**CONFIDENTIAL**

**June 2016**

**Case No. 16019.Q/Prohibited conduct; fiduciary duty**

Hello Drew and Kristi,

Dear

I apologize for the delay in my getting this to you; as you know, I was out last week.

[You] had posed this question to me by phone on May 16, and this letter will confirm the advice she was given, and our advice on a “going forward basis.”

Initially, I remind you both both that the fact that E was [possibly still is] a non-compensated Board member on the board of advisors for Chicago [Organization] Innovation Awards (“C”), does not *per se* preclude [your department] from entering into this partnership with C in the way you describe below. The only restrictions in this situation would be imposed upon [E] personally.

There are pertinent several provisions in the Governmental Ethics Ordinance.

First, on May 16, I had advised E to resign her position as a C Board member, assuming this partnership is going to proceed. There is a provision in the Governmental Ethics Ordinance, §2-156-111(d)(1), which prohibits new City employees from making or participating in the making of City governmental decisions for their first two (2) years of City service in matters that benefit their “immediate former employer” or “immediate former client” who they represented or for whom they acted as a consultant or lobbyist, unless they have completely severed any ties with that former employer or client  that would confer a monetary benefit. On its face, this prohibition does not apply to E, because she never had a monetary relationship with C.

Next, §2-156-111(d)(2) would prohibit E for her entire City service from “personal[ly] participat[ing] in any capacity in a City matter if she “participated personally and substantially in that matter” for her immediate pre-City employer or pre-city  “client” on whose behalf she acted as a consultant, prior to beginning her City service.  Again, it is our conclusion that this does not strictly apply, given that E did not have C “as a client.”  Nonetheless—if, during her service as a C Board member, this very partnership with [your department] was discussed, and she participated in those discussions, I would advise that, to avoid even the appearance of impropriety, she recuse herself from any discussions or decisions in [your department] that pertain to this partnership, for as long as she works for your office.  Again, though—even if this were the case, it would not preclude [your department] from entering into this partnership.

Finally, assuming that E was not “personally and substantially” involved as a C Board member in discussions about this very partnership, and has resigned her C Board membership, then she would not be prohibited on a going-forward basis from becoming involved in decisions about this partnership for [your department]. The only “restriction” left would be E’s fiduciary duty, under §2-156-020.  As the Board has construed it, it would require her to ask herself whether she can, in good faith, put the City’s interests before any feelings she may have regarding C, or any particular award recipient under consideration. That is a subjective test. See this case <http://www.cityofchicago.org/dam/city/depts/ethics/general/AO_FiduciaryDuty/04009-AO-redact_2.pdf>

Assuming she could do that, then there is nothing in the Governmental Ethics Ordinance that would prohibit her from becoming involved in the administration of this partnership with C.  Realize, of course, that even if all these conditions are met, it does not mean that an organization that is “in competition” with C, or might wish to enter into a similar kind of partnership with [your department], won’t protest or claim favoritism—but assuming the conditions above are met, I see no reason under the Ethics Ordinance why E could not participate.  Nonetheless, that decision is obviously up to you both and [your department head].

Please note that this opinion is based solely on the application of the City’s Governmental Ethics Ordinance to the facts you both have provided.  Other laws or rules may apply, such as the City’s Personnel Rules.

I appreciate your conscientiousness. Please let me know whether you have any other questions.

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**From: M** BerMes, Drew
**Sent:** Thursday, June 02, 2016 7:40 PM
**To:** Berlin, Steve
**Cc:** Superfine, Richard; Lafleur, Kristi
**Subject:** Confidential Ethics Opinion Request

Greetings, Steve:

E (copied) and I spoke with Rich today - my apologies for the emails and calls over the last few days, I was unaware that you were on vacation.  I hope you are having a wonderful time.

I believe that this question has already been raised but we are hoping to secure a written response from your office that instructs us as to the best way to proceed to ensure compliance with the Ethics Ordinance.

E is the Chief Operating Officer of the Office of the [“D” City department]. E is also on the board of advisors for the C . E is not compensated as part of her board membership.  D’s awareness of the [awards presented by C] , and the good work they do for the City's small business and entrepreneurial community, predates E’s joining the office.

The Treasurer's Office D wishes to explore entering into a partnership with the C as part of its efforts to support small businesses and spur economic development in Chicago.  Should it be undertaken, this partnership would include conveyance of funds from D e Treasurer's Office along with matching funds from other [organizations] to create a prize for persons located in Chicago's neighborhoods to receive consulting help and educational classes to help grow their business.

I understand that E is in the process of resigning and will certainly have resigned prior to any decision being made related to pursuing the partnership.  To ensure our compliance with the Ethics Ordinance, we request that you provide confidential guidance regarding E's board membership and next steps.

Thank you very much for your help and please feel free to call with any questions.