



EMUS

ADVISORY OPINION
CASE NO. 96032.A
FIDUCIARY DUTY

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics

Date: August 22, 1996

Dorothy J. Eng
Executive Director

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan
Bro. Michael F. Quirk

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TTY)

On June 5, you requested guidance on how the City's Governmental Ethics Ordinance affects your ability to serve, without pay, on the advisory board of [REDACTED], a not-for-profit residence for women [REDACTED]. You also asked if the Ordinance prohibits you from including your City title with your name on [REDACTED] letterhead stationery and other documents that list the members of the advisory board. The stationery will be used for fund-raising, among other purposes.

Staff advised you about the provisions of the Ordinance that may restrict a City employee's activities as a volunteer member of a not-for-profit advisory board, but advised you that, under the facts you presented and clear Ethics Board precedent, nothing in the Ethics Ordinance prohibits you from serving without pay on the [REDACTED] advisory board.

This Advisory Opinion therefore primarily addresses the use of your City title. The Board is of the opinion that in the circumstances you described, the Ordinance does not prohibit you from including your City title with your name on [REDACTED] letterhead stationery and other [REDACTED] materials that list the members of the advisory board. The facts you described and the basis for the Board's decision follows.

FACTS: Your City Position. You are currently the Director of [REDACTED]. [REDACTED] your office is funded through the Department of [REDACTED]. You told staff that your office's mission is to improve the City's ability to identify solutions to the problems associated with [REDACTED] and formulate solutions to them.



EMUS

You said your office creates City policy and manages the City's legislative agenda on issues related to [REDACTED]. It recommends new [REDACTED] programs to City departments and other organizations, and advises them how to further develop and improve existing programs. Your office also works with other governments and organizations to create collaborative programs. In addition, the office offers advice and technical assistance to organizations to help them increase their resources and effectiveness in solving problems of [REDACTED].

You told staff no [REDACTED] programs are funded through your office. You make recommendations about types of programs needed in particular areas of the City, but make no funding decisions for those programs. You also said that on occasion, a member of your office is appointed to serve on a panel or review committee, made up of members of various City departments. Such committees review City funding applications for various City programs, including [REDACTED] programs, and make recommendations about them.

[REDACTED] Advisory Board. You were recently asked to serve without compensation on the advisory board for [REDACTED], a not-for-profit [REDACTED] residence for women. The residence, located in the "A" neighborhood, is for women [REDACTED]

You stated that [REDACTED] charges the residents who stay there a fee, and raises the majority of its other funds through private sources; you said you were not aware of any City funding for [REDACTED] but you thought it possible that it receives a small portion from the Departments of [REDACTED]. You told staff neither you nor anyone in your agency has been, or would be, involved with applications for or approval of City funding for [REDACTED].

Advisory board members for [REDACTED] provide advice related to their areas of knowledge and experience to the members of the Board of Directors and staff. You believe you were asked to be on the advisory board primarily to be available to provide advice. The advice, you pointed out, will not be different from what you provide in your City position -- it is part of your City job to advise and assist organizations that deal with problems related to [REDACTED]. In addition, you said you will meet with other advisory board members once a year at what has been described to you as primarily a social event.

EMUS

Case No. 96032.A
August 22, 1996
Page 3

[redacted] lists the names of its advisory board members, along with members' titles, if they have them, on its letterhead stationery. You told staff you would like to be able to use your City title with your name; you emphasized, however, that your invitation to serve is not contingent on the use of your name or title. Among the uses to which letterhead will be put is fund-raising. Advisory board members' names and titles are also provided to grant-giving agencies.

You said that your participation on this advisory board, with all it entails, would both complement and further your City work and the goals of your agency. You believe that the use of your title with your name on organizational stationery is therefore appropriate and consistent with the mission of your office. You stated that you reviewed your plans to serve on [redacted]'s advisory board with your immediate superior [redacted]

LAW, ANALYSIS and RECOMMENDATION: The Governmental Ethics Ordinance does not directly address a City employee's use of her City title. The provision that applies to your situation is fiduciary duty.

Fiduciary Duty. Section 2-156-020, "Fiduciary Duty," provides:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

The fiduciary duty provision is a general admonition. It has been interpreted by the Board to oblige a City employee to use her City position and City time responsibly and in the best interest of the public. The Board has said fiduciary duty requires that employees or officials give undivided loyalty to the City in the discharge of their public duties, and it precludes the use of City time and resources to obtain a personal benefit or promote a purely private interest. See Case No. 92028.I (discussed below).

