

ADVISORY OPINION

CASE NO. 04005.A

Post Employment

To: [John]

Date: April 7, 2004

You are a licensed civil engineer and are currently a project manager in the City's Department of [DEPT1]'s ([DEPT1's]) Bureau of [BUR1]. You will be retiring from City service in []. You have asked for an advisory opinion on what restrictions the City's Governmental Ethics Ordinance places on your activities in your post-City employment.

After careful consideration of the facts presented and the relevant law, the Board has concluded that the Governmental Ethics Ordinance imposes restrictions (as more fully described herein) that limit your post-employment activities. What follows is a statement of the issues in this matter, a statement of the facts; a statement of the applicable law and the Board's analysis, and the Board's determinations.

- ISSUES:**
1. Whether the post-employment provisions of the City's Governmental Ethics Ordinance prohibit you, as an employee of a private consulting company (yet to be determined), from providing professional services to a future [DEPT1] project identified as the [AVE1 PROJECT].
 2. Whether the post-employment provisions of City's Governmental Ethics Ordinance prohibit you, as an employee of a private consulting company named [CONS], from working on projects that do not involve the City.

FACTS:

A. City Employment

You entered City service in [] as an Engineering Technician with the Bureau of [BUR2] in the Department of [DEPT2]. In [], you transferred to the Department of [DEPT3], where you served in the various grades of civil engineer¹ until the Department of [DEPT3] became the

¹The Civil Engineer title in [DEPT1] is classified by grade, with Civil Engineer I being the lowest rank and Civil Engineer V the highest. You stated that the higher the civil engineer grade, the larger the project for which that engineer is responsible. A Civil Engineer IV, for example, would be assigned to a medium-sized project (a construction value of approximately \$2-\$3 million.)

Department of [DEPT1] ([DEPT1]) in []. After the transition, in [], as a [DEPT1] employee, you held the title of Civil Engineer IV and worked as a resident engineer for [DEPT1]'s Bureau of [BUR1] ([BUR1])² until [], when you were promoted to project manager. In [], you were promoted to [TITLE1], and in [], you were promoted to [TITLE2].³

In your current position as [TITLE2], you serve as one of five [BUR1] project managers, who all report to [BUR1]'s Assistant Chief Engineer. Projects are assigned to you by [BUR1]'s Chief Engineer, who is responsible for all project assignments. You said you do not work on any projects other than the ones assigned to you. As project manager, you oversee the work of consultants and contractors on construction projects, and coordinate the work of these consultants and contractors, engineers from other [DEPT1] bureaus and other City departments, and State and federal engineers. During your tenure as a [BUR1] project manager, you have worked on approximately 20 projects, ranging in construction value from \$1 million to \$25 million. They are as follows:

1. [PROJECT 1] (a streetscaping project)
2. [PROJECT 2] (a streetscaping project)
3. [PROJECT 3] (a streetscaping project)
4. [PROJECT 4] (a streetscaping project)
5. [PROJECT 5] (a rehabilitation project)
6. [PROJECT 6] (a streetlighting project)
7. [PROJECT 7] (a reconstruction project)
8. [PROJECT 8] (a rehabilitation project)
9. [PROJECT 9] (a rehabilitation project)
- 10-14. Five (5) arterial street resurfacing projects.

The current projects are:

1. [PROJECT 15] (a rehabilitation project)
2. [PROJECT 16] (a streetscaping project)
3. [PROJECT 17] (a rehabilitation project)
4. [PROJECT 18] (a reconstruction project)
5. [PROJECT 19] (a reconstruction project)
6. [PROJECT 20] (a streetscaping project)

²[BUR1] is one of seven [DEPT1] bureaus. The other six bureaus are [BUR2], [BUR3], [BUR4], [BUR5], [BUR6] and [BUR7].

³Although your title changed from "[TITLE1]" to "[TITLE2]", your main role continues to be project manager of [BUR] construction projects.

