

Advisory Opinion

Case No. 08037.A, Post-employment August 27, 2008

You were employed in the City's Department of [T] as a Project Manager until 2008, when you resigned to join [O] in a position you said is best described as a project manager. On July 21, you asked our office for an opinion addressing how the post-employment provision of the City's Governmental Ethics Ordinance will restrict your employment with [O]. As explained in this opinion, the Board has determined that you are: 1) prohibited, until 2009, from assisting or representing any person, including [O] or its customers or clients, in any real estate development transaction involving the City or any of its agencies in the [M] Planning Area, --this prohibition includes seeking or coordinating City financial assistance with respect to "retrofitting" industrial buildings for maximized energy efficiency if the buildings are located in these areas; and 2) permanently prohibited from assisting or representing any person, including [O] or its customers or clients, with respect to any redevelopment project over which you exercised contract management authority. The Board's analysis and detailed discussion of these prohibitions follow.

FACTS: You began your City career as a [T] intern in May 2001 in the [T] division. In 2003, you became a Legislative Liaison, responsible for monitoring the flow of [T] matters through the City Council, researching possible legislation, keeping abreast of events that could affect [T]'s projects, reviewing [T]'s proposed Ordinances prior to presentation to Senior [T] managers, arranging and conducting ward tours with appropriate [T] employees and aldermen, and coordinating [U] Office briefings regarding proposed [T] Ordinances. In 2005, you were promoted to Project Manager, the position you held until you left City service. In this position, you managed economic and real estate development projects from inception to completion, including commercial, industrial, commercial and residential developments in the [L] Planning Area, which encompasses [T].

This work also included coordinating the administration of tax increment financing (TIF) funds, Small Business Improvement Funds (SBIF), and Cook County Class 6(b) Property Tax incentives to support certain projects in these areas of the City, such as infrastructure and streetscape improvements, environmental remediation, and industrial company expansion. You also said you negotiated several redevelopment agreements with commercial, residential and industrial developers, such as the [R] and [W] commercial projects (the latter involved a restaurant on [T] Street), and developed criteria and design guidelines in preparation for several Requests for Proposals (RFP's).

During your work on the [ZX] redevelopment, you became interested in what you called "green construction" or "retrofitting" older industrial facilities. That particular

project involved a redevelopment agreement based on the City's sale of a parcel to two adjacent companies, one constructing a 50,000 square foot facility for processing, the other expanding its parking lot. You explained that you realized that the City might also assist in refurbishing [ZX's] old industrial facility to become energy efficient, specifically by helping it to use newer construction and insulation material, and by redesigning the facility's electrical system. You knew of the [O] from other projects you had worked on, and said you approached its representatives at a presentation on Leadership in Energy and Environmental Design (LEED) certification and then met with them to discuss your ideas. The company expressed interest in both the [ZX] facility, and in doing this kind of work in other industrial facilities as well.

You said that, around the same time, you approached your superiors [T] about your ideas, but, although they expressed interest, they told you that the Department had other priorities. In the Winter of 2008, you discussed this with [] of the [U] Office, who expressed his support, and recommended that you meet with [] []. You met with her in February 2008, and she likewise was excited about your ideas, and assigned [F] (who you authorized us to contact) to assist you. You and Ms. [F] then met once with senior officials from [T], she said to "brainstorm" about identifying companies that could benefit from this type of assistance, and to identify what sources of City and non-City monies might be available for this work. She said that she then met with Deputies from [T] regarding this possible initiative. You met again with the Department's Division, and made your presentation to its Deals Task Force. [D], [T]'s First Deputy Commissioner (who you also authorized us to contact) explained that this is an area in which the department is still attempting to become more involved, but so far there has really just been a work group formed, of which you were a member. She said that, to her knowledge, the work group has not yet even met. [T]'s role so far has been to begin to identify companies in the City that might qualify for retrofitting, and to arrange for an "energy audit," which entails examining a facility's energy footprint and expenditures and its age. The idea then would be to have [T] and possibly employees from the City's Department of [P] coordinate with the company to apply for a grant from the [S] Foundation, which likely will have funds for this work available through the [ASDF] Sustainable Growth Initiative. Ms. [D] said that you "played such a small part in this" project, although you did, as you said, meet with a representative from the [S] Foundation once, and have several conversations on the phone with this representative. You asked the representative to contact the Local Industrial Retention Initiative (LIRI) Organization representative to set up meetings with member companies of the LIRI. The only company that agreed was [CV] (a company in one of your Industrial Corridors), which then met with [KL] and the [S] Foundation in preparation for an energy audit. You did not attend this meeting. Your idea, you said, is to have the City "remarket" and redeploy some of its existing loan and grant programs for retrofitting industrial facilities in Chicago, or, as you described it in a document you used in your presentation to Senior [T] staff, to create an "energy efficient industrial corridor initiative." Potential City funding sources for these projects include the Small Business Improvement Fund (SBIF), the Class 6(b) Tax Classification Incentive Program, and the TIF Program. Each of these programs are currently offered through [T] and are available to industrial and commercial businesses for infrastructure and construction improvements for occupied and abandoned facilities, though none of the benefits are specifically earmarked for "green" improvements. In fact, you said, none of the projects on which you have worked at [T] have involved "green retrofitting"; rather, your work was mostly in commercial redevelopments, and all of your projects involved new construction, such as the [ZX] redevelopment project. To date, to your knowledge, the City has not made any such loans or grants. Any loans or grants made through this

