

EMUS



ADVISORY OPINION
CASE NO. 94031.A
REPRESENTATION

City of Chicago
Richard M. Daley, Mayor

To:

Board of Ethics

Date: November 16, 1994

Dorothy J. Eng
Executive Director

Catherine M. Ryan
Chair

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Steve Lawrence
Emily Nicklin
Fr. Martin E. O'Donovan
Janice E. Rodgers

You are an attorney, currently serving as _____ for the Chicago Board of Election Commissioners (the "CBEC"). On September 7, 1994, you contacted our office and asked whether the City's Governmental Ethics Ordinance (the "Ordinance") prohibits you from representing a City employee in a proceeding before the _____.

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TDD)

As a matter of both state law and the Ordinance, employees of the CBEC, such as you, are not considered City employees for purposes of this Ordinance. Thus, the Board concludes that the City's Governmental Ethics Ordinance does not prohibit you from representing a City employee in a proceeding before the _____. We present our analysis below.

FACTS: You informed staff that you wish to represent a client, who is a City employee, in a _____ proceeding before the _____. You said you would be compensated by a contingency fee. In such a matter, of course, the City would be the adverse party.

You also told staff that your _____ CBEC salary is paid by the City, you receive City health benefits, and you contribute to the Employees' Pension Fund.

ISSUE: The issue in this case is whether a person performing services for the CBEC, who is compensated by and receives benefits from the City, is a City employee, subject to the provisions of the Ordinance.

LAW AND ANALYSIS: Section 2-156-090(b) of the Ordinance, entitled "Representation of Other Persons," prohibits any elected official or employee of the City from having an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before an administrative agency or court, if the City is a party and the person's interest is adverse to the City's. Were



EMW

Case No. 94031.A
November 16, 1994
Page 2

you a City employee, you would be subject to this provision, and we would apply it to your situation. Resolution of the issue at hand, then, depends on whether persons performing services for the CBEC are City employees, subject to the Ordinance.¹

In Case no. 88047.Q, the Board addressed the question of whether the CBEC is an agency of City government, and thereby whether CBEC employees are required to file Statements of Financial Interest pursuant to the Ordinance. The Board held that the CBEC is not an agency of City government, therefore CBEC employees need not file these statements. Your question, however, involves a different (though related) issue: whether CBEC employees are themselves City employees, subject to the provisions of the Ordinance. For the reasons that follow, we hold that CBEC employees are not City employees subject to the Ordinance. This holding is consistent with our earlier decision.

The CBEC, created by authority of the Illinois Election Code (10 ILCS 5/6-1 et seq.), has three commissioners, who are appointed by and become officers of the Circuit Court of Cook County. The CBEC has the authority, subject to the approval of the Circuit Court, to hire an executive director, an attorney, and such other employees and personnel as it deems necessary. It is authorized to make all rules and regulations it deems necessary to carry out its duties, which are to have charge of and provide for all elections held in Chicago. Each of the commissioners, and the executive director, are paid by the county. All of the CBEC's other expenses and salaries are to be paid by the City of Chicago, and audited by the chief circuit judge.

The Law Department, reviewing these provisions of the Illinois Election Code, states, in a letter to the Board of Ethics dated October 27, 1994, that employees of the CBEC are not employees of the City for the purposes of the Ordinance. The Law Department reasons that, under state law, the CBEC is an independent board, created by Illinois statute and placed under the supervision and control of the Circuit Court--not the City. Thus, under the scheme established by the Illinois Election Code, neither the City of Chicago nor any of its officers or employees exercise any authority over the CBEC or its employees. The Board concurs with this interpretation.

Moreover, the Law Department states, the fact that CBEC employees are compensated by and receive benefits through the City can be

¹ Section 010(j) of the Ordinance defines "employee" in relevant part simply as "an individual employed by the City of Chicago ..." Obviously, this definition does not specifically address the status of CBEC employees.

EMUS

Case No. 94031.A
November 16, 1994
Page 3

explained by the provision in the Illinois Election Code that makes the City responsible for paying the salaries of CBEC employees. These factors relating to compensation and benefits, then, are not indicia of City employment: they do not² affect the conclusion that CBEC employees are not City employees.

Second, the Law Department believes, and we concur and conclude, that nothing in the Ordinance indicates an intention to extend the Ordinance's provisions to the CBEC or its commissioners and employees, thereby varying the scheme established in the Illinois Election Code.

CONCLUSION: For the reasons cited above, the Board of Ethics concludes that CBEC employees are not City employees, and not subject to the provisions of the City's Ethics Ordinance. Therefore, the Ordinance does not prohibit you, as a CBEC employee, from representing a City employee in a proceeding before the . . .

Our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in the opinion. If the facts presented are incomplete or incorrect, please advise the Board, as a change in the facts may alter our opinion. We remind you that other rules or laws also may apply to this situation.

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
Catherine M. Ryan
Chair

cc: Susan Sher, Corporation Counsel
tjk/94031.AO

² See also People v. Lipsky, 307 Ill. App. 137, 30 N.E.2d 502 (1st Dist. 1940) (commissioners and employees of CBEC are not subject to provisions of the Civil Service Act, because they are not City employees, but rather, employees of an independent statutory board, under supervision and control of county court); and 40 ILCS 5/8-101 et seq., which establishes the Municipal Employees' Annuity and Benefit Fund. §114 therein specifically allows CBEC employees the right to participate in the Fund; if they were considered City employees, there would be no need for this provision, as City employees were already covered under the Fund.