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E. Mills

Advisory Opinion
Case No. 93005.A, Post-Employment

Date: [REDACTED], 1993

On [REDACTED], 1993, we received your written request for an advisory opinion about your proposed post-employment. You were at that time [REDACTED] in the Department of [REDACTED]. You are considering a position in which you would be actively involved, on behalf of a firm, in an existing contract with the City to oversee the design, construction and development of the Central Area Circulator Project.

It is the Board's opinion, based on the facts you presented, and the corroboration of these facts by the [REDACTED] of the Department of [REDACTED], that you have neither had contract management authority over nor participated personally and substantially in the subject matter of the contract on which you hope to work; therefore the Ethics Ordinance does not prohibit you from working on that contract.

It is also the Board's opinion that you are permanently prohibited from assisting or representing anyone with respect to the City's Intergovernmental Agreements with the Metropolitan Pier and Exposition Authority (MPEA), and you are permanently prohibited from assisting or representing anyone other than the City in any [REDACTED] or other administrative proceeding in which you were personally and substantially involved while with the City. Our analysis of your situation under the Ethics Ordinance follows.

FACTS: Training and Background. You have a Master's degree in [REDACTED] and a [REDACTED] degree, and you practiced [REDACTED] before you came to work for the City. You came to the City as [REDACTED] in the Department of [REDACTED] on [REDACTED]. [REDACTED] on [REDACTED], 1992, you became [REDACTED], the post you held at the time you requested this advisory opinion. You left City service at the end of [REDACTED], 1993.



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Proposed Position. You are interested in assuming a position with ██████████, a ██████████ firm. You report that ██████████ has entered a partnership called ██████████. The partnership has a contract with the City, through the Central Area Circulator Board, to oversee and manage the design, construction and development of the Circulator. The City has separately entered into contracts with other parties for services, such as those for urban design and engineering design.

Proposed Tasks. You have indicated that in the proposed position, you expect to work on the contract with the City for oversight of the Circulator. You stated in your letter to us that your tasks:

could be expected to include review and oversight of the work of the urban design team and the design team; evaluation of alignment determinations made by the design team; coordination of meetings and issues with affected property owners and occupants; assistance in controlling costs, scope and quality of the project; and acting as an extension of the City's Circulator Project staff.

The Circulator Project. The Circulator is a proposed light rail or trolley-like public transportation system to serve the downtown as far South as McCormick Place. A Special Service Area was organized in 1991 to provide some portion of the funding, through taxes on property in the area served. The Circulator Board, the governing board of the Circulator (and of the Special Service Area), is appointed by the Mayor, and includes by statute four members who are from the Mayor's office or are department heads; none is from the Department of ██████████.

The ██████████ Department was involved from the beginning, however, in formulating the feasibility of the Circulator project. At the time you became ██████████, the Department contained a division called "The Circulator Project," which was eliminated in mid-1991 when the Circulator Board was set up. The head of that division, you said, reported at meetings of the deputies on the progress of the Circulator, but you had no role in decisions or planning about it. The City department that appears to be most involved with the Circulator now is the Department of Transportation. The ██████████ of your former Department reports that the division within your former Department that currently deals with the Circulator is the Division of ██████████.

Duties as ██████████. As ██████████ ██████████, you have been responsible for the reviews that the City is required by Ordinance to conduct for every ██████████ change, proposed ██████████, and certain other ██████████ matters. A developer, for example, would submit an application for a "Planned Development," with supporting materials. Your division's staff prepares a recommendation from the Commissioner to a tribunal about the appropriateness of the development. The division does not check for conformity with codes other than ██████████, but rather looks at the ██████████ ██████████. It then reviews the plans at a later stage to ensure that they conform to what was approved. The division also makes brief recommendations to the ██████████ Committee of City Council on about 30 or 40 routine ██████████ changes a month, and works on other ██████████ matters.

You characterize your purely ██████████ role as that of a regulator, not a participant in development.

Your Relation to the Circulator in Your ██████████ Job. You stated that out of projects dealing exclusively with ██████████, you were able to think of six sets of plans out of, you said, thousands, that had any relation to the Circulator. Two examples you provided were plans for buildings in which the buildings' loading docks, and thus the entry for trucks, had a potential for conflicting with the proposed location of the Circulator tracks ("alignment"). The issue had to be resolved before final recommendations for ██████████ changes, and posed no major problems.

Duties as ██████████. In ██████████ 1992, ██████████ ██████████, your duties expanded to include ██████████, in addition to ██████████.

There are three development divisions of the Department of ██████████: ██████████, ██████████, and ██████████. The goal in these three divisions, you state, is to assist and promote development as though the City were the co-developer. The City may act in an entrepreneurial way by, for example, taking property it owns or intends to condemn and issuing an RFP (Request for Proposals) for development. Alternatively it may respond to the projects of others, which you said has primarily characterized your division's work during your tenure. For a fairly typical kind of development project, your division might acquire property rights, and use property already owned by the City, to assemble what is needed for the particular use or user.