“initiative” would, you said, involve new contracts, and would be entirely separate from any redevelopment agreements already negotiated and in progress.

Your new position, which, you said, you essentially created, would involve representing [O] as a “one-stop shop” for clients interested in retrofitting industrial facilities according to energy-efficient or “green” specifications. For properties located in the City, you would, as [O]’s representative, assist its clients in applying for and procuring whatever loans and grants might be available for this work from [T] or other City sources. For client properties outside the City, you would do basically the same thing, but not through City of Chicago funding sources or programs. You would also serve as a construction manager for such projects that [O] commences. Your position might also entail marketing and managing these services to “sister agencies” like the Chicago Park District and the Public Building Commission, as well as meeting with various local Chambers of Commerce or industry groups for this purpose.

LAW AND ANALYSIS: I. Post-employment. Section 2-156-100(b), “Post-Employment restrictions,” states, in relevant part:

No former ... employee shall, for a period of one year after the termination of the ... employee’s ... 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.

This section imposes both a one year and a permanent prohibition on former City employees’ activities. The Board will analyze your situation under each.

A. One-Year Prohibition. Under the first clause of § 2-156-100(b) you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including [O] or any of its customers or clients), in any business transaction involving the City if you participated “personally and substantially” in the “subject matter” of that transaction as a City employee.¹ Accordingly, we first assess whether there are “business transaction[s] involving the City” on which you will likely be asked to assist [O], then their “subject matter,” and finally, whether you “participated personally and substantially” in those subject matter[s] during your City employment.

Business Transactions Involving the City. The work you anticipate doing for [O] and its clients will involve contacting [T] and possibly other City departments to arrange and coordinate City financial assistance with respect to “retrofitting” industrial buildings for maximized energy efficiency. This includes presentations you may make at Chambers of Commerce or LIRI meetings, where available

1. Note that this prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. Case No. 94011.A, p. 7. “Assisting” or “representing” a person in business transactions involving the City encompasses helping a person to seek or to perform a contract or project. See Case Nos. 96001.A, 92035.A. “Representation” applies to activities in which someone acts as a spokesperson for another or seeks to communicate and promote the interests of one party to another. It includes signing any proposals, contracts, or other documents. Case 93005.A, p. 7.

financial assistance from the City will be discussed, and which would aim at attracting clients specifically to take advantage of available City funding. Some of your work will, of course, also involve the [S] Foundation and parties other than the City, but as you envision it, your work, at least for companies located within the City, will be partly focused and dependent on City involvement, most likely from [T]. Thus, this work will constitute [a] “business transaction[s] involving the City.” See Case Nos. 92035.A; 00002.A. To the extent that this work will be performed on behalf of [O] clients located outside the City of Chicago, it will not.

Transactional Subject Matter. The Board must next ascertain the subject matter of the transactions on which you would work for [O]. As you have described it, the goal of your work will be to assist [O] and its clients in seeking and coordinating City financial assistance with respect to “retrofitting” their industrial buildings for maximized energy efficiency. We conclude that this also constitutes the subject matter of your post-City work. Therefore, if you were personally and substantially involved in that subject matter during your City employment, then you will be prohibited from assisting or representing [O] in such transactions until 2009.

