



BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

Month, day, 2020

Name
Staff Assistant to the Alderman
— Ward
Address Chicago, Illinois 606__

Re: Case No. 20024.Q / Outside/Secondary Employment

Dear _____,

You contacted Board of Ethics [Board] staff by email on [date] to inquire whether you could obtain a real estate license for use in contemplated outside employment, and, if so, the restrictions to which you would be subject under the Governmental Ethics Ordinance [Ordinance]. You told us that were you to get a real estate license, you do not know at this time for which real estate firm you would work.

You are a Staff Assistant to Alderman [name]. You have held this position since [date]. In this position, you assist the Alderman with constituent services, park events, public safety issues and work done by the Alderman in connection with several City Council committees on which he serves.

As we have concluded in this opinion, and as we explain, the Ordinance does not prohibit you from having this secondary position. However, if you decide to pursue it, you will be subject to many restrictions. They are discussed below.

Legal Analysis.

As an initial matter, please note that our Board has long recognized that nothing in the Ethics Ordinance prohibits City employees from engaging in outside or secondary employment, although clear restrictions apply. Case Nos. 87026. A; 88078.A; and 01051.Q

Under the Ordinance, the restrictions placed upon you are:

1. Representation of Other Persons.

Under §2-156-090(a), as a City employee, you are prohibited from “representing” or deriving or receiving any income or compensation from the “representation” of any other person other than the City in any formal or informal transaction before any City agency, where the City’s action is non-

ministerial (that is, where the action involves discretion on the City's part.) The Board has interpreted the term "represent" to include a broad range of activities in which one person acts as a spokesperson for someone other than the City, and seeks to communicate the interests of that party, such as attending or speaking at face-to-face meetings, making phone calls, or signing documents submitted to a City department. See Case Nos. 90035.A and 97061.A.

Because you anticipate having secondary employment as a real estate agent, and receiving compensation in connection with this work, we advise you that any "representation" that you would undertake on your clients behalf, or that of the real estate agency for which you would work, before any City agency, department, official, or employee, in any City matters, would be perceived not as your actions in your official capacity, but in your capacity as a real estate agent. As a practical matter, this means that, if your clients or any realtor with which you are associated have matters pending in the Ward Office, or before City Council or any City department, you cannot speak or advocate on their behalf, even though your role as an aldermanic aide may otherwise involve such communication. Thus, as with City employees in past cases, we advise you to refrain from engaging in any such representation. See Case Nos. 07018.Q; 06037.Q; 93014.Q.

2. Fiduciary Duty.

Under §2-156-020, you owe a fiduciary duty to the City. As our Board and Illinois courts have recognized, this obligates you to discharge your duties as a City employee at all times in the City's best interests, free from and uninfluenced by the duties you owe others (such as a buyer, seller or a real estate firm). See Case Nos. 90035.A; 03027.A; 11045.A; see also *Chicago Park District v. Kenroy*, 78 Ill.2d 555, 402 N.E.2d 181 (1980); *In re Vrdolyak*, 137 Ill.2d 407, 560 N.E.2d 840 (1990); and *U.S. v. Bloom*, 149 F.2d 649 (7th Cir. 1998). Your fiduciary duty requires that you to use your City position responsibly and in the best interests of the public, and exercise your professional judgments and carry out your City responsibilities free from conflicting duties to outside entities. It also requires that, should an issue arise in which the City's interests are adverse to or conflict with those of your real estate clients or the firm for which you would work, you must resolve that conflict in the City's best interests, or recuse yourself from involvement in such a decision.

3. City-owned Property.

Section 2-156-060 of Ordinance prohibits City officials and employees from using or permitting the use of City-owned or City-leased property for anything other than its authorized purposes. "City-owned property" includes, among other things, City-issued computers, telephones, smart phones, vehicles, offices, letterhead—and your City title itself, the City seal, and your City business cards. They must be used carefully, to avoid misleading people into believing you are acting in your official capacity in a personal matter or in connection with your outside employment. Accordingly, we advise that you may not use your City title, the City seal, or any City letterhead when doing any kind of work as a real estate agent.

4. Money for Advice.

This provision, §2-156-142(f), prohibits you from accepting anything of value, such as compensation, tips, or gifts from anyone other than the City (such as your real estate clients or the real estate firm for which you work), for giving advice or assistance on matters concerning City business, if the matters are in any way related to your City work. The prohibition includes receiving compensation or anything else of value for giving even "behind the scenes" advice. Specifically, the Board has applied this provision to cases where, conceivably, City employees, in their outside employment, were benefitting by using knowledge that was not publicly available and was not "wholly unrelated" to their City duties and responsibilities. *See, e.g.,* Case No. 91103.A.

5. Conflicts of Interest; Improper Influence.

Two sections of the Ethics Ordinance require that you recuse yourself from certain matters pending before the City or your own Ward Office. Sections 2-156-030(a) and (b), "Improper influence," and 2-156-080(a) and (b)(1) & (2), "Conflicts of interest, appearance of impropriety," both provide, in relevant part, that you cannot make, participate in making or in any way attempt to use your City position to influence any City governmental decision or action involving a person (here, any real estate clients and/or the real estate firm for which you would work) from whom or which you have derived any income or compensation during the preceding twelve months, *or from whom or which you reasonably expect to derive any income or compensation in the following twelve months.*

Further, because you would have a reasonable expectation of receiving compensation from your real estate clients and/or any real estate firm for which you would work, in the following 12 months *after* taking on such work, then you would not be allowed to work on any matters involving these clients or that firm, including matters pending before the City Council or any other City department. In practical terms, this means that, were you to represent any real estate clients who live in the ___ Ward, you would not be able to have any involvement in deciding or resolving their City matters. For clients or properties located outside your Ward, this prohibition still applies, but it is less likely to impact you because you would not typically get involved in their City matters.

6. Confidential Information.

In addition, §2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing, other than in the performance of your City duties, confidential or non-public information you have acquired through your City position. "Confidential information" here means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. Further, and similar to restrictions discussed above under "fiduciary duty," §2-156-060, "City-Owned Property," prohibits you from using any City property or resources—including your City business cards or City title—in your non-City position or for any private benefit, such as your real estate clients or the real estate firm for which you work.

7. Statements of Financial Interests – "FIS."

As a City Council employee, you are required to file annual FIS forms pursuant to §2-156-150(a) of the Ordinance. On these forms, you will be required to disclose your outside income from real estate clients and/or the real estate firm for which you work.

Reliance.

Our conclusions and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this letter. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter our conclusions or advice. Please note, as well, that this opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Our office appreciates the opportunity to advise you, and your conscientiousness in seeking our advice. If you have further questions about this or any other matter, please contact us.

Sincerely,



Lisa Eilers, Deputy Director

Approved:



Steve Berlin, Executive Director