

August 13, 2002

CONFIDENTIAL

[John]
[]
Chicago, IL 606

**Re: Case No. 02027Q
Post-Employment**

Dear [John]:

On August 1, 2002, you asked the Board of Ethics for an opinion on whether you, a former City employee, are prohibited by the City's Governmental Ethics Ordinance from accepting a position with [Beta], Inc., a City contractor, to work on the [C] Reconstruction project. You said that, to the best of your knowledge, you would be assisting [Beta] on the [C] project by performing engineering inspections with respect to road, bridge and abutment repairs and replacements. Board staff has reviewed the facts that you, and one of your former supervisors, have presented, as well as the relevant law and Board precedent. It is staff's conclusion that the Ordinance does not prohibit you from accepting the position with [Beta] as you described it.

FACTS

You spent your entire City career with the [Department of A] (which became the [Department E ("E")] in [year]), beginning as a Structural Engineer I in October [19N] , and continuing until you were laid off from your position as a Structural Engineer V effective August 1, 2002. You said, and [Mr. G], the Deputy Commissioner in [E's] Bureau of [X and Y Operations] (who you suggested we contact), confirmed, that, during your career, you worked on many [x and y operation] construction and projects, essentially carrying out those professional tasks for which civil engineers are trained: reviewing blueprints and plans and inspecting the work on site to ensure that the work conforms to those plans. You said that, for the last five years of your City service, you were involved primarily in supervising [X] painting projects at, among other sites, the [U] Avenue [x], the [L St.] overpass, and various moveable [x(es)] over the Chicago [area]. This work involved reviewing proposed drawings and designs for these structures, writing and placing advertisements for outside professional and consulting services, and supervising work done by retained engineers and construction firms on site, including disposal of lead-based paint and proper completion of the painting.

You told staff that, during your City employment, you did not have occasion to work with any [Beta] personnel, nor did you review any of the work [Beta] was doing or proposing to do on any City projects, either as a structural engineer, or in the "quality assurance/quality control" area (see below). Nor do you recall performing any engineering work on the [C] Project, a four year \$250 million renovation of the entire [] roadway scheduled for completion in 2005. [Mr. G.] confirmed that, within the past year, he asked you to perform what he called "quality assurance/quality control" work on the [C] Reconstruction Project; the work consisting of reviewing certain specification documentation to make sure it was technically complete (for example, assuring that "pay items"—where the City will be paying outside engineers—were correctly coded). [Mr. G.] described this work as generic and routine, and not concerned with the overall scope, design details, timetable or cost of the [C] project itself. You told staff, and [Mr. G.] also confirmed, that your work for [Beta] (which the City has retained to serve as a "resident engineer" on the [C] Reconstruction Project), would likely be to assist it in preparing work schedules and ensuring that repair work on certain, bridges, abutments and segments of road is performed according to design. You said, and he confirmed, that this work could be performed successfully by any trained civil engineer, and requires no specialized knowledge of City or departmental procedures, rules, regulations or personnel.

You also stated that you learned of the [Beta] opportunity from [Mr. G.], your former Deputy, who advised you to contact Board staff for guidance. [Beta] has been retained as Resident Engineer on the project, and, [Mr. G.] informed you, is looking to hire licensed structural engineers to assist it in overseeing work done by other outside firms. As of August 1, the date you requested this opinion, you had had no contact with [Beta] regarding the position.

LAW, ANALYSIS AND CONCLUSIONS

Section 2-156-100(b) of the City's Governmental Ethics Ordinance, entitled "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.

As you are now a former City employee, this section prohibits you, for one year after leaving your City service, from assisting or representing any person (including [Beta]) in a business transaction involving the City if, during your City service, you participated personally and substantially in the subject matter of that transaction. Additionally, you are permanently prohibited from assisting or

representing any person (such as [Beta]) in a contract if, during your City employment, you exercised “contract management authority” with respect to that contract.¹

The issue here is whether the one-year prohibition in §100(b) prohibits or limits your prospective employment with [Beta]. You said that your employment duties with [Beta], as you understand them, would be solely on the [C] reconstruction site, helping to ensure that work done by outside engineering and construction firms retained by the City on certain road, bridge and abutment repairs is completed according to design. Clearly, this work would be in connection with a business transaction involving the City: the [C] Reconstruction project. However, the one year prohibition in §100(b) would limit or prohibit you from assisting [Beta] (or another person) on this “transaction” only if you participated personally and substantially in its subject matter while in City service. The [C] Reconstruction Project is a major, long-term public works project involving hundreds of workers and plans and dozens of firms. Your work on [C]-related matters was limited to routine review of a few City-prepared specifications for the project, mainly to check that they conformed to departmental standards. Staff concludes that this work was not “personal and substantial participation” in the “subject matter” of the [C] Reconstruction Project. See Case No. 98020.A (former City employee who served as resident engineer and assistant project director on numerous City engineering projects participated personally and substantially in only those specific projects on which he actually worked; the Ordinance’s one-year prohibition did not limit his ability to assist a new employer on similar engineering projects that first arose during the one-year period).

Our conclusion is further supported by both your and [Mr. G.’s] statements that your work on the [C] project would involve occupational and professional skills common to structural engineers and acquired through education and job experience, not through exposure to or unique knowledge of City-specific standards or regulations. The Board has held that the Ordinance’s post-employment prohibitions are not intended to limit a former City employee’s ability to practice general skills common to members of his or her profession or occupation. See Case Nos. 91098.A (Ordinance did not prohibit a former City employee from providing medical examinations on City employees, even though he performed the same examinations during his City service; the Board reasoned that these tasks involved the “occupational skills of his profession, skills acquired through his occupational education and training,” thus performing them did not “fall within the intended meaning of the one-year post-employment provisions”); and 01051.A (work to be performed by two engineers for an outside company was work for which they were qualified, based on their education and status as structural engineers, and the expertise enabling them to do this work was not uniquely or specifically related to their City duties or to any City-specific engineering standards or regulations).

¹The permanent prohibition is not at issue in this case, as the facts presented do not indicate that you exercised contract management authority with respect to any contract that [Beta] has with the City.

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Similarly, while your responsibilities with [Beta] will likely involve the same professional skills you used during your City employment, these skills are common to structural engineers generally.

Based on the facts presented, then, Board staff concludes that the one-year prohibition in §100(b) of the Ordinance does not limit your ability to perform the work described in this letter on behalf or as an employee of [Beta]. If, however, your duties with [Beta] (or any other person) differ from those described in this letter, or will involve either [x] painting or any of the specific [x] projects which you supervised or on which you worked (regardless whether they are named in this letter), we advise you to contact us for further advice, as the Ordinance's one-year or permanent prohibitions might restrict your ability to perform such duties.

Staff's conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions. If you have any further questions, please do not hesitate to contact us.

Very truly yours,

[Signature]
Steven I. Berlin
Deputy Director

Approved by:

[Signature]
Dorothy J. Eng
Executive Director

cc: [Doug]

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