

MEH



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Chicago, Illinois 60610  
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July 12, 1991

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

[REDACTED]

**Re: Post-Employment, Case No. 91056.A  
ADVISORY OPINION**

Dear [REDACTED]

On May 14, 1991, you met with Marilyn E. Hanzal, Board Legal Counsel, concerning your employment with [COMPANY Q] [REDACTED] a private [REDACTED] consulting firm. You requested an advisory opinion concerning the propriety, in regard to the Governmental Ethics Ordinance, of performing certain duties in your new employment. We appreciate your bringing this matter to our attention and your willingness to abide by the standards of the Governmental Ethics Ordinance.

After reviewing the facts presented, it is the determination of the Board that your performance of the duties for Co. Q that you described does not constitute a violation of the post-employment provisions of the Ordinance. However, this opinion is limited to those duties described by you. Therefore, should your position and/or duties with the company change prior to May 24, 1992, we suggest you contact us at that time. This letter sets forth our analysis of the facts of your case.

**FACTS:** You were employed by the City of Chicago as [REDACTED] POSITION R [REDACTED] for [REDACTED] DEPT. S. [REDACTED] You resigned effective May 24, 1991, and began working for Co. Q on May 27, 1991.

According to you and [REDACTED] INDIVIDUAL A of DEPT S. [REDACTED]

[REDACTED] (formerly your supervisor), your responsibilities with the Department [REDACTED] involved the planning stage of four projects or programs [REDACTED]

[REDACTED] As a planner, your duties were to conceptualize potential problems and changes for the future with regard to these projects, and then formulate a plan to address these problems and changes. [REDACTED]



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[REDACTED]  
None of your City duties involved [REDACTED] the project you work on with your new Co. [REDACTED] or the monitoring of a construction project, which are at issue in this case.

COMPANY Q ) the company with whom you are currently employed, contracted with [REDACTED] GROUP T.

[REDACTED] Co. Q works with [REDACTED] GROUP T [REDACTED] on [REDACTED] IA CONSTRUCTION [REDACTED] project. You noted that this is not the only project on which you will be working, but is the only project that has anything to do with the City of Chicago.

According to [REDACTED] INDIVIDUAL B of Co. Q [REDACTED], the company will provide [REDACTED] GROUP T [REDACTED] with a cost and scheduling analysis for the construction. [REDACTED] Co. Q will first provide an evaluation of what it projects as the cost and timing of the construction project. It will then evaluate any changes in the cost or the scope of the project.

[REDACTED]  
[REDACTED] Co. Q would evaluate their cost projections on behalf of [REDACTED] GROUP T [REDACTED] to assure that such changes are reasonable and legitimate. You, as Cost Control Manager, will be in charge of the evaluation and the monitoring of the costs of the project as compared to Co. Q [REDACTED] cost projections.

**ISSUE:** Whether your performance of your duties as Cost Control Manager for Co. Q is prohibited under the post-employment section of the Governmental Ethics Ordinance.

**LAW:** Section 2-156-100(b) of the Governmental Ethics Ordinance 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

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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. (prior code § 26.2-10(b))

Section 2-156-010(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 can be subject to two restrictions on his or her 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 transaction while acting as a City employee.

#### **ANALYSIS: I. Permanent Prohibition**

In interviews with you and INDIVIDUAL A [REDACTED] the Board staff was informed that in the four projects with which you were involved while with the City, you had no personal involvement with or direct supervisory responsibility over any contracts. Since you exercised no contract management authority while employed by the City, it is the determination of the Board that you are not subject to any permanent restrictions under the Post-employment provisions of the Ordinance.

#### **II. One-Year Prohibition**

The one-year restriction prohibits any former City employee

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from assisting or representing any person in a business transaction involving the City if the former employee was personally and substantially involved in the subject matter of that transaction while with the City. The Board determines, based upon its analysis of the facts in the case, that the term "business transaction involving the City" as it relates to this case pertains to the construction of terminal five.

According to INDIVIDUAL A [REDACTED] and you, there are several phases that a project goes through before it is complete. Typically, the planning phase is separate and distinct from the construction phase.

Co. Q's role in the construction [REDACTED] is that of construction management, which is a part of the construction phase. Co. Q will evaluate and monitor the cost of the construction project as well as whether the project is progressing according to time schedules. Your duties for Co. Q are to produce the evaluation of the expected time schedule and cost of the project, and monitor the project in light of the schedule evaluation.

The Board compared your duties for Co. Q with the duties and activities you performed for the City, which duties dealt with the planning phase of a project. According to you and INDIVIDUAL A, your work while a City employee was in the planning of four projects, and had nothing to do with the construction phase, more particularly with the management of any construction project. In addition, you had no connection with or involvement in the formulation of this construction [REDACTED] project while you were with the City.

Based upon these facts, the Board concludes that while you were employed with the City of Chicago, you were not personally and substantially involved either in construction management or in any business transaction involving the construction PROJECT [REDACTED]. Therefore, based upon the facts presented, the Board determines that the one-year prohibition does not apply to your duties with Co. Q as you have described them.

**CONCLUSION AND DETERMINATION:** Based on the facts presented, the Board determines that your performance of the duties you described in your position with Co. Q does not violate the post-employment provisions of the Governmental Ethics Ordinance. However, please be advised that this opinion

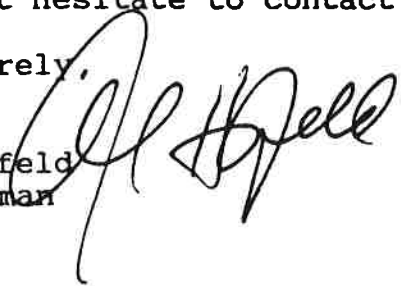
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relates only to the specific duties you have described.<sup>1</sup>

Thank you again for bringing this matter to our attention. We enclose a sheet which sets forth the Board's procedural rules after it renders a decision. If you have any further questions regarding this matter or some related issue, please do not hesitate to contact us.

Sincerely,

Al Hofeld  
Chairman



encl

cc: Kelly Welsh, Corporation Counsel  
[REDACTED]  
[REDACTED]

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<sup>1</sup>Should your duties with Co. Q change to involve the four projects on which you worked while with the City [REDACTED] or in any other way, prior to May 24, 1992, the one year anniversary of your leaving City employment, we request that you contact us at that time. Also, please note that this opinion is based on the facts as presented. If these facts are incorrect or incomplete, please contact us immediately.

## 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.