B. [BUR1] Projects Generally

The Bureau of [BUR1] is responsible for the design and construction management of arterial, industrial, and new street reconstruction and resurfacing. It also coordinates the City's streetscape and median programs and public infrastructure improvements required for large-scale developments. You explained that [BUR1] construction projects are typically divided into three discrete phases. During an interview with Board staff, you reviewed the different phases, and outlined your general responsibilities as to each phase, as discussed below. Depending on the project, you may be involved in only one phase of a particular project, or two, or all three phases.

1. Phase I - Planning Phase. In most cases, before [BUR1] embarks on a construction project, it issues a Request for Qualifications ("RFQ") for a consulting engineer to draft a development report for the project. Generally, the report outlines the scope of the project, estimates the cost, proposes a time frame, and sets forth the State and federal guidelines (e.g., lane widths, intersection designs to accommodate existing and projected traffic volumes) that must be met for the project. Interested consultants then submit a response to the RFQ, and the responses are reviewed by [BUR1]'s Chief Engineer. You stated that you have not been involved in preparing any RFQs, reviewing responses, or selecting consultants for this phase of a project.

Once a consultant is selected, the Chief Engineer of [BUR1] assigns the project to a project manager. You, as project manager, are responsible for ensuring that the consultant properly completes Phase I of the project. You and the consultant meet with Illinois Department of Transportation (IDOT) and Federal Highway Administration engineers to ensure that the plans meet State and federal guidelines. The consultant drafts a project development report, and once completed, the report is submitted to you, as well as engineers from IDOT and the Federal Highway Administration, for review. Upon your review of the development report, you make a recommendation to the [BUR1] Chief Engineer. The project development report is approved once all the necessary agencies sign off on the report; for [BUR1], the Chief Engineer is the person who has approval authority on the report. The Phase I project development report is the basis for Phase II of the project.

2. Phase II - Detailed Design Phase. You described Phase II as the phase where a detailed design for the construction of the project is drafted. In almost all cases, the consultant who prepared the Phase I project development report is the one that prepares the detailed design for the project. The detailed design includes, among other things, blue prints and specifications. You are responsible for making sure that the consultant properly completes Phase II. You and the consultant meet with IDOT and federal engineers, and if necessary, with personnel from other City departments, such as the [DEPT2] Department and the [DEPT3] Department, to coordinate in the design of the project. Once the Phase II detailed design is completed, the design is submitted to you, engineers from IDOT and the federal government, and personnel from the other City departments for review. Upon your review of the detailed design, you make a recommendation to the [BUR1] Chief Engineer. The detailed design is approved once all the necessary agencies sign off on the report; for [BUR1], the Chief Engineer is the person who has approval authority on the design.

3. *Phase III - Construction Phase.* Once the detailed design is approved, [BUR1] sends the “design package” to the City’s Department of Procurement Services, which issues a Request for Bids for a construction contractor. The responses to the bid requests are received by the Department of Procurement services and reviewed for the lowest bidder. The Procurement Department then forwards the response of the lowest bidder to [BUR1]. You, as project manager, are responsible for evaluating the lowest bidder’s response and determining whether the bidder is qualified to do the project. If you believe that the lowest bidder is qualified, you recommend to the Chief Engineer of [BUR1] that the bid can be approved. If the Chief Engineer agrees with your recommendation, he then sends a letter (also signed by the Commissioner of [DEPT1]) to the Department of Procurement indicating that award of the contract should go to said bidder.

The selected contractor does the actual construction work. You, as project manager for the project, are responsible for supervising the construction activities of the contractor and ensuring that the project plans and specifications are followed. You said that you have a group of City engineers who work under you, and they are the ones who have direct civil engineering responsibilities for the project. Once, the construction is finished, you are responsible for “closing the books” on the project—making sure that the contractor is fully paid.

