

**ADVISORY OPINION
CASE NO. 02006.A
Post-Employment**

To: [John]

Date: April 10, 2002

In a letter dated March 1, 2002, you requested an advisory opinion from the Board of Ethics regarding how the post-employment provisions of the Governmental Ethics Ordinance (the "Ordinance") would apply to your prospective employment as Director of Development with [Alpha Company] ("[Alpha]"), both generally and with regard to a specific property located at [00] Avenue.

After careful consideration of the facts presented, the purpose and language of the post-employment provisions of the Ordinance, and prior Board opinions, the Board determines:

- 1) You are prohibited for a period of one year from the end of your employment with the City from assisting or representing any person or entity other than the City in any business transaction involving the City that involves real estate development in the [Dpt.] designated [Districts X and Y], which includes the property located at [00 Avenue].
- 2) You are permanently prohibited from assisting or representing any person, other than the City, on any contract over which you exercised contract management authority while in City service. The prohibition does not apply to the property located at [00 Avenue] because you did not exercise contract management authority, within the meaning of the Ordinance, on that project while employed by the City.

FACTS: Your Service as [District X] Coordinator

You served as an Assistant Commissioner in the [Department] (the "Department"). In this capacity, were the Department's [District X] Coordinator from May 1999 to March 31, 2002. Prior to that you served as the [District Y] Coordinator for approximately two years. You explained that the Department is divided into six neighborhood districts: three in the North Region and three in the South Region. The North Region and the South Region each have a Deputy Commissioner who reports directly to the Department's First Deputy Commissioner and Commissioner. Each of these six districts has a District Coordinator who supervises between

two and five project managers. The project managers are each responsible for overseeing and facilitating [Dpt.] projects and initiatives in specific sub-area of a neighborhood district. They work with local Aldermen and coordinate all City department activities as they relate to commercial area improvement.

As [District X] Coordinator, you supervised two project managers and reported directly to Deputy Commissioner [Mary]. You said that, in general, you acted as a liaison to each of the neighborhoods within your district with respect to [Department] planning initiatives. You were responsible for ensuring smooth and timely coordination between aldermanic staff and [Department] staff with respect to planning and development in the neighborhoods within your district. You facilitated community planning studies and organized community planning meetings to present [Department] programs. You oversaw project managers with respect to development plans and proposals and helped present these plans to [Department]'s [project group] for review and approval. Further, in conjunction with the project manager, you were responsible for the presentation of development plans and proposals to the Deputy Commissioner and Commissioner.

You said that you were not responsible for designating areas within the [District X] as a tax increment financing districts ("TIF District"). Designation of TIF Districts is performed by the Department's TIF Division. You were, however, responsible for intake of requests submitted to the Department by private developers for the City to assemble land for redevelopment and for making recommendations thereon to the TIF staff during the TIF designation process.¹ Further, you worked with project managers and assisted them with summarizing requests for land assembly assistance for presentation to the Deputy Commissioner and Commissioner and for review at [project group]

¹A private developer who wishes to acquire land for redevelopment typically has an ownership interest in a significant portion of a potential redevelopment site. The private developer must submit a concept plan to [Department] (see Footnote 2). The Department must then determine if the site is appropriate for redevelopment and if the private developer's concept plan is appropriate for the site from a zoning and land use perspective. If a site is in a TIF, the City has the ability to acquire land using eminent domain powers for the purpose of economic development. If the Department determines that redevelopment is appropriate, the concept plan is approved by the Commissioner and a report is presented to the [Commission C], a nine member City commission that is responsible for reviewing all City-initiated redevelopment projects. If the [C] approves the plan, it passes a resolution approving the acquisition authority subject to the amendment of the TIF Ordinance to include acquisition authority for subject parcels by City Council. The resolution is presented to the Mayor's Office of Intergovernmental Affairs, which introduces it in City Council. If the Ordinance is passed, the land owners are offered fair market value based on appraisal. If the City and the land owner are unable to negotiate terms then the City begins condemnation proceedings, the owner is forced to sell and the purchase price is determined in the court of law (sometimes between attorneys, sometimes by the judge, and in rare cases by a jury.)

Meetings. You stated that you had no authority to approve land acquisition and that you had no responsibility for recommending or implementing zoning changes.

[Alpha] Redevelopment Plans Within the [neighborhood] TIF District

Prior to your transfer from the [District Y] to the [District X] in mid-1999, [Area A] had already been designated a TIF District. In February 1998 [Alpha] requested land assembly assistance for a site located on the [] block of [00] Avenue (the "Site") in the [Area A] TIF district. However, the land assembly assistance could not be granted at that time because the Department had failed to properly notify the owners of the property surrounding the site. In early 1999, several months before you transferred to the [District X], [Alpha] again requested land assembly assistance through the [Area A] TIF for a concept plan consisting of a single nine story building for the Site. When you began your tenure as [District X] Coordinator, the Commissioner was reviewing the [Alpha] concept plan and request for acquisition authority. However, the Commissioner's review revealed that the concept plan was too large and too tall for the Site. Thus, the Department did not proceed to exercise its acquisition authority with respect to these parcels.

