

CONFIDENTIAL

September 20, 2006

[EMPLOYEE]
[ADDRESS]
Chicago, Illinois 60637

RE: Case No. 06038.A

Dear [EMPLOYEE],

On July 3, 2006, you contacted this office, requesting guidance as to whether your potential employment is prohibited by the post-employment provisions of the City of Chicago Governmental Ethics Ordinance. It is the Board's opinion that the Ordinance does not prohibit you from performing the duties, as you have described them to us. Our analysis is as follows.

CITY EMPLOYMENT

You began your City employment in the [DIVISION 1] of [DEPARTMENT 1] in 1995, and were employed there until 2004, when you transferred to [DEPARTMENT 2]. You began in [DEPARTMENT 2] as the Deputy Commissioner in [DIVISION 2], subsequently becoming the Deputy Commissioner in [DIVISION 3]. Your position in [DEPARTMENT 2] was eventually phased out, and you separated from City service on June 30, 2006.

During your employment in [DEPARTMENT 2], you were responsible for acquiring real property for City projects through actions in eminent domain, also known as condemnation. As you explained, eminent domain proceedings are only performed by public entities, such as municipalities, and they are carried out in accordance with Illinois state statutes. The City does not have any special procedures that it uses in its eminent domain actions, nor does it perform its eminent domain proceedings any differently than any other municipality in the State of Illinois. The eminent domain process, as you explained it, proceeds as follows:

1. The public entity that has a legal right to exercise the power of eminent domain must pass legislation authorizing the use of that power;
2. The property is appraised;

3. An offer is made based upon the appraisal;¹
4. The owner either accepts the offer or rejects the offer; and
5. Either a settlement is negotiated or the matter goes to trial for a jury determination of fair market value.

You explained that this is the normal procedure, mandated by State statute, that is followed by all attorneys in both the private and public sector and that there is no additional knowledge required to perform eminent domain transactions on behalf of the City.

While you were in [DEPARTMENT 2], many of the eminent domain acquisitions that you handled were in connection with airport projects. You explained that, for example, you acquired property under eminent domain for the City in connection with building the new terminal at Midway airport approximately 10 years ago. As explained above, you followed the procedures as set forth in the Illinois Compiled Statutes in performing those acquisitions. However, to the best of your recollection, you did not perform any eminent domain acquisitions with respect to O'Hare International Airport ("O'Hare"). The only O'Hare work that you recalled were licenses and/or easements that you helped the City to acquire through negotiated settlement in connection with 2 sewer drainage projects at O'Hare. You stated that, for the sewage draining projects, pipes had to be laid that were not exclusively on O'Hare property. In order to lay the pipe, you recalled getting licenses for much of the property, due to the fact that the land in which the pipe was to be laid was public property. There were, however, 2 easements that you recall obtaining. In one instance, the pipe bordered a cemetery, and the cemetery sold the City the right to lay the pipe. In another instance, the pipe needed to be laid on a private property. In that case, the land owner granted the City an easement to lay the pipe. None of this work involved land acquisition or the use of eminent domain proceedings.

While you were in [DEPARTMENT 2], you held two different positions. As the Deputy Commissioner of [DIVISION 2], you exercised administrative oversight of all airport properties and any leases related to those properties. In that position, your interactions were primarily with the airlines, rental car companies and tenants in airport-owned property. As the Deputy Commissioner of [DIVISION 3], you were responsible for legal research in connection with construction claims and you exercised oversight of the vendors that supplied services at O'Hare. None of your duties in [DIVISION 3] related to the acquisition, maintenance or disposition of real estate.

During your employment in Aviation, the only acquisition projects you performed in connection with O'Hare was to gain usage rights for the City in connection with the aforementioned sewer project and receiving an easement ceded to O'Hare by the Illinois Tollway Authority.² At no

¹ You stated that the Illinois courts have indicated that to be a bona fide offer, the offer must be in an amount that approximates the fair cash market value of the property. Thus a fair cash market value appraisal is usually the appropriate basis to determine the value of an offer.

² You were, however, involved with the formation of a possible acquisition for Midway.

time were you involved in formulating or carrying out the acquisition plans for the O'Hare Modernization Project (the "OMP"). At no time were you involved in any expansion plans for O'Hare, under the OMP or otherwise. You did have occasion to attend meetings between Aviation personnel and OMP personnel; however, the only issues discussed at those meetings related to the coordination of OMP activities with normal airport functions, so as not to disrupt daily activities at O'Hare.

PROPOSED EMPLOYMENT

Your proposed employment will involve practicing law in the real estate/property group of a private firm in the Chicago area. You anticipate that some of your responsibilities will include seeking to acquire property on behalf of the City in connection with expanding O'Hare under the OMP.

OMP is currently planning to acquire 433 acres of land under the O'Hare Land Acquisition Program ("OLAP"). All land will be acquired in compliance with a Federal Aviation Administration publication entitled "Land Acquisitions for Public Airports." In addition, acquisitions under the OLAP will follow the guidelines of the federal Uniform Relocation Assistance and Real Property Acquisition Act as well as the O'Hare Modernization Act, passed by the Illinois legislature. As stated on the OMP website, "[w]hile it is the City's goal to acquire property through voluntary negotiations with property owners, under Illinois state statute[sic], the City can also use the right of eminent domain."

APPLICABLE LAW AND ANALYSIS

Section 2-156-100. The provision of the Ordinance that is relevant to your request is Section 2-156-100, entitled "Post-Employment Restrictions," which provides that:

(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. [emphasis added]

This section prohibits you, as an attorney, from representing any third person in any judicial or administrative proceeding involving the City if you participated personally and substantially in the matter, or if you were counsel of record. It also prohibits you, as a former City employee, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if you participated "personally and substantially" in the subject matter of that transaction during your City employment. In addition, it permanently prohibits you from assisting or representing any person on a specific contract if, during your City employment, you exercised "contract management authority" over that contract.

Legal Representation and Permanent Prohibition. Based on your past job titles and responsibilities, there are likely to be many contracts and/or proceedings on which you are permanently prohibited from working. However, none of those contracts and/or proceedings is at issue here. Therefore, an analysis under the permanent prohibition is unnecessary. Should your proposed employment change, however, we strongly urge you to contact us for further guidance.

One-Year Prohibition. In order for this provision to be implicated, the business transaction involving the City must be the same subject matter that you were personally and substantially involved in during your City employment. The subject matters in which you were involved during your City employment included, among other things, real estate acquisition for the City through eminent domain. Your proposed employment, however, specifically involves real estate acquisition through the OMP for the expansion of O'Hare under the federal guidelines of the "Land Acquisitions for Public Airports" publication, the federal Uniform Relocation Assistance and Real Property Acquisition Act, and the state O'Hare Modernization Act. And, although eminent domain proceedings can be performed to acquire land under the OLAP, all acquisitions must ultimately comply with all federal rules and mandates. In addition, we note that OMP is a department entirely separate from Aviation, solely responsible for the expansion of O'Hare. At no time did you work with the OMP or attend any OMP meetings. At no time during your City employment did you perform real estate acquisitions for the expansion of O'Hare, nor were you involved in any planning or meetings related to the expansion of O'Hare. Based on the totality of the circumstances that you described, the Board determines that acquiring properties for the OMP under the aforementioned federal and state guidelines for the purpose of the O'Hare expansion would be distinct from the work you performed during your City service and that it does not involve the same subject matter(s) on which you worked during your City employment.

DETERMINATION

Based on the facts that you presented, the Board determines that the Ordinance does not prohibit you from assisting your proposed employer in acquiring properties for the expansion of O'Hare through the OMP. Should your actual job responsibilities differ from those described in this letter, please contact us for further guidance, as you may be restricted by the Ordinance's post-employment provisions from assisting your proposed employer, or any other person, with respect to that work. Also note that we have addressed only one specific project. Based on staff's review of your City career, we believe that the Ordinance may prohibit you, for a period of one

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year and/or permanently, from working on various other projects. Thus, we strongly advise you to contact us for further guidance if your responsibilities for your proposed employer change, or if you are contemplating assisting any person on other City-related transactions or projects.

Please note that our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the applicable sections of the Governmental Ethics Ordinance to the facts as you have represented them. If the facts stated are incorrect or incomplete, please notify the Board immediately, as this may change the outcome of our analysis.

Other rules and/or laws, including the Rules of Professional Conduct, may also apply to this situation.

RELIANCE

This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

Very truly yours,

Darryl L. DePriest
Chair