

Advisory Opinion
Case No. 04014.A, Post-employment

To: [Norman Smith]
Date: XXXXXX, 2004

You formerly worked as an engineering technician in the Bureau of [M] (the Bureau) in the City's Department of [O]. On , 2004, shortly before your retirement from City service, you requested an advisory opinion from the Board of Ethics on how the Governmental Ethics Ordinance would impact your post-City employment activities. Specifically, you asked whether, following your retirement, you may assist [BE Corp. ("BE")] in preparing engineering design plans and cost estimates related to the City's street lighting and traffic signal systems, pursuant to an existing consulting contract between [BE] and O.

After careful consideration of the information you presented and the relevant law, the Board has determined that you are prohibited for one year from the date you left City service, that is, until , 2005, from assisting or representing [BE]

Corp., or any other person other than the City, on any business transaction involving the provision of electrical engineering services related to the City's street lighting and traffic signal systems, including the preparation of engineering design plans and/or cost estimates for such systems.

FACTS: City Employment. You began City employment in August 198X as an Engineering Technician 1 in what was formerly the City's Department of [L]. In or around January 199X, the Department of [L] was reorganized as [O]. Following that reorganization, you were assigned to the Engineering Division of [O]'s Bureau of [M]. From that time, until your retirement on , 2004, you worked exclusively for the Bureau. At the time of your retirement, you held the position of Engineering Technician 2.

The Bureau's Engineering Division, you explained, provides engineering design work, and related support services, for the City's street lighting and traffic signals systems. The Engineering Division is divided into 3 sections: Project Design; Job Design; and the Drafting Section. You worked in the Project Design section. You were assigned work by, and reported to, the section head, [Dave Jones].¹ You estimate that, on average, you worked on 18 design projects per year. As to each project, your duties essentially consisted of the following:

- 1) performing a field survey to collect relevant data, such as the location of

¹Following[] in the summer of 200X, until your retirement , you reported to the Bureau's Coordinating Engineer, [Bob C], who oversaw the work of all three sections of the Engineering Division.

existing Bureau facilities and geometrical measurements of the site;

- 2) ordering and reviewing relevant plats and maps of the site from [o] 's Board of [Y]
- ;
- 3) preparing a design plan for the removal of existing, and the installation of new, street lighting and/or traffic signals, including specifications such as the quantity and type of posts, lamps, controllers and conduit to be installed; and
- 4) preparing a cost estimate for the project based on the design plans and specifications.

You stated that, at the time of your retirement, all of the design projects on which you worked as a City employee had been completed.

Post-City Employment. You stated that [BE] has a consulting contract with [O] under which it provides engineering services to the Bureau. You have asked whether, following your retirement, you, as an employee of [BE], may assist [BE] in preparing engineering design plans and cost estimates related to the City's street lighting and traffic signal systems, pursuant to that consulting contract. You stated that, during the course of your City employment, you had no involvement in any aspect of the process by which [BE's] consulting contract with [O] was awarded or formulated. You also stated that you had no involvement in the decision by the Bureau to utilize [BE's] services under that contract; nor, according to you, did you ever supervise [BE] personnel or authorize payment to [BE] for work performed under that contract.

STATEMENT OF THE LAW: The section of the Governmental Ethics Ordinance at issue in this case is Section 2-156-100, entitled "Post-Employment Restrictions," specifically part (b), which 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.

Section 2-156-010(g) defines "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.

APPLICATION OF THE LAW TO THE FACTS: Ordinance Section 2-156-100(b) prohibits a former City employee from assisting or representing any person, other than the City, in any business transaction involving the City for one year after leaving City service, if he or she “participated personally and substantially in the subject matter of the transaction” while a City employee. That section further provides that if the employee “exercised contract management authority” with respect to a contract, the prohibition shall be permanent as to that contract.

1. The One Year Prohibition: Personal and Substantial Participation. You stated that [BE] has a consulting contract with [O] under which it provides engineering services to the Bureau. The rendering of these services to the Bureau, pursuant to that contract, clearly constitutes a “business transaction involving the City” within the meaning of Section 2-156-100(b) of the Ordinance. You have asked whether, following your retirement, you, as an employee of [BE], may assist [BE] in preparing engineering design plans and cost estimates related to the City’s street lighting and traffic signal systems, pursuant to that consulting contract. For purposes of analysis under the one year prohibition, therefore, the question becomes whether, during the term of your City employment, you participated personally and substantially in the subject matter of the transaction.

You worked in the Engineering Division of [O’s] Bureau of [M] for approximately 12 years. The function of that Division is to provide engineering design work, and related support services, for the City’s street lighting and traffic signals systems. You estimate that, on average, you worked on 18 design projects per year. As to each project, your duties consisted of the following: performing a field survey to collect relevant data; ordering and reviewing relevant plats and maps of the site; preparing a design plan for the removal of existing, and the installation of new, street lighting and/or traffic signals; and preparing a cost estimate for the project. Based on the foregoing, the Board finds that, as a City employee, you were personally and substantially involved in the provision of electrical engineering services related to the City’s street lighting and traffic signal systems.

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 , 2005, from assisting or representing [BE] , or any other person other than the City, on any business transaction involving the provision of electrical engineering services related to the City’s street lighting and traffic signal systems, including the preparation of design plans and/or cost estimates for such systems.

2. The Permanent Prohibition: Contract Management Authority. As noted above, 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.*”

You stated that, during the course of your City employment, you had no involvement in any aspect of the process by which [BE's] consulting contract with [O] was awarded or formulated. You also stated that you no involvement in the decision by the Bureau of [M] to utilize [BE's] services under that contract; nor, according to you, did you ever supervise [BE] personnel or authorize payment to [BE] for work performed under that contract.

Based on your representations, the Board finds that you did not exercise contract management authority, within the meaning of Ordinance Section 2-156-100(b), with respect to [BE's] consulting contract with [O], under which [BE] is providing engineering services to the Bureau of [M].

The Board determines, therefore, that after [REDACTED], 2005, you are not prohibited under Section 2-156-100(b) of the Governmental Ethics Ordinance, from assisting or representing [BE] in providing electrical engineering services related to the City's street lighting and traffic signal systems to the Bureau, pursuant to [BE's] consulting contract with [O] because, during the term of your City employment, you did not exercise contract management authority with respect to that contract.

DETERMINATIONS: After careful consideration of the facts you presented and the relevant law, the Board determines that:

1. [REDACTED] 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 March 1, 2005, from assisting or representing [BE], or any other person other than the City, on any business transaction involving the provision of electrical engineering services related to the City's street lighting and traffic signal systems, including the preparation of engineering design plans and/or cost estimates for such systems; and
2. [REDACTED] after [REDACTED], 2005, you are not prohibited under Section 2-156-100(b) of the Governmental Ethics Ordinance, from assisting or representing [BE] in providing electrical engineering services related to the City's street lighting and traffic signal systems to the Bureau, pursuant to [BE's] consulting contract with [O] because, during the term of your City employment, you did not exercise contract management authority with respect to that contract.

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.

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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

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