Personal and Substantial Involvement. Were you? In Case No. 92020.A, the Board addressed a situation similar in important respects to your own. There, an employee attended three or four Board meetings of an organization he later joined after leaving his City employment, and wrote two memos to his department seeking to initiate a program, which the City did not yet have (it “was still in the conceptual phase,” the Board noted). And, he wrote a memorandum to a federal agency inquiring about its grant program for private-public partnerships. The Board concluded that his participation in the subject matter was not substantial. The Board also concludes in this case that, while you were *personally* involved in seeking and coordinating City financial assistance with respect to “retrofitting” their industrial buildings for maximized energy efficiency, you were not *substantially* involved. We base this conclusion on our review of the totality of your work with [T] over the last year in particular, and stress the following: 1) there is not yet any City program or initiative to address this subject matter, and there have been no [T] or City transactions to date involving this type of financial assistance, and it is not clear how such a transaction would be structured; 2) [T] and the [U] Office are still in the process of establishing a “green industrial corridor” or “green retrofitting” as one of focus, and have only recently set up a working group, which had not met when you left City employment; 3) the projects on which you worked at [T] involved only new construction, not refurbishing older facilities; 4) though you attempted to interest your superiors in your idea—which is essentially to remarket existing loan and grant programs such as SBI, TIF and Class 6(b) to fund green retrofitting—and in fact succeeded in interesting the [U] Office in it, this was not a significant part of your work as a Project Manager (see Case No. 93005.A); and 5) your contact with the [S] Foundation and the LIRI to arrange an energy audit was preliminary, and does amount to substantial participation (see also Case No. 01030.A).

Geographical Subject Matter. However, as the Project Manager for industrial, commercial and residential developments in the [L] Planning Area

you supervised various steps in carrying out redevelopment projects in these areas, including industrial, commercial (the bulk of your work) and residential projects. Your 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 the redevelopment plans. Successful performance of these duties required you to research, keep track of and maintain contact with SBIF, TIF, and Class 6(b)

developments and transactions. As the Board determined in Case Nos. 96001.A, 96015.A, 96035.A, 99044.A, 01046.A and 04006.A, all post-employment involving [T] employees with responsibilities analogous to yours, the Board concludes here that you were, as a [T] Project Manager, personally and substantially involved in real estate development and redevelopment involving the City in your area: the [L] Planning Area

. Therefore, you are prohibited, for one year after your effective termination date from City employment (i.e. until 2009), from assisting or representing any person, including [O] or its customers or clients, in any real estate development transaction involving the City or any of its agencies in the [L]

this prohibition includes seeking or coordinating City financial assistance with respect to “retrofitting” industrial buildings for maximized energy efficiency if the buildings are located in these areas.

B. Permanent Prohibition. Under the second clause of § 2-156-100(b), you are permanently prohibited from assisting or representing any person, including [O] or its customers or clients, with respect to any City contract if you exercised “contract management authority” over that contract during your City service. “Contract management authority,” 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.

Based on the facts presented, and on previous Board opinions applying the post-employment provisions to employees with responsibilities similar to yours, we conclude that your work on the specific [T] projects on which you served as a Project Manager, which involved drafting RFP’s, negotiating redevelopment agreements, monitoring (re)developer performance and managing City funding for projects, constitutes the exercise of contract management authority with respect to those projects. See Case Nos. 04006.A, 99044.A, and 01047.A. This includes but is not limited to projects specifically mentioned above, such as the . Thus, the Ordinance prohibits you from assisting [O] or any other company or person with respect to work on these redevelopment projects; this prohibition lasts until the redevelopment agreements terminate. The Board notes, however, that in the event that, after 2009, any of the companies with these redevelopment agreements pursues the green refurbishment of an older industrial facility through grant or loan from [T] and/or the [S] Foundation, this prohibition would not restrict you from assisting or representing that company or [O] in the transaction, provided that, as you expect and explained to us, this “green retrofitting” transaction does not become incorporated into or was not contemplated by the original redevelopment agreement.

II. Confidential Information. Section 2-156-070, “Use or Disclosure of Confidential Information,” prohibits you, as a former City employee, from using or revealing 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: Based on the Board’s analysis of the facts presented in this opinion under the City’s Governmental Ethics Ordinance, the Board determines that you are: 1) for one year (i.e. until 2009), prohibited from assisting or representing any person, including [O] or its

customers or clients, in any real estate development transaction involving the City or any of its agencies in the [L] Planning Area,

--this prohibition includes seeking or coordinating City financial assistance with respect to "retrofitting" industrial buildings for maximized energy efficiency if the buildings are located in these areas; and 2) permanently prohibited from assisting or representing any person, including [O] or its customers or clients, with respect to any redevelopment project over which you exercised contract management authority.

Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the Governmental Ethics Ordinance to the facts stated in this opinion. If those facts are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Ordinance.

RELIANCE: This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz, Chair