

June 22, 2000

CONFIDENTIAL

Mr. [John Smith]
[Title]
[Department of X]
Chicago, IL 606[xx]

*outside business
home inspections*

**Re: Case No. 00013.Q
Outside Employment**

Dear [John],

In a letter dated June 6, 2000, you asked whether the Governmental Ethics Ordinance prohibits you from starting a home inspection business while maintaining your present position at [Department 1]. It is staff's opinion that the Ethics Ordinance does not prohibit you from starting this business, as you have described it, although the Ordinance does impose certain restrictions, which are discussed in this letter.

FACTS: You are a [manager] in the City of Chicago's [Department 1]. You stated that you have supervisory responsibility for [Bureau X], whose employees are charged with the inspection of [certain systems] in commercial and residential buildings under construction. You also stated that your division does not inspect the [aforementioned] systems of *existing* buildings, a task which is reserved for [Bureau Y] of [Department 2].

According to your letter, your outside employment would involve inspection of residential properties, "usually on behalf of a potential buyer," to determine the condition of these properties. This will entail inspection of the exteriors and interiors of the buildings, including, for example, their plumbing, electrical, heating and cooling systems. You said that you expect that your inspections, however, will not be used as proof of conformity or non-conformity with relevant building codes, and you believe that your reports will have no regulatory authority or weight in this regard. Rather, you said your assessments will usually be used by your clients to determine whether to purchase specific properties, or to negotiate a lower purchase price. You stressed that you intend to inspect only existing residential buildings (primarily single family homes in the suburbs), and that no other City employees will be involved in your inspection business.

Further, you said that you believe you have an obligation, as a private home inspector, to report potentially life-threatening violations of the building code to the appropriate city or town authorities, and to refuse to recommend tradespeople to your clients or the owners of the property you inspect. You told staff that you will abide by these standards of conduct.

According to your letter, your immediate supervisor, Deputy Commissioner [Michael], has already approved your proposal for outside employment, and you are now seeking guidance from the Board on this matter at the request of Commissioner of [Department 1] [,] [James].

LAW AND ANALYSIS: The provisions of the Ethics Ordinance most relevant to your proposed non-City employment are those governing “Interest in City Business,” “Improper Influence,” “Conflicts of Interest,” and “Representation.” We address each of these below.

Interest in City Business. Section 2-156-110 of the City’s Governmental Ethics Ordinance prohibits City employees from having a financial interest in any contract, work or business of the City “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.” By your account, you will not seek as a client for your business any City Department or agency. As long as this remains true, Section § 2-156-110 of the Ordinance would not restrict your activities as described.

Improper Influence; Conflicts of Interest. Sections 2-156-030 and 2-156-080 of the Ethics Ordinance prohibit City employees from making, participating in making, or in any way attempting to influence City governmental decisions or actions in which those City employees have an economic interest. Economic interest is broadly defined in Section 2-156-010(i) to include “any interest valued or capable of valuation in monetary terms.” The Board of Ethics has determined that an employee has an economic interest in his outside employment (Case No. 98062.A). Under these sections, then, you are prohibited from making, participating in, or attempting to use your City position to influence City decisions or actions that are related to or may enhance your outside employment. As you have described your City job and your proposed outside employment, it is unlikely that such a conflict of interest will arise. However, in your capacity [for the City], you have the authority to make or influence decisions that could possibly affect a private client of your inspection business; if such a situation were to arise, staff advises you to seek Board guidance before taking part in any such decision.

Representation. Section 2-156-090(a) of the Ethics Ordinance prohibits City employees from representing or having an economic interest in the representation of any person other than the City in any proceeding before any City agency that concerns nonministerial action or inaction. Section 2-156-090(b) of the Ordinance prohibits a City employee from having an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before a court or City agency when that person’s interest is adverse to that of the City. Staff reminds you of your obligations under these provisions, and counsels you to seek further clarification from the

Board should any of your clients ask you to testify in their behalf in any City administrative hearing or in any Court case involving the City.

CONCLUSION: Based on the foregoing analysis, it is staff's opinion that the Governmental Ethics Ordinance does not prohibit you from beginning outside employment as a home inspector.

As in all inquiries regarding outside employment cases, Board staff takes this opportunity to remind you that you owe a fiduciary duty to the City at all times in the performance of your public duties (§ 2-156-020); you are prohibited from engaging in the unauthorized use of City-owned property (§ 2-156-060); and you are prohibited from using or disclosing confidential information gained by reason of your City employment (§2-156-070).

Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion. Other laws or rules may apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment. In addition, we remind you that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. We enclose a copy of the Ordinance for your convenience, as well as a summary of restrictions concerning outside employment of City employees. Please contact us if you have further questions.

Very truly yours,
[Signature]
Steven I. Berlin
Deputy Director

Approved by:
[Signature]
Dorothy J. Eng
Executive Director