

Advisory Opinion
[John Smith]
Case No. 00002.A, Post-employment
[, 2000]

You are President and Chief Executive Officer of [start-up,] a new company whose business goal is to provide [certain business] assistance to middle- and small- market companies. Until [], 2000, you were employed by the City as an [position]. You were responsible, among other things, for managing the [] Development Initiative. On [, 2000], you wrote the Board of Ethics and asked for an opinion on how the City's Governmental Ethics Ordinance applies to your new responsibilities at [start-up].

It is our opinion that, while you are prohibited by the Ordinance's one-year post-employment provisions from assisting or representing persons with respect to certain transactions or matters discussed in this opinion, these provisions do not prohibit you from undertaking the particular activities with [start-up] that you described to us, or from serving as a volunteer on the [Council of Advisors]. Our analysis of how the Ordinance's post-employment restrictions apply to your situation follows.

FACTS: You began your City service in August 199[] as an Assistant Commissioner in the Department of [S], and later became the department's Director of Strategic Planning. In these positions, you said, you were responsible for improving the performance and design of the department's information services systems. Specifically, you supervised the implementation of an automated work order management system for the department and designed several applications to enable the department to conduct more business over the Internet.

In August 1998, you joined [department R] with the title of [position]. In this position, you said, your primary responsibility was to coordinate the development and adoption of the [Development Initiative]. This Initiative, released in [] 1999, is a general policy statement that is publicly available. It announces the City's goal of, and overall strategy for, attracting information [certain] companies to and retaining them in Chicago, thereby positioning Chicago and environs as a [industry] hub similar, for example, to the Silicon Valley, and improving the region's economy generally. The Initiative has several components: 1) marketing the City's business climate to the [] industry as one favorable for relocating or commencing operations (including the creation of a public-private partnership to provide additional funds to attract and retain these companies); 2)

developing and training the region's workforce to satisfy the needs of [industry] businesses; 3) developing City-supported facilities to support the needs of [industry] businesses; and 4) creating a network to provide all City residents—commercial and residential—with high-speed telecommunications.

The Initiative also establishes the [] Council of [] Advisors (the "Council"), and charges the Council to adopt a [] Plan" (the [] "Plan"). Formed in [] 1999, the Council is a volunteer partnership of private industry leaders, academics and local government officials that meets quarterly. It is, you explained, a task force, appointed by the Mayor, whose objective was to adopt and is to oversee implementation of the [] Plan. The [] Plan itself, released in the summer of 1999, is a policy statement that elaborates on the Initiative, restating the City's role in and support for marketing itself as an ideal location for [industry] companies. It envisions several short- and long-term goals and initiatives, and includes five specific projects: the development of four [state of the art] buildings and the establishment of the [venture capital] Fund. You said that you served as staff director for the Council, and were responsible for coordinating and reviewing the efforts of the Council's four subcommittees, each of which addressed a component of the Initiative. You said that you were not active in any of these subcommittees, though you coordinated and supervised the work of the four persons who served as staff to each subcommittee, and worked with them to compose the final version of the [] Plan's text, which incorporates the various parts of the [] Initiative. Day-to-day, you explained, you also worked to promote the [] Plan and the City's effort to support high-tech business generally. To this end, you spoke at events, served on panel discussions, and attended meetings and briefings with industry representatives, entrepreneurs, real estate developers, and sources of venture capital.

As to the five specifically included projects, you said that, on behalf of [City government], you promoted the four [state of the art] buildings being developed in Chicago with public financing vehicles (such as tax increment financing) to attract and house industry services companies.¹ You briefed the Mayor and his Chief of Staff on the status of these developments, organized the press events at which [these projects were announced], and wrote related press releases (and in doing so gathered information on their progress from the Department of [L] personnel responsible for overseeing them). You said you also met with several prospective tenants (representatives of [industry]) to promote both these facilities and the City's support of [industry] generally. However, you said, you were not involved in any of the decisions concerning these projects' design, construction, financing or leasing, and you did not enter into any related negotiations or review or approve any related contracts. Additionally, you said, a small part of your work involved the [venture capital] Fund (the "Fund"), a public-private venture capital fund managed by [dsl,] Inc., a local firm. The assets of the Fund (to be about \$100 million) derive in small part (about 4%—"seed

¹These four buildings are the [] the [] building
[] the new [] headquarters on West [] St.; and the [] property on Goose Island, an "incubator" in which companies will be housed in the same facility to encourage sharing of information.

money,” as you described it) from one of the City’s pension funds; the remainder is to come from the private sector. As envisioned in the Initiative and stated in the Plan, the Fund’s objective is to provide, via a partnership between the City and private industry, start-up equity capital investment for new [industry] businesses in the City (early “seed-stage financing,” you said). As a [person occupying your position], you met with representatives from [O] and Co. (a local investment firm that represents the pension fund) to help select an appropriate fund manager and to develop the Fund’s investment strategy, parameters and award criteria. Together with the City’s [] Officer, you secured the initial capital investment of City pension monies, and, consistent with the strategy of using public investment to “leverage up” private investment, you met with private venture capitalists to solicit their participation. You said that you also approached several high-tech start-up companies and informed them of the Fund’s existence and objectives, and solicited them to apply for Fund awards. But, you said, you did not assist any person in completing an application and did not assist in evaluating any applications or awarding any monies. ²

Finally, you said, you served as a media representative of the [City government] on issues relating to [industry] businesses in Chicago generally, and as the [City’s] liaison to the City Department of [N], responsible for monitoring the progress of several internal information technology projects such as the conversion of the City’s financial and purchasing system to one designed by [T], Inc., and on aspects of the Y2k compliance efforts.

On February 16, 2000 you became President and Chief Executive Officer of [start-up, Inc.], a new 50-employee company in the business of acting as an [] service provider to small- and middle-market businesses desiring to establish and conduct e-commerce. You explained that [start-up’s] business will entail maintaining, on [its] own computer network servers, [certain client] information [

]. You will be responsible for guiding [start-up’s] efforts to raise equity financing, for planning its marketing efforts to attract clients, and for developing its longer-term business strategy. You said that [start-up] has no intention of providing services to or seeking contracts with governmental agencies or the public sector at any level, and has not (and does not intend to) applied for or received any funds or facilities-related assistance from the City, whether through the Fund or any other financing vehicle or program. You did indicate to Board staff, though, that you do not know whether any of [start-up’s] clients would seek funds or facilities-related assistance from the City (through the Fund or through some other program), but that neither you nor other [start-up] employees would encourage this nor assist any clients in seeking such assistance. Further, you said, you would not serve on the committee of the Fund that evaluates applications and makes investment decisions.

²These funding decisions, you said, are to be handled by an investment committee that includes representatives from the City (no persons have yet been chosen), [O] and Co. and [dsl] . In fact, you said, the Fund has not raised all the money it expects to, nor has it yet made any awards; there are about 30 applications pending.

Additionally, you told Board staff that—because of your knowledge of the region’s high-tech business potential and resources, not your position with [start-up]—you have been invited [] to serve as a member of the [] Council of [] Advisors (a volunteer position), and would like to do so.

LAW AND ANALYSIS: Post-employment. The relevant provision of the Governmental Ethics Ordinance is Section 2-156-100(b), “Post-Employment Restrictions.” It states:

No former official or employee shall, for a period of one year after the termination of the officials’ 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.

This section imposes both a one-year and a permanent prohibition on certain activities.

One-Year Prohibition. The first clause of section 2-156-100 (b) prohibits you, for one year after leaving City service—i.e. until [], 2001—from assisting or representing any person, including [start-up] or its clients, in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction while a City employee. In previous decisions, the Board has stated that “assisting” and “representing” a person in business transactions involving the City encompasses helping a person to seek a contract or project as well as helping a person to perform a contract or a project. See Case Nos. 96001.A, 92035.A. Also, the term “representation” applies to activities in which someone acts as a spokesperson for another or seeks to communicate and promote the interests of one party to another. It includes signing any proposals, contracts, or other documents. Case 93005.A, p. 7.

A. [start-up’s] Primary Business. [start-up], your new employer, is in the nascent business of being an [] service provider,” i.e. [maintaining certain client information]

. You said that [start-up] will seek only private sector clients. You affirmed that it has no intention to provide services to or seek any contracts with governmental agencies or the public sector at any level, and will not apply for any monetary or facilities-related assistance from the City, whether through the Fund or any other financing vehicle or program envisioned by the [] Plan. As you described them, the services [start-up] does and will offer are private business arrangements between it and small- and middle-market companies. These services themselves do not appear to be, the Board concludes, based on the facts you present, business transactions involving the City. Thus, it is the Board’s opinion that the Ordinance’s one-year prohibition does not restrict you from performing the

responsibilities you described as [start-up's] President and Chief Executive Officer, or from assisting [start-up] in providing the e-commerce services to its clients as you described them.

B. [start-up] Client Transactions. You also said that, at this time, you do not know whether any of [start-up's] clients will themselves apply for any monetary or facilities-related assistance from the City, whether through the Fund or any other financing vehicle or program envisioned by the [] Plan, or whether they will seek any contracts with the City. While employed in the [position], you: 1) were staff director for the [] Council of [] Advisors and coordinated production of the [] Plan; 2) managed public and industry relations and media contact for the [City] on the four [state of the art] facilities; and 3) helped solicit investments into the [venture capital] Fund and, acting as a representative of the [City], helped design the Fund's investment strategy and parameters and assisted in selecting its manager.

i. The City's [] Development Initiative and [] Plan. Based on the facts presented, the Board concludes that you were personally and substantially involved in the development and promotion of the [] Development Initiative and [] Action Plan. At present, the only definite business transactions involving the City that are specified in the Initiative and [] Plan are the establishment of the [venture capital] Fund and the development of the four [state of the art] facilities (see ii. and iii., below), though of course both the Initiative and [] Plan envision other future City- or Council-sponsored transactions. Because the Initiative and [] Plan do not specify parties or other critical details for future business transactions, the Board cannot at this time determine whether your participation in the subject matter of these future transactions was personal and substantial. The Board does note that you have stated that [start-up] will not itself seek any City or other government contracts, and that neither you nor other [start-up] personnel would encourage or assist any clients in applying for or participating in monetary or facilities-related assistance from the City, whether through the Fund or any other financing vehicle or program envisioned by the [] Plan. As long as this remains the case, the Ordinance's post-employment prohibitions will not restrict the activities with [start-up] you detailed to us. But, because you were personally and substantially involved in the development of the [] Plan, we advise you to seek specific direction from the Board if, at any time until [], 2001, you are asked to assist or represent any person, such as a [start-up] client, in preparing for or engaging in a business transaction involving (or with) the City (other than those specifically discussed below) where that transaction is City- or Council-sponsored and envisioned by the Initiative or [] Plan.

ii. The Four [state of the art] facilities. During your City employment, your participation in four of the business transactions identified in the Plan, namely the development of the four [state of the art] facilities, consisted of promoting them. Though you did not work on their design, financing, construction or leasing, you were well aware of the City's objectives and marketed the buildings and the City's support of the concept behind these projects. Based on these facts, it is the Board's opinion that you participated personally and substantially in the subject matter of promoting the development of these four [] facilities, and therefore you are—for one year after you leave City

service, i.e. until [], 2001—personally prohibited by the Ordinance’s post-employment restrictions from assisting or representing any person, such as a [start-up] client, in preparing for or engaging in a business transaction that relates to development of these facilities.

iii. The [venture capital] Fund. Based on the facts you presented, the Board concludes that you were personally and substantially involved in the establishment of the [venture capital] Fund and the design of its award criteria.³ Thus, it is our opinion that, for one year after you leave City service—i.e. until [], 2001—you may not personally assist or represent any person, including [start-up] or its clients, in seeking or applying for an award from the [venture capital] Fund.

C. Service on the Council. You said that [you have been] invited [] to serve on the [] Council of [] Advisors, not in your capacity as President and CEO of [start-up], but because of your experience and knowledge of the industry generally. Like the other members of the Council, you would be volunteering your time to the City in, as stated by the Council’s mission: “promot[ing] the growth and retention of [industry] businesses with venture capital, workforce development and improved use, access and understanding of [the industry] in Chicago.” While the Council’s work has envisioned current and future business transactions that involve the City, service on the Council is not itself a business transaction. Thus, it is the Board’s opinion that the Ordinance’s post-employment provisions do not prohibit you from serving on the Council. However, to avoid any appearance of impropriety, we advise you to take care not to “assist” or “represent” the interests of any person, particularly a [start-up] client, with respect to a business transaction envisioned by the Initiative or [] Plan when you are doing the Council’s work of promoting and implementing the [] Plan, or to offer to do so, and we remind you that you are subject to the Ordinance’s one-year prohibition with respect to the four [state of the art] facilities and the [venture capital] Fund.

Permanent Prohibition. The second clause of section 2-156-100(b) permanently prohibits you, as a former employee, from assisting or representing any person in any contract involving the City if the employee exercised “contract management authority” over that contract during City employment. The facts presented in this opinion do not appear to warrant application of this provision.

Confidential Information. We also bring to your attention Section 2-156-070, “Use or Disclosure of Confidential Information.” This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

³We note that, although [O] and Co. and [dsl] _____, the Fund’s manager, retain ultimate authority in evaluating applications and making investment decisions for the Fund, City officials (to be determined) will participate in these decisions; moreover, the Fund’s activities are conducted pursuant to the [] Plan, and it was designed in part by you and other City employees. Therefore, we conclude that, for purposes of the Ordinance’s post-employment restrictions, applications to and awards made from the Fund are business transactions that involve the City.

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Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental 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 this opinion is rendered.

Darryl L. DePriest
Chair

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