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August 24, 1994

C O N F I D E N T I A L

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Re: Case No. 94025.Q

Dear

You recently called our office to ask whether the City's Governmental Ethics Ordinance would prohibit you from serving, without pay, on a not-for-profit community development organization

which is being organized to redevelop

The Board staff has carefully reviewed the facts you presented, and the past opinions rendered by the Board of Ethics on this issue. The Ethics Ordinance does not per se prohibit you from accepting an appointment as a member of a board. However, it is the staff's opinion that, if you accept the position, you would be significantly restricted not only in your ability to perform the duties of a member of the board, but more importantly, in your ability to perform your responsibilities in your City position. Therefore, even though we conclude there is no provision of the Ordinance that specifically prohibits you from serving at this time, we cannot conclude that you should accept the appointment because of the inherent conflict it would create.

We set forth below our analysis of the facts you have described under the provisions of the Ordinance.

FACTS: You currently serve as a
City employee

In this position, you are responsible for administering



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You are involved in administering the well as In the course of administration, you not only supervise members of your staff who have contact with City personnel in other departments, but also have direct contact with other departments yourself. You also supervise for all City departments. This includes the production of a program update, which provides estimates over the next five years.

You said you have decision-making authority in all these areas. You also said, however, that you are able, without difficulty, to delegate particular responsibilities to others in your staff, who, if necessary, would report directly to your supervisors.

Because you live in , you have been asked by Alderman to serve, without pay, in some capacity with the board. So far, there have been only a few meetings of this Commission (only one of which you attended), and no decisions have been made regarding what form or exact mission the Commission will assume. Consequently, you do not yet know in what capacity you may be asked to serve, but you do anticipate being asked to work on one of the Commission's subcommittees and possibly its board of directors.

As far as you know at this time, the board is interested in pursuing City funding in two areas. One is a study to assess the need for improved parking space in the area. You said a City-wide parking study is being undertaken by the Department X the study will include the area. Funds for this study are being appropriated by your department and in your City position, you are participating in preparing for this study.

The second area in which the board is interested involves funding for capital improvement and development programs that may become available if an area is designated as a Tax Increment Financing ("TIF") district. The City has engaged a consulting contractor to conduct a City-wide study to determine what areas are qualified to be designated as TIF districts. You said you have no involvement in your City position with any part of the TIF process, including decisions about which areas of the City are eligible for TIF status. You added, however, that the contractor in charge of the study

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works in your office area and you anticipate being asked by the board to report to it regarding the status of that study.

You also stated that applications to the City for capital improvement funds go through an evaluative process conducted by the individual department in charge of the funding program. However, you said your office would likely be involved, because it administers projects in all City departments.

DISCUSSION: The provisions of the Ethics Ordinance most relevant to the situation you describe are Sections 2-156-020, "Fiduciary Duty," and 2-156-090(a), under the title of "Representation of Other Persons."

Section 2-156-020, "Fiduciary Duty," imposes a duty of loyalty on all City employees. It states:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This section obligates City officials and employees to use their City positions responsibly and in the best interest of the public. It requires them to exercise their professional judgments on behalf of the City free from conflicting commitments or obligations to another entity.

In the circumstances you have presented, the board necessarily will interact with City departments in the course of seeking funds through the capital improvement programs administered by the City. You are responsible for supervising the departments in all the City departments. Thus, in your City job, you are in a position to influence decisions that will affect the board. Your service on the board, an organization that benefits the community in which you live and depends on funds from the City creates a situation of inherent conflict that could compromise your ability to exercise your judgment as a City employee on behalf of the City independently, free from your commitments and obligations to the board.

Because you have the authority in your City position to influence decisions affecting the board, service on the Commission would be one of conflict that limits your capacity to carry out your City duties. When exercising your authority in your City position over matters that affect the board the fiduciary duty provision requires you, as a member of the

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board to recuse yourself from any involvement with those matters if you cannot exercise your City duties in a manner free of your interest in and commitment to the board. Although you said you are able to delegate these duties, the very necessity of delegating the daily responsibilities of one's position to others is a strong indicator of that conflict. Therefore, even though the fiduciary duty provision of the Ordinance does not specifically prohibit you from serving on the board while you also serve the City, the conflict imposes serious restrictions that could lead to a violation.

For example, this provision prohibits you from using your City position, time, or resources for any private purpose--including for the board's benefit. Thus, making inquiries on the board's behalf about the status of the TIF study currently being conducted for the City by the private consultant may violate the fiduciary duty provision of the Ordinance.

Next, the Representation section of the Ordinance, 2-156-090(a), would restrict your ability to exercise your responsibilities as a member of the Commission while holding your City position. This section states, in relevant part:

No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment....

The term "represent" here means acting as a spokesperson for another person or seeking to communicate and promote the interests of one party to another. Representing another person before the City would include, but not be limited to, actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and signing or submitting proposals, contracts or other documents to City agencies, employees or officials on behalf of others.

This provision prohibits you from undertaking any activity that constitutes representing the board in any formal or informal proceeding or transaction before any City agency. The prohibition includes signing any documents or making personal or telephone contacts on the board's behalf with any representative, official, or employee of the City. Thus, the representation provision also seriously restricts the

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activities that you, as a high ranking City employee in the
may undertake as a member of
the board.

Four other provisions of the Ordinance affect the conduct of a City employee serving another entity. The first two are Sections 2-156-030, entitled "Improper Influence," and 2-156-080(a), under the title of "Conflicts of Interest." These sections prohibit City employees and officials from participating in, or trying to use their positions to influence, a governmental decision or action in which they have an "economic interest," defined as any interest valued or capable of valuation in monetary terms (§ 2-156-010(i)).

Section 2-156-070, entitled "Use or Disclosure of Confidential Information," prohibits all current and former officials and employees from using or revealing confidential information they may have acquired during the course of their City job.

Finally, Section 2-156-060, entitled "City-owned Property," prohibits officials and employees from engaging in or permitting the unauthorized use of City property or resources for any private benefit, including the benefit of an organization with which they are affiliated.

Our conclusion is based on the application of the City's Ethics Ordinance to the facts provided. If the facts are incorrect or incomplete, please notify us, as a change in facts may alter our opinion. Please be advised that there may be other rules or laws that apply to your situation. For example, Personnel Rule XVIII requires that employees perform their duties in a manner that furthers the efficiency and best interest of the City, and which results in the highest level of public trust and confidence in municipal government. Under this rule, a department head has authority to take disciplinary action against employees who engage in occupations or other activities that result in a conflict of interest with their present City employment, or who give preferential treatment in the course of their employment to any organization or person, unless authorized by law. We also note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance. Therefore, we suggest you discuss this matter with your supervisor.

We appreciate your inquiry and your readiness to abide by the City's Ethics Ordinance. We hope this letter offers you guidance to help you make your decision. We enclose a copy of the Ordinance for your convenience. If you have any further

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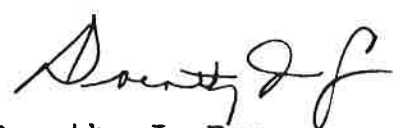
questions about this or any other matter, please do not
hesitate to contact us.

Sincerely,



Steven I. Berlin
Deputy Director

Approved:



Dorothy J. Eng
Executive Director

enclosure

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