

MEH



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Board of Ethics

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Suite 530  
205 West Randolph Street  
Chicago, Illinois 60606  
(312) 744-9660

[REDACTED]

Re: [REDACTED] Foundation, Case No. 89018.A

Dear [REDACTED]

A former employee of the Department X [REDACTED] asked the Board of Ethics to render an advisory opinion concerning his participation in contracts between the Department X [REDACTED] and the [REDACTED] Foundation. Specifically, [REDACTED] asked the Board whether it would be permissible under the Governmental Ethics Ordinance for him to sign City contracts between Dept. X and the [REDACTED] Foundation. By virtue of his job [REDACTED] he also served as a member of Comm'n. Y and as a member of the [REDACTED] Foundation.

Since the issue raised by [REDACTED] request is now relevant to your activities [REDACTED] the Board addresses its opinion on this matter to you. This opinion affects other persons serving on Comm'n. Y as well, and we therefore ask that you make copies available to this Board.

**FACTS:** It is our understanding that the [REDACTED] Foundation is a not-for-profit corporation. The Board of Directors of the Foundation is identical to the membership of the [REDACTED] Commission [REDACTED]. The stated purpose of the [REDACTED] Foundation is to effect the programs of Comm'n. Y. [REDACTED] has stated that the [REDACTED] Foundation was established by Comm'n. Y as a means for the City to receive grants from private foundations. [REDACTED]

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[REDACTED] The principal activities of Comm'n  
Y are twofold. First, it raises money to fund Y projects, receiving approximately [REDACTED] per year from the City through contracts; approximately [REDACTED] in grant money from the state, and an amount of money equal to the aggregate of these two sources from private donations. Secondly, the [REDACTED] Foundation participates in the actual implementation of Y projects by retaining private consultants for the research [REDACTED] related to these projects.

As a private not-for-profit corporation, the [REDACTED] Foundation is not subject to the Open Meetings Act or the Freedom of Information Act. In its business with private consultants, the [REDACTED] Foundation is presumably not required to meet the same contracting requirements placed on City agencies.

The [REDACTED] Foundation by-laws enable the Board of Directors to enter into contracts and allow board members to receive a fixed sum and expenses for each regular or special meeting of the board. However, it is our understanding that currently, no member of the Board of Directors of the [REDACTED] Foundation receives compensation for serving in this capacity.

Based on the information we have received from [REDACTED] and from the Department of [REDACTED], the [REDACTED] Foundation has entered into contracts with the Department of X, [REDACTED]

[REDACTED] Since the former employee also served as a member of Comm'n Y and upon the [REDACTED] Foundation Board of Directors, his name appears on such contracts both as a representative of the City (through the [REDACTED]) and as a representative of the contractor (the [REDACTED] Foundation). He usually signs on behalf of the City, but hypothetically could be asked to also sign such a contract as a representative of the [REDACTED] Foundation, as could other directors of the [REDACTED] Foundation.

[REDACTED] He asked the Board of Ethics whether it would be permissible for him to "co-sign for the City contracts between the City of Chicago and the [REDACTED] Foundation".

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**SUMMARY STATEMENT:** Based on the facts as presented, the Board reached two conclusions: First, under Section 26.2-9(a) of the Ethics Ordinance, no member or employee of Dept. X [redacted] may act on behalf of the [redacted] Foundation in any business agreement between the [redacted] Foundation and the Department X. [redacted] Second, under Sections 26.2-7 and 26.2-9(c) no member of the Comm. Y may disclose confidential information to a non-City entity, including the [redacted] Foundation, or in any manner represent a non-City agency, including the [redacted] Foundation, before Com. Y, Dept. X, or any other City agency where the matter involved is related. [redacted] On the basis of this second conclusion, the current arrangement whereby Com. Y, a City agency, and the [redacted] Foundation, a private not-for-profit corporation, are identical in membership may be impracticable without resulting in violations of Sections 26.2-7 and 26.2-9 of the Governmental Ethics Ordinance.

Our opinion and discussion of these conclusions is presented below in two parts. Part I addresses the issue of whether a member of Dept. X may act on behalf of the [redacted] Foundation in transactions or proceedings involving the City. Part II discusses the implications of the Governmental Ethics Ordinance for Com. Y and its relationship to the [redacted] Foundation, and, in specific, addresses the issue of whether it is possible for members of Com. Y to effectively serve on the Board of Directors of the [redacted] Foundation without violating provisions of the Governmental Ethics Ordinance.

Part I: Re: [redacted] Contracts Between the Dept. X [redacted] and the [redacted] Foundation

Section 26.2-9 states:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person 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 of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities.

