



CITY OF CHICAGO



BOARD OF ETHICS

CONFIDENTIAL

[date]

Re: Case No. 24006.Q, Post-employment restrictions on assistance and representation, and lobbying

Dear [Name],

On February 28, you requested an advisory opinion outlining the post-employment restrictions to which you are subject under the City's Governmental Ethics Ordinance (the Ethics Ordinance"). You served as the Commissioner of the City's [Department of QR] from [date to date] and before that, as a [title] from [date to date], and before that, as a [title] from [date to date].

As an initial matter, I stress that the City's post-employment/revolving door laws do **not** prohibit you from working for any particular person, firm or organization, whether an all-purpose or a consulting firm, even if that potential employer has or had contracts with [QR], and even if you oversaw or managed those contracts. *Rather*, the prohibitions to which you are subject are activity-, matter-, or project-based. Moreover, all restrictions and prohibitions in the Ethics Ordinance are personal to you — that is, even if you are personally prohibited from working on any particular matters, projects or contracts, your post-City employer is not, as long as you do not assist it behind the scenes or work on those matters. That is, the Board recognizes impermeable ethical screens, as discussed below.

RELEVANT LAW. There are five (5) restrictions to which you are subject. They are in §§2-156-100 and -105 of the Ethics Ordinance, and provide:

2-156-100. Post-employment restrictions on assistance and representation.

(a) No former official or employee shall assist or represent any person other than the city in any judicial or administrative proceeding involving the city or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(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.

(c) Nothing in this section shall be construed to restrict a former official's or employee's activities on behalf of, and while employed by, another government agency.

2-156-105. Post-employment restrictions on lobbying.

...

(a) Any person who serves as ... (ii) a department head, shall be prohibited from lobbying the City of Chicago or any city department, board or other city agency for a period of two years after leaving that position.

2-156-070. Use or disclosure of confidential information.

(a) Except as otherwise provided in subsection (b) or (c) of this section, no current or former official or employee, including any current or former official or employee of the board or the inspector general, shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information or any non-public information, including the identity of the subject of an investigation, gained in the course of an investigation or by reason of his position or employment.

DISCUSSION.

1. Permanent prohibition as to judicial and other proceedings. Under §2-156-100(a), you may not work on any judicial, administrative proceeding (whether pending before any City agency, state court or administrative agency, or federal court or administrative agency) if you were personally and substantially involved in that proceeding. The Board has recognized, however, that you could assist the City in such a proceeding. *See* Case No. 21010.A.¹ I doubt this prohibition will be relevant to you, but if you do have any questions about it, or are asked by a post-City employer to assist it with any such proceeding that was pending while you were employed at [QR], I advise that you contact our office for specific advice.

2. One-year subject matter prohibition. Under §2-156-100(b), you are subject to a one-year “subject matter” prohibition: until [date] _____, you cannot assist or represent any person, such as a new employer or client, on any matters, projects or transactions involving the City if, while employed at [QR], you were personally and substantially involved in those matters, projects or transactions, or in their “subject matter.” Based on past opinions our office has issued to former City department heads, this means that you will be required to recuse yourself from any work, even behind the scenes, that involves any ongoing or new project, contract, or matter with or that would involve involvement by the [QR], because, as [QR’s] Commissioner, and before that one of its [title] _____, you were personally and substantially involved in all aspects of the [QR’s] mission and work.

I again stress, though, that this prohibition does *not* mean that you could not accept a position with an engineering or consulting firm with which you dealt while serving as [QR’s] Commissioner or before that — rather, it means that you personally must recuse yourself from any work, conversations, document review, etc., with respect to any ongoing or new projects or contracts involving [QR] until [date] _____.²

3. Permanent prohibition: contract management authority. Also under §2-156-100((b), you are “permanently” prohibited from assisting or representing a new employer or client on any City contract, if you exercised “contract management authority” with respect to that contract. “Contract management authority” is defined in §2-156-010(g) of the Ethics Ordinance, and means:

¹ https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_PostEmploy/21010.A.pdf.

² *See* Cases 89119.A, <https://www.chicago.gov/content/dam/city/depts/ethics/general/memos/89119A.pdf>; 90069.A, https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_PostEmploy/90069.A.pdf; 96036.A, https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_PostEmploy/96036.A.pdf; 04058.A, https://www.chicago.gov/dam/city/depts/ethics/general/AO_PostEmploy/04058.A.pdf

[P]ersonal 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.

Based on past Board opinions, our conclusion is that you exercised such authority with respect to any [QR] contract that you signed, negotiated, or whose performance you supervised, or for which you drafted specifications or participated in drafting or approving the scope of services (perhaps through an RFI, RFP, or RFQ), or approved vouchers by which the contractor was paid under that contract.

Rather than analyze an extensive list of contracts that were ongoing or executed during your time as [QR] Commissioner, we advise that you are required to recuse yourself from working, even behind the scenes, on those contracts for any firm that has them, for as long as those contracts remain in force (which is what “permanently” means here).

Again, however, I stress that this prohibition does *not* bar you from working for any such firm that has such a contract, but you may not in any way assist or represent the firm on that contract for as long as it remains in force (and certainly for one year). Should such a contract be up for renewal, beginning on or after [one year after your effective termination date], and you are asked to work on securing that renewal, we would need to analyze whether the proposed renewal contains one or more new material terms (such as price or scope of services) in order to determine whether it would be the same contract (on which you could not work), or a new one (on which you could work). We advise you to contact us for specific advice if that becomes something you are asked to work on.

4. Two-year lobbying prohibition. Under §2-156-105(a), you, as a former department head, are barred for two (2) years (that is, until [date]) from lobbying any City department, agency, employee or official, including but not limited to [QR]. “Lobbying” and “lobbyist” are defined in §§2-156-010(p) of the Ethics Ordinance, and that definition will change on July 1, 2024.³ If you are asked to engage in any activities that

³ The current definition is: "lobbyist" is “any person who, on behalf of any person other than himself, or as any part of their duties as an employee of another, undertakes to influence any legislative or administrative action, including but not limited to: (1) a bond inducement ordinance; (2) a zoning matter; (3) a concession agreement; (4) the creation of a tax increment financing district; (5) the establishment of a Class 6(b) Cook County property tax classification; (6) the introduction, passage or other action to be taken on an ordinance, resolution, motion, order, appointment or other matter before the City Council; (7) the preparation of contract specifications; (8) the solicitation, award or administration of a contract; (9) the award or administration of a grant, loan, or other agreement involving the disbursement of public monies; or (10) any other determination made by an elected or appointed City official or employee of the City with respect to the procurement of goods, services or construction. Provided, however, that a person shall not be deemed to have undertaken to influence any legislative or administrative action solely by submitting an application for a City permit or license or by responding to a City request for proposals or qualifications. It shall not constitute lobbying as defined here for an individual who is paid on a contingent or commission basis for the good faith sale of goods or services to contact a City official or employee regarding the purchase by the City of such goods or services, provided that such individual is contacting only those City official or employees who have responsibility for making purchasing decisions regarding such goods or services in the normal course of business. The term "lobbyist" shall include, but is not limited to, any attorney, accountant, or consultant engaged in the above-described activities; provided, however, that an attorney shall not be considered a lobbyist while representing clients in a formal adversarial hearing. A person who seeks to influence legislative or administrative action on behalf of a not-for-profit entity shall be deemed a lobbyist only if such person: (i) is paid or otherwise compensated for those efforts; or (ii) undertakes those efforts as a matter of professional engagement, regardless of pay or other compensation. The term “lobbyist” shall not include: (i) any employee or official of another government unit who engages in the above-described activities on behalf of that government unit; or (ii) a person who: (a) attends a meeting with an employee or official simply to provide technical information or address technical questions; (b) attends a meeting to provide clerical or administrative assistance (including audio-visual, translation or interpretation and sign language); (c) attends a meeting to observe for educational purposes; or (d) plays no role in the strategy, planning, messaging, or other substantive aspect of the overall lobbying effort.”

involve contacting City employees or officials between now and [date] , I advise you to contact us before making such contacts to ensure that they would not constitute lobbying, as defined.

This prohibition does *not* restrict you from lobbying any government entity *other* than the City, like a “sister agency,” or Cook County, the State of Illinois, or any suburban municipality, nor does it prohibit you from registering as a lobbyist with the Illinois Secretary of State under the Illinois Lobbyist Registration Act. And, consistent with the advice above, it does *not* prohibit other personnel from any new employer or client of yours from lobbying City government or registering with our office as a lobbyist.

5. Confidential information. All former City employees and officials are subject to the prohibition on using or disclosing (except as required by law) any confidential or non-public information gained by reason of their City employment. This prohibition is permanent. *See* §2-156-070.

PENALTIES. The penalties for violating these provisions are severe: they consist of fines up to \$20,000 per violation, and those fines could be assessed against you and/or your post-City employer. Moreover, any contract entered into or performed in violation of these prohibitions can be cancelled by the City, and any regulatory action made as a result of any violation of these provisions is void. *See* §2-156-510.

CONFIDENTIALITY. This letter is confidential, which means we will not discuss it with any person unless we have a waiver of confidentiality from you; you, however, are free to share this letter with any person or prospective employer.

RELIANCE AND RECONSIDERATION. Our conclusions and advice are based solely on the application of the City’s Governmental Ethics Ordinance to the facts summarized in this letter. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter our conclusions or advice. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered. If there are additional material facts and circumstances that were not available when we considered your questions, you may request reconsideration of the opinion. As provided in Section 3-8 of the Board’s Rules and Regulations, a request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by the Board within fourteen (14) City business days of the date of this letter.

I appreciate your conscientiousness. If there are any issues or questions you have that are not addressed in this letter, please feel free to contact us, or have a representative from any prospective employer contact us.

Yours very truly,

Steve Berlin
Executive Director