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ADVISORY OPINION
CASE NO. 94011.A
POST-EMPLOYMENT

To:

Date: July 1, 1994

You contacted the Board of Ethics requesting guidance on the restrictions the Governmental Ethics Ordinance imposes on your post-City employment. On _____, you resigned your City job as "P2(position)" for "C"(City Employer) and began a position with "O"(Other Employer), a nationwide company that operates training programs chiefly in Los Angeles, but also in Indianapolis, Cook County, and the City of Chicago. Our analysis of the facts under the post-employment provisions of the Ordinance are presented in this opinion.

FACTS: You provided us with the following facts, and we note where other sources provided us with additional facts. You were employed by C in three different positions. From 1981 to 1986, you worked as a _____ in what was then the _____, a work-force development project. (In these positions, you worked with on-the-job-training programs, none of which involved O.) In 1986, you temporarily left City employment. You returned to C in 1989 as P1, _____ and in 1992 moved into your last position as P2. _____ In late April, you accepted a job with O. We present below a description of your proposed position with O, with each area of that position explained. For all of these areas, we then include an explanation of the relevant duties you performed during your City employment.

O is a private corporation that works with communities and local governments to develop job training programs geared mostly toward persons receiving public aid. You accepted the position of P3 in charge of O's Midwest Operations. You will be responsible for managing O's programs currently in operation in the midwest as well as for developing new programs. That responsibility will include the whole range of contract management: seeking new contracts with a variety of public agencies, overseeing the funding of contracts, and supervising performance.



O recently obtained a large grant to provide job placement services in Indianapolis. You said that 50 percent of your time will be spent in the development and management of this project. Approximately 25 percent of your time will be spent developing new business with other public agencies in the midwest, and another 25 percent will be spent managing current contracts with Cook County and the City of Chicago. If there were no expansion of O's City business, you estimated that the work required on O's current City contracts would amount to approximately 10 percent of your time.

You told us O currently has two City contracts with C --(1) a vocational classroom training program for security guards, and (2) an ongoing summer job placement program for youth, funded through the Job Training Partnership Act ("JTPA"). You said O also may seek additional contracts with C. The areas O is interested in pursuing are (3) programs geared toward retraining dislocated workers, and (4) "client assessment," which is an evaluative process used in all programs to determine what kinds of placements are appropriate for clients.

As O's P3 of Midwest Operations, you anticipate being expected to work with all of these projects. You said you feel there may be some leeway to negotiate the activities you undertake, and that you may delegate particular responsibilities to other O staff members, if necessary.

(1) Security Guard Training Program.

In this program, which dates from the early 1980s, O receives funds through C to provide a vocational classroom training program for security guards. Until 1992, this was a performance-based contract: if performed as specified, it was automatically renewed year after year without having to be renegotiated. However, according to you and another C employee, "A.C.E.", this contract was renegotiated in the summer of 1992. In addition, all of C's current training program contracts, including this renegotiated O security guard program, will expire on June 30, 1994. Any agencies seeking funding for programs for the 1994-95 fiscal year must renegotiate their contracts with C by that time.

In your employment with O you would be responsible for managing O's new, renegotiated security guard training program with C. During your C employment, you were involved with the program in two ways: (a) in the contract renewal process during your tenure as P1, and (b) in client referrals while you worked as P2.

(a) Grants administration. During your City employment as *PI,* you participated in the procedure through which City contracts (or grants) held by all *C's* training agencies (including *O*) were monitored and renewed.¹ We describe this procedure in some detail because it is relevant to the Board's determination of whether, under § 2-156-100(b) of the Ethics Ordinance, you (1) participated in the subject matter of your proposed work with the *O* security guard grants during your City employment; and (2) whether you exercised "contract management authority."

During this period, *C* contracted with approximately 85 training agencies, each of which held a renewable one- or two-year contract. The process through which the department decided which programs to renew (and at what funding level) encompassed many factors. These included the training agency's program enrollment, the number of clients who successfully completed its program, the number of clients who were placed in jobs following training, cost analyses, the agency's performance of the terms of its contract, and other non-quantitative, or policy, criteria.