C. Post-City Employment

Your New Position - Scenario 1. You will be retiring from City service in []. You said that you have been asked by your Department to assist, as a consultant, in the management of a future [DEPT1] streetscaping project located at [AVE1], from [STREET1] to [STREET2]. As you envision your consultant role, you, yourself, would not have a personal services contract with the City. Instead, you would be an employee of a consulting company (yet to be determined), and that company would enter into a professional services contract with the City, under which your services would be provided to [DEPT1] on the [AVE1 PROJECT]. Although funding for that project has been identified, you explained that the project is 3 to 4 months away from any design (Phase I & II) start; no contracts have been formulated nor executed; no RFP has been prepared or issued by the City with respect to any aspect of the project; and no project manager has been assigned to the project. Further, you stated that you have had no involvement in any preliminary or preparatory work on the project, including work done to identify the project or funding for the project.

Your New Position - Scenario 2. You said that, if the above consulting service arrangement is prohibited under the Ethics Ordinance, you are considering accepting a job offer from [CONS] Corporation.⁴ [CONS] would like you work as a construction coordinator, managing construction activities on projects that do not involve the City of Chicago. The first project that [CONS] would like you to work on is the construction of an off-ramp at the intersection of Interstate [] and Interstate [], an IDOT project located in [] Illinois.

⁴[CONS] currently has a construction supervision contract for the [] project with [DEPT1]’s Bureau of [BUR6]—a project you will not be working on if you were to work for [CONS].

APPLICABLE LAW AND ANALYSIS: The provision of the Governmental Ethics Ordinance that is relevant to your request is § 2-156-100(b), entitled “Post-Employment Restrictions,” which provides:

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 § 2-156-100(b), a former City employee is subject to two employment restrictions after leaving City service: a one-year prohibition and a permanent prohibition. Both of these prohibitions are discussed in further detail below.

A. Permanent Prohibition

The Board first will address the permanent prohibition. Under § 2-156-100(b), you, as a former City employee, are permanently prohibited from assisting or representing any person, other than the City, in any contract over which you, as a City employee, exercised “contract management authority.” Section 2-156-010(g) of the Ordinance defines the term “contract management authority” as follows:

“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.

Your City Position - Project Manager. As project manager of [BUR1] construction projects, your overall responsibility, as to all three phases of construction, is to manage and supervise the performance of consultants and/or contractors—ensuring that their performance is in accordance with their City contracts. With respect to Phase I of a given project, your responsibilities include reviewing development reports, and making recommendations to the Chief Engineer as to whether these reports should be approved. With respect to Phase II, you review design plans, and make recommendations to the Chief Engineer as to whether these plans should be approved. With respect to Phase III, you are responsible for evaluating RFP responses and for determining whether bidders are qualified to construct the projects, and for making recommendations to the Chief Engineer of [BUR1] as to which RFP responses should be approved. In addition, you are responsible for supervising the construction activities of the contractor and ensuring that the construction is done in accordance with the design plans. Upon completion of construction, you are responsible for “closing the books” on the project—ensuring that the contractor is fully paid.

The Board concludes that these activities constitute personal involvement in, or direct supervisory responsibility for, the formulation, or execution of City contracts. Therefore, we determine that you

exercised contract management authority over City contracts where you acted as project manager, and, accordingly, are permanently prohibited from assisting or representing any person, other than the City, on any City contract where you acted as project manager.

Your New Position - Scenario 1. The first post-employment scenario described above involves you, as an employee of a private consulting firm, providing professional services on the [AVE1 PROJECT]. The Board notes that the [AVE1 PROJECT] has only been identified by [DEPT1] as one of its future projects. Although funding for the project has been identified, the project is 3 to 4 months away from any design start; no contracts have been formulated nor executed; no RFP has been prepared or issued by the City with respect to any aspect of the project; and no project manager has been assigned to the project. Moreover, according to you, you have had no involvement in any preliminary or preparatory work on the project, including any work done to identify the project or to identify funding for the project. Based on the foregoing, the Board finds that you did not have personal involvement in, or direct supervisory responsibility for, the formulation or execution of any contract involving the [AVE1 PROJECT], and determines that you are not subject to the permanent prohibition with respect to this project.