A different division of the Department [REDACTED] is responsible for [REDACTED], [REDACTED] Long Range Planning. This division has prepared planning guidelines, to be followed by those who implement development, for some, but not all, areas where there is major development activity.

You state that a difference between your work on [REDACTED] projects (which also entails work toward obtaining [REDACTED] approval) and ordinary work of the [REDACTED] division is that the City has already decided that the [REDACTED] projects are appropriate. You are charged with making the projects work (while meeting [REDACTED] and other planning standards), rather than with simply assessing their viability.

McCormick Place and Navy Pier. The Circulator has been implicated in two development projects on which you have devoted much of your efforts -- McCormick Place and Navy Pier. You characterize your role for the City on these projects as "less incentive packaging and more intergovernmental consensus finding." The major decision-making entity for both the projects is the Metropolitan Pier and Exposition Authority (MPEA), an independent municipal corporation or "single purpose government" created by the state legislature; one half of its members are appointed by the Mayor, and one half, by the governor. Before you were involved in either project, the [REDACTED] the Department had elaborated detailed planning guidelines for Navy Pier; the planning guidelines for McCormick Place, you report, are more general.

You pointed out that the MPEA must file for [REDACTED] approval with respect to City property, like other developers. So your division was charged with working out what was needed to obtain [REDACTED] approval for the projects. Further, you point out, the MPEA is taking public property and building infrastructure - and that had to be worked out in intergovernmental agreements between the City and the MPEA (one agreement for McCormick Place, and another for the development of Navy Pier); you state that you *participated* in negotiating the intergovernmental agreements. For Navy Pier, a major focus of both the [REDACTED] approval and intergovernmental agreement was the use of City property, immediately to the West of the pier, for a park. For McCormick Center, the focus of the [REDACTED] approval is a three-million-square-foot building that will require relocation of part of Lake Shore Drive, reconfiguration of Martin Luther King Drive, and reconstructing entrances and exits to the Stevenson. The focus of the Intergovernmental Agreement for McCormick Place, which is not yet complete (but

for which the major points are apparently agreed upon), is the expenditure of public monies on the offsite improvements -- such as redoing Lake Shore Drive and constructing pedestrian walk-ways.

You point out that the MPEA has ultimate decision-making authority over the projects, subject to applicable laws and regulations, and with respect to the overall projects, your division is an interested party like many others -- those interested in the Navy Pier development, for example, include other departments of the City (e.g., the Department of Transportation), other governmental entities (e.g., the Chicago Transit Authority (CTA), the Park District, the Water Reclamation District, and the federal government), and civic groups and local residents, such as the residents of Lake Point Towers.

The Circulator in Relation to McCormick Place and Navy Pier.
Before your division became involved, the plans provided that the Circulator would make stops at Navy Pier and McCormick Place.

It was on the initial plans for the Navy Pier development that Circulator tracks and a station would be located in the proposed park. Then plans for the precise location became more detailed. You stated, "We were aware of the Circulator at different moments." The location of the tracks and station -- and the "site layout," which includes the relation of the station and tracks to the trees, the pedestrians, the bicyclists, the people getting off the trains and buses, etc. -- were integral to the park. A matter that later arose was a problem about whether there was sufficient green space. In order to increase green space, roadway had to be decreased, which meant decreasing and changing the space for buses. Any change in park design for buses, you noted, could affect the Circulator, so members of the Circulator staff were involved.

You characterized dealing with the Circulator in the context of the whole development of Navy Pier as a "micro" issue, which, while a factor to be considered on some issues, was tangential to the plan as a whole.

You state that the final Navy Pier Intergovernmental Agreement basically provides, with respect to the Circulator, that the MPEA, in leasing the City land for park space, must permit the Circulator to build a line on the leased premises. The agreement does not provide for the specific location, and does not provide for other matters about the Circulator. You provided a copy of this agreement to the Board. Some greater

specifics are in the ██████████ approval (but you say you have been informed by staff for the Circulator that they are planning to change many of those specifics, although the changes have not yet been approved).

For McCormick Place, the plans, including those for the Circulator, were less set at the time you began working on the project. The Circulator staff, you said, came in with a variety of plans, which changed over a period of time, about where the best place to put the Circulator would be, and the parties involved (e.g., your division, the Department of Transportation, the MPEA, the Illinois Department of Transportation, and other entities affected, including local property owners such as Mercy Hospital) worked it out. The issues with respect to the Circulator, you have stated, were very minor compared to the overall scope of the development, which involved, besides the huge building project, reconfigurations of City, state and federal roadways.

