



City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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October 27, 1989

[REDACTED]

Re: [REDACTED] (Police
Board Appointees),
Case No. 89147.A

Dear [REDACTED]

At your request the Board of Ethics has rendered an advisory opinion on the application of the Governmental Ethics Ordinance ("the Ordinance") to hypothetical appointees to the Police Board. The hypothetical circumstances on which the Board based its opinion concern (1) an appointee whose investment banking firm does business with the City and (2) an appointee who is a partner in a law firm doing business with the City.

You asked whether the Ordinance would bar the appointees' firms from continuing to do business with the City. Based on the hypothetical circumstances and facts set out below, the Board of Ethics determined that neither the appointees themselves nor their firms would be barred from doing business with the City because the firms' City business would be wholly unrelated to the City duties and responsibilities of the Police Board appointees. This advisory opinion is based on the hypothetical circumstances and facts set out below and assumes their accuracy. The application of the advisory opinion is limited to those circumstances and facts.

FACTS:

The Police Board was created pursuant to Chapter 11 of the Municipal Code. With the advice and consent of the City Council, the Mayor appoints nine members for a term of five years. The members serve without compensation. The Board exercises the following powers: (1) nomination of candidates for police superintendent when the position is vacant; (2) adoption of rules and



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regulations for the governance of the Chicago Police Department; (3) review, approval and submission to the city budget director of the annual budget of the Chicago Police Department; and (4) conduct of hearings in serious disciplinary actions.

Subject to the rules of the Police Department and the instruction of the Police Board, the Superintendent of Police serves as the chief executive and administrative officer of the Police Department. Among other powers and duties given to the Superintendent by ordinance is recommendation to the Board of an annual departmental budget covering the anticipated revenues and expenditures of the department.

The City business of the investment banking firm is public financing and underwriting. A specific instance of the firm's City business is underwriting an issuance of equipment notes for the purchase of equipment by City departments including the Police Department. Annually an ordinance authorizing the issuance of such notes, which finance the purchase of equipment for all City departments, is submitted to the City Council in the first calendar quarter of the year. The selection of underwriters for equipment notes may be handled by the Mayor's Office or the Finance Committee, or it may be negotiated. Equipment notes are prepared by the City Comptroller.

The Police Board has the power and duty to review and approve the Superintendent's recommended budget for the Police Department, including recommended appropriations for the purchase of equipment. However, the Police Board does not have the authority to exercise any discretion in the matter of financing purchases authorized in an approved budget. The Police Board plays no role in the choice of underwriter, the terms of financing, or the review and approval of equipment notes.

The City business of the law firm is unspecified legal representation. The firm would not engage in any legal representation on behalf of the Police Department or Police Board, nor would the firm represent anyone before the Police Board.

LAW AND ANALYSIS:

Section 26.2-43 of the Governmental Ethics Ordinance applies to any firm having a contractual relationship with the City. It states that all City contracts shall include a provision requiring compliance with the Governmental Ethics Ordinance. It provides further that "any contracts negotiated, entered into, or performed in violation of any of the provisions of [the Ethics Ordinance]... shall be voidable as to the City. Any...official

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action of a City agency applied for or in any other manner sought, obtained or undertaken in violation of any of the provisions of the [Ethics Ordinance]...shall be invalid and without any force or effect whatsoever." To ensure the legality of their contracts with the City the appointees' firms must take care that the contracts are not obtained or performed in violation of the Governmental Ethics Ordinance.

Section 26.2-1(q) of the Governmental Ethics Ordinance defines an "official" as "...any appointed, non-employee member of any City agency." The definition of "agency" in Section 26.2-1(b) includes any board of City government. Members of the Police Board are appointed by the Mayor, approved by the City Council and serve without compensation. For purposes of the Governmental Ethics Ordinance, members of the Police Board are "appointed officials."

Several provisions of the Governmental Ethics Ordinance apply to the conduct of appointed officials. Section 26.2-3 states: "Improper Influence. No official...shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally."

To similar effect is Section 26.2-8(a): "Conflicts of Interest. No official...shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public."

Based on the facts stated above, the hypothetical appointee from the investment banking firm would not make, participate in making or have the opportunity to use his position as a Police Board member to influence any City governmental action in which he has an economic interest distinguishable from that of the general public. The banker's economic interest lies in governmental decisions and actions regarding financing, such as the decision to use a particular underwriter. Such actions and decisions are not within the power of the Police Board.

