

MEH



September 19, 1990

City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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[REDACTED]

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

Re: Case No. 90024.A  
ADVISORY OPINION

Dear [REDACTED]:

Suite 530  
205 West Randolph Street  
Chicago, Illinois 60606  
(312) 744-9660

You requested an advisory opinion to determine what post-employment restrictions, if any, apply to your involvement in the development of property INVOLVED IN PROJECT F.

Facts: You stated in your request that you were acting as a consultant for a developer, GROUP C, that is interested in developing the site. In that letter of April 9, 1990, you stated that since you left your position with DEPT. A you joined COMPANY B.

In separate correspondence, it was indicated that you are a vice-president of Co. B with a 25% partnership interest in the firm.

In connection with PROJECT F, you state that you are assisting GROUP C "with the planning and community process." In addition, you stated, "I have also begun to assist with the coordination necessary to solicit the city to support THEA D assistance for this project." In this connection, you stated, "I will be responsible for hiring AN THE consultant who will do the actual studies to be submitted to the City. I will be therefore, a team member working with DEPARTMENTS X and T, in satisfying the city requests for consideration of this subsidy."

According to INDIVIDUAL J, the previous DEPT. X "project person" for PROJECT F,



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the City is involved in relocating businesses on the site, cleaning up environmental problems, addressing zoning issues, and extending a subsidy for development. It is proposed that the latter take the form of a TIF, although nothing had been agreed upon yet. (INDIVIDUAL J handled this project from its inception until [REDACTED] when INDIVIDUAL K took over).

In an [REDACTED] telephone conversation with the staff, INDIVIDUAL K, the current DEPARTMENT PROJECT PERSON for PROJECT F [REDACTED], stated that you had attended meetings with the DEPT. X on behalf of GROUP C where options on the project were discussed. These options have included the extension of an TIF A D subsidy for the development.

You forwarded to this office a copy of a letter you sent to INDIVIDUAL Y, of DEPT. A [REDACTED]. The letter was a follow-up to a meeting attended by you and INDIVIDUAL Y. [REDACTED] In it, you discuss proposed changes in PROJECT F. [REDACTED]. In addition, per INDIVIDUAL Y's [REDACTED] request at the [REDACTED] meeting, you provide a breakdown of tax revenues that would be generated by INDIVIDUAL Y [REDACTED] which would make the development viable for a TIF [REDACTED] subsidy. You conclude the letter by arguing for the desirability of designating the site as a TIF district."

INDIVIDUAL K's predecessor, INDIVIDUAL J, [REDACTED] confirms that while he was handling the project, GROUP C was arguing for TIF designation for this site. INDIVIDUAL J [REDACTED] stated that you accompanied the developer, but the GROUP C people had done most of the talking.

In your request for an opinion, you stated that, as a City employee, you were involved in THE [REDACTED] subsidies: "My role involved the policy making decision on whether a project should be recommended or not for such a subsidy." [REDACTED]

Ethics Ordinance: Section 26.2-9 of the Ethics Ordinance imposes substantial restrictions on the post-employment activities of former City officials and employees. Subsection (b) of Section

[REDACTED]

26.2-9 contains two separate restrictions that are applicable to this case: a one-year prohibition and a permanent prohibition.<sup>2</sup> Under the one-year prohibition, a former City employee or elected official is prohibited for one year after leaving the City from assisting or representing any person in any business transaction involving the City or any of its agencies if both the following conditions are met:

- (1) The transaction involves a "subject matter" in which the person participated as a City employee or official; and
- (2) The person's participation in this subject matter was personal and substantial.

In past decisions, the Board has understood "subject matter" in this context to mean a general type or area of business; the permanent prohibition was understood to apply to specific contracts/business transactions (See Case Nos. 90012.A, 89142.A, 88107.Q, 88086.A, and especially Case No. 89108.A).

Under the permanent prohibition, a former employee or elected official is prohibited permanently from assisting or representing someone in a business transaction involving the City or any of its agencies if:

- (1) The transaction is a contract; and
- (2) The person exercised "contract management authority" with respect to this particular contract while acting as a City employee or official.

Analysis: You resigned your City position on [REDACTED] and left City employment on [REDACTED]. INDIVIDUAL K stated that PROJECT F [REDACTED] did not get underway until after you had left the City; the earliest indication of DEPT. A involvement in the project was in a [REDACTED] MEMO DATED four months after

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<sup>2</sup>The full text of Section 26.2-10(b) reads as follows: "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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your departure from the City. INDIVIDUAL Y OF DEPT. A, confirmed this. Therefore, you are not subject to the permanent prohibition in this particular project.

Accordingly, the object of inquiry in this case is whether you were subject to and violated the one year ban between your departure from City employment on [REDACTED] and [REDACTED] of the current year. Under Section 26.2-10(b), you were prohibited, for a period of one year, from assisting and representing any person in a transaction with the City if, as a City employee, you were personally and substantially involved in the "subject matter" of that transaction. As indicated above, in past decisions, the Board has understood "subject matter" in this context to mean a general type or area of business. The subject matter in this case would include the extension of TIF subsidies.

Your letter [REDACTED] shows that you were personally and substantially involved in the recommendation of projects for TIF subsidies, and describes your subsequent efforts on behalf of COMPANIES B and C [REDACTED] in securing ATIF subsidy. INDIVIDUAL Y [REDACTED]

[REDACTED] confirmed that DEPT. A [REDACTED] administers TIFs and determines if A TIF is appropriate for a particular project. The Division's recommendation is taken to COMMISSIONER L [REDACTED] which then considers it, and makes its recommendation to the City Council. Approximately five to ten TIFs are handled by DEPT. A per year.

Therefore, you were prohibited by Section 26.2-10(b) from assisting or representing Co. C in securing ATIF subsidy for one year after terminating your employment with the City. However, your [REDACTED] letter to the Board, your [REDACTED] correspondence with INDIVIDUAL Y [REDACTED] and the staff's conversations with INDIVIDUAL K [REDACTED] and INDIVIDUAL J [REDACTED] show that you were assisting and representing Co. C. This assistance and representation was improper and in violation of the Governmental Ethics Ordinance.

Conclusion: Based upon the above analysis, the representation and assistance you provided to Co. C in its efforts to secure a TIF subsidy for PROJECT F [REDACTED] from the City were in violation of the one-year post-employment prohibition of Section 26.2-10(b) of the Ethics Ordinance.

Therefore, the Board is recommending to the DEPT. A [REDACTED] that it impose sanctions in conformity with Sections 26.2-43 and 26.2-44 of the Ethics Ordinance. The

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relevant portion of Section 26.2-43 of the Ordinance (Invalid Actions) states:

Any contracts negotiated, entered into, or performed in violation of any of the provisions of this chapter shall be voidable as to the City. Any permit, license, ruling, determination or other official action of a City agency applied for or in any other manner sought, obtained or undertaken in violation of any of the provisions of this chapter shall be invalid and without any force or effect whatsoever.

Under Section 26.2-44, the City may maintain "an action for an accounting for any pecuniary benefit received by any person" due to a violation of the Ethics Ordinance and/or may recover damages for any violations.

If you have any questions, please contact the staff of the Board of Ethics at 744-9660.

Sincerely,

  
Albert Hefel  
Chairman

AH:tl:90024.L1

cc:

[REDACTED]