

September 13, 2000

CONFIDENTIAL

outside employment

[John]
[Address line 1]
[Address line 2]

Re: Case No. 00019.Q

Dear [John]:

On August 29, you contacted the Board of Ethics to ask whether the Governmental Ethics Ordinance prohibits you from working part-time outside your City job.

In your City position, you are a [rank] computer console operator with [the Department]. As you described it, your job entails working in the computer [detail] section and at the computer [detail].

You are interested in working on an occasional basis, during your non-City work hours, as a concrete/asphalt technician for [the Company]. [The Company] performs material testing on concrete and asphalt intended for use in road construction. You would be involved in performing those tests and in determining whether the materials meet certain specifications. (Prior to entering City service, you worked as a [type of] engineer.) [The Company] is a subcontractor on county, state and private projects, as well as on some City projects, but, to your knowledge, has no contracts directly with the City. You said you are not in a position in your City job to make or influence decisions affecting [the Company] or the City projects – none of which, to your knowledge, involve [the Department] – on which [the Company] subcontracts.

Based on the facts you have presented, it is Board staff's opinion that nothing in the Ethics Ordinance would prohibit your proposed dual employment. However, you should be mindful of the Ordinance provisions that may restrict your conduct during your dual employment status. For your convenience, we present the following summaries of those provisions.

Section 2-156-030 and 2-156-080 of the Ordinance, entitled "Improper Influence" and "Conflicts of Interest," respectively, prohibit you, as a City employee, from participating in, or trying to use your position to influence, a governmental decision or action in which you have an economic interest. Section 2-156-010(i) defines "economic interest" as "any interest valued or capable of valuation in monetary terms...." Interpreting these sections, the Board has concluded that a City employee has an economic interest by virtue of outside, paid employment. *See, e.g.,* Case Nos. 98062.A, 94009.A, 92053.I, and 92044.A. If that economic interest will be affected by the City employee's governmental decisions, then a conflict of interest arises and the employee is prohibited from making such decisions.

Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you from soliciting or accepting money or anything of value in return for advice or assistance on matters concerning the operation or business of the City.

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Section 2-156-090, "Representation of Other Persons," prohibits you from representing or acting as a spokesperson for any person or entity 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 discretionary in nature.

Section 2-156-110, "Interest in City Business," prohibits you from having a "financial interest" in any contract, work, or business of the City when the cost of that contract, work, or business is paid for with funds belonging to or administered by the City, or approved by ordinance. A "financial interest" is defined, in part, as an interest of more than \$2,500 per year, or a present interest of \$5,000 or more (§ 2-156-010(1)). (As you have described your contemplated arrangement with [the Company], you would be an employee of the company. If, however, you were to acquire an ownership interest in [the Company], we advise you to contact the Board for specific advice on how Section 2-156-110 would apply to your situation.)

Three other provisions are relevant to outside employment. These are: Section 2-156-020, which obligates you to use your City position responsibly and prohibits you from using your City time, resources, position, or title to obtain a personal benefit or to promote a private interest; Section 2-156-060, which prohibits you from using any City property or resources for any private benefit; and Section 2-156-070, which prohibits you from disclosing or using confidential information gained in the course of, or by reason of, your City employment.

Be advised that our conclusion is based solely on our application of the Governmental Ethics Ordinance to the facts stated in this letter. If any of the facts presented here are incorrect or incomplete, please notify us immediately, as a change in the facts may alter our opinion.

In addition, be advised that rules or laws other than the Governmental Ethics Ordinance may apply to your situation. For example, Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, requires City employees to file a written request with their department head for permission to engage in outside employment. Furthermore, 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. Therefore, we caution you to consult with the [Head of Department] prior to beginning secondary employment with [Company].

We appreciate your bringing this matter to our attention, and your concern to abide by the standards of the Ethics Ordinance. We enclose a copy of the Ordinance for your reference. If you have any further questions, please do not hesitate to contact us.

Sincerely,
[Signature]

Michael Haggerty
Deputy Director

Approved:
[Signature]

Dorothy J. Eng
Executive Director