At that time, the Commissioner directed Deputy Commissioner [Mary], you and the project manager for the [Area A] TIF to work with the Department's Zoning Division to develop specific recommendations appropriate to the Site. Together you developed recommendations that you summarized and presented to [XX] Ward Alderman [Michael] and [Alpha]. Over a period of three years you participated in approximately ten meetings with [Alpha] regarding redevelopment of the Site. These meetings were held either in response to proposals offered by [Alpha] or at the request of Alderman [Michael]. These meetings were also attended by [Department] project managers and, occasionally, by Alderman [Michael].

In the fall of 2001, [Alpha] developed a concept plan that meets all Department recommendations for the redevelopment of the Site (the "Concept Plan"). The plan is for a 120 unit apartment building with retail stores on the first floor (Attachment A)². In cooperation with the Department's Zoning Division and the project manager, you reviewed the Concept Plan and made minor design recommendations to [Alpha]. These recommendations concerned the design and decoration of exterior facade of the building. After [Alpha] agreed to implement your proposed changes, you and the project manager presented the Concept Plan to the Commissioner. The Commissioner approved both the Concept Plan and the Department's land acquisition authority to promote the redevelopment of the Site.

In January 2002, the project manager prepared a report for the [Commission "C"] requesting acquisition authority for parcels not owned by [Alpha] at the Site.

²You stated that the Concept Plan is a preliminary document, submitted by [Alpha] for internal use by [Department]. The copy of the Concept Plan you provided consists of four pages of architectural drawings of the development that [Alpha] hopes to build on the Site.

You attended the meeting with the [C] and responded to questions regarding the report. The [C] passed a resolution approving the acquisition authority subject to the amendment of the TIF Ordinance to include acquisition authority for subject parcels by City Council. Since that time, the project manager, under your supervision, prepared a memorandum, for the signature of the deputy commissioner, to the Mayor's Office of Inter-Governmental Affairs Memorandum regarding the proposed amendments to the TIF Ordinance. This memorandum was introduced at the February 27, 2002 City Council Meeting. To date, only the Concept Plan has been approved by [Department]. The [Department] has not issued a redevelopment plan and negotiations have not begun towards implementing any contract with [Alpha].

Proposed Employment With [Alpha]

[Alpha] Development, which is headquartered in Chicago, specializes in the development of [buildings]. The company also does some residential development. You have been offered a position as [Alpha]'s Director of Development, effective April 1, 2002. In this position, you will be responsible for site selection recommendations and project management with respect to architectural approval, civil engineering, village or city approval, construction and sales for [Alpha] properties. Initially you said, you will be working as a project manager for three retail shopping centers located outside City limits. You indicated that approximately 90% of your work on [Alpha] projects will be independent from any City involvement. [Alpha] hopes to eventually develop the [00 Ave.] site. You have asked the Board to address what restrictions, if any, the Ethics Ordinance places on your employment with [Alpha], both generally, and with regard to the [00 Avenue] site.

LAW AND ANALYSIS: Section 2-156-100 of the Governmental Ethics Ordinance (Post-Employment Restrictions) states:

(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.

Under this provision, a former City employee is subject to both one year prohibition and permanent prohibitions after leaving City service. The one year prohibition provides that for one year after leaving City employment, a former employee is prohibited from assisting or representing a person, other than the City, in any business transaction involving the City or any of its agencies, if he or she participated personally and substantially in the subject matter of that transaction during City

employment. “Assisting” or “representing” a person in a business transaction involving the City includes helping a person perform a City contract. (*See* Case No.01037.A.)

The permanent prohibition provides that a former City employee is permanently prohibited from assisting or representing any person on a contract if, as a City employee, he exercised “contract management authority” with respect to that contract. Section 2-156-010(g) of the Ordinance defines the term “contract management authority” as:

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.

A. One-Year Prohibition.

Section 2-156-100(b) prohibits you, for a period of one year following the date you leave City employment, from assisting or representing any person other than the City in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment.

In Case No. 01047.A, the Board addressed the situation of a former City employee who while an employee of the [Dpt.] supervised and coordinated the various steps of development projects in a number of [Dpt.] sub-districts. The employee’s administrative duties included supervising and monitoring the progress of individual developments and improvements as well as coordinating all the acquisitions and City improvements called for by redevelopment plans. The Board concluded that the employee was personally and substantially involved in all real estate transactions within those sub-districts, and was prohibited, for one year after leaving City employment, from assisting or representing any person other than the City in any business transaction involving the City entailing real estate development in the sub-districts.

