



City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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Suite 530  
205 West Randolph Street  
Chicago, Illinois 60606  
(312) 744-9660

January 2, 1990

PERSONAL AND CONFIDENTIAL

[REDACTED]

Re: [REDACTED] Case No. 89119.A

Dear [REDACTED]

In response to your request of September 26, the Board of Ethics reconsidered its advisory opinion of September 11 on the application of the post-employment provision of the Governmental Ethics Ordinance to your proposed employment after leaving the service of the City. The Board's opinion regarding restrictions on your proposed employment remains unchanged. The opinion is based on the facts as outlined below.

Request for Reconsideration and Board Response

In your request for reconsideration, you asked for access to the sources of facts which the Board had considered in reaching its decision and which were in addition to the information you provided in your request for an opinion. You also asked for the opportunity to respond to those facts and submit additional evidence.

By telephone, Board staff told you that the request for reconsideration had been granted. At that time, arrangements were made for you to review on October 18 all documents used by the Board in the preparation of its opinion; you were not able to keep that appointment. The Board confirmed the reconsideration in a letter dated October 19. That letter also advised you that you should submit a written statement to the Board within fifteen days detailing your objections to the opinion and providing material facts that might alter the Board's opinion. Finally, you were invited to reschedule your review of Board documents.



You did not reschedule your review of Board documents and did not submit any additional statements or material facts.

**FACTS:** You were the Commissioner of the Department of Economic Development of the City of Chicago

As Commissioner, you were also one of seven voting members of the Commercial District Development Commission ("CDDC").<sup>1</sup>

On about \_\_\_\_\_ you became associated with the law firm of \_\_\_\_\_ as "Of Counsel." In late \_\_\_\_\_ you began to do work for \_\_\_\_\_ a developer "D" a developer which was already a client of \_\_\_\_\_ "A" Your work at \_\_\_\_\_ the law firm "A" for "D" the "designated developer"<sup>3</sup> of \_\_\_\_\_

1 "The Commercial District Development Commission is responsible for recommending to the City Council the designation of Commercial Development Districts and for the acquisition and disposition of land and buildings within those districts (under Chapter 15.1 of the Municipal Code). The commission has powers of eminent domain. It has seven members....It has no separate budget and is staffed by the Department of Economic Development and the Department of Planning...." Barbara Page Fiske, ed. Key to Government in Chicago and Suburban Cook County (Chicago: University of Chicago Press, 1989), 83.

"The CDDC may exercise the following powers, with the authority of the City Council, with respect to the development and redevelopment of a commercial area: (1) designate a blighted commercial area and approve the redevelopment plan, (2) act as the agent in management and disposition of acquired property, (3) act as the agent in the enforcement and administration of related ordinances, (4) cooperate with other city agencies and departments in the redevelopment of commercial areas, and (5) develop agreements and conduct negotiations regarding the disposition of land." Dick Simpson, ed. Blueprint of Chicago Government: 1989, (Chicago: University of Illinois at Chicago, 1989), 92.

2 the law firm "A" was counsel to developer "D" in the major development project and represented "D" before the DED and CDDC during your tenure as Commissioner.

3 You described a "designated developer" as a developer chosen by the CDDC to enter into negotiations with the City for a development project in which "it is contemplated that there will be some City interest and some semblance of City control."

*a major development project.*

Overview of  
Redevelopment

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is a major redevelopment project planned for *an area of the city.* "D" has negotiated with the City since 1986 on this project. During your tenure as DED Commissioner, this project was at times the subject of intense activity, discussion and negotiation in the DED and CDDC. Some of the major events in this project were:

- 1986 "D" approached DED with redevelopment project for
  - 1987 DED and "D" discuss land acquisition, financing and other issues related to *dev. proj.* A negotiated sale of land to "D" was planned.
  - 6/23/87 CDDC formally approved a resolution to negotiate with "D" on sale of land for *major development project.*
  - 8/87 DED advertised proposed negotiated sale of land to "D" in Chicago Tribune and Wall Street Journal.
  - 9/87 "D" responded to ad and plans went forward.
  - (2/25/88 City Council approved nomination of as DED Commissioner.)
  - 5/25/88 CDDC heard presentation from "D" on *major dev. proj.* After executive session discussion, CDDC approved recommending sale of Blocks 1A, 1B and 1C in to "D" for *major development project.*
  - 7/13/88 City Council adopted CDDC's recommendation to sell land to "D" and approved City's application for tax abatement on behalf of *major development project.*
  - 7/29/88 City Council approved ordinance authorizing City and "D" to enter into redevelopment agreement under which CDDC would exercise eminent domain powers to acquire land in *major development proj. area* and convey it to "D"
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City Council approved Urban Development Action Grant application for *major dev.* which was submitted to DED.

8/88 - 9/88 "D" and DED/CDDC moved toward anticipated execution of redevelopment agreement for *major dev.* in October.

Among remaining issues before agreement: approval of tax abatement, agreement with Sewer Department on land acquisition, eminent domain land buys, UDAG approval.

DED agreed to seek City Council approval of a purchase money mortgage with

10/5/88 UDAG application turned down.