Fiduciary Duty -- As Applied to Use of City Title. The Board has applied the fiduciary obligation of section 2-156-020 to the use of a City title in three cases. Two cases applying fiduciary duty to use of a City title are clearly distinguishable from your situation: in one, the employee stood to benefit economically and personally (in Case No. 88087, the employee was admonished not to use his title City title while selling insurance to City employees); and in the other, the alleged conduct was clearly detrimental to the best

EMWS

Case No. 96032.A
August 22, 1996
Page 4

interests of the City (in Case No. 92028.I, an employee was alleged to have used his title as a police officer to obtain information from others for a purely private purpose).

The case with facts most similar to yours is Case No. 88122.A, in which the Board found no Ordinance violation in an employee's use of a City title in promoting an organization. The City employee in that case asked if she could sign her name, with her title, on an invitation to selected City employees to attend a social event hosted by a professional association of women in management. The opinion emphasized among other things (1) that she received no remuneration for her participation in the organization or for use of her name and title in promotional activities, and thus there could be no violation of the prohibition against acceptance of money or anything of value in exchange for advice or assistance concerning the operation of the City, and (2) that she used no City time or resources in preparing the promotional materials. Although the opinion did not expressly discuss this, it also seems clear that there was nothing in the City employee's support for the professional organization of women that was detrimental to the public's best interests or disloyal to the City.

As in Case No. 88122.A, you will receive no remuneration for your participation in the organization or for use of your name. In both instances, use of an employee's name and title may result in some benefit to a private, nonprofit organization. Unlike the City employee in that case, who herself signed the letters to promote the professional organization to City employees, you ask only that your title accompany your name on the list of those identified on organization stationery as advisory board members. While the stationery might be used by others for promotional purposes, you will not be signing any promotional letters.

In addition, your situation involves a distinct element, not present in previous cases: you are responsible for City **_____** policy, and you stated that you would be complementing and furthering City goals -- the goals of the **_____** in particular -- by serving on the advisory board of **_____**. If you complement and further your City work by advisory board membership, then the use of your City title in connection with your name to identify you as an advisory board member is consistent with your loyalty to the City.

The fiduciary duty provision is very broadly worded. It does not impose particular duties or prohibitions. The Board

EMWS

Case No. 96032.A
August 22, 1996
Page 5

believes the fiduciary duty provision expects City employees, in the course of carrying out their public duties, to exercise primary responsibility for determining what conduct is in the best interests of the City. The provision leaves to you, and those to whom you report, the major responsibility to decide whether it is wise for you to use your title in the circumstances you describe, taking into account City policies and interests.

CONCLUSION: Based on the facts presented above, the Board determines that the Ordinance does not prohibit you, as an advisory board member of [REDACTED], from including your City title with your name on [REDACTED] letterhead stationery and other [REDACTED] materials that list the members of its advisory board.

In addition, as staff discussed with you, the Ordinance places certain restrictions on your service as a volunteer on [REDACTED]'s advisory board. Those restrictions are summarized below.

First, section 2-156-020, "Fiduciary Duty," as we explained, provides that City employees at all times in the performance of their public duties owe a fiduciary duty to the City. Under this provision, in the execution of your City responsibilities you owe your primary loyalty to the City, and are responsible to uphold and further the interests of the City.

Section 2-156-060, "City-owned Property," also applies to your situation. This section prohibits you from any unauthorized use of City property or resources, whether in your volunteer position or for any other use.

Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing any confidential information that you have acquired through your City employment. Confidential information, for purposes of this provision, is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act.

Finally, section 2-156-090, "Representation of Other Persons," provides in part:

- (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

E mws

Case No. 96032.A
August 22, 1996
Page 6

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 . . .

Representing others before the City would include actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and submitting written requests and proposals to City agencies, employees or officials on behalf of others. Representation also includes signing any proposals, contracts, or other documents submitted to City agencies on behalf of others.

The Board's conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this advisory opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our decision. Other rules or laws may apply to this situation, and a City department may adopt and impose rules stricter than those contained in the Ethics Ordinance.

RELIANCE: This 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.


Acting Vice Chair