



Advisory Opinion  
Case No. 92033.A, Post-employment

Date: [REDACTED], 1992

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You requested and were sent relevant advisory opinions on the post-employment provisions of the Governmental Ethics Ordinance with the confidential information deleted. On [REDACTED], 1992, after reviewing the opinions sent to you, you telephoned to request an advisory opinion on how the post-employment restrictions apply to your situation. Specifically, you asked whether you may work on the [REDACTED] A project and the [REDACTED] B project on behalf of potential employers. Based on the facts presented, the Board determines that you may not assist or represent [REDACTED] or any other person on the [REDACTED] A project for one year from the date of your departure from City employment. The Board also determines that you are not prohibited from working on the [REDACTED] B project for [REDACTED] in the manner you have described to us. The facts as presented to us and the Board's analysis are set forth below.

FACTS: You are the former [REDACTED] of the Department [REDACTED]. In that position you were in charge of the Office of [REDACTED]. Prior to [REDACTED], you held the same position with the Department of [REDACTED]. You left City employment on [REDACTED], 1992. You stated that your departure was not voluntary and therefore does not reflect a "revolving door" approach to City employment.

In your City position, you were responsible for the planning, design and construction of mass transit facilities. For example, you supervised staff working on the [REDACTED]. As part of this program, [REDACTED] train lines were renovated, and construction of the [REDACTED] Project, [REDACTED] was initiated. You were also responsible for planning and program operation of departmental projects. Your duties were supervisory, including

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reviewing plans and monitoring the progress of projects.

Your involvement in the two projects on which you would like to work for future employers will be presented and analyzed separately below.

**POST-EMPLOYMENT RESTRICTIONS:** One of the provisions of the Governmental Ethics Ordinance relevant to your situation is subsection 2-156-100(b) of the provision, 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.

Section 2-156-010(g) defines "contract management authority:"

"Contract management authority" means 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 these sections, 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 any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee; and (2) the person's participation in this subject matter or area was personal and substantial. A former City official or employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract; and (2) the person exercised "contract management authority," as defined above, with respect to this particular contract while acting as a City official or employee.

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.)

**PROJECT DESCRIPTIONS AND ANALYSES:**

**PROJECT A [REDACTED]**

One of the projects on which you would like to work for future employers is the Project A [REDACTED]. [REDACTED]

[REDACTED]. While with the City, you had substantial involvement in the project. The [REDACTED] project, which now has its own governing board, was originally run by the Department [REDACTED]. You stated that you worked on the project in an advisory capacity. Beginning around [REDACTED], in your position as Head of [REDACTED] in the Department [REDACTED], you worked with committees doing planning for the [REDACTED]. After becoming [REDACTED], first of the Department [REDACTED] and then of the Department [REDACTED], you continued to work on the project with [REDACTED], [REDACTED] of the [REDACTED] Project.

You advised in the formulation of the Request for Qualifications ("RFQs") for both the management and design teams for the [REDACTED] and were on the Evaluation Committee for both of these RFQs. You stated that the City advertises an RFQ rather than a Request for Proposals ("RFP") when the project is not well defined. Whereas an RFP asks contractors to describe how they would complete a project, often including cost estimates, an RFQ asks contractors to state why they are well qualified to undertake a certain sort of project. You explained that RFQs are often used when professional services are sought and the goal is to find the best qualified contractor. Once the most qualified contractor is selected, the City then begins contract negotiations.

The Board of Ethics staff reviewed the RFQs in question and they did not contain any project specifications. You stated that the RFQ provided a very good definition of the project concept but only a generic description of the skills needed. As a member of the Evaluation Committee, you helped review the responses to the RFQs. For both RFQs, the Committee narrowed the field to three or four contractors and invited them to meet with the Committee. The Committee then made a recommendation

to Mr. [REDACTED], who was also part of the Committee, and Mr. [REDACTED] made a recommendation to the [REDACTED] Board. After reviewing the responses to the RFQs, the Evaluation Committee had the authority to request proposals from the respondents with the Purchasing Agent's approval, but the Committee did not choose to do so. You had no role in the formulation of the actual contracts, which are still being negotiated.

You stated that the [REDACTED] project is now almost completely privatized. At most, there are six City employees working on the project. Four members of the [REDACTED] Board are from City government. You also stated that the management consultant team serves as Mr. [REDACTED]'s staff and acts as an extension of City staff. They represent the City before other consultants, contractors, and the public.