Your New Position - Scenario 2. Based on your representations, the projects that [CONS] intends to assign to you, as an employee of [CONS], will not involve the City in any way (e.g., the construction of an off-ramp at the intersection of Interstate [] and Interstate []). As such projects would fall outside the scope of the Ordinance's restrictions, the Board finds that analysis of this post-employment scenario under the permanent prohibition in § 2-156-100 of the Ordinance is not indicated. Please note that should you decide to work for [CONS], and you are assigned a project that in some way involves the City, you should contact the Board for further advice.

B. One-Year Prohibition

Under § 2-156-100(b), you, as a former City employee, are prohibited for one year after leaving City service from assisting or representing any person, other than the City, in a business transaction involving the City if, during your City employment, you participated personally and substantially in the subject matter of the transaction. "Assisting" and "representing" a person in a business transaction involving the City has been found to include helping a person to seek a City contract, as well as perform a City contract. (See Case Nos. 92035.A; 89119.A) Further, the term "representation" has been found to include a broad range of activities in which one person acts as a spokesperson for another person or seeks to communicate and promote interests of one party to another. (See Case No. 93038.A) Also, the one-year period begins on the date your City employment ended, not on the date you stopped performing particular tasks. (See Case No. 97025.A)

The Board first addresses the issue of what subject matter you were personally and substantially involved in during your City employment. As stated above, as project manager of [BUR1] construction projects, your overall responsibility, as to all three phases of construction, is to manage and supervise the performance of consultants and/or contractors hired to either design or construct [BUR1] projects. The projects that you managed involved City arterial, industrial, and new street reconstruction, rehabilitation, resurfacing, streetscaping and lighting. Accordingly, the Board concludes that you participated personally and substantially in "the management and supervision of

the design and construction of City arterial, industrial, and new street reconstruction, rehabilitation, resurfacing, streetscaping and lighting. Therefore, you are prohibited, for a period of one year from the date you leave City employment, from assisting or representing any person, other than the City, in the management or supervision of the design or construction of City arterial, industrial, and new street reconstruction, rehabilitation, resurfacing, streetscaping and lighting.

Your New Position - Scenario 1. The Board next addresses the issue of whether the aforementioned one-year prohibition applies with respect to the [AVE1 PROJECT]. Under this first post-employment scenario, you, as an employee of a private consulting company, would provide professional services to the City (under a contract between your employer/consulting company and the City) on [BUR1]'s [AVE1 PROJECT]. Clearly, a contract between your employer/consulting company and the City is a transaction involving the City. The professional services that you would provide under the contract would be assistance in the management of the design and construction of the [AVE1 PROJECT]—a streetscaping project. The subject matter of this transaction falls squarely under the subject matter in which you participated personally and substantially during your City employment (i.e., the management and/or supervision of the design and construction of City arterial, industrial, and new street reconstruction, rehabilitation, resurfacing, streetscaping and lighting). The Board, therefore, determines that you are prohibited, for a period of one year from the date you leave City employment, from assisting or representing any person, other than the City, on the [AVE1 PROJECT].

Your New Position - Scenario 2.

As the projects you foresee working on for [CONS] do not involve the City in any way, the Board finds that analysis of this post-employment scenario under the one-year prohibition in § 2-156-100(b) is not indicated. Again, please note that should you decide to work for [CONS], and you are assigned a project that in some way involves the City, you should contact the Board for further advice.

Other Sections of the Ordinance. Confidential Information. We also bring to your attention § 2-156-070 of the Ordinance, entitled “Use or Disclosure of Confidential Information.” This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this Section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

DETERMINATIONS: Based on the facts presented, the Board determines the following:

1) Permanent Prohibition

A. You exercised contract management authority over City contracts where you acted as project manager, and therefore, are permanently prohibited from assisting or representing any person, other than the City, on any City contract where you acted as project manager.

B. You did not have personal involvement in, or direct supervisory responsibility for, the formulation or execution of any contract involving the [AVE1 PROJECT], and therefore, you are not subject to the permanent prohibition with respect to this project.

2) One-Year Prohibition

You are prohibited, for a period of one year from the date you leave City employment, from assisting or representing any person, other than the City, on the [AVE1 PROJECT].

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 determination. 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