Your unit was in charge of reporting on one of those factors--the training agencies' contract performance. When an agency's contract was up for renewal, it submitted to *C* a monthly performance summary showing statistical information relating to its performance of the terms of its particular contract. Your staff, particularly the training agency liaisons, collected those forms and transferred that information onto *C* forms. You reviewed these forms to assure the data had been entered correctly. You also met monthly with two *C* unit directors (each of whom provided data on other factors) to compare the information you had received on particular agencies. Based on this data, the three of you made recommendations about program renewals to *C's* two deputy directors. You said that all such recommendations had to be unanimous decisions, and all three unit directors signed the memoranda that were submitted to the deputy directors. *The* Director of *C's* *X* Unit at that time confirmed that in preparing these memoranda, you and he and *the* Director of *Y* Unit relied on objective data and, to some extent, on the estimates of your training agency liaisons. *Director of X Unit* said directors also had the authority to "dig deeper" if they felt there was reason to contact a training agency directly.

¹ In this opinion, "training agencies" refer to companies and organizations that receive *C* funding to provide employment and job training programs for "clients," those persons seeking employment or job training.

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In addition, you met at least annually with the other unit directors, the deputy directors, and Ms. Z, Director of C. At these meetings, decisions were made regarding selection and renewal of all of the training agencies' contracts. You said, and Ms. Z stressed, that these decisions were a "collective" effort, with everyone reporting on the data for which they were responsible. Everyone present had some input into the decisions about whether the training agencies' contracts were renewed and the funding they should receive. You emphasized, however, that whatever input you had was limited to your own area, that of contract performance.

This description of the process was confirmed by two City employees who worked under you at that time. They were both training agency liaisons--Government Grants Specialists assigned to gather information on the program performance of certain training agencies, which they reported to you.

You participated in this process in relation to all of C's training agencies, including O, which had a security guard training program contract with C during that time. You never had involvement in the initial awarding of the C contract to O.

A.C.E. said the contract selection and renewal process is basically the same now as it was during your tenure as P1 from 1989 through 1991. Although all C training program contracts are being renegotiated, the categories of data and the evaluative criteria used in the decision-making process are fundamentally the same.

(b) Client services. Your proposed responsibilities for O in relation to the security guard contract also include overseeing O's referrals of its clients to C's client services unit. You said you will not personally be involved in referring O clients to C, but you normally would be expected to oversee this process as part of your management responsibilities.

As P2 you supervised the unit that offers client support services to training agencies. Currently, there are approximately 65 such agencies, including O. Your former unit matches these training agencies' clients geographically with a variety of vendors offering child day care facilities, substance abuse and related counseling, and vision care. These services are intended to help clients successfully complete their programs.

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In this position, you said, you were concerned only with the supervision of the procedure through which support services are provided to individual clients enrolled in the training programs. The list of service vendors used by your unit was created by the Assessment Division of C, and the training agencies' programs were initially evaluated for renewal by the Planning Section of the department.

You said that in your position as P2, you had no input in the program renewal and evaluation process. A.C.E. said that, to his knowledge, for the past year and a half, you had only "minimal" involvement in the current evaluative process as P2, meaning that you did not attend any meetings, were not on any distribution list for documents, and had only occasional conversations about the process with others in the department. You said the P2 position normally would have participated in this process.

(2) The Summer Job Placement Program.

In your post-employment position, you said you would be responsible for managing O's ongoing summer jobs contract with C. This program provides placement and salaries for youth in local organizations and businesses during the summer months.

Both you and A.C.E. said C's summer jobs programs are handled by the Sub-Unit, a subdivision of the P2-related Unit. A.C.E. said that about 20 percent of the summer jobs programs involve substantial contracts, which go through a funding decision-making process. He said the P2-related Unit played a limited role in these decisions, and that it has been a resource for the agencies operating these larger programs. You told us that, although organized as a subdivision of the P2 Unit, the Sub-Unit functions as a completely separate division of C. Once you became P2, your staff reported directly to Mr. W, a former C Deputy Director. You said you had no input into any operational, selection, or funding decisions, exercised no responsibilities for this program, and received only an occasional document.

(3) Dislocated Workers.

You said O also is interested in pursuing contracts with C to provide vocational classroom programs geared toward dislocated workers--those who have lost their jobs and need training for different occupations. O has had no previous contract with C involving programs for dislocated workers.

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You said, and A.C.E. confirmed, that your only major involvement in this area was your work with "defunct". This program, now defunct, was operated by C from 1991 to 1992, and involved a completely separate funding process. You were brought into this program in 1992, with the specific charge of assuring that clients met eligibility requirements. In addition, you said that while you were P1, there may have been some training agencies who offered services for dislocated workers as part of their larger programs, which would have gone through the reporting process described above. You said you were not involved in the selection or renewal process for any new programs involving dislocated workers.

