

MEX



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December 20, 1990

C O N F I D E N T I A L

[REDACTED]

Re: **ADVISORY OPINION**
Post-Employment
Case No. 90079.A

Dear [REDACTED]

On December 18, 1990, the Board of Ethics considered your request for an advisory opinion regarding your post-City employment. It is the determination of the Board that, based on the facts as we know them, the work you said you do in your present position with **CORPORATION X** is not prohibited by the Ethics Ordinance. This letter reviews the facts of your case and explains how the Ordinance applies to your situation. In the interest of avoiding any potential conflict which may arise in your present employment over the next year, we advise you to be particularly aware of the one-year prohibition in §2-156-100 (prior code §26.2-10) which is covered in this letter.

FACTS: You explained to us that you were employed in **DEPARTMENT A AS POSITION M**

[REDACTED] and **SUBSEQUENTLY**
AS POSITION N AT LOCATION Q.

Your responsibilities in these positions related to the day-to-day physical operation of the utility systems and the facilities at **LOCATION Q.** This included supervision of staff, coordination of maintenance and cleaning, inspection of the facilities, and making budget and staffing recommendations to **DEPARTMENT B.** Your duties did not include any involvement in the bidding for, awarding of, or supervision of the performance of any City contracts.

[REDACTED]



On November 5, 1990, [REDACTED] YOU REB'AN WORK IN A POSITION w/ CORP. X.

[REDACTED] CORP. X is a City contractor that has performed several [REDACTED] treatment projects for the City. Your responsibilities with CORP. X include "contacting current company accounts to promote repeat business and to explore business relationships with new clients in both the public and private sectors." In a telephone conversation with a member of the Board staff on December 5, 1990, you confirmed that, in the course of assisting and representing the company as a salesman, you will not be involved in any business with which you were involved during your City employment.

THE ETHICS ORDINANCE: The provision of the Ethics Ordinance relevant to your situation is §2-156-100(b) (prior code §26.2-10(b)) governing post-employment activities. This section states:

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.

Section 2-156-010(g) (prior code §26.2-1(g)) defines "contract management authority:"

"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.

According to these sections, a former City employee is subject to two restrictions on employment after leaving City service, a one-year prohibition and a permanent prohibition. A former City employee is prohibited, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee; and (2) the person's participation in this subject matter or area was personal and substantial.

A former City employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract; and (2) the person exercised "contract management authority," as defined above, with respect to this particular contract while acting as a City employee.

ANALYSIS: THE PERMANENT PROHIBITION: Your work for the City was confined to management of facilities.

Given that you had no involvement in decisions concerning the awarding of or fulfillment of City contracts during your City employment, the Board determined that you had no "contract management authority," as defined in the Ordinance. Therefore, the permanent ban of the post-employment provision does not come into play.

THE ONE-YEAR PROHIBITION: You will not have any project management or field supervision duties in your position with CORPORATION X that could be construed as similar to, or overlapping with, the areas of your responsibilities in your City job. Further, you will be assisting the company only in obtaining new work with which you had no involvement during your City employment. Given these job responsibilities, there is no violation of the post-employment provision of the Ordinance.

Be advised, however, that the language of the Ordinance is fairly broad: the terms "assisting" and "representing" cover a wide range of activities, not confined to bidding processes or construction operations. In the past, the Board has defined "representation" to mean any activity in which a person acts as a spokesperson for another party or seeks to communicate and promote the interests of one party to another. It could include actions such as making personal appearances or telephone contact on behalf of others, and submitting written requests and proposals on behalf of others. (See Case No. 89087.A.) Likewise, "assisting" here can be understood as any activity that aids another person in any business transaction involving the City or any of its agencies. The focus of the Ordinance in your situation, then, is whether the assistance and representation you provide to CORPORATION X has to do with business transactions with which you had personal and substantial involvement while you worked for the City.

CONCLUSION: Based on the facts as they have been presented, the Board finds that the work you currently perform for CORPORATION X does not violate the post-employment provision of the Ethics Ordinance. As new situations arise in the future, please keep in mind that the one-year ban of the post-employment section prohibits you until from assisting or

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representing anyone in any business transaction involving the City in which you participated personally and substantially during your City employment.

Thank you for bringing this matter to the attention of the Board, and for the thorough information you provided. We enclose a memo which provides standard procedural information. If you have any further questions, please do not hesitate to contact us.

Sincerely,



Albert Hofeld
Chairman

encl.

cc: Kelly Welsh, Corporation Counsel
City of Chicago

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NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.