Currently, you have a possible job offer from an engineering company called [REDACTED]. This company is one of the consultants on the management team for the [REDACTED] project and is looking for someone to run its Chicago office. The previous head of the Chicago office is now working full-time on the [REDACTED] project. If you took this position, you would be working mostly on projects other than the [REDACTED]. However, you stated that, because of your knowledge of the [REDACTED] project, Mr. [REDACTED] has suggested that it would be useful if you could work on that project as well. You stated that since the management team represents the City's interests in the [REDACTED] project, your ability to work on the management team would be beneficial to the City.

You also asked whether the Ethics Ordinance prohibits you from working on other aspects of the [REDACTED] project that are not part of the work of the management or design teams, for example, funding analysis.

#### Issue

Does the governmental Ethics Ordinance prohibit you from working on the management team of the [REDACTED] project on behalf of a new employer? Does the Ordinance prohibit you from working on aspects of the [REDACTED] project that are not part of the work of the management team (or design team), for example, funding analysis?

#### Analysis

In a potential future position, you wish to work on behalf of [REDACTED] as part of the management team for the [REDACTED]

project. As a City employee, you played an advisory role in the formulation of the RFQ for the management team and served on the Evaluation Committee that reviewed and made recommendations on the responses received to the RFQ. You did not have any role in the formulation of any contracts related to the project. The Ordinance includes under the definition of contract management authority the evaluation of bids or proposals. In light of the differences you described between an RFQ and an RFP, the Board does not believe your role in the formulation of the RFQs and the evaluation of the responses to the RFQs constitutes contract management authority. Therefore, the permanent post-employment prohibition does not apply to your participation in the management team (or the design team) for the [REDACTED].

Although you did not exercise contract management authority on the [REDACTED] project, you did participate personally and substantially in many planning aspects of the project as well as in the RFQs for the project. Therefore, you are prohibited from assisting or representing [REDACTED] or any other person on that project for a period of one year from the date of your departure from City employment. This prohibition applies to all aspects of the [REDACTED] project, including but not limited to the work of the management and design teams.

#### PROJECT B [REDACTED]

The Policy Committee of the Chicago Area Transportation Study ("CATS"), which is a State agency, serves as the Metropolitan Planning Organization ("MPO") for this area. The MPO oversees a 20-year regional transportation plan and acts as a clearinghouse for any transportation plans proposed for the region. It also determines how federal money is to be distributed to transportation projects in the area. CATS provides the staff for the MPO, which is comprised of representatives from transportation agencies throughout the region. Represented agencies include cities, counties, the State, and public transit agencies. You served as the City's representative on the MPO's [REDACTED] Committee, a technical committee that reviews plans and makes recommendations to the Policy Committee. You also served as the stand-in for the City's representative to the [REDACTED] Committee, who was the commissioner of the Department [REDACTED]. You explained that working on various aspects of the regional transportation plan is an inherent part of the profession of transportation planning. The regional plan is continually being developed and revised.

You stated that the regional plan is created out of fairly

sketchy plans that are submitted to the CATS Policy Committee by various agencies. Around [REDACTED], your staff had a brainstorming session and put together about two dozen ideas for [REDACTED] system improvements at various locations, including the B Project [REDACTED]. These ideas were not very detailed. CATS staff tested these ideas for the region, and the [REDACTED] [REDACTED] was one idea that was adopted into the regional plan around [REDACTED].

The [REDACTED] is a corridor that runs from approximately [REDACTED] and the [REDACTED], along [REDACTED] to [REDACTED], and ends near [REDACTED]. You stated that the additional transportation services proposed for this corridor could be provided in a variety of ways; by Metra, by a CTA rail line, by adding a bus line, or by improving existing services. Although the City had the lead in this plan, you said that CATS, Metra, and others were involved.

Once the plans were accepted, your staff did more detailed technical studies on the corridor, including land use studies, population studies, and studies of existing transportation services. You stated that these studies were going on through this year. You also said that the key step in any project is an "alternative analysis," which requires federal approval. The [REDACTED] project is still at the conceptual stage and has not progressed beyond the point of preliminary feasibility. It is approximately one year away from having an alternative analysis conducted. The project has not been formally adopted by the City and no contracts have been involved. In addition to the City's studies on ways of improving transportation services in this corridor, you stated that there are also other regional studies being done on the corridor and that Metra or CTA may also do such studies.