As P2, you were responsible for supervising the procedure through which support services were provided to the clients of all training agencies, including those agencies operating dislocated workers programs. For agencies that offered such programs, the P2-related Unit also instructed them on state requirements for eligibility and funding, according to M.Y.S., a member of your staff.

(4) Client Assessment.

O also is pursuing future contracts with C in client assessment. Currently, training agencies themselves are responsible for client assessment. But programs are being developed by entities responding to a C Request for Proposals ("RFP") to perform this task for a variety of training agencies at once.

According to A.C.E., you had indirect involvement with client assessment in your position relating to P1, as follows. The training agencies were responsible for performing their own client assessment, and reported on this to C as an element of their contract performance report. Therefore, client assessment was included in the performance evaluations carried out by the P1 at that time.

A.C.E. also said that the P2-related Unit has been developing materials to teach the training agencies how to perform client assessment in accordance with federal regulations. However, you told us that, in fact, you were not personally involved with this while P2. You said M.Y.S. supervised this area and reported to you. M.Y.G. confirmed that he was responsible for developing the client assessment materials, and that he reported to you on his progress.

According to A.C.E., the P2-related Unit also was responsible for developing an RFP for a new program, the "New"

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Project," which includes client assessment. Under this project, one agency would operate a program for job training that would include a variety of occupations. You stated, and *A.C.E.* and *M.Y.S.* confirmed, that you were never consulted in any way with respect to the formulation or award of this RFP. *A.C.E.* said that *O* had submitted a bid on this RFP but did not receive the award, though it may attempt to resubmit its bid.

Other Experience. You have worked in the field of job training for 24 years. You believe that much of the information and knowledge upon which you would be drawing in your post-City employment is based on this experience, gained prior to your City employment. This includes your working with JTPA guidelines, which are publicly available to anyone working in the field of job training.

LAW AND ANALYSIS: Section 2-156-100(b) of the Ethics Ordinance, under the title of "Post-employment Restrictions," 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.

This section imposes both a one-year and a permanent prohibition on certain activities of former City officials and employees after they leave City service. It prohibits a former City official or employee from assisting or representing any person in a business transaction involving the City for one year after his or her termination of City employment if, while a City employee, he or she participated personally and substantially in the subject matter of that transaction. The one-year period of prohibition under § 2-156-100(b) begins on the date the employee's or official's City employment or term of office terminates, not on the date that he or she stopped performing particular tasks. According to the Board's interpretation, "assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek a contract as well as perform a contract. (See Case No. 89119.A.) It also permanently prohibits a former City official or employee from assisting or representing a person in a particular contract if, while a City employee, he or she exercised "contract management authority" with respect to that contract. Section 2-

156-010(g) of the Ordinance defines "contract management authority" as:

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.

In our analysis, we apply these provisions where appropriate to each of the four areas discussed above, as well as to the Career Center project and client services generally.

(1) Security Guard Training Program.

PERMANENT PROHIBITION. Your participation in this program on behalf of C is detailed above in the description of your position as PI from 1989 through 1991. The Board first addresses whether your involvement in the process of C's review of contract renewals constitutes "contract management authority."

Your unit was responsible for reporting on one of the factors considered by C officials during the renewal process. In your position as PI, you supervised the process by which the training agencies' contract performance was reviewed. You met monthly with the two other unit directors to discuss the ongoing status of the agencies' contract performance and, together, you made recommendations about funding renewals to the deputy directors based on this review. In addition, you met with the other unit directors, the deputy directors, and the Director of C at annual meetings at which decisions were made regarding all of C's training agencies' contracts. These decisions were a "collective" effort, with everyone, including yourself, reporting on their own data. However, you did not have final responsibility for making the decisions.

It is the Board's opinion, from the facts presented, that your responsibility as PI constitutes contract management authority as intended by the Ordinance. You were personally involved in C's supervision of the contract performance of all of its training agencies. You made recommendations and participated in decisions about contract renewal and funding for all of C's training agencies. Therefore, the Ordinance prohibits you permanently from involvement in any of the C training agencies' contracts that existed during the time you participated in this contract renewal and funding process.

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The security guard training program contract O currently holds with C, which is due to expire June 30, 1994, was renegotiated in the summer of 1992, after you had moved into the position of PZ.

Although you said you had no input in the funding and evaluation process, A.C.E. said you did have minimal involvement. Based on that information, the Board determines that the permanent prohibition also applies to the contract renegotiated in 1992.

