

August 24, 2009

CONFIDENTIAL

[REDACTED]

RE: Case No. 09033.A

Dear [REDACTED]

You are a member of [REDACTED].¹ You were appointed to the [REDACTED] in [REDACTED], and, since [REDACTED], have served as its [REDACTED]. That [REDACTED] makes you, ex officio, a member of the [REDACTED]. The [REDACTED] was formerly known as the [REDACTED].² On [REDACTED], you asked for an advisory opinion addressing whether a family partnership in which you own a 20% interest is prohibited by the Governmental Ethics Ordinance from applying for assistance from the [REDACTED] program. As explained in this opinion, the Board has determined that the [REDACTED] program is “wholly unrelated” to your official City duties on both the [REDACTED] and the [REDACTED], thus, you, as a City appointed official, would not have a prohibited financial interest in City business, and the Ordinance would not limit or restrict you or the partnership from applying for or receiving monetary assistance from the [REDACTED] program. Our analysis is explained below.

FACTS:

Chicago's [REDACTED]: The [REDACTED] has five members, each of whom is appointed by the mayor and confirmed by the City Council. It holds public hearings and meetings regarding [REDACTED] and [REDACTED] initiated, funded, and built by [REDACTED]. The Board also accepts protest petitions in instances where residents oppose [REDACTED] projects. You said meetings are called as necessary; the Board does not have a regular schedule of meetings. As President of the [REDACTED], you sign [REDACTED] payment vouchers for projects which require

special assessments (fees paid by area residents to help defray the City's costs for [REDACTED])

¹The [REDACTED] is established at 2-102-050 of the Municipal Code of Chicago and established under the authority of §9-2-7 of the Illinois Municipal Code (65 ILCS 5/9-2-7).

²The [REDACTED] is established at 2-120-370. It was initially appointed in [REDACTED] as one of the recommendations of the [REDACTED].

projects) and [REDACTED] petitions.

You said that the [REDACTED] has never had, and would never have, occasion to review, vote on, decide, or approve [REDACTED]³ or [REDACTED] matters. [REDACTED] projects are not paid for with [REDACTED] or [REDACTED] funds.

[REDACTED]: The [REDACTED] is established by §2-120-370 of the Municipal Code of Chicago. The Commission is staffed by employees of the [REDACTED] division, which provides technical review and recommendations. The [REDACTED] members are appointed by the Mayor and confirmed by the City Council and must approve, disapprove or defer any proposal by a public body or agency “to acquire, dispose, or change any real property within the territorial limits of the City” on the basis of whether the referral complies with the City’s long range planning goals and objectives. According to [REDACTED], Deputy Director of [REDACTED], with whom you gave us permission to speak, the [REDACTED] also reviews land use proposals in [REDACTED] matters.

Board staff contacted [REDACTED], Assistant Commissioner of the [REDACTED]⁴, on the recommendation of [REDACTED], for a fuller explanation of the role of [REDACTED] funding in the projects you review on the [REDACTED]. Ms. [REDACTED] explained to Board staff that there are three types of [REDACTED] “products:” i) large projects and districts which need City Council approval, ii) those which are part of a streamlined [REDACTED] procedure and are fairly routine in terms of administration and funding, and iii) the very smallest projects [REDACTED], which are administrative in nature and handled solely by [REDACTED], an Illinois not-for-profit corporation authorized by City Council to administer the [REDACTED] program (discussed more fully below)⁵, and [REDACTED]. Ms. [REDACTED] said, and you confirmed, that [REDACTED] members do not, nor would they ever, officially know about, review, act or decide upon [REDACTED]s. You confirmed that the type of work which would be eligible for [REDACTED] funding would be of a smaller scale than the projects which come before the [REDACTED], and that type of work would occur after a project was already approved (see explanation of [REDACTED] in next section). You also said that the scale/complexity of projects which come before the [REDACTED] is “enormous,” and that the fact that an applicant before [REDACTED] has applied for or received [REDACTED] funding has not, nor would it ever, come before

³ [REDACTED] is a special funding tool used by the City of Chicago to promote private investment in blighted sections of the city. Source: <http://egov.cityofchicago.org>, visited 8/18/09.

⁴ [REDACTED]. Ms. [REDACTED] worked for the [REDACTED] before the name change/departmental reorganization.

