

EMWS



Advisory Opinion
Case No. 97010.A
Financial Interest in City Business

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics
Dorothy J. Eng
Executive Director
Angeles L. Eames
Vice Chair

Date: [REDACTED]

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You are a City employee, and also part owner of a company that is entering into a lease agreement with the City. On [REDACTED], you asked us for guidance on whether your interest in this lease will constitute a prohibited interest in City business under the Governmental Ethics Ordinance. It is the Board's opinion that the Ordinance does not prohibit your interest in the lease, as described below. Our reasoning follows, along with the facts you presented.

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FACTS: You are the [REDACTED] in the Department of [REDACTED]. You are also a 15% owner of [REDACTED] vs [REDACTED], Inc., which operates a [REDACTED] under the name of "O's [REDACTED]" vs [REDACTED], doing business as O's [REDACTED], is seeking to lease a parcel of vacant land from the City to use as a parking lot. The term of the lease will be four years, expiring in the year [REDACTED]. Rent for the land will be \$391 per month for the first year, \$403 per month for the second year, \$415 per month for the third year, and \$427 per month for the fourth year. The lease is to be administered through the Department of [REDACTED]. In your City job you have not participated in negotiating or administering this lease.

LAW AND ANALYSIS: Section 2-156-110 of the Governmental Ethics Ordinance, entitled "Interest in City Business," states, in relevant part:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, 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....

Under this section, an employee may have an interest in a City contract, work, or business as long as the



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interest does not constitute a "financial interest." This provision applies to leases with the City, because leases are contracts that must be authorized by ordinance. Case No. 88041.A (involving a City employee leasing property from the City).

The Ordinance's definition of "financial interest" includes three subdefinitions:

(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit....

§ 2-156-010(1).

The applicable definition of "financial interest" in your situation is subdefinition (ii), "any interest with a cost or present value of \$5,000 or more." To comply with this provision, your interest in the cost or present value of [redacted]'s lease with the City must be under \$5,000. Your share in the lease is calculated by multiplying the amount of the lease by your percentage share in the company. See Case No. 90077.A.

Our calculations indicate that your interest in [redacted]'s lease with the City does not exceed this limit. Multiplying the monthly rent for each of the four years by twelve, and adding together the amounts for each of those years gives a total cost for the lease of \$19,632.00. As a 15% owner, your share in that cost is \$2,944.80, well below the \$5,000 limit. The Board therefore determines that your share in the lease is not a prohibited financial interest under the Governmental Ethics Ordinance.

Subdefinition (i) is not relevant to the question at hand. It applies to a situation where a City employee or official receives or is entitled to receive money as a result of his or her interest. You will not receive any money as a result of [redacted]'s lease with the City; rather, [redacted]'s will be paying money to the City in return for use of the vacant land.

By definition, under subdefinition (iii) you have a financial interest in [redacted] 1/3 [redacted], because you have a 15% ownership in the corporation. Therefore, under section 2-156-080 ("Conflicts of Interest") and section 2-156-160 (under Article 2: "Financial Disclosure"), if the corporation does business with the City, as a City employee you would become subject to the disclosure

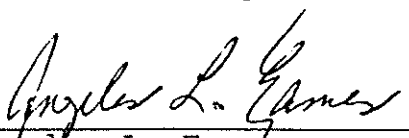
requirements of these two provisions. However, because the Interest in City Business provision (§ 2-156-110) prohibits an employee from having a financial interest in a contract with the City, your financial interest in [REDACTED] 1/2 [REDACTED] is not dispositive of the issue at hand: whether you would have a prohibited financial interest in City business, if [REDACTED] 1/2 [REDACTED] were to enter into the proposed lease with the City.

In past cases involving employees with more than a 10% ownership interest in a corporation that has a contract with the City, the Board, consistent with the language of the Interest in City Business provision, looked to the interest the employee had in the City contract. See Case No. 95044.A, (a City employee who owned more than 10% of a company with a City contract did not have a prohibited financial interest in City business); Case No. 90077.A (a company owned 50% by a City employee). Your interest, as previously stated, would be below the \$5,000 limit established by subdefinition (ii), and is not in violation of § 2-156-110.

Should your percentage ownership in [REDACTED] 1/2 [REDACTED] change, we note that an increase of your ownership to 25% would give you a share of \$4,908.00 in the cost of the four-year lease, still below the \$5,000 limit imposed in § 2-156-110. If you plan to increase your ownership beyond that percentage, we advise you to contact us for further advice, as such an increase may result in a prohibited financial interest.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as a change in the facts may alter our opinion. Please note that other laws or rules may apply to your situation, and a City agency, such as your department or the department administering the lease, may adopt and impose rules stricter than those contained in the Ethics Ordinance.

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


Angeles L. Eames
Vice Chair