DED transmitted First Amendment of Redevelopment Agreement to City Council.

10/?/88 Redevelopment Agreement not executed. DED and "D" continued to discuss land acquisitions and financing. "D" began to negotiate for a TIF development.

10/88-2/89 Intensive preparation by "D" and City for proposal of TIF for *major dev.* culminated in public hearing before CDDC for TIF on 1/31/89. CDDC approved TIF eligibility study and redevelopment plan, recommended *major dev.* for TIF on 1/31/89.

2/89 - 4/89 Request for Proposals for *project area* TIF drafted by DED staff. CDDC voted to authorize issuance of RFP. "D" and DED continued to plan *major development* project, including projected timelines for execution of project once "D" was designated developer. *Development area* TIF submitted to Plan Commission. Legal notice of RFP for *project area* TIF published in Tribune.

(4/24/89 was not reappointed as Commissioner of the DED.)

4/27/89 "D" submitted only response to RFP.

5/16/89 CDDC designated "D" the developer for the *project area* TIF.

According to information received from the DED, in May and June 1989, intensive negotiations on *major development project* were underway between "j" and the City.

Participation in the \_\_\_\_\_ Project

In your letter of June 28, 1989, to the Board, you stated:

"...my employment had ended with the City before the project or any transaction related to it had come into being. (The day I left employment being \_\_\_\_\_ the date the project was accepted being *one month later* ...there was no substantial and/or personal involvement in the subject project or any transactions relating to it. Even before RFP issuance, my discussions and preparations concerning the project were general in nature and only involved general public discussions, there was no substantial involvement."<sup>4</sup>

In that letter, you also stated:

"...I personally never saw nor held any specific discussions about the *major project development* TIF] with staff. As Commissioner, I have had broad policy discussions about the need for development in this general area of the City, but I have taken no official actions for or against the entity or the project. Additionally, the Commissioner of Economic Development has no authority to take official actions on a project of this type. That is solely the province of the Commercial District Development Commission and the City Council."

According to information gathered by the Board on the duties of the Commissioner of Economic Development, as DED Commissioner you were an ex officio, voting member of the CDDC. As a member of the CDDC, you were present at open and executive sessions of the CDDC which discussed the \_\_\_\_\_ project in detail. You also voted to approve several CDDC resolutions directly related to *the developer's proposals*.

The Board reviewed correspondence, memoranda and other documents from the DED which are related to the *major development project*. The documents show that as Commissioner of the DED and a voting member of the CDDC you received regular, detailed

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<sup>4</sup> On June 29, 1989, the Board received your original request for an advisory opinion and statement of facts dated June 28, 1989. On July 3, 1989, the Board received your second letter dated June 28, 1989, which you sent as a "replacement" for the first. The second letter is slightly different from the first. The quoted language is from the second letter.

reports from your immediate subordinates on the progress of *the project*. Moreover, as the Commissioner of the DED, you had direct supervisory responsibility for DED staff who worked for the CDDC on all aspects of the *project*. The documents reviewed by the Board show that you were kept well informed about the progress of *the project* by your staff, as well as the developer.

The documents provided by DED also show that you had personal discussions with the developers on *the project*. For example, a letter sent to you in December 1988 by one of the developers during preparations for the planned TIF hearing in January 1989, is detailed and specific regarding *project* issues and the progress of the project. The last two paragraphs state:

"Suggestion - Let's either agree or not agree on a deal. We might wish to sign some sort of letter of understanding that I can show my team members so they will go back to work. Let's make sure your staff is informed on what we agree on so I can avoid meetings like we had today. I have attached a copy of the term sheet I have prepared and would appreciate discussing this as soon as possible.

"In closing, I want you to know that I still have the highest confidence in your personal commitment to the project and know that you have been extremely sincere in our negotiations and your commitment to a terrific idea. I apologize for the stern tone of this letter unfortunately, I see 'our' dream vanishing before me and I honestly believe it will take a drastic change in the way our teams work to move this toward a successful conclusion."

In light of all the information provided, the Board has determined that you were personally and substantially involved in the *major development project* while you were the Commissioner of the Department of Economic Development and a voting member of the CDDC.

Your letters of June 28, 1989, contend that you could not have had personal and substantial involvement in the *project* because "D"'s response to the RFP for the TIF development was not submitted until three days after you left your position as Commissioner. Based on the documents reviewed by the Board, the *Redevelopment* has a long, complex history. The CDDC's acceptance of "D"'s proposal for redevelopment on May 16, 1989, was only one step of many toward this project's completion. *The developer* has had the most significant involvement in the *project* for three years, despite the fact that they became "designated developers" by CDDC resolution only shortly after your departure from City employment. The Board finds that the *project* transaction on which you seek to represent and assist *the developer* is part of set

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of transactions known as "The major development project" that was handled in DED while you were Commissioner.

Proposed Work for the developer

In response to questions from Board staff, on July 25, 1989, you described the work you plan to do for "D"

"For the most part, my work will involve the design and institution of a comprehensive job training and affirmative action program for the project (if it occurs). There may be other activities respecting development that I would be assigned to, but they do not exist at this time. I will be interfacing with the Mayor's office on the design of the job training program, and the purchasing agent on the affirmative action program."