⁵The City Council, under the [REDACTED] Ordinance, authorized the [REDACTED] to enter into an agreement with [REDACTED] 4, Inc., an Illinois not-for-profit, corporation ([REDACTED]), and [REDACTED] entered into such agreement on [REDACTED], [REDACTED]. Source : <http://egov.cityofchicago.org>, visited 8/18/09.

the [REDACTED], because [REDACTED] projects are completed *after* a property has been obtained.⁶

You said that the [REDACTED] is informed if [REDACTED] funds are involved in a project, but that members do not decide how a project is funded. Ms. [REDACTED] and Ms. [REDACTED] confirmed this.

[REDACTED] program: The [REDACTED] program encourages commercial and industrial business owners to invest in their property by making [REDACTED] funds available for building improvements.⁷ On [REDACTED], the zoning division of the [REDACTED] entered into an agreement with [REDACTED], an Illinois not-for-profit corporation [REDACTED], to perform certain administrative services for the Program, including processing and approving or disallowing all applications based on program rules and eligibility requirements.⁸ Applicants can receive reimbursement grants of up to \$150,000 to cover the cost of installing new windows, floors, roofs, heating and air conditioning systems, and tuckpointing.

According to Ms. [REDACTED], there is a “rollout,” which is a defined community meeting, almost always attended by the area alderman, which “starts the clock” on the [REDACTED] application process. If there are more applicants applying for more money than is available in a particular [REDACTED] program, then a lottery is held. Ms. [REDACTED] said it is random as opposed to “first come, first served.” She also said that the \$150,000 eligibility is per application *year*, per *building*. She explained that if a building has more than one tenant, then it is up to the tenants and landlord to divide the funds among themselves. Ms. [REDACTED] also said that it is conceivable that applicants could assemble more than \$150,000 over the course of several years if they reapplied, they remained eligible, funds were available, they won the lottery in those instances where a lottery was necessary, and they were approved. Due to all of these contingencies, however, she said that it is unlikely that applicants would get funding in subsequent years, and, she confirmed, there has never been an applicant who has received funding after applying in a subsequent year.

⁶An applicant has to apply for [REDACTED] funds *after* the work for which the applicant is seeking reimbursement funding has been completed, reviewed, their application accepted and their [REDACTED] funding approved.

⁷The [REDACTED] program was implemented by an ordinance adopted by the City Council on [REDACTED], and published in the Journal of Proceedings of the City Council for said date at pages 8307 to 8344, inclusive.

⁸Applicants must submit a statement of Net Worth, which entitles them to funding in the following manner, according to an Ordinance adopted by the City Council first on November 8, 2000 (and amended most recently on June 1, 2008), and published in the Journal of Proceedings of the City Council for said date at pages 43877 to 43930, inclusive, and [REDACTED], [REDACTED] Assistant Director at [REDACTED], to whom you gave staff permission to speak: up to 75% reimbursement of eligible costs if the applicant demonstrates a net worth of less than \$500,000; up to 50% of eligible costs if the applicant demonstrates a net worth equal to or greater than \$500,000 but less than \$2,500,000; up to 25% of eligible costs if the applicant demonstrates a net worth equal to or greater than \$2,500,000 but less than \$4,000,000.

█ grant funds are provided to property owners after remodeling work is completed and all expenses are paid by the applicant.

Your family partnership's █ assistance application: You said that you own a 20% stake in a family partnership which owns a commercial property. The partnership is considering some work on that property and then applying for funds from the █ program. The partnership owns a single property on the █ side of Chicago, which houses █. You explained that "the redevelopment of a property (of the sort you consider as a member of the █) is *enormously* higher than anything" your family partnership anticipates doing on the property it owns. You also stated that "the figure is coming down" with respect to the cost of the work the family partnership intends to do on the property and that it will "be spread out over a couple of years, anyhow." When asked to clarify, you said that some work would be done, then the partnership would apply for a reimbursement grant, and then more work would be completed (and another reimbursement sought).

LAW AND ANALYSIS:

As President of the █ and a member of the █, you are, for purposes of the Governmental Ethics Ordinance, an "appointed official" of the City.⁹ See *Case No. 94001.A and Dorothy J. Eng Memorandum, dated April 10, 1991*. Thus, you are subject to the Governmental Ethics Ordinance as an appointed official. The provision of the Ordinance that is relevant to your question is discussed below.

1. Interest in City Business. To advise you, we will consider the facts you have presented in accordance with § 2-156-110 of the Ordinance, "Interest in City Business" which 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 with 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....No appointed official shall engage in a transaction described in this section unless the matter is *wholly unrelated* to the official's City duties and responsibilities. (emphasis added)

The term "financial interest" is defined, in relevant part, in §2-156-010(l) of the Ordinance:

⁹The term "official," as defined in §2-156-010(q) of the Ordinance includes, "...any appointed, non-employee member of any City agency.