In order to apply this prohibition to your case, the Board must ascertain the subject matter of the transactions in which you personally and substantially participated as a City employee. In your capacity as [Districts X and Y] Coordinator you (1) acted as a liaison to each of the neighborhoods within your district, (2) ensured smooth and timely coordination between aldermanic staff and other departmental staff with respect to planning and development within a neighborhood within your district, (3) facilitated community planning studies and community planning meetings to present department programs, (4) oversaw project managers with respect to development plans and proposals, (5) packaged development plans and proposals for land assembly assistance for presentation to the Deputy Commissioner and Commissioner and for review and approval by the Department’s [group project], and 6) were responsible for intake of requests submitted to the Department by private developers for the City to assemble land for redevelopment and for making recommendations thereon to the TIF staff during the TIF designation process.

Based on these facts, the Board concludes that, while in City employment, you were personally and substantially involved in the subject matter of real estate development in the [Districts X and Y]. Therefore, the Board determines that Sec. 2-156-100(b) of the Ethics Ordinance prohibits you, for one year from the end of your City employment, from assisting or representing any person other than the City, including [Alpha] or its clients, in any business transaction involving the City entailing real estate development in the [Dpt.]-designated [Districts X and Y]. This prohibition includes, but is not limited to, assisting persons other than the City with land assembly and acquisition, presenting development plans or concepts to the City on behalf of your employer, and participating in meetings with the City concerning real estate development on behalf of your employer.

With regard to the one-year prohibition, the Board notes that your employer, [Alpha], is not prohibited from entering into or performing any contracts with the City involving real estate development or redevelopment in the [Districts X and Y].

B. Permanent Prohibition

Section 2-156-100(b) prohibits you from assisting or representing any person on a contract if, as a City employee, you exercised “contract management authority” with respect to that contract. The Board has concluded that a City employee can exercise contract management authority even before negotiations of a contract’s specific terms, or of the duties of the parties under a contract have begun, *i.e.*, before there is a contract. In Case No. 94044.A, the Board determined that a City employee’s activities prior to a City contract constituted personal involvement in the preparation of contract specifications, and therefore that he had contract management authority over the ensuing contract.

In that case, the employee inspected City property for a future contract to dispose of property, determined that the City should retain certain easements in it, and conferred with the Law Department about the goals of a reappraisal of this property, all with the aim of facilitating the City’s recalculation of the parcel’s price for a new contract. (*See* Case No. 94044.A, p. 11). However, in that specific instance, the City had already begun negotiating with a person for a contract to sell the property and the employee had undertaken the property inspection in order to facilitate the ability of the City to appraise the land at a price attractive to this specific party. (*Id.*) Also in Case No. 94044.A, the Board found that the employee’s participation in the disposition of other City-owned properties did not rise to the level of contract management authority, as the employee’s involvement was limited to inspecting the sites, identifying potential purchasers, and ordering and reviewing surveys and legal descriptions. The Board determined that the employee’s participation in the contract of sale of these properties was simply too preliminary to constitute contract management authority, even though the employee was aware that the City was considering selling the properties pursuant to *some* future contract. In Case No. 01037.A the Board found that a Deputy Commissioner was permanently prohibited from assisting or representing anyone other than the City with respect to a Redevelopment Agreement because he chaired the committee that reviewed the developer’s application for a subsidy that was a part of a Redevelopment Agreement and chaired a committee that reviewed and approved design specifications contained in a Redevelopment

Agreement. The Board concluded that these actions constituted contract management authority. The Board also determined that the employee had exercised contract management authority over two other Redevelopment Agreements by virtue of the fact that he had served on the committee that selected the developers.³

In this case, by contrast, no contract concerning the [00 Avenue] site currently exists between the City and [Alpha]. Any future contract will take the form of a redevelopment agreement. To date, [Alpha] has not presented a specific redevelopment plan for the Department's approval and contract negotiations have not begun towards implementing a redevelopment agreement. However, [Alpha] has made three requests to [Department] for land assembly assistance based on its Concept Plans. The first two requests occurred before you became [District X] Coordinator. Shortly after you took the post of [District X] Coordinator, the [Dpt.] Commissioner directed you, along with a deputy commissioner and the project manager for the [Area A] TIF to work with [Dpt.]'s Zoning Division to develop specific recommendations appropriate to the Site. Together you developed recommendations that you summarized and presented to the local alderman and [Alpha]. Over a period of three years you have participated in approximately ten meetings with [Alpha], with regard to this site.

