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EMUL

April 19, 1993

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

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rep*

[REDACTED]

Re: Case No. 93014.Q

Dear [REDACTED],

This letter is in response to your question whether the Governmental Ethics Ordinance prohibits a City employee from obtaining City certification for the employee's business as a Disadvantaged, Minority or Women-owned Business Enterprise (DBE/MBE/WBE). You further asked whether, if there is no prohibition, there are some Ordinance limitations or guidelines that apply to employees seeking to have a business certified.

You are currently on [REDACTED] the City's MBE/WBE Certification Review Committee. You state that the committee has asked you to obtain guidance on these questions from the Board of Ethics.

In the language of the City regulations effective March 1, 1993, the City ordinance "mandates that the City of Chicago use its purchasing functions to provide and enhance competitive opportunities for minorities and women" within the six-county region surrounding Chicago (page 2). The City purchasing agent, by ordinance, has a goal of awarding a certain percentage of the dollar value of all contracts to qualified MBEs and WBEs. § 2-92-430. Therefore certification as a DBE/MBE/WBE may be preparatory to obtaining City contracts. However, you have explained, the certification may also be used to obtain contracts with other entities that are not City agencies, such as the Chicago Park District, the Board of Education, the City College system, or the Metropolitan Pier and Exposition Authority (MPEA). These entities could set up their own certification systems if they so chose, but they have chosen to use that of the City. You provided staff with a DBE/MBE/WBE application packet, which includes the City Code



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provisions authorizing the MBE and WBE Procurement Programs, the City regulations governing certification (which state that they are intended to be consistent with the federal regulations), and federal regulations governing DBE participation in federal Department of Transportation programs.

As we discussed, the Ordinance does not prohibit an employee from obtaining City certification for the employee's business. See Case No. 87020.Q. (I enclose a copy of the staff letter in that case.) There are, however, a number of Ordinance provisions that would affect an employee's ability to carry on a business outside of his or her City employment.

One of the primary provisions relevant to an employee owning a business is the prohibition against an employee having a "financial interest" (an interest as a result of which the owner is entitled to receive \$2,500 a year or an interest with a cost or present value of \$5,000) in City business. (§ 2-156-100 and § 2-156-010 (1).) This prohibition would severely limit the ability of a company owned by an employee to contract with the City. This provision would not affect a City employee's ability to contract with the independent entities, such as the School Board or the MPEA, that accept City MBE and WBE certification but are not City agencies, so long as the contract is not paid for by funds belonging to or administered by the City or authorized by city ordinance. (§ 2-156-100.)

I enclose a two-page document entitled "Restrictions Concerning Outside Employment or Business Activities of City Employees," prepared by the staff. This document summarizes in plain language the Ordinance restrictions that generally affect a City employee who has an ownership interest in or engages in a business outside that person's City job. It could be useful to employees who seek certification from your committee, to alert them to their responsibilities under the Ordinance. Please note, as the summary states, the Ordinance governs in the event of an inconsistency between these guidelines and the Ordinance, and employees are advised to consult with the Board of Ethics for authoritative guidance on specific questions.

You stated that you were concerned with the situation of an employee who seeks certification to carry on a business while still employed by the City. Please note that if that same employee should then leave City employment to conduct the business for which certification was obtained, that person would be affected by the Ordinance's post-employment provision, § 2-156-100. The post-employment provision restricts in various ways the ability of a former employee to engage in a transaction involving the City after leaving City employment.

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The staff opinion in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. We appreciate your inquiry and your willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance. If you have any further questions, please contact us.

Sincerely,


Ellen M. W. Sewell
Legal Counsel

Approved:


Dorothy J. Eng
Executive Director

enclosures

cc: Susan Sher, Corporation Counsel (w/enc.)

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