(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....

Under Ordinance §2-156-110, an appointed official, like you, may not have a financial interest in City work or business, such as monetary assistance under the [REDACTED] program, unless that the City contract, work or business is “wholly unrelated” to the official’s City duties and responsibilities. Your family partnership is contemplating completing some work on the commercial property it owns and then applying for assistance from the City’s [REDACTED] program, which is and would be City work. The Board needs to determine if your work on each of your City Commissions is “wholly unrelated” to possible [REDACTED] assistance.

There are few Board cases discussing whether one set of City responsibilities or Board’s work is “wholly unrelated” to another’s. However, *Case No. 88124.A*, is instructive. There, the Board determined that the subject matter of contracts appearing before the commission on which an appointed official served were wholly unrelated to a City venture in which the appointed official wished to participate. In that case, the Board stated that the subject property and land “are not the subject of any present or foreseeable future matters before the [appointed official’s Commission].” The Board reasoned, “Therefore, [the appointed official’s] public position on the [Commission] presents no present opportunity for him to influence any decisions which may relate to his interest in the [City work in which the appointed official wished to participate].” We now apply this rationale to your City responsibilities.

i) [REDACTED]. The facts provided indicate that, in your role as [REDACTED] of the [REDACTED], you sign [REDACTED] payment vouchers for projects which require special assessments, and that the [REDACTED] holds public hearings and meetings regarding [REDACTED] and [REDACTED] projects initiated, funded, and built by [REDACTED], and accepts protest petitions in instances where residents oppose [REDACTED] projects. You said that the [REDACTED] has never had, and would never have, occasion to review, vote on, decide, or approve [REDACTED] or [REDACTED] matters, and that [REDACTED] projects are not paid for with [REDACTED] or [REDACTED] funds.

Applying the rationale in *Case No. 88124.A*, the Board concludes that [REDACTED] projects are wholly unrelated to the City work or business you do as [REDACTED] of the [REDACTED].

ii) [REDACTED]. As an ex officio member of the [REDACTED], your duties include attending regularly scheduled meetings, where members consider, review, and vote on matters regarding the sale and use of City-owned land which [REDACTED]P staff prepared, reviewed, then presented to [REDACTED]. You stated that you do not vote on, decide, review, have any knowledge or involvement with the [REDACTED] program or any small types of [REDACTED] financing, nor would the fact that an applicant is a recipient of [REDACTED] funds be relevant to any [REDACTED] deliberations or decisions. Both staff at the [REDACTED] and at [REDACTED] confirmed that [REDACTED] members do not see, influence, determine, or evaluate applicants for the [REDACTED] program. You also stated,

and it was confirmed by employees who work closely with [REDACTED], that the fact that an applicant before [REDACTED] has applied for or received [REDACTED] funding has not, nor would it ever, come before the [REDACTED], because SBIF projects are completed *after* a property has been obtained. The TIF-funded projects which come before the [REDACTED] are of a much larger scale, price, and scope, than the tiny projects which would be eligible for [REDACTED] reimbursement grant monies, so, [REDACTED] program projects are never presented to you as a [REDACTED] member (or as a [REDACTED] member).

Applying the rationale from Case No. 88124.A, explained above, the Board concludes that [REDACTED] projects are wholly unrelated to the work you do on the [REDACTED].

ADDITIONAL ORDINANCE PROVISIONS:

2 & 3. City Property; Confidential Information. Last, §§ 2-156-060, "City-Owned Property," and -070, "Use or Disclosure of Confidential Information," also apply to your Board and Commission service. The former prohibits you from the unauthorized use of City property, including City time, or supplies, to carry out your duties on behalf of the family partnership; the latter prohibits you from using or revealing confidential information you have gained in the course of or by reason of your Commission or Board positions.

DETERMINATIONS: Based on the facts presented, the Board determines that the [REDACTED] program is "wholly unrelated" to your official City duties on both the [REDACTED] and the [REDACTED], thus, you would not have a prohibited financial interest in City business, and the Ordinance would not limit or restrict you or the partnership from applying for or receiving monetary assistance from the [REDACTED] program.

The Board's determination in this opinion is limited to your family partnership's initial application for [REDACTED] reimbursement funds. If in the future your partnership becomes eligible and wishes to reapply, you are advised to contact our office for further guidance. We do not address in this opinion the issue regarding whether such a reapplication for additional funds would constitute the same or entirely different work or business of the City, and thus whether you would have a prohibited financial interest in City business.

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

RELIANCE: This opinion may only be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

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Miguel A. Ruiz, Chair