From information the Board has received, the job training and affirmative action programs are standardized in City agreements. We were informed that deviations from those agreements for a TIF redevelopment would have to be negotiated with the DED. In any case, the affirmative action and job training programs for the redevelopment agreement would be integral and required parts of "D"'s business transaction with the City, as they have been already in the numerous draft redevelopment agreements to date.

**LAW:** Section 26.2-10(b) of the Governmental Ethics Ordinance 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."

Section 26.2-1(g) defines "contract management authority:"

"...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."

Contract management authority clearly includes activities related to the formulation of a contract. A finding that a person

exercised such authority does not hinge on the single factor of whether or not the contract actually came into being. The execution of a contract is not a condition precedent for finding that a person exercised contract management authority within the meaning of the post-employment provision, there would be absurd results, and the post-employment provisions would be denied much of their intended effect.

The intent of post-employment restrictions is to impede the operation of the "revolving door" through which government employees move from their employment in government agencies to representation of private interests having business before those agencies. By preventing both the actual abuse of influence as well as its appearance, the restriction promotes public confidence in the fairness of governmental decisions. It limits a former employee's ability to reap improper benefits for himself or new clients by using his influence with government agencies and personnel that he worked with while in public service. Post-employment restrictions also ensure that City employees will not be influenced in the performance of their public duties by the thought of later reaping a benefit from a private individual. In addition, the restriction reduces the possibility of a former employee's intentionally or inadvertently disclosing or using confidential government information for private gain.

The Board interprets "subject matter of [a] transaction" to mean not just the content of a particular transaction, but the general area of City business in which the transaction occurs. The term "representation" is not defined in the Governmental Ethics Ordinance. However, the Board has interpreted it to cover any of a broad range of activities in which one person acts as the spokesman for another person. Such activities would include making appearances before City agencies on behalf of non-City parties, contacting City officials by phone or by letter on behalf of other persons, and signing petitions and proposals which are submitted to City agencies for review. In Section 26.2-10(b) "assisting" or "representing" persons (both natural and legal) in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract.

You should also be aware that Section 26.2-7 of the Governmental Ethics Ordinance permanently prohibits your use or disclosure of confidential information. It states: "No current or former 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 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."

CONCLUSION:

1. The Major development Project

You propose to represent or assist *the developer* on the *major development project* transaction with the City. Based on its review of all the information provided to it, the Board has determined that you were personally and substantially involved in the Project while you were Commissioner of the DED.

Moreover, you had direct supervisory responsibility for and personal involvement in the negotiation and formulation of a business transaction concerning which you now seek to represent and assist *the developer*. The Board has determined that you exercised contract management authority on the *major development project*. Therefore, you are permanently prohibited from representing or assisting any person on this project.

2. Other Employment Involving City Government

You did not mention any other particular transaction on which you planned to work, but asked generally about the application of the Governmental Ethics Ordinance to your employment after leaving City government. The Board reached the following general conclusions concerning the possible implications of the post-employment provisions for your circumstances.

A. One-Year Restriction

As the Commissioner of the Department of Economic Development you exercised the highest level of authority over a broad range of decisions related to economic development in the City of Chicago. Given the nature and scope of your responsibilities as Commissioner, many of the decisions which concern the promotion of economic development in Chicago may constitute subject matters in which you participated personally and substantially during your City employment.<sup>5</sup> Therefore, under the Governmental Ethics Ordinance you would be prohibited for one year, until

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<sup>5</sup> Examples of possible areas of prohibited activity are the loan and grant programs administered by the DED, commercial district developments, TIF developments, and industrial revenue bonds.

from representation or assistance in any transaction with the City that involves economic development issues.

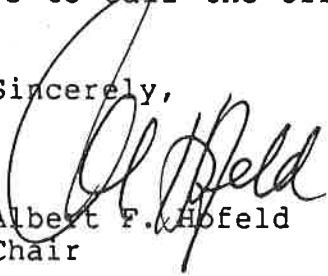
B. Permanent Restriction

You are permanently prohibited from representing or assisting any person in a business transaction in which you exercised contract management authority while a City employee. Under this restriction, you would be prohibited permanently from engaging in any post-employment activities which involve advice or assistance on a contract which you helped to formulate, evaluate, negotiate or in any way supervise while serving as a City employee. This restriction would include contracts over which you exercised contract management authority while in the office of Intergovernmental Affairs as well as in the DED.

The Board emphasizes that these generally stated portions of the opinion concern the possible application of the post-employment provisions for a person with your employment history with the City. The types of activities restricted under the one-year prohibition stated above may vary depending on the precise nature of your activities as Commissioner and the services you propose to render as a private consultant or lawyer. It would be prudent to contact us with information on the specific activities you would engage in as a private consultant or lawyer. On the basis of this information and further information concerning your specific activities as Commissioner, we would render a specific opinion concerning the status of those particular activities under the one-year prohