

September 20, 2006

CONFIDENTIAL

Mr. [F]

Chicago, IL 606

Re: Case No. 06040.A; Advisory Opinion

Dear Mr. [F] ,

You are an attorney licensed to practice law in Illinois. You formerly served as the Commissioner of the [K Department] , having left your City employment effective [Date 5] 2005. On , 2006, our office received your written request for an advisory opinion addressing your proposed post-City employment with a Chicago law firm, beginning after [Date 5] 2006. The Board has considered the facts presented in your case, and, in summary, has determined that you are not subject to the Ordinance's post-employment prohibitions as to: 1) assisting the firm (or any other person) in negotiating subsequent agreements to the current contracts the City has with either the [Union A] or the [Union B] ; or 2) assisting the firm or any other person or client with respect to lobbying the City's sister agencies; or 3) analyzing or providing recommendations to the firm and/or its clients with respect to legislation introduced at the City, state or federal level after [your effective departure date from City service]. A summary of the relevant facts and our analysis follow.

FACTS: You began City service in October 1989, as Director in the City's Department of [O] . In 1993, you joined the [K] staff, and became its Commissioner in December XXXX. As [K] Commissioner, you managed a staff of 28 . You (and [K]) were responsible for promoting and implementing the City's policy agenda through legislation at the local, state and federal levels. This included managing the Mayor's and the City's legislative agendas before the City Council, State House in Springfield and the Congress (which in turn involved transportation and infrastructure issues, law enforcement issues, regulatory and tax issues, environmental issues, social service and workforce programs and funding, and real estate and economic development matters). You said you had significant involvement in formulating underlying policy as well. Your responsibilities both as [K] Commissioner and staff member included serving as the City's primary liaison to other governmental agencies, particularly the so-called "sister agencies"—including the Chicago Park District, Board of Education, Chicago Transit Authority, City Colleges and Metropolitan Pier and Exposition Authority. You said that, as [K]'s Commissioner and as a [K] staff member before that, you were also involved specifically in formulating and implementing the City's labor relations policy, and coordinating that policy with these other governmental agencies. This included developing a negotiation strategy with respect to agreements with the City's various collective bargaining units , as well as formulating and articulating the labor relations policies underlying those agreements. You worked closely with City personnel involved in negotiating those agreements, including personnel from the Departments of [V,Z,W, and Q] .

The City's current agreements with [Unions A and B] expire on June 30, 2007. You said that, during your City employment, you were not involved in negotiations or discussions of City labor relations policy specifically with respect to subsequent agreements.

You are considering employment with (or consulting to) a Chicago law firm to provide the following professional services: 1) assisting it with respect to representing the City in negotiating subsequent contracts to the current [Union A and B] agreements (i.e., the agreements expiring on June 30, 2007); 2) assisting the firm and/or its clients, or any other client of your own, with respect to lobbying the City's sister agencies; and 3) advising the firm and/or its clients (which would be other governmental agencies, particularly the "sister agencies") with respect to legislation introduced at the City, state or federal level (both you and a partner in the firm, who you authorized us to contact, confirmed that all such legislation would be recent--introduced after [your departure date from City service]).

LAW, ANALYSIS AND CONCLUSIONS:

Post-employment restrictions. Section 2-156-100 of the City's 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.

You are, as a former City employee, subject to three possible prohibitions under this section: a "one-year" prohibition and two distinct "permanent" prohibitions. We address each in turn.

One-Year Prohibition, §100(b). The first, in § 100(b), prohibits you, for one year after leaving City service, from assisting or representing any person or client in a business transaction involving the City if, during your City service, you participated personally and substantially in the subject matter of that transaction. Because you left City employment on [Date 5], 2005, and the activities described in your proposed post-City employment will occur after [Date 5], 2006, the Board need not address the one-year prohibition in this opinion.

Permanent Prohibition, §100(b). The second prohibition, also in § 100(b), prohibits you, "permanently," from assisting or representing any person or client as to a City contract if, during your City employment, you exercised "contract management authority" with respect to that contract. "Permanently" in this context means for the term of the contract. See, e.g. Case No. 95038.A. "Contract management authority," as defined in § 2-156-010(g), 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.

Our review of your City work warrants the conclusion that you had direct supervisory responsibility for the formulation of the two current collective bargaining agreements at issue, i.e. with [Union A and B], respectively, and thus that you exercised contract management authority with respect to these agreements. However, these agreements expire on June 30, 2007. You said, and the partner in the law firm retained by the City with whom we spoke confirmed, that the agreements expire fully, and the new subsequent agreements (which are expected to have four year terms) will be negotiated completely *de novo* by the City (and its attorneys, such as this law firm, retained by the Law Department for this purpose), and are deemed by both the City and representatives of each respective bargaining unit to be new, distinct agreements. Our review of your City work also warrants the conclusion that you did not exercise contract management authority with respect to any yet-to-be-negotiated subsequent [Union A and B] agreements (though you were clearly involved in the subject matter of developing City labor relations policy generally). We therefore conclude that you are prohibited, under § 2-156-100(b), from assisting or representing any person (including this law firm) with respect to the [Union A and B] agreements that expire on June 30, 2007, but that you are not prohibited, under that same section, from assisting or representing the firm and/or its clients or any person with respect to any subsequent [Union A and B] agreements that take effect July 1, 2007.

However, our review of your City career indicates that you likely exercised contract management authority with respect to other City agreements not addressed in this opinion. Therefore, if your proposed work for this law firm or any other person changes, we advise you to contact our office for specific advice, because the permanent prohibition of § 2-156-100(b) may restrict your activities.

Permanent Prohibition, §100(a). This section of the Ordinance permanently prohibits you, as a former City employee, from assisting or representing any person other than the City (such as a law firm retained by the City, see Case No. 02034.A) in any judicial or administrative proceeding involving the City or any of its agencies, if you were counsel of record or participated personally and substantially in the proceeding during your City employment. The facts presented do not indicate that you were counsel of record in any proceedings, judicial or administrative, or that you participated personally or substantially in any judicial proceedings. The only remaining question is whether you “participated personally or substantially” in any “administrative proceedings.” The term “administrative proceeding” is not defined in the Ordinance, and this Board has not had occasion to address or delimit the various types of proceedings that might qualify. (See, e.g., Case No. 02034.A, fn. 3). Nonetheless, based on the facts presented in this case, it appears that none of the matters on which you intend to work or provide advice—including federal, state or City legislation, or other projects—were pending or introduced before the effective date you ended your City service. Further analysis under this subsection is therefore unnecessary.

Thus, we conclude that you are not prohibited, under § 2-156-100(a), from assisting or representing any person with respect to lobbying the City or its sister agencies or analyzing or providing recommendations to the firm and/or its clients with respect to legislation introduced at the City, state or federal level after [your effective departure date from City service], or with respect to projects introduced after that date. However, if your work description changes, and you are asked to assist either this firm or another person or potential client on a matter that involves specific legislation, ordinances or projects with which you had involvement as either [K] Commissioner or staff member before [your effective departure date from City service] (whether state, federal or City), then we advise you to contact us for specific guidance, as either the permanent prohibition in §§ 100(a) or -100(b) may apply and restrict your ability to perform that work.

We also advise you that the Ordinance does not prohibit you from engaging in lobbying per se. Rather, your activities, as would those of any former City employee or official, would be subject to the

prohibitions analyzed above, and those prohibitions would include, where appropriate, lobbying on behalf of clients or employers. Assuming that no such prohibitions exist, as discussed above, then, if you do engage in lobbying activities before the City or any of its agencies (including the City Council or its committees, or any City executive department or City Board or Commission, but not including lobbying activity before the City's sister agencies or their personnel), you will be required to register as a lobbyist with the Board of Ethics by paying the annual registration fee and filing a lobbyist registration statement and semi-annual activity reports, as required by Article 3 of the Ordinance.

Confidential Information. The Board also advises you that, as with all former City employees, you are prohibited, under § 2-156-070, "Use or Disclosure of Confidential Information," from using or disclosing confidential information acquired through your City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

DETERMINATIONS

The Board determines that you are not subject to the Ordinance's post-employment prohibitions as to: 1) assisting this law firm (or any other person) with respect to subsequent agreements (which will take effect July 1, 2007 or after) to the current contracts the City has with [Unions A and B]; or 2) assisting this firm or any other person or client with respect to lobbying the City or its sister agencies; or 3) analyzing or providing recommendations to the firm and/or its clients with respect to legislation or projects introduced at the City, state or federal level after [your effective departure date from City service]. However, the Board again cautions you that, if your work description changes, and you are asked to assist either this firm or another person or potential client on a matter that involves specific legislation, ordinances or projects with which you had involvement as [K] Commissioner (or as a [K] staff member) before [your effective departure date from City service] (whether state, federal or City), then we advise you to contact us for specific guidance, as either of the permanent prohibitions in §§ 100(a) or -100(b) may apply and restrict your ability to perform that work.

The Board's determinations do not necessarily dispose of all the 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 presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other laws or rules, including the Illinois Rules of Professional Conduct (Article VIII of the Rules of the Supreme Court of Illinois), may also apply to your 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.

Darryl L. DePriest,
Chair