According to you and A.C.E. O's current security guard training program contract, as well as all other current training program contracts with C, will expire on June 30, 1994. All contracts beginning in the 1994-95 fiscal year must be completely renegotiated by that time. You had no involvement in any of the renegotiations or in the process by which O's bid for renegotiation of the contract was requested. Because O will have a new security guard training program contract as of July 1, 1994, over which you exercised no contract management authority during your City employment, it is our determination that you are not prohibited by the permanent provision from assisting or representing O in its management of this security guard training program with C.

ONE-YEAR PROHIBITION. The Board also considered the application of the one-year provision to your involvement in O's security guard training program with C. This provision prohibits you, for one year after leaving City service, from assisting or representing any person, including O, in a business transaction involving the City if, while employed by the City, you participated personally and substantially in the subject matter of that transaction.

The business transaction at issue is O's contract with C to provide a security guard training program. That transaction--all aspects of which you believe you would be responsible for managing--involves several subject matters, as do all C contracts. These include O's bid on the original RFP, the training of security guards, the management of the vocational classroom type of training program, and the management of the C contract itself, which includes knowledge of the categories and criteria used in C's bid evaluation and program renewal process. Knowledge of those criteria is used by O both in applying for C contracts and in complying with the performance specifications of those contracts.

In the course of your City employment, you participated in at least one of those subject matters: you worked with the management of the C contract itself, including the evaluative criteria used in the department's program renewal evaluation process. We have already described your knowledge and use of both the quantitative and qualitative criteria that are part of the process by which C

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personnel considered, evaluated, and made determinations regarding the program renewal of all of its training agencies. A.C.E. said the criteria used in this process have not changed since you were PI. Based on the description of your participation in this process and your knowledge of C's evaluative criteria, (both of which you as well as Ms. Z and ACE confirmed), we determine that your participation in this subject matter was personal and substantial. Your experience with these criteria gives you special knowledge about the procedures and criteria C still uses to evaluate the performance of training programs as well as funding proposals submitted to that department. It is reasonable to conclude that this knowledge might give you an advantage over other contractors in preparing program evaluations and funding proposals that are submitted to C. The post-employment provision of the Ordinance is designed to prohibit such an advantage.

Based on this analysis, it is our conclusion that your responsibilities with O involve you (1) in the application process through which training agencies seek new contracts with C, and (2) in the management of those agencies' program performance. Both of these by necessity involve you in a subject matter in which you participated personally and substantially during your City employment--the criteria used in the process by which C considered, evaluated, and made determinations regarding training program evaluation and renewal. Therefore, the Ordinance prohibits you for one year after leaving City employment from assisting or representing any person, including O, in seeking any new contracts or managing any ongoing program involving this process. This prohibition includes your participation in the management of O's security guard training program.

(2) Summer Jobs Placement Program.

Your job description with O includes managing its current contract with C to provide its ongoing summer jobs program. This program is evaluated and renewed through its own process, which is separate from that used in other C training and placement programs. According to you and ACE, you had no involvement in the process through which this program was funded or renewed. Because you were not in a position to have contract management authority in relation to this program, the permanent prohibition does not apply.

Further, because C employs a different renewal procedure and different evaluative criteria for the summer jobs program than those with which you were involved in your position as PI, your responsibilities for O's summer jobs

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program do not concern the same subject matter as that in which you participated in your position with P1.

In regard to your position as P2, ACE told us that unit played a limited role in funding decisions on 20 percent of the summer jobs programs, and that it also served as a client services resource for those programs. You did not deny this, but said that, in actuality, you had no involvement with any summer jobs programs, and that all funding decisions were made by the staff of Sub-Unit without your input.

Based on these facts, it is our opinion that, during your City employment, you did not participate personally and substantially in the subject matters of O's summer jobs placement program. Therefore, the one-year provision does not restrict you from working on behalf of O (or any other person) in its ongoing summer jobs program with C.

- (3) Dislocated Workers Program.
- (4) Client Assessment.

These are the two areas in which O may seek new contracts with C, and for which you would be assisting O. No contract preparations had begun in either of these areas during the time you were involved in C's evaluative process. (A separate analysis of the "new" RFP, which involves client assessment, is given below.) Therefore, the permanent prohibition would not apply to your proposed involvement in these areas.

In regard to the one-year provision, it appears that you had some involvement in both of these program areas. According to you, ACE, and MYS, the P2-related Unit was involved in client assessment during your tenure as P2. While you were not personally involved in this area, MYS reported to you on the development of client assessment materials. As for the area of dislocated workers, your main participation was with the now defunct "defunct" program (1991-92), which was handled by a completely separate process from the standard C procedure. However, as MYS described, the P2-related Unit also was responsible for instructing agencies that offered dislocated workers programs on state funding and eligibility requirements.

