

MEH



October 9, 1991

CONFIDENTIAL

[REDACTED]

City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660

RE: 91093.A  
Post-Employment  
ADVISORY OPINION

Dear [REDACTED]

On September 24, 1991, you called to ask whether you can enter into a consulting contract to evaluate a program between the City and a not-for-profit corporation by the name of Company A. The Board determines that the post-employment provisions of the Governmental Ethics Ordinance do not prohibit you from entering into the consulting contract. The Board appreciates your willingness to comply with the provisions of the Governmental Ethics Ordinance, and provides its analysis below.

FACTS: You informed us that you are the former employee of the Department of X and you left this position in [REDACTED] of 1990.

In [REDACTED] 1990, the City entered into two contracts with two organizations, Co. A [REDACTED] and Co. B, wherein these organizations are providing a program [REDACTED] to citizens of the City of Chicago; this program was previously provided by Agency Y [REDACTED] run by the City. Pursuant to the contract, Co. A [REDACTED] "provides the program [REDACTED]

[REDACTED] Section 3.01(a) of the Contract. According to [REDACTED], the Mayor's Office determined that it would be in the best interest of the City to privatize the [REDACTED] program. The contract with Co. A [REDACTED] runs from [REDACTED] to [REDACTED] and is signed on behalf of the Department of X by [REDACTED] of the Department of X.

You explained that Co. A [REDACTED] recently entered into an agreement with Co. Q [REDACTED], a management consulting firm, wherein Co. Q will evaluate, for Co. A [REDACTED], whether this



privatization of the [REDACTED] program has been successful in the last year. Co. Q [REDACTED] contacted you to assist with this evaluation. You believe you were chosen because of your background in [REDACTED]. You contacted us to determine if you can perform these tasks.

Of relevance, Co. A [REDACTED] agreed in its contract with the City to "furnish the City with monthly, quarterly and annual reports of its activities, operations and expenses in such form as the City may require pertaining to the Services and any other matters covered by this Agreement." Section 3.03(a) of the Contract. You stated that Co. Q [REDACTED] told you that they anticipate that parts of their report will be included in Co. A's [REDACTED] annual report to the City.

The remainder of this facts section will deal with the parties involved in the privatization process and the City's contract with Co. A [REDACTED].

[REDACTED] all stated that [REDACTED] the Mayor's Office was the driving force behind this privatization process, and did most of the work. They all stated that the X Department was only brought in at the end of the negotiations to review the contract, which had already been drafted. [REDACTED] stated that based upon all of the information she received, she believes that you were not involved with the privatization process at all. [REDACTED]

A wealth of information regarding those involved in this process is found in the transcript of [REDACTED]. Among those who testified were [REDACTED]. Report of Proceedings, [REDACTED]

The history behind the process is as follows. According to [REDACTED] expressed a desire in [REDACTED] 1989 to purchase the site on which the Agency Y facility was located. Therefore, a new site for the Agency Y facility was needed. Starting in [REDACTED] 1989, [REDACTED] worked with the X Department, Department of [REDACTED], and [REDACTED] to relocate Agency Y. She testified that you assisted in this search for a new facility. Although several sites were considered [REDACTED] none were suitable and affordable. [REDACTED]

In [REDACTED] 1990, [REDACTED] met with the people of Co. A [REDACTED] and learned that they also provided the same type of service as did Agency Y. Also [REDACTED] along with [REDACTED] then [REDACTED] performed a management and financial analysis of the Agency Y program and learned that the program was underutilized. [REDACTED] testified that this was the first time she considered privatization of these services. [REDACTED] she asked Co. A [REDACTED] to submit a proposal for taking over the [REDACTED] services that the City was providing. Based upon the proposal and the management and financial analyses, [REDACTED] recommended to [REDACTED]

[REDACTED] that the services should be provided by a private entity rather than the City. Discussions with Co. A [REDACTED] continued into [REDACTED], at which time Co. A [REDACTED] and the City came to an agreement. The agreement was submitted to City Council, which ultimately approved the contract. The contract was signed on [REDACTED]

[REDACTED] testified that with regard to the agreement with Co. A [REDACTED], she first contacted the Department of X when [REDACTED] was the [REDACTED]. The Commissioner assigned [REDACTED] to be involved in implementing the new program, and [REDACTED] first met with [REDACTED] on [REDACTED] 1990. It was after this date that the Department of X became involved with the new program, with [REDACTED] testifying before City Council in favor of the contract. [REDACTED]

All of the testimony clearly confirms the statements made that [REDACTED], with the help of [REDACTED] formulated the idea to privatize, performed the financial and management analyses, and negotiated the terms of the contract; only in [REDACTED] 1990, after you were no longer a City employee, did they involve the Department of X in the privatization process.

**LAW AND ANALYSIS:** 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 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) of the Ordinance defines the term "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 provisions that may restrict his or her employment after leaving City service: a one-year prohibition and a permanent prohibition. Since you left City employment [REDACTED] more than one year ago, the one year prohibition is irrelevant. A former City employee is prohibited permanently from assisting or representing someone as to a contract involving the City only if the person exercised "contract management authority," as defined above, with respect to this particular contract while acting as a City employee. See 91026.A.

The question to be answered is whether you had contract management authority over the contract between Co. A [REDACTED] and the City; in other words, were you personally involved in or did you have direct supervisory responsibility over this contract?

You stated, and every person that we spoke with confirmed, that you were not involved in the privatization process or with the contract between the City and Co. A [REDACTED]. The testimony indicates not only that you were not involved, but that no one in the X Department was involved until after you left the Department. None of the people who were involved, specifically [REDACTED]

[REDACTED] were in the Department of X under your supervision.

All of the information gathered indicates that you were not personally involved in and did not have direct supervisory responsibility for any phase in the privatization process,

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including the formulation or execution of the City's contract with Co. A [REDACTED]. Therefore, the Board determines that you did not have contract management authority over the contract between Co. A [REDACTED] and the City. Since the permanent post-employment provision restricts only those who had contract management authority over a contract from assisting or representing any person with regard to that contract, the Board determines that you are not so restricted.

**CONCLUSION:** The Board determines that the facts clearly indicate that you did not have contract management authority over the contract between the City and Co. A [REDACTED], and therefore, the post-employment provisions do not restrict you from assisting Co. A [REDACTED] in their evaluation of the Co. A [REDACTED] program.

The Board's determination is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.<sup>1</sup> Other rules or laws may be relevant to this situation.

The Board appreciates your bringing this matter to our attention and your willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance. We enclose the Board's procedural rules that apply after it renders a decision. If you have any further questions, please do not hesitate to contact us.

Sincerely,

  
Al Hofeld  
Chairman

enclosure

cc: Kelly Welsh, Corporation Counsel

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<sup>1</sup> If the facts presented in this opinion are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.

## 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.