A potential employer for whom you might work on the [REDACTED] [REDACTED], if permitted to do so, is [REDACTED]. [REDACTED] receives federal funding to do transportation research, and the reports produced are published as public record. You are not sure what you would do on the [REDACTED] [REDACTED] for another employer because the project is at such a preliminary phase. However, you stated that if you worked on plans for the [REDACTED] for [REDACTED], you would be looking at it from a different point of view than when you were with the City. With the City, the primary concern was implementing the plan. With [REDACTED], the focus would be the implications of the plan for regional travel and development. The approach would be more theoretical. You also

stated that if you were working for [REDACTED], you would have no interaction with City employees on the work you do for the plans and that you would have no role in helping [REDACTED] gain additional funding.

### Issue

You asked, first, whether the Ethics Ordinance restricts you from working on the [REDACTED] for [REDACTED], and second, whether you are prohibited from working on plans that you reviewed as a member of the CATS [REDACTED] Committee for inclusion in the 20-year regional plan.

### Analysis

The [REDACTED] project is still in a preliminary phase and no contracts have been awarded for it. You did not exercise contract management authority over this project while you were employed with the City and, therefore, the permanent post-employment prohibition does not apply. Turning to the question of a one-year prohibition, the Board is of the opinion that your proposed work for [REDACTED] on the plan for the [REDACTED] is not a "business transaction involving the City." Your potential employer is an educational institution and the work you would be doing on the [REDACTED] will be research funded by the federal government. The report produced will become public record, available to all who might find it useful. Your work on the plans for the [REDACTED] will not give [REDACTED] an advantage in any dealings it may have with the City or any other entity. Given the totality of these circumstances, the Board does not believe that your proposed work for [REDACTED] would constitute a business transaction. In addition, while the [REDACTED] project as a whole does involve the City, your work for [REDACTED] would not involve the City or any of its agencies.

Your second question is whether the post-employment provisions in any way prohibit you from working on plans that you reviewed for inclusion in the 20-year regional transportation plan. As a City employee, you served on the [REDACTED] Committee of CATS in its capacity as the MPO for the area. In that position, you reviewed and made recommendations on various plans submitted for inclusion in the regional plan. You asked whether your participation in such reviews would warrant post-employment restrictions on your future participation in the plans reviewed. In light of the preliminary nature of the plans, the Board believes that reviewing and making recommendations on plans that were submitted by others to the

MPO does not in itself constitute personal and substantial participation in the particular plans reviewed. Therefore, no post-employment restrictions are applied to your working on plans that you merely reviewed for inclusion in the 20-year regional plan.

**CONFIDENTIAL INFORMATION:** An additional provision relevant to post-employment situations is section 2-156-070, "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.

Under this section, a former official or employee may not use or reveal confidential information acquired during the course of his or her City job.

Neither your proposed work on the [REDACTED] project nor your proposed work on plans for the [REDACTED] [REDACTED] would involve your using or revealing any confidential information you gained during the course of your City employment. Therefore, the Board is of the opinion that this provision of the Ordinance does not prohibit your proposed participation in these projects. However, we remind you that you are permanently prohibited from revealing or using any confidential information you acquired while a City employee.


**CONCLUSIONS:** Based on the facts presented, the Board makes the following determinations: 1) You are prohibited for one year from the date of your departure from City employment from assisting or representing [REDACTED] or any other person on any aspect of the [REDACTED] A [REDACTED] project, including but not limited to the work of the management and design teams. 2) Neither the permanent nor the one-year post-employment prohibition applies to your proposed work on the [REDACTED] [REDACTED] project for [REDACTED] as described in this opinion. In addition, no prohibition applies to your working on plans that you merely reviewed as a member of the CATS [REDACTED] Committee for inclusion in the 20-year regional plan.

The Board also determines that the confidentiality provision of the Ordinance does not prohibit your proposed employment with either [REDACTED] or [REDACTED]. Nonetheless, in relation to any future job offers, you should be aware that you are permanently prohibited from using or revealing any



confidential information you gained during the course of your City employment.

**RELIANCE:** Other rules or laws may apply to this situation. Our decisions in this case are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this advisory opinion. 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 the specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

  
Catherine M. Ryan  
Chair