsibilities you had in your City work. In the fourth, [redacted] "#6" TIF, a new TIF district is being created. The team will prepare an eligibility study for it, and draft a redevelopment plan. In addition to these projects, the team has been asked to submit proposals, including budgets and time schedules, to draft eligibility studies and redevelopment plans for three new TIF areas:

- a. "#7" [redacted]
- b. "#8" [redacted]
- c. "#9" [redacted]

Also, [redacted] (X) is in the process of responding to a Request for Qualifications ("RFQ") put out by (CD) for TIF consultants to be put on retainer to do eligibility studies and redevelopment plans on a project-by-project basis. Thus all the TIF projects you are asking the Board to address involve conducting eligibility studies and drafting redevelopment plans.

In your City job, you said, you did not take part in preparing, negotiating, or administering the [redacted] "p" program, under which [redacted] (X) currently holds its retainer contract, nor did you work on any of the projects to which [redacted] (X) has

EMUS

been assigned or for which it is submitting proposals under that program. Moreover, none of these projects is in the "D" District or in any of the TIF districts on which you worked as a City employee.

You also stated that you did not participate in any way in issuing the RFQ for TIF consultants to which [redacted] (X) is responding. You said that since most TIF planning involves new TIF districts, projects assigned to [redacted] (X) as a result of its response to this RFQ will be in areas on which you have not worked, except possibly where the City chooses to amend an already-existing TIF. You also said that you had no interaction with [redacted] (X) in any of your City work.

Finally, you explained your belief that your experience working for the City does not give you any particular advantage in performing eligibility studies and drafting redevelopment plans for TIF districts within the City. You said that TIFs are commonly used by municipalities throughout the state, and that each potential TIF district has a unique set of needs and possibilities, and each is subject to different City aims and policies. Considerations involved in any given TIF district, you said, are so local and particular that with respect to planning for TIF designation, knowledge gained from work on previous districts does not help you in dealing with a new district. What is common among potential TIF districts, you said, is that they must conform to state eligibility criteria and redevelopment guidelines. Familiarity with these guidelines is a prerequisite for TIF-consulting work within the state, and is not the special domain of persons who have worked for the City.

LAW AND ANALYSIS: Post-Employment Restrictions. Section 2-156-100(b). The provision of the Ethics Ordinance most relevant to your situation 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 imposes both a one-year and a permanent prohibition on certain activities of City employees after they leave City

EM 105

employment. It prohibits you, for one year following the date you left City employment, from assisting or representing (X) [redacted] or any other person in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment. To "assist" and "represent" encompasses helping a person seek a contract, as well as to perform a contract. "Representation" covers a broad range of activities in which one person acts as the spokesman for another, including making appearances before City agencies on behalf of non-City parties, contacting City officials on behalf of other persons, and signing proposals submitted to City agencies for review.

This section also permanently prohibits you from assisting or representing a person in a particular contract if, while a City employee, you 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."

The Permanent Prohibition. You stated that in your City job, you did not participate in any way in establishing or administering the [redacted] "P" program or the retainer contracts entered under that program. The Board therefore concludes that you did not exercise contract management authority on the retainer contract between the City and the team that includes (X) [redacted] under the [redacted] "P" program, and that therefore the permanent provision of § 2-156-100(b) does not prohibit you from assisting or representing (X) [redacted] on the four named projects and three proposed projects under that contract. In addition, because the facts as you presented them indicate that in your City job you did not assist in preparing or issuing the City's RFQ for TIF consultants, or in formulating any contract to result from the RFQ, we also conclude that you had no contract management authority over the retainer contract that may result from that RFQ, and that therefore the permanent provision does not prohibit you from assisting (X) [redacted] on that contract. However, your work on any projects (X) [redacted] may be asked to consult on in the future under either retainer contract is subject to the restrictions set forth in this opinion.

You explained that you negotiated redevelopment agreements with developers for projects in various TIF districts, and monitored individual developments, which means supervising performance of redevelopment agreements. Because negotiating agreements or supervising their performance constitute "contract management authority," the facts you presented indicate that you exercised

[REDACTED]

contract management authority over those redevelopment agreements you negotiated or monitored, and are subject to the permanent prohibition with respect to those agreements. Further, your description of your City work indicates that you may have exercised contract management authority in connection with projects in the [REDACTED] "D" District or other developments in the TIF districts on which you worked. Thus, the Board advises you that, if you are asked to work on projects or transactions in the [REDACTED] "D" District or in any of the TIF districts on which you worked as a City employee, you should seek further advice from the Board, as the permanent prohibition may apply to contracts associated with them.

The One-Year Prohibition. The facts you presented indicate that both TIF redevelopment plans and district development itself are tailored to a particular locality. You stated that none of the City projects to which (X) [REDACTED] is currently assigned, or for which it is seeking a contract, are located in or concern either the [REDACTED] "D" District or any of the TIF districts or developments on which you worked as a City employee. Three of these projects, as you described them, have no relation to your City responsibilities, while the other projects involve TIF-consulting work--performing eligibility studies and drafting redevelopment plans for TIF districts. In your City job, you managed development in two existing districts, and assisted in several others, offering input into plans, and negotiating and monitoring agreements with developers. You participated to a lesser extent in the planning phase of new TIF districts. However, the facts indicate that neither your activity in the planning phase of various TIF districts, nor your more substantial involvement in managing TIF-district development, gave you any special knowledge that would give you an advantage in performing eligibility studies or drafting redevelopment plans for new TIF districts. The state guidelines to which such studies and plans must conform are commonly known, you had no particular familiarity with or input into City policies guiding the designation of TIF districts, and you did not yourself draft any redevelopment plans or carry out the substantive work to establish the eligibility of a district. You were also not responsible in your City job for hiring TIF consultants. The Board therefore concludes that you did not participate personally and substantially in the subject matter of [REDACTED] (X)'s four projects under the [REDACTED] "P" program, or in the subject matter of the three projects for which it has been asked to submit proposals to perform eligibility studies and draft redevelopment plans for new TIF districts under that program, and that therefore the one-year provision does not prohibit you from assisting (X) [REDACTED] on these projects.

