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ADVISORY OPINION  
95004.A, Appointment of Ethics Board Members

To: [REDACTED]  
Date: [REDACTED]

City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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Executive Director

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Chair

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Vice Chair

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In a letter of [REDACTED], you asked the Board of Ethics for an advisory opinion on whether certain legal work by your law firm may result in your having a financial interest in the work of a governmental agency that would preclude you from continuing to serve on the Board, under § 2-156-310(iv) of the Governmental Ethics Ordinance. You presented facts and a set of assumptions you asked the Board to make. The Board has carefully considered your request, after conducting a thorough search of past Board decisions, reviewing the interpretations of similar provisions in other jurisdictions, and consulting with Corporation Counsel. Our conclusions, and the facts and assumptions those conclusions are based on, are set forth here.

**FACTS:** You are one of [REDACTED] equity partners in the law firm of [REDACTED]. You said the Cook County Forest Preserve District has retained your law firm [REDACTED] as legal counsel with respect to certain litigation. Also, you said [REDACTED] Company A [REDACTED] has retained [REDACTED] your law firm [REDACTED] as underwriter's counsel in connection with a possible issuance of tax-exempt securities by Cook County. While your firm's client for the bond issuance is, Company A [REDACTED], you expect a portion or all of the fees will be paid, directly or indirectly, by the county. You said you will be involved personally in performing this legal work for Company A [REDACTED]. Further, the firm also expects it may be asked to provide legal services to the county and to other governmental agencies in the future--services on which you may be asked to perform.

You explained that several factors go into calculating the compensation of your firm's [REDACTED] partners, including how much of the firm's income results from the work of individual partners. Your current interest in firm profits is less than five percent and you expect it to remain well below ten percent in the foreseeable future.

In your letter, you asked us to make certain assumptions. You asked us to assume that [REDACTED] your firm's work involving the county will result



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in the firm receiving more than \$2,500 per year from county business and, further, that you personally will receive or be entitled to receive more than \$2,500 per year "as a result of one or more matters involving the County." You asked us to assume that your firm's work for the underwriters, which was described in your letter, constitutes work for the county, even though you know there are arguments to the contrary.

**LAW AND ANALYSIS:** The relevant provision of the Ethics Ordinance is Section 2-156-310(iv), which governs the appointment of Board of Ethics members. It provides:

Members of the Board shall . . . have no financial interest in any work or business of or official action by the City, or any other governmental agency within the jurisdiction of the State of Illinois, County of Cook, or City of Chicago.

"Financial interest" is defined in Section 2-156-010(1), in relevant part, as:

- (i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year;
- (ii) any interest with a cost or present value of \$5,000 or more;
- (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit. . . .

Because you have less than a ten percent partnership interest in [REDACTED] your firm's profits, you do not have a "financial interest" under subsection (iii) of Section 2-156-010(1). We are adopting your assumption that you will be entitled to receive more than \$2,500 per year as a result of your firm's work on one or more matters involving the county. Therefore, the question is whether you have a financial interest under subsection (i) of Section 2-156-010(1) that would preclude you from serving on the Board.

Section 2-156-310(iv) prohibits you as a Board member from having a financial interest, as defined above, in any work, business, or official action not only of the City of Chicago but of any other governmental agency within the jurisdiction of the state, county, or City.

The facts you presented do not specify whether the assumed income of more than \$2,500 per year is a sum that would accrue

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from work for a single governmental agency or from work performed for a number of agencies. The Board considered whether Section 2-156-310(iv) not only prohibits a Board member from deriving a financial interest from a single agency, but whether it includes an aggregation of the interests you would derive from your firm's work for two or more governmental agencies.

After considering the plain language of the provisions--which refers to "any" governmental agency rather than agencies in the aggregate--and consulting with the City's Law Department, we conclude that the financial interest limitation applies only to transactions with a single agency. Although the Ordinance does not define "agency" for purposes of this provision, it is our opinion that under any reasonable construction of the term, the Cook County Forest Preserve District is an agency that is distinct from Cook County government or departments of Cook County government. The Cook County Forest Preserve District is created by state law, and constitutes a "body politic and corporate." (70 ILCS 810/4.) Thus, for purposes of the Ethics Ordinance, income from business with the District would be calculated separately from income through your firm's work on Cook County's bond issuance. Under Section 2-156-310(iv), if you receive or are entitled to receive more than \$2,500 per year from your firm's income for services to a single governmental agency, that amount would constitute a financial interest in the work of that agency, which is prohibited by the Ordinance.

With respect to your firm's having been retained as counsel to Company A [REDACTED], which is the underwriter on bonds that may be issued by the county, you asked us to assume that this constitutes business with the county on the part of your law firm. Under that assumption, you would have a prohibited financial interest in the business of the county if you were to receive more than \$2,500 per year from [REDACTED] your firm's work on this matter.

However, after considering this issue, and consulting with the Law Department, the Board is of the opinion that while [REDACTED] Company A, as the underwriter of the county bonds, has a financial interest in county business, [REDACTED] your firm [REDACTED], as counsel to the underwriter, does not. Under this interpretation, you would not have a financial interest in county business by virtue of [REDACTED] your firm's service as counsel to Company A [REDACTED].

The Board discussed whether a partner in a law firm that does business with governmental agencies can avoid the prohibitions

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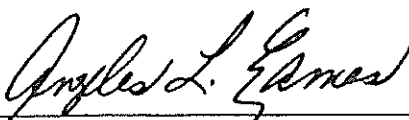
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of Section 2-156-310(iv). It is Corporation Counsel's opinion that if the Board member forgoes all compensation from the law firm's business with the specified governmental agencies, including replacement payments from the firm, the member will be in compliance with the Ordinance, because the member will neither receive nor be entitled to receive income from government business.

Finally, the language of Section 2-156-310 does not refer to a Board member's personal involvement in business of non-City governmental entities. Therefore, the Board is of the opinion that the fact that you are personally involved in your firm's work on Cook County's bond issuance does not affect the analysis under Section 2-156-310.

Our conclusions in this case are based on the application of the Ethics Ordinance to the facts and assumptions stated in this opinion. If the facts presented are incorrect or incomplete, or if you wish the Board to make assumptions different from those discussed here, please notify the Board, as any change in the facts or assumptions may alter our opinion. As you know, other laws or rules also may apply to this situation.

**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.



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Angeles L. Eames  
Vice Chair