The McCormick Place Intergovernmental Agreement, you state, provides for the Circulator only by providing that the MPEA is obliged to obtain the right-of-way to the West of Martin Luther King Drive for purposes of the Circulator.

For both Navy Pier and McCormick Place you said there were great numbers of meetings with staff in which the subject of the Circulator could have come up -- it was an issue, you said, but always tangential, not a central concern. For Navy Pier, you estimate you had perhaps five meetings with Circulator people (the executive director, someone on his staff or a consultant), mostly prompted by the green space issue; for McCormick Place you estimate you had two to four meetings with Circulator staff. At one point you estimated that Circulator issues may have taken up three to five per cent of your time and attention.

The ██████████ of your former department confirms that in your work as ██████████, the Circulator has been solely tangential. She states that you have had to deal with the Circulator only as it interfaced with the projects for which you were responsible; she added that "one out of a thousand issues" in any given development is the impact of the Circulator on the development.

LAW AND ITS APPLICATION TO THE FACTS: Section 2-156-100 of the Governmental Ethics Ordinance, entitled "Post-employment Restrictions," states:

(a) 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 or employment.

(b) 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.

"Assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek a contract or perform a contract. (See Case No. 89119.A.)

The term "representation" applies to a broad range of activities in which someone acts as a spokesperson for another or seeks to communicate and promote the interests of one party to another. "Representation" also includes signing any proposals, contracts, or other documents.

Under these provisions, 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.

Permanent Prohibition. A former City employee is permanently prohibited from assisting or representing any person other than the City in a proceeding in which he or she has participated personally and substantially. (§ 2-156-100(a).)

You have said that you did participate personally and substantially in numbers of administrative proceedings relating to ██████████, such as ██████████ proceedings for approval of "Planned Developments" or ██████████ proceedings relating to ██████████ approval for McCormick Place and Navy Pier.

Conclusion: Permanent Prohibition for Participation in Proceeding. The Board concludes, from the facts presented, that you are permanently prohibited by § 2-156-100(a) of the Ordinance from representing anyone other than the City in any such administrative proceedings in which you participated personally and substantially in the course of your City duties.

A former City employee is also permanently prohibited from assisting or representing any person in a contract involving the City if while a City employee, he or she exercised contract management authority (as defined in § 2-156-010(g)) with respect to that contract. (See case number 92010.A, p. 3.) Therefore, if in a City job an employee had personal involvement in or direct supervisory responsibility for the execution of a contract or the formulation of a City contract -- including the negotiation of contract terms; the planning, development, or evaluation of proposals; or the selection of vendors -- he or she would be permanently prohibited from working on that contract after leaving City service.

You stated that you were ██████████ a ██████████ major participant in negotiating the intergovernmental agreements with the MPEA for Navy Pier and McCormick Place (which is not yet complete). Those agreements are "contracts" within the intended meaning of the Ordinance prohibition.

Conclusion: Permanent Prohibition for Contract Management Authority. The Board concludes, from the facts presented, that under the terms of the Ordinance, you had contract management authority on the City's two Intergovernmental Agreements with MPEA, one concerning Navy Pier, and the other, concerning McCormick Place, and you are therefore permanently prohibited, while not in City employment, from representing or assisting anyone with respect to those agreements.

One-year Prohibition. A former City official or employee is prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if while a City employee he or she participated personally and substantially in the subject matter of that transaction.

Under most circumstances, this means that if, while employed by the City, a person participated personally and substantially in a particular project, he or she may not assist or represent anyone in that project for a year after leaving City employment. (See, e.g., Case No. 92010.A)

The subject matter of the transaction, or the project, on which you propose to work is oversight and management of the design, construction and development of the entire Circulator. While the facts set forth in this opinion indicate that you did participate personally in issues relating to the Circulator, the Board concludes, from the facts presented, that your participation in the Circulator Project has not been substantial.

Conclusion: One-Year Prohibition. It is the Board's opinion, from the facts presented, that you have not participated personally and substantially in the subject matter of the contract you have described between the City and the Chicago Partners, and therefore you are not prohibited by the one-year post-employment provision from engaging in the work you describe on that contract.

Confidentiality. In addition to the post-employment provisions, § 2-156-070, entitled "Use of Disclosure of Confidential Information," prohibits former officials and employees from using or revealing confidential information they may have acquired during the course of or by reason of their City job. It 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. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

You told us you do not believe that you possess any confidential information concerning the Circulator, but we remind you that you are permanently prohibited from using or revealing any such information that you may possess.

We recommend that you seek the Board's assistance if, at any time in the future, you are uncertain about the applicability of the Ordinance to your work on any other project involving the City.

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Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.

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.

Catherine M. Ryan

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Chair

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