

ADVISORY OPINION
CASE NO. 02032.A
Post Employment

To: [John]

Date: November 13, 2002

You were formerly employed as the Executive Director of the Chicago [District A] [(A)]. You resigned from that position on December 1, 2000. On October 18, 2002, you requested an advisory opinion from the Board of Ethics concerning your prospective post-City employment as an instructor for an economic development entrepreneur program established by the Chicago [Not for Profit]. The entrepreneur program is part of the [Development Program] which is administered by the [Not for Profit] pursuant to a contract with the City for \$541,000 in [District A]/[District B] ([A]/[B]) grant funds.

This advisory opinion contains the facts you presented, as well as facts gathered from a review of documents supplied by [A] staff. After careful consideration of the facts presented and the relevant law, the Board has determined that 1) because you left City service on December 1, 2000, any restrictions imposed by the one-year prohibition in Sec. 2-156-100(b) of the Ethics Ordinance no longer apply to your post-City employment; and 2) because you did not exercise contract management authority over the [Not for Profit]'s [Development Program] contract with the City, the permanent prohibition in Sec. 2-156-100(b) does not prohibit you from teaching an economic development entrepreneur class offered by the [Not for Profits] under that program.

FACTS

I. City Employment. You served as the Executive Director of the Chicago [District A] from November 1, 1998, through December 1, 2000.¹ In

¹ The [District A]/[District B] ([A]/[B]) program was established in the Fall of 1993 under the Federal [Act N]. The program is designed to empower people and communities across the United States by developing a strategic plan designed to create jobs and opportunities in our nation's most impoverished urban and rural areas. Through the U.S. Department of Housing and Urban Development (HUD) a nation wide competition for the designation of six urban [A]s and sixty-five urban [B]s began in January of 1994. Each designated [District A] and [District B] is awarded federal grant funds along with various tax benefits for [A]-based businesses. On December 21, 1994, Chicago was one of six urban areas awarded an

your capacity as Executive Director, you were responsible for overseeing and supervising [A] staff and programs. Among these programs was the administration of [A]/[B] grant funds, which are awarded through a Request for Proposal (RFP) process.

In September 1999, the [District A] issued an RFP for Youth Futures, Public Safety and Economic Empowerment initiatives. The RFP did not include detailed technical information or a narrowly focused scope of services. Instead, the RFP invited interested parties to submit a grant proposal to the [A] requesting funds for programs related to these initiatives. It did not specify a specific project, proposal or service, nor was it directed to any particular organization or individual. Rather, it was directed to anyone with an interest in administering a program that promoted youth futures, public safety, or economic development in the [District A]s.

You stated that [A] staff assigned to public safety, youth futures, and economic empowerment divisions of the [A],² respectively, prepared initial drafts of the RFP. You collaborated with them to produce a final draft of the RFP, which you, as Director, ultimately approved.

Approximately 315 organizations responded to the RFP. One of these respondents was the Chicago [Not for Profit], which submitted a proposal on September 30, 1999, requesting \$541,000 in [A]/[B] grant funds to administer the Chicago [Not for Profit] [Development Program

].³ If awarded the funds, the [Not for Profit] stated that it would act as the fiscal agent for program development and implementation, contribute staffing for the programs, provide access to its computers and other technological services, and provide program tracking and reporting services along with rental space for business incubation. The total contribution from the [Not for Profit] was estimated at \$200,000; the majority of the balance would be made up by the [A]/[B] funds.⁴

[District A] by the federal government on the basis of a comprehensive strategic plan submitted plan submitted by the City. Chicago's [District A] includes 200,000 residents in three non-contiguous areas on the City's [] Sides, that have an aggregate size of 14 square miles of land uses including commercial districts, industrial areas, open space and transportation corridors. Qualifying organizations within the [District A] may apply for Federal funding, administered by the City, through an RFP process to provide programs or services within the [A].

²The City's strategic plan for [District A]s identified six initiatives: economic empowerment; affordable housing; public safety; cultural diversity; health and human services; and youth futures.

³The [Not for Profit]'s response to the RFP included, among other required information, the five main goals of the program being proposed: 1) provide technical assistance to 100 businesses over 3 years; 2) graduate 150 participants from entrepreneurial training class; 3) create 150 employment opportunities for [A]/[B] residents; 4) enroll 100 business owners in the program; 5) develop 10 lucrative businesses.

⁴The documents submitted by the [Not for Profit] in response to the RFP also included the names of other sources of funding and assistance: the []

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Once the responses to the RFP were received by the [A] office, that office forwarded them to the [A]/[B] Coordinating Council⁵. The Council selected ten expert consultants from around the nation to read and rank the proposals submitted in response to the RFP. No [A] staff or other City of Chicago employees participated in selecting these outside consultants, or participated as a voting member in the proposal grading process. The consultants selected 51 proposals, which were sent back to the [A] Coordinating Council for consideration.

On March 21, 2000, you sent a letter to [John], President of the [Not for Profit], notifying him that the [A]/[B] Coordinating Council had completed its review of the proposals, and would send the [Not for Profit]'s proposal to City Council with the recommendation that it be approved, pending the [A]'s receipt of the [Not for Profit]'s Economic Disclosure Statement. The proposal was forwarded to City Council shortly thereafter, and on August 30, 2000, the City Council approved an Ordinance authorizing the City to enter into an agreement with the Chicago [Not for Profit] for the purposes and amounts described in the [Not for Profits's] proposal.

Following City Council approval, the City entered into a contract with the Chicago [Not for Profit] for the award of \$541,000 in grant funds to administer the [Development Program]. You stated that the contract was negotiated and drafted after you left City service (December 1, 2000) by your successor, [Michael]. A review by Board staff of the [Not for Profit]'s response to the RFP, and of the contract between that entity and the City, reveals that the scope of services contemplated by the [Not for Profits's] response to the RFP and the services agreed to in the contract are virtually identical. The [Not for Profit] requested \$541,000 in [A]/[B] funds; \$541,000 in funds were granted in the contract. The five main goals submitted in the [Not for Profits's] response to the RFP (see Footnote 4) are encompassed in the contract's program description.⁶ The contract was signed by Budget Director [] (on December 19, 2000) and Comptroller [] (on December 22, 2000), on behalf of the City, and by Mr. [John] on behalf of the [Not for Profit] (on December 7, 2000), and runs from January 1, 2001 through December 31, 2004.

Under the [Not for Profit]'s agreement with the City, grant funds are payable directly to the [NFP], which must submit reimbursement requisitions to the City identifying the services performed and costs expended. A detailed budget was incorporated into the contract, breaking down the personnel and non-personnel expenses. A Project Manager from [A] staff is assigned to the project to ensure

⁵The [A] Coordinating Council is an appointed Board comprised of 1 representative each from City, County and State governments, and representatives from business and community groups in the [District A]s. The Coordinating Council guides implementation of the strategic plan and oversees disbursement of federal funds for economic development and social services in the [District A].

⁶There are specific references in the contract to the program providing employment opportunities for at least 150 individuals; conducting entrepreneur training classes; enrolling local businesses in the program; and providing technical assistance to local businesses and residents.

that the grant funds are spent in a manner consistent with the mission statement, business plan, budget, and other information contained in the contract. The [Not for Profit] must also submit quarterly and yearly reports to the [A], outlining spending, objectives achieved, and new goals, and attesting to compliance with relevant law. The City also maintains the authority to audit the program to ensure that their actual financial position is consistent with their financial reporting.

II. Post-City Employment. The [Not for Profit] has asked you if you would be interested in teaching an economic development entrepreneur class offered under its “Micro-Business Development Program.” You stated that this 14-week class would be held at the [Not for Profit]’s offices, [Z College], or the [University Y], and would focus on providing prospective entrepreneurs with business training, professional skills and networking opportunities. You explained that you currently hold a number of positions, including chairman of a community organization providing after school programs for neighborhood youth, instructor at an after school program at [School X], and distributor of [] software, a payroll processing system. You believe that your experience in government and in the private sector would be beneficial to the [Not for Profit] program, and would like to accept their offer. Your salary would be paid by the [Not for Profit], and your supervisor would be an employee of that organization.