EMWS

Case No. 96052.A

Page 8

For the same reasons, the Board also concludes that you did not participate personally and substantially in the subject matter of [redacted] X's TIF-consulting work for conducting eligibility studies and drafting redevelopment plans for which it has submitted its qualifications in response to the City's RFQ.

However, the work you performed in your City job in connection with the [redacted] #1 [redacted] and [redacted] #2 [redacted] TIF districts constitutes personal and substantial participation in the TIF planning and development of those districts. Thus you are subject to the one-year prohibition with respect to planning or development of those districts. Further, if you are asked by X [redacted] or any other person to work on a project that involves any other TIF district on which you worked in your City job, (if, for example, the City chooses to amend an already-existing district), or on the [redacted] "D" District, you should seek further advice from the Board, as the one-year prohibition may apply.

Further, while not pertinent to the specific projects you have asked the Board to address, your description of your City work indicates that you participated personally and substantially in extending TIF funding for developers and negotiating and managing TIF-district redevelopment agreements. Thus you are subject to the one-year prohibition with respect to seeking or receiving TIF funding for developers or seeking, entering or carrying out TIF redevelopment agreements with the City. See, e.g., Case no. 90024.A, in which the Board determined that a former deputy commissioner, who in his City job was responsible for the "policy-making decision on whether a project should be recommended or not for [a TIF] subsidy" was prohibited for one year from assisting a developer in obtaining TIF subsidies, because in his City job he was personally and substantially involved in the subject matter of the extension of TIF subsidies. While you were not responsible for departmental policy as the former deputy commissioner was, your participation in the development phase of TIF districts warrants this application of the one-year prohibition.

Confidential Information. The other provision of the Ethics Ordinance relevant to your situation is § 2-156-070, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or disclosing confidential information you have acquired during the course of or by reason of your City employment.

DETERMINATIONS:

Permanent Prohibitions. The two retainer contracts. From the facts you presented, the Board determines that the permanent provision of § 2-156-100(b) of the Ordinance does not permanently prohibit you from assisting or representing X [redacted] in the

EMWS

four named projects and three proposed projects under its retainer contract with the City to perform planning and design work under the [redacted] "P" program; and does not prohibit you from assisting or representing X [redacted] in its possible future retainer contract with the City, resulting from its response to the City's RFQ, to conduct TIF eligibility studies and prepare redevelopment plans. The reason is that you did not exercise contract management authority over either of these retainer contracts. However, be advised that your work on any tasks X [redacted] may be asked to perform in the future under either retainer contract is subject to the restrictions set forth in this opinion.

Redevelopment agreements negotiated or monitored. Because the facts you presented indicate that you exercised contract management authority over the redevelopment agreements you negotiated or monitored, the Board determines the Ordinance permanently prohibits you from assisting or representing X [redacted], or any other person, on those agreements.

Advice on other contracts. Because the facts indicate you may have exercised contract management authority, the Board advises that if you are asked to work on projects or transactions in the [redacted] "D" District or in any of the TIF districts on which you worked as a City employee, you should seek further advice from the Board, as the permanent prohibition may apply to contracts associated with them.

One-Year Prohibition. [redacted] "#1" [redacted] and [redacted] "#2" [redacted] districts and other districts. From the facts you presented, the Board concludes that you participated personally and substantially in the TIF planning and development of the [redacted] "#1" [redacted] and [redacted] "#2" [redacted] TIF districts; from these facts, the Board therefore determines that you are prohibited for one year after leaving City employment from assisting or representing X [redacted] in TIF planning and development in those two districts. Further, if you are asked by X [redacted] or any other person to work on a project that involves any other TIF district on which you worked in your City job, or that involves the [redacted] "D" District, you should seek further advice from the Board, as the one-year prohibition may apply.

Extending TIF funding and activity on TIF redevelopment agreements. The facts you presented about your City work indicate that you participated personally and substantially in extending TIF funding for developers and negotiating and managing TIF-district redevelopment agreements. For this reason, the Board determines that the Ordinance prohibits you for one year after leaving City employment from assisting or representing X [redacted] or any other person in seeking or receiving TIF

funding for developers or in seeking, entering or carrying out TIF redevelopment agreements with the City.

██████████ "P" ██████████ and TIF consulting projects. From the facts you presented, the Board determines that the Ordinance's one-year provision does not prohibit you from assisting or representing (X) ██████████ in the four named projects and three proposed projects under its retainer contract with the City under the ██████████ "P" program; and does not prohibit you from assisting or representing (X) ██████████ in TIF-consulting projects for eligibility studies and redevelopment plans, projects that may result from its response to the City's RFQ, insofar as your work on those projects does not involve other restrictions set forth here. The Board has concluded that you did not participate personally and substantially in the subject matters of these transactions during your City employment.

CAUTION: Please note that our determinations in this case are based on 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. 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