

November 20, 2000

outside bus. ownership

CONFIDENTIAL

[name and address]

Re: Case No. 00025.Q

Dear [John],

Recently you contacted the Board of Ethics to ask whether you may legally run a business of your own while you are also an employee of the City. You stated that you are employed in the [department] as [staff] and you wish to start a business involving [services], which you would operate concurrently with your City employment. You stated, furthermore, that your new business would have no relation to your City work.

The City's Governmental Ethics Ordinance does not prohibit City employees from owning or operating a business apart from their City employment. However, under the same Ordinance, certain restrictions apply to you if you operate an outside enterprise while employed by the City. Since these restrictions would apply in the event that you carried out your proposed plan of starting your own business, they are summarized below for your convenience.

Section 2-156-020 of the Governmental Ethics Ordinance, "Fiduciary Duty," establishes that your primary loyalty is owed to the City at all times while you remain a City employee, and consequently, you are prohibited from using your City time, resources, position, or title to obtain a personal benefit or to promote a private interest (such as your business). In addition, Section 2-156-060 specifically prohibits any and all unauthorized use of City-owned property, whether or not in connection with outside employment.

Section 2-156-030(a), "Improper Influence," and Section 2-156-060(a), "Conflicts of Interest," prohibit you in the course of your City employment from participating in any decision-making that might affect your business, since your business would constitute an economic interest (defined in Section 2-156-010(i)) distinguishable from that of the general public. Furthermore, if any matter relating to your business were pending before a City agency, Section 2-156-060(c) would require you to disclose the nature of your interest in the matter to the Board of Ethics, and, if the matter were pending before your own agency, you would also need to disclose this to the head of your agency.

Section 2-156-090(a), "Representation of Other Persons," would prohibit you from representing your business in any proceeding or transaction before any City agency (since, based on the definition in Section 2-156-010(r), a corporation is considered to be a person for the purposes of the Ordinance). This restriction applies to any proceeding or transaction of a "non-ministerial" nature; that is, to matters other than those which occur as part of the regular, non-discretionary duties of an agency or official. Under subsection (b) of this provision, you would also be prohibited from representing your business in any judicial or quasi-judicial proceeding in which the City was a party and your interest was adverse to that of the City.

Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from disclosing or using confidential information gained in the course of, or by reason of, your City employment. Thus, you

November 17, 2000

Case No. 00025.Q

Page 2

would, of course, be prohibited from using any such confidential information for the purposes of your new business.

Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," furthermore prohibits you from soliciting or accepting money or any thing of value in return for advice or assistance on matters concerning the operation or business of the City; so, such advice or assistance to clients of your new business for compensation would not be permitted under the Ordinance.

Section 2-156-110, "Interest in City Business," prohibits you from having a "financial interest" in any contract, work, or business of the City when the cost of that contract, work, or business is paid for with funds belonging to or administered by the City, or approved by ordinance. A "financial interest" is defined, in part, as an interest of more than \$2,500 per year, or a present interest of \$5,000 or more (§ 2-156-010(l)). Thus, you, or your incorporated business, would be prohibited from entering into any contract if the value of the contract exceeded these monetary thresholds and was paid for with such funds.

Finally, if your level of compensation as a City employee currently requires you to file a statement of financial interests in accordance with Section 2-156-150 (e.g., if your salary will exceed \$60,800 in 2001), you will need to disclose all required information about your business as described in Section 2-156-160, "Content of Statements."

Please be advised as well that laws or rules other than the Governmental Ethics Ordinance may apply. For example, the City's Personnel Rule XX, Section 3, specifies conditions under which secondary employment may take place and requires City employees to file a written request with their department head for permission to engage in outside employment. Furthermore, 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.

The advice given in this letter is based solely on the application of the Ordinance to a hypothetical situation in which you would start your own business in addition to your current City employment. Should you carry out your proposed plans, be advised that further facts may become relevant to determining whether your outside employment is in compliance with the Ordinance. Do not hesitate to contact us at (312) 744-9660 should you have any further questions. You should ask to speak with [attorney or research analyst], who are familiar with your case.

We appreciate your concern to abide by the standards of the Ethics Ordinance and have enclosed a copy of the Ordinance for your reference.

Sincerely,
[signature]

Dorothy J. Eng
Executive Director