In the fall of 2001, two years into your tenure as District Coordinator, [Alpha] developed a concept plan that meets all Department recommendations for the redevelopment of the Site. In cooperation with the Department's Zoning Division and the project manager you reviewed the Concept Plan and made minor design recommendations to [Alpha]. After [Alpha] agreed to implement the proposed changes, you and the project manager presented the Concept Plan to the Commissioner. The Commissioner approved both the Concept Plan and the Department's land acquisition authority to promote the redevelopment of the Site. In January 2002, the project manager prepared a report for the [Commission "C"] requesting acquisition authority for parcels not owned by [Alpha] at the Site. You attended the meeting with the [C] and responded to questions regarding the report. [C] passed a resolution approving the acquisition authority subject to the amendment of the TIF Ordinance by City Council to include acquisition authority for subject parcels. Since that time, the project manager, under your supervision, prepared a memorandum for the Mayor's Office of Inter-Governmental Affairs regarding the proposed amendment to the Ordinance.

As stated earlier, contract management authority can include not only supervising the performance of a contract, but also preparing specifications, evaluating bids and proposals, and negotiating contract terms. You stated that you helped develop specific recommendations for redevelopment of the Site, met with representatives from [Alpha] concerning redevelopment of the Site, recommended minor design changes to [Alpha]'s Concept Plan, and supervised the preparation of reports seeking acquisition authority for the redevelopment of the Site.

³The Redevelopment Agreement had not been entered into in these two cases, but negotiations between the City and the selected developer were ongoing.

However, negotiations toward a potential contract, i.e. a Redevelopment Agreement, have not begun at this stage. The City has not acquired land, a redevelopment plan has not been drafted, and the City has undertaken no negotiations with [Alpha] concerning the sale of property. The only action taken has been that the City has targeted the Site as a candidate for redevelopment and sought authority to acquire land. The Concept Plan is merely a representation by [Alpha] that they are capable of undertaking work that would meet the [Dpt.]’s basic requirements for the development of the Site. It does not bind the City to sell the land to [Alpha] or confer upon [Alpha] any rights concerning the property.

Your situation is analogous to that of the City employee in Case No. 94044.A, specifically to his inspection of sites, identification of potential purchasers, and his ordering of surveys and legal descriptions. Your participation in the acquisition and potential sale of land at the Site has been preliminary; you helped identify a site as a candidate for redevelopment and assisted in the preparation of documents seeking acquisition authority. Like the employee in that case, you have not been involved in formulating an actual City contract. Your evaluation of [Alpha]’s Concept Plan, and subsequent recommendations to [Alpha] for amending that plan, are distinguishable from the activities undertaken by the deputy commissioner in Case No. 01037.A, where the Board found that he had contract management authority because he participated in negotiating and evaluating contract terms for a specific Redevelopment Agreement, with a specific party, and because he participated in the process by which developers for two other Redevelopment Agreements were evaluated and selected. In your case, negotiations toward a Redevelopment Agreement have not begun. In fact, the City has not even begun preliminary work toward drafting such an agreement. Even if the City acquires the land and seeks developers for the Site, there is no guarantee that [Alpha] will be the selected developer.

Therefore, the Board concludes that your participation in the development of specific recommendations for redevelopment of the Site, your meetings with representatives from [Alpha] concerning redevelopment of the Site, your evaluation of [Alpha]’s Concept Plan, your recommendation of minor design changes to that plan, and your supervision of the preparation of reports seeking acquisition authority for the redevelopment of the Site do not constitute contract management authority over any City contract that ensues for [Alpha] to develop the [00 Avenue] site. Therefore, the Board determines that you are not permanently prohibited from assisting or representing [Alpha] with the development of the [00 Avenue] site.

The Board has not addressed other specific situations where you may have had contract management authority. Please be advised that you are permanently prohibited from assisting or representing any person on a contract if, as a City employee, you exercised “contract management authority” with respect to that contract.

Confidential Information

The Board further notes that Section 2-156-070, “Use or Disclosure of Confidential Information”, prohibits you from using or revealing any confidential information that you acquired through your City 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.

DETERMINATION:

For the reasons set forth above, the Board concludes that:

- 1) You are prohibited for a period of one year from the end of your employment with the City from assisting or representing any person or entity other than the City in any business transaction involving the City that involves real estate development in the [Department]-designated [Districts X and Y], which includes the property located at [00 Avenue].
- 2) You are permanently prohibited from assisting or representing any person, other than the City, on any contract over which you exercised contract management authority while in City service. The prohibition does not apply to the property located at [00 Avenue] because you did not exercise contract management authority, within the meaning of the Ordinance, on that project while employed by the City.

Our determinations are not necessarily dispositive of all issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determinations. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

[Signature]

Darryl L. DePriest
Chair