As the Board has interpreted it, representation of a person under Section 26.2-9 can take many forms, depending upon the nature of the proceeding or transaction and its degree of formality. Acts of representation could include a formal, personal appearance at a hearing before a City agency; a telephone call to any agency employee to advocate the person's position; or discussions or correspondence on behalf of the person with the City agency. For example, in a transaction carried out completely on paper, if a City employee allowed his name to appear on documents submitted to the City on behalf of a non-City party, that employee would appear to be engaging in representation of the non-City party.

Under subsection (a) cited above, no City employee may represent any person other than the City in any proceeding or transaction before any City agency. Given that the ██████████ Foundation is a private corporation or "person other than the City" and that the member ██████████ of Dept. X is a City employee, this section would prohibit member ██████████ from representing the ██████████ Foundation in any proceeding or transaction before any City agency, including ██████████ Dept. X. Since "representation" includes actions such as signing documents on behalf of a non-City entity or allowing one's name to appear as a representative of such an entity, the prohibition contained in Section 26.2-9(a) prohibits the member ██████████ of Dept. X from performing such actions on behalf of the ██████████ Foundation in transactions between the City and the Foundation. Such actions constitute the representation of a person other than the City in a transaction with a City agency.

**PART II: Re: Interrelationship Between Comm. Y and the [REDACTED] Foundation**

Under Section 26.2-9(c) as cited in the preceding part of this opinion, no appointed official may represent any person other than the City if the matter is related to that official's City duties. Members of Comm. Y are considered appointed officials for purposes of the Ethics Ordinance as defined in Section 26.10(o). Therefore, under 26.2-9(c) members of the Commission are prohibited from representing or in any manner acting or speaking on behalf of a person other than the City before a City agency, if the matter involved is related to their duties on the Commission. The [REDACTED] Foundation is a private not-for-profit corporation, the sole purpose of which is to facilitate [REDACTED] in Chicago. By serving on both agencies, members of Comm. Y represent a private corporation (the [REDACTED] Foundation) before a City agency (Comm. Y), and the matter involved is related to their duties as appointed officials. Therefore, serving on both agencies would appear to unavoidably result in a conflict of interest prohibited under the representation restrictions of the Ethics Ordinance.

There are other provisions contained in the Ethics Ordinance which might preclude dual membership on Comm. Y and the Board of the [REDACTED] Foundation.

**Section 26.2-7 states:**

No current or former official or employee shall use or disclose, other than in the performance of his public duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his employment....

"Confidential information" as defined in this same section means "any information that may not be obtained pursuant to the Illinois Freedom of Information Act as amended." According to the Freedom of Information Office, such confidential information includes but is not limited to "proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give advantage to any person proposing to enter into a contractor agreement with the body until an award or final selection is made."

Under these provisions members of *Comm. Y* are prohibited from using or disclosing any information concerning [REDACTED] which could give advantage to any person proposing to enter into a contract with the City. Using and disclosing such information is an integral aspect of acting both as a member of *Comm. Y* (a city agency) and as a director of the Foundation (a private not-for-profit corporation) since the very purpose of the [REDACTED] Foundation is to make use of Commission advice and information concerning the City's [REDACTED] needs and how these are to be met through contractual arrangements. Therefore, it would appear impossible in practice for members of *Comm. Y* to serve on the Board of Directors of the [REDACTED] Foundation without violating Section 26.2-7 of the Ordinance.

**CONCLUSIONS:** Based on the information discussed above, the Board of Ethics has reached two conclusions: (1) Section 26.2-9(a) of the Ethics Ordinance would prohibit *an employee of Dept. X* [REDACTED] from allowing his name to be used in connection with the [REDACTED] Foundation in any transaction involving the City; and (2) Sections 26.2-9(c) and 26.2-7 have the effect of prohibiting members of *Comm. Y* from also serving effectively on the Board of Directors of the [REDACTED] Foundation.

Both of these conclusions indicate that previous contracts between *Dept. X* and the [REDACTED] Foundation may have run afoul of the Governmental Ethics Ordinance. The second of these conclusions indicates that those sections of the [REDACTED] Foundation by-laws which establish the membership of *Comm. Y* as identical to that of the [REDACTED] Foundation may be incompatible with provisions of Chapter 26.2 of the Chicago Municipal Code. The Board of Ethics will notify Corporation Counsel of this determination.

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

This advisory opinion is based on the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which

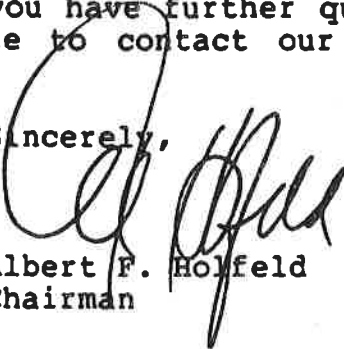
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are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

We appreciate your time and efforts in sharing this opinion with members of Comm. Y. If you have further questions on this matter, please do not hesitate to contact our office at 744-9660.

Sincerely,



Albert F. Hoffeld  
Chairman

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