

Advisory Opinion
Case No. 04012.A, Post-employment

To: [Fred Doe]
Date: XXXXX, 200X

You formerly worked as a civil engineer in the Bureau of [R] in the City's Department of [P]. You retired from City service on XXXXXX, 200X. Shortly before your resignation, you requested an advisory opinion from the Board of Ethics on how the Governmental Ethics Ordinance affects your post-City employment activities. Specifically, you asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work (for example, as an assistant to the resident engineer) on Bureau of [R] construction projects.

After careful consideration of the facts you presented and the relevant law, the Board has determined that both the one-year and permanent prohibitions contained in Section 2-156-100 of the Ordinance impose significant restrictions (set forth in detail below) on your post-City employment activities.

FACTS: You are an Illinois-licensed, civil engineer. You received a bachelor of science degree in civil engineering in 196X and your professional engineering license in 198X. You began City employment in October 198X as a civil engineer in the City's Department of [B]. [U]ntil your retirement, you worked exclusively for [P]'s Bureau of [R].

City Employment. From May 198X until May 200X, you served as resident engineer on approximately 23 consecutive [R] construction projects. The vast majority of these projects, approximately 95% in your estimation, involved some aspect of City residential, arterial or industrial streets. They included construction, rehabilitation and resurfacing of City streets; installation of landscaped medians, curbs and gutters; and installation of street lamps and pedestrian lighting.¹ On average, each project lasted approximately one year. In all instances, the construction work was performed by outside contractors, as opposed to in-house (City) forces.

1. For example, at [Project 1], you supervised, over the course of 18 months, construction of an overpass across the [Road] and exit/entrance ramps to/from [site], resurfacing of the roadway and installation of landscaped medians. At [N] Street and the Drive, you supervised, over the course of 18 months, the construction of a new bridge connecting the two roadways. Along [U] Avenue between [L] Street and the [Site 2], you supervised, over the course of 12 months, the removal and replacement of pavement and the installation of sewer lines, curbs, gutters and lighting.

As resident engineer, you had no involvement, you stated, in any aspect of the letting or award of the design or construction contracts for these projects. Your duties consisted of daily, on-site supervision of the contractors' construction activities to ensure compliance with contract specifications, plans and drawings prepared by an outside consultant. You stated that if a design issue arose during construction, you notified the project manager who, in turn, conferred with the design consultant to resolve the issue. You were then responsible for ensuring that any design changes were implemented by the construction contractor. You reviewed daily reports from field inspectors and regularly conducted your own field inspections. In addition, you chronicled the contractors' work in a daily log book and prepared monthly pay-estimates, based on those recorded entries (which were then forwarded by the project's manager to [P] 's Bureau of [M] For processing of contractor payments).²

[A] Street Improvement Project. All but one of the construction projects on which you served as resident engineer had been completed by the time you retired from City service. The one unfinished project is the [A] Street Improvement Project, a three-phase project³ involving resurfacing of the roadway, installation of street lamps and pedestrian lighting and installation of landscaped medians.⁴ Phases 1 and 2 of the Project were completed under your supervision. Phase 3 was approximately 26% complete at the time you retired.

For all three phases of the [A] Street Improvement Project, the design consultant was [FGH]. However, each phase of the Project had a different construction contractor: Phase 1 construction was performed by [IOU]; Phase 2, by [TIN]; and Phase 3, by [VV]. You stated that, as the Project's resident engineer, you had no involvement in any aspect of the letting or award of the design or construction contracts for any phase of the Project. You also stated that, as the Project's resident engineer, you had no direct interaction with [FGH], the design consultant. Your duties consisted of daily, on-site supervision of the construction contractors' activities to ensure compliance with contract specifications and with plans and drawings prepared by [FGH]. If a design issue arose during construction, you notified the Project Manager who, in turn, conferred with [FGH] to resolve the issue. You were then responsible for ensuring that any design changes were implemented by the construction contractors.

Post-City Employment. You have asked whether, following your retirement, you, as an employee of some third-party entity, may work (for example, as an assistant to the resident engineer) on Bureau of [R] construction projects. By way of example, you cited the unfinished [A] Street Improvement Project.

²As part of the payment process, the contractor pay vouchers were subsequently returned to you and the project manager for signature.

