



ADVISORY OPINION
Case No. 96042.A, Post-Employment

To: [REDACTED]
 Date: [REDACTED]

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You recently left your position as Director of [REDACTED] in the Department of [REDACTED] to become [REDACTED] of [REDACTED] [REDACTED] ("X"), a consulting firm that has some computer-related contracts with the City. On [REDACTED], you asked the Board of Ethics for an advisory opinion on how the City's Governmental Ethics Ordinance applies to your post-City employment. More specifically, you requested an opinion on whether the Ordinance prohibits your involvement in two City contracts, one current and one pending. The Board determines that under the post-employment provisions of the Ethics Ordinance, you are permanently prohibited from assisting or representing [REDACTED] or any other person in connection with the pending contract between the City's Department of [REDACTED] and [REDACTED] on the [REDACTED] System. The Board also determines that the post-employment provisions of the Ethics Ordinance do not prohibit you from assisting or representing [REDACTED] on its ongoing contract with the Department of [REDACTED] to provide maintenance and support to the [REDACTED] and [REDACTED] Centers, nor do they prohibit you from assisting or representing [REDACTED] or any other person in other transactions with the City whose subject matter is the [REDACTED] and [REDACTED] [REDACTED] Centers' independent computer system. Further Board advice is set forth in this opinion, along with the facts as you presented them to us and the Board's analysis.

FACTS: From [REDACTED], when you began work for the City, to [REDACTED], you were a [REDACTED] Research Analyst in the Department of [REDACTED]. You did computer programming and led a team of programmers in devising technical solutions to the Department of [REDACTED]'s business problems. In [REDACTED] you joined the Department of [REDACTED] as Director of [REDACTED], a position whose title was later changed to Director of [REDACTED].

In the Department of [REDACTED] you directed day-to-day computer operations. You were in charge of the [REDACTED] section of the [REDACTED] division. You were



responsible for the Department's administrative network, which includes all the computer systems in the Department, except for the system controlling emergency and security operations. Your job duties included creating technical solutions to the Department's business problems, and this sometimes required contracting for outside computer help. You were involved in preparing, negotiating, and entering into these contracts.

Because the Department of [REDACTED]'s administrative network covers the entire department, you attended monthly meetings of the Commissioner and Deputy Commissioners, in case technical questions arose, and you were apprised of administrative issues related to computers. You also attended the monthly staff meetings of the [REDACTED] division, as a resource for issues relating to the administrative network. You told us you did not have decision-making authority in any of those meetings.

You have also participated in one interdepartmental computer activity: you served on the [REDACTED] Subcommittee of the interdepartmental [REDACTED] Committee, and attended its monthly meetings. The goal of the Subcommittee was to establish City-wide computer imaging standards; you said you participated in order to keep abreast of the City's plans about computer imaging. -

You noted that all City departments maintain their computer systems under the direction of the Department of Management Information Systems ("MIS"), which designs and maintains City-wide networks and the interfaces between those networks and departmental computer systems. You said that you do not have significant knowledge of City-wide networks, because you did not work on their design or programming, but you are familiar with MIS's general standards and requirements.

On [REDACTED], you left City employment, and on [REDACTED] began work with [REDACTED], a consulting firm that, among other services, provides computer systems integration, design and implementation. The firm's current clients include the Department of [REDACTED] and the Department of [REDACTED], in addition to numerous private businesses and governments. You will be the [REDACTED] Officer in [REDACTED]'s *informatics systems* division, and will oversee technical design -- that is, design of computer systems. You will meet with clients and prospective clients to determine their needs, and will be responsible for designing computer solutions to their business problems.

After you have designed a project, it will be turned over to a project manager, who will oversee implementing the design. You

will continue to be engaged in the project to ensure that the design meets the client's needs, and you will do a final test of the system before the contract is closed out, but final responsibility will fall to the project manager.

You will meet prospective clients only in response to a Request for Proposals or as follow-up to the initial solicitations of (X)'s sales personnel. You will not be involved in selling or marketing, nor will you be the person who initially contacts a potential client.

Because your ongoing participation in projects will follow from your having designed them, you anticipate that you will be asked to work only on projects that have not yet been designed.

You said there are two contracts (X) currently holds or is finalizing with the Department of [REDACTED]. You asked us to address them in our advice. The first contract, in the final stages of preparation at the time you left your City position, is for a [REDACTED] System, called "[REDACTED]S," to manage the work performed by skilled trades- and maintenance people, as well as to manage inventory information electronically. You told us this contract was the result of a response to a Request for Proposals/Request for Qualifications ("RFP/RFQ") that the City put out for competitive bid, and that you, with others, prepared the RFP/RFQ, reviewed responses and negotiated the contract as part of your City duties. You stated that, based on your knowledge of the Ethics Ordinance, you understand that in your new position you would be permanently prohibited from assisting (X) or anyone else on this contract.

The second is an ongoing contract (X) holds to provide maintenance and support to the [REDACTED] and [REDACTED] Centers. You said the [REDACTED] and [REDACTED] Centers' primary function is the dispatch of emergency personnel, including police, fire, and security officers. The Centers use a single FAA-mandated system of integrated components which, together, operate to provide [REDACTED] security and emergency dispatch. The system is entirely independent of the City's computer systems and of MIS direction. Contracts with private companies maintain component parts of the system. The Technical Support Manager of the [REDACTED] Center directs the system, and negotiated and administers the contracts with private companies, including the contract with

(X).
Under its contract, (X) is responsible for maintaining the parts of this system that verify ID-badging, assist in computer-aided dispatch, and monitor access.