Regardless of the extent of your participation in these particular program areas, it is the Board's opinion, as argued above, that you were personally and substantially involved during your tenure as P2 in, among other subject matters, the procedure C used in the program evaluation and renewal of all of its training agencies. Almost all new programs in these areas

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would go through that same evaluative procedure and, thus, concern this same subject matter. Therefore, the Ordinance prohibits you for one year after leaving City employment from assisting or representing O (or any other person) in seeking any new contracts with C --including those in the areas of dislocated workers or client assessment--that are channeled through this same evaluative process. At this time, these two areas are the only ones you have identified as possible O proposals.

THE "NEW" PROJECT. O is also pursuing a project in which one agency would operate a client assessment program for a variety of job training areas. Although the P2-related Unit was responsible for the preparation and writing of the RFP for this project, you told us that, in fact, you were not consulted in the preparation or award of any RFP issued on this project. ACE and MYS confirmed that you did not participate in the formulation of the RFP, and had no part in the evaluation of bids. From the facts presented, it is our opinion that you did not have contract management authority over this project, as defined in the Ordinance, and that, therefore, the permanent prohibition does not apply.

The remaining issue under the "New" Project is the applicability of the one-year provision to your involvement with the project. One of the subject matters of this project is client assessment. However, while MYS reported to you on his development of client assessment materials to be used by individual training agencies, these materials were not related to the development of the "New" RFP or the evaluation of the bids submitted. MYS also worked on the "New" RFP, but said he did not report to you on that project. In addition to the fact that you did not participate in this project, it involves an evaluative process completely different from the one used in C's standard evaluative procedure and is being handled by outside (non-City) reviewers. Therefore, the evaluative process for the "New" Project involves a different subject matter than that in which you participated during your City employment.

Based on these facts, it is our determination that the one-year provision does not restrict you from assisting or representing O in its "New" proposal to C.

O CLIENT REFERRALS. Your post-employment responsibilities also will include overseeing O's referrals of clients (including those in the security guard program) to your former City office, C's P2-related Unit. While you said you will not personally be involved in making those referrals for O clients, you will be responsible for supervising this process. In your City position as P2 for C, you supervised the referral

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procedure, including O's clients' referrals. It is the Board's determination, from the facts presented, that your involvement with this procedure during your City service constitutes personal and substantial participation. Therefore, the one-year provision prohibits you from any involvement on behalf of O (or any other person) in the process by which clients enrolled in any of its programs are referred to C's client services unit.

CONFIDENTIAL INFORMATION: There is another provision of the Ordinance, Section 2-156-070, entitled "Use or Disclosure of Confidential Information," that applies to all current and former City officials and employees. It states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

This section prohibits you from revealing confidential information you may have acquired during the course of your City employment.

CONCLUSION: It is the Board's determination that, because you had contract management authority over all of C's training agencies' contracts while you were P2 for C, you are prohibited permanently from assisting or representing any person in any of the contracts that resulted from the evaluative process while you participated in it. In relation to O, this prohibition applies only to your involvement with its current security guard training program contract, renegotiated in 1992 and expiring on June 30, 1994. Because you were not involved in the process by which C's current contracts are being renegotiated, we find that the permanent prohibition does not apply to your involvement in the future O security guard contract, which would begin on July 1, 1994.

The Ordinance also prohibits you for one year from the date you left City service, i.e. until May 1, 1995, from assisting or representing any person, including O: (1) in managing O's security guard training program, including that which begins on July 1, 1994; (2) in any transactions with C in the areas of dislocated workers and client assessment; and (3) in supervising client referrals to C's client services unit. This includes clients enrolled in any of O's programs serviced by that unit. These prohibitions are based on the fact that all three areas

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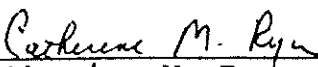
involve the same subject matter in which you participated personally and substantially during your City employment.

The Ordinance does not prohibit you from involvement in O's ongoing summer jobs placement program with C, or from participating in O's proposal to C on the Career Center Project.

Please be advised that, if you are interested in pursuing any other projects over the next year that this opinion does not cover, or if you have questions about whether a prohibition may apply to a proposed project, you should return to the Board at that time for guidance.

Our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

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 the opinion is rendered.



Catherine M. Ryan
Chair

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