³Phase 1 of the Project was that portion of [A] Street from [K] Road to [Q] Street. Phase 2 was that portion of [A] Street from [Q] Street to Interstate XXX. Phase 3 was that portion of [A] Street from Interstate XXX to the [Site 4].

⁴Phase 3 also involves the relocation of support structures for certain elevated train tracks.

LAW: The relevant provision of the Governmental Ethics Ordinance is subsection 2-156-100(b) of the section 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.

Under this provision, then, a former employee is subject to two, distinct restrictions on employment after leaving City service. First, *for one year* after leaving City employment, a former employee is prohibited from assisting or representing any person, other than the City, in any business transaction involving the City or any of its agencies, if he or she participated personally and substantially in the subject matter of that transaction during City employment. Second, a former City employee is *permanently* prohibited from assisting or representing any person, other than the City, on a contract if, as a City employee, he or she exercised “contract management authority” with respect to that contract.

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

"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.

One-Year Prohibition. First, we address the one-year prohibition contained in the first clause of subsection 2-156-100(b). In your request to the Board for an advisory opinion, you asked whether, following your retirement, you, as an employee of some third-party entity, may work (for example, as an assistant to the resident engineer) on Bureau of [R] construction projects. By way of example, you cited the unfinished [A] Street Improvement Project.

In order to determine how the one-year prohibition applies to you in your post-City employment, we must look at the work you performed, and the duties and responsibilities you had, while a City employee. You began City employment in October 1981 as a civil engineer

[U]ntil your retirement
, you worked exclusively for [P] 's Bureau of [R] .

During your City employment, you served as resident engineer on approximately 23 consecutive Bureau of [R] construction projects. Almost all of these projects involved some aspect of City residential, arterial or industrial streets. They included construction, rehabilitation and resurfacing of City streets; installation of landscaped medians, curbs and gutters; and installation of street lamps

and pedestrian lighting. On average, each projects lasted approximately one year. In all instances, the construction work was performed by outside contractors.

As resident engineer, you had no involvement, you stated, in any aspect of the letting or award of the design or construction contracts for these projects. Your duties consisted of daily, on-site supervision of the contractors' construction activities to ensure compliance with contract specifications, plans and drawings (prepared by an outside consultant), as well as responding to unforeseen design or construction issues that arose as the contractors' work progressed. You reviewed daily reports from field inspectors and regularly conducted your own field inspections. In addition, you chronicled the contractors' work in a daily log book and prepared monthly pay-estimates, based on those recorded entries.

Based on the foregoing, the Board finds that, as a City employee, you were personally and substantially involved in the construction of City arterial, residential and industrial streets. The Board determines, therefore, that under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until _____, from assisting or representing any person other than the City, on any business transaction involving the construction of City arterial, residential or industrial streets, including new street construction, street rehabilitation and resurfacing; installation of landscaped medians, curbs and gutters; and installation of street lamps and pedestrian lighting.

Permanent Prohibition. Next, we address the permanent prohibition contained in the second clause of subsection 2-156-100(b). All but one of the construction projects on which you served as resident engineer had been completed by the time you resigned from City service. Analysis under the permanent prohibition of your authority over the contracts associated with those completed projects is, therefore, unnecessary.

The one unfinished project is the three-phase [A] Street Improvement Project. As to that Project, the Board finds that, in supervising the performance of the Project's three construction contractors -- [IOU] _____, [TIN] _____ and [VV] _____ -- you exercised contract management authority over the Project's construction contracts. Therefore, the Board determines that you are permanently prohibited from assisting or representing any person other than the City on any of the construction contracts associated with the [A] Street Improvement Project.

DETERMINATIONS: In summary, after careful consideration of the facts you presented and the relevant law, the Board has determined that:

- 1) under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until _____, from assisting or representing any person other than the City, on any business transaction involving the construction of City arterial, residential or industrial streets, including new street construction, street rehabilitation and resurfacing; installation of landscaped medians, curbs and gutters; and installation of street lamps and pedestrian lighting; and

- 2) under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are permanently prohibited from assisting or representing any person other than the City on any of the construction contracts associated with the [A] Street Improvement Project.

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.

CONFIDENTIAL INFORMATION: We also bring to your attention Section 2-156-070 of the Governmental Ethics Ordinance, "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.

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