You said that your knowledge of this independent computer system that provides for [REDACTED] security and emergency dispatch derives primarily from the monthly meetings of the [REDACTED] division, and informally, from your office's proximity to that of the [REDACTED] Center. You stated that the contract with [REDACTED] was discussed at the meetings of the [REDACTED] division, but that you were never asked for and did not provide input on it. You said you had no supervisory authority over this contract, and were not personally involved in the planning, bidding, negotiation, supervision of performance or any other aspect of it. As the contract is ongoing and fully staffed, you do not expect that you will work on this particular contract in your new position with [REDACTED]. However, you have asked us to address it in our advice to you.

You said you believe that [REDACTED] may pursue further contracts with the Department of [REDACTED] and other City departments. Because you do not yet know the specific nature of the projects on which you will be asked to work, you have asked that this opinion provide general guidelines on how the Ethics Ordinance affects your post-City employment, in addition to considering the two contracts discussed.

LAW: The provision of the Ethics Ordinance most relevant to your situation is Section 2-156-100(b), entitled "Post-Employment Restrictions." It states:

No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

"Assisting" and "representing" a person in a business transaction involving the City encompasses helping a person to seek a contract as well as to perform a contract. Section 2-156-010(g) defines "contract management authority":

"Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of

specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

To summarize, § 2-156-100(b) subjects former City employees to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition. First, for one year after leaving City service, you are prohibited from assisting or representing any person in a business transaction involving the City if while a City employee you participated personally and substantially in the subject matter of that transaction. The one-year period begins on the date your City employment terminated, not on the date you stopped performing particular tasks.

Next, you are permanently prohibited from assisting or representing any person in a contract if as a City employee you exercised "contract management authority," as defined above, over that contract. Therefore, if as a City employee you were personally involved in or had direct supervisory responsibility for formulating or executing a contract -- if you engaged in activities such as preparing specifications, reviewing proposals, selecting vendors, negotiating terms, or supervising performance -- then you are permanently prohibited from assisting or representing any person in connection with that contract after leaving City service.

ANALYSIS AND DETERMINATIONS: The Pending Contract for the [REDACTED] System. The first contract you asked us to address is (X)'s pending contract with the Department of [REDACTED] on the [REDACTED] System. In your City position, you worked on preparing the RFP for this contract, you reviewed and evaluated the proposals, and you participated in selecting (X) and in negotiating the contract. These activities constitute contract management authority over that contract.

Determination. We therefore determine, based on the facts you presented, that you are permanently prohibited from assisting or representing (X) or any other person in connection with the pending contract between the City's Department of [REDACTED] and (X) on the [REDACTED] System.

The Ongoing Contract for Support to the [REDACTED] Centers, and Its Subject Matter. By contrast, with respect to the second contract, (X)'s ongoing contract to provide maintenance and support to the [REDACTED] and [REDACTED] Centers, you said you had no supervisory authority over it, and were not personally involved in its formulation or execution. From the facts you presented, the Board concludes that you did

not exercise contract management authority over the contract to provide maintenance and support to the [REDACTED] and [REDACTED] Centers.

Furthermore, the facts you presented indicate that you were not personally and substantially involved in the contract's subject matter, the independent computer system that provides [REDACTED] security and emergency dispatch. You said that in your City employment you had no responsibility for that computer system: it is not located in your division of the department ([REDACTED]), and is entirely separate from the City's computer systems. You had no input into its management or operation. It is the Board's opinion that your knowledge about it from the sources you described does not amount to personal or substantial participation in it. On the basis of the facts you presented, we conclude that in your City employment, you did not personally and substantially participate in the subject matter of the [REDACTED] and [REDACTED] Centers' independent security and emergency computer system.

Determination. The Board therefore determines, based on the facts you have described, that the Governmental Ethics Ordinance does not prohibit you from assisting or representing (X) on its ongoing contract with the Department of [REDACTED] to provide maintenance and support to the [REDACTED] and [REDACTED] Centers, nor does it prohibit you from assisting or representing (X) or any other person in other transactions with the City whose subject matter is the [REDACTED] and [REDACTED] Centers' independent computer system that provides security and emergency dispatch.

General Guidance. You asked for general guidance under the post-employment provisions of the Governmental Ethics Ordinance. As set forth above, the one-year prohibition applies to transactions involving the City in whose subject matter you participated personally and substantially in your City job. You said your duties in your new job will be to design computer solutions to solve the business needs of (X)'s clients. In your City job you performed similar duties -- you worked on computer solutions to business problems in the Departments of [REDACTED] and [REDACTED], and also took part in interdepartmental computer activities concerning City-wide imaging standards. Therefore if you are asked to work on a project not addressed in this opinion that involves computer systems in the Department of [REDACTED] or the Department of [REDACTED], or that involves City-wide imaging standards, we advise you to contact the Board for further guidance in connection with that project.

The permanent prohibition applies to contracts over which you exercised contract management authority while in City employment. In your City job, you were involved in preparing, negotiating and entering into contracts on behalf of your department. These activities may constitute contract management authority over a particular contract. Therefore, if there arise situations not addressed in this opinion where you are asked to work on a contract with which you were involved while in City employment, we advise you to contact the Board for further guidance.

Our determinations and advice are based on an application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our conclusions. Please note that other laws or rules also may apply to this situation.

CONFIDENTIAL INFORMATION: We also advise you that § 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from using or disclosing confidential information you acquired in the course of your City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.


Darryl L. DePriest
Acting Vice Chair