LAW AND ANALYSIS

The relevant section of the Ethics Ordinance is 2-156-100(b):

(b) 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.

Section 2-156-010(g) of the Ordinance defines the term “contract management authority” as:

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.

This section of the Ordinance imposes both a one-year and a permanent prohibition on former City employees’ post-employment activities. The one-year prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. We analyze in turn each prohibition as it applies to the facts you presented.

I. One-Year Prohibition. Under the Ordinance’s one-year prohibition, you are prohibited for one

year after you left City employment from assisting the Chicago [Not for Profit], or any other person, in any business transaction involving the City if you participated personally and substantially in the subject matter of the transaction while employed by the City. As you left City service on December 1, 2000, the restrictions imposed by the one-year prohibition no longer apply to your post-City employment.

II. Permanent Prohibition. Under the permanent prohibition, you are permanently prohibited from assisting or representing any person other than the City on a City contract, if you exercised contract management over that contract while employed by the City. The issue before the Board is whether you, while a City employee, exercised “contract management authority” over the [Not for Profit]’s contract with the City to administer the [Development Program]. If so, you would be permanently prohibited from assisting or representing the [Not for Profit] with respect to that contract, including assisting the [Not for Profit] in performing that contract by teaching a Program class.

The facts establish that, as Director of the [A], you participated in the preparation of the RFP to which the [Not for Profit] responded, and under which the [Not for Profits’s] contract is funded. More specifically, you supervised the [A] staff who prepared initial drafts of the RFP and collaborated with staff to produce a final draft of the RFP, which you, as Director, ultimately approved. In addition, after the [A]/[B] Council decided to recommend to the City Council that the [Not for Profits’s] proposal be funded, a letter signed by you was forwarded to the [Not for Profits], notifying them of the [A]/[B] Council’s action.

However, the RFP, which you helped prepare, and ultimately approved, did not include detailed technical information or a narrowly focused scope of services. It did not specify a specific project, proposal or service, nor was it directed to any particular organization or individual. Instead, the RFP invited interested parties to submit grant proposals requesting funds for programs related to youth futures, public safety, or economic development initiatives. Furthermore, you played no role in advising the [Not for Profit] as to the content of its response to the RFP. Nor did you play any role in reviewing or evaluating the [Not for Profits’s] response, or anyone else’s response. You had no role in the selection of the 51 proposals submitted to the [A]/[B] Council for consideration, nor in that Council’s decision to recommend to the City Council that any of the proposals be funded. Finally, because you left City service before contract negotiations with the [Not for Profit] commenced, you played no role in preparing the specifications, or drafting or negotiating the terms of the [Not for Profits’s] contract.

Based on these facts, the Board finds that you did not have personal involvement in, or direct supervisory responsibility for, the formulation or execution of the [Not for Profit]’s contract with the [A]/[B]. Because you did not exercise contract management authority over the [Not for Profit]’s [Development Program] contract with the City, the permanent prohibition of the Ordinance’s post-employment provisions does not prohibit you from teaching an economic development entrepreneur class offered by the [Not for Profits] under that program.

Confidential Information. Please be advised that, as a former City employee, you also are subject to Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," which states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

DETERMINATION: Based on the facts presented and the relevant law the Board determines:

1. because you left City service on December 1, 2000, any restrictions imposed by the one-year prohibition no longer apply to your post-City employment; and
2. because you did not exercise contract management authority over the [Not for Profit]'s [Development Program] contract with the City, the permanent prohibition of the Ordinance's post-employment provisions does not prohibit you from teaching an economic development entrepreneur class offered by the [Not for Profits] under that program.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the 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 determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by 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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

[Signature]

Darryl L. DePriest
Chair