Assuming that the hypothetical appointee from the law firm derived her economic interest in City business from matters that were unrelated to and unaffected by the decisions and actions of the Police Board, she would not run afoul of these provisions of

the Governmental Ethics Ordinance by serving on that Board.¹ Section 26.2-9 limits representation by City officials of persons other than the City before City agencies and any administrative agency or court in which the City is a party. It states:

"Representation of other persons.

"(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature....

"(b) No elected official or employee may have an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

"(c) No appointed official may represent any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities." (Emphasis added)

The Board of Ethics has interpreted the term "representation" to include more than legal representation of a client or appearance on behalf of a client. The term applies to any activity in which a person acts as the advocate for another person or seeks to communicate and promote the interests of another person.

An appointed official such as a Police Board member may represent a person other than the City before City agencies, or a person whose interests are adverse to the City's in quasi-judicial and judicial proceedings, as long as the matter is wholly unrelated to the official's City duties and responsibilities. From the facts set out above, the hypothetical appointee from the investment banking firm would engage in representation if, for example, he negotiated with the City on behalf of his firm to be the underwriter for an issuance of equipment notes. Although the Police Board approves the budget recommendations of the Superintendent, which may include accounts for the purchase of

¹ Under the Governmental Ethics Ordinance, appointed officials may have permissible financial interests in matters pending before City agencies. However, Section 26.2-8(c) requires appointed officials to disclose such interests to the Board of Ethics. The obligation to report arises as soon as the official is or should be aware of the pendency of the matter.

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equipment, the Police Board exercises no discretion and makes no recommendations regarding financing City equipment purchases. Therefore, the banker's representation appears to be wholly unrelated to the powers, duties and responsibilities of Police Board members and is not prohibited by the Governmental Ethics Ordinance.

Similarly, the hypothetical appointee from the law firm would engage in "representation" if she appeared on behalf of a client in a proceeding against the City. Clearly, representing a client before the Police Board would be prohibited, since it would not be wholly unrelated to the appointee's City responsibilities. Based on the hypothetical circumstances known to the Board of Ethics, without limiting prohibited representation to the following areas, we can state that representations related to the Police Board's other statutory duties² would also be prohibited. However, other representations of non-City clients would be permissible as long as they were "wholly unrelated" to the lawyer's responsibilities as a Police Board member.

Section 26.2-11 provides:

"Interest in City Business. No elected official or employee shall have a financial interest in his own name or in the name of any other in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance....No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities." (Emphasis added)

As with representations of persons other than the City, appointed officials may have a financial interest in City business if the transaction generating the financial interest is wholly unrelated to the official's City duties and responsibilities. Based on the hypothetical circumstances and facts set out above, if the appointee from the investment banking firm had a financial interest in City business derived from underwriting an issuance of equipment notes for the City, that interest would be permissible (even though the equipment notes might finance the purchase of police equipment) because the arrangement of financing falls outside the jurisdiction of the Police Board and

² The other duties relate to nomination of the Superintendent, rules and regulations of the Police Department, and review and approval of the Police Department budget.

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is wholly unrelated to the City duties and responsibilities of Police Board members.

Similarly, a lawyer who serves on the Police Board may contract to render legal services to the City as long as those legal services do not entail representations before the Police Board or any other services related to the Board's statutory responsibilities.³

CONCLUSION:

Sections 26.2-3, 26.2-8(a), 26.2-9 and 26.2-11 of the Governmental Ethics Ordinance will not prohibit the hypothetical appointees and their banking and law firms from engaging in financing transactions with and legal representation of the City as described in the hypothetical and fact section of this opinion because these business transactions with the City would be wholly unrelated to the appointees' City duties and responsibilities.

RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your 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 which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

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 which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

³ Since the hypothetical facts state that the lawyer's firm, like the appointee herself, does not and will not engage in any legal work related to the duties of Police Board members, this opinion need not address the issues raised by an appointee's law firm engaging in legal work that is not wholly unrelated to the duties and responsibilities of the Police Board.

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We hope that this opinion adequately answers your inquiry. If you have any questions, please contact the Board of Ethics at 744-9660.

Sincerely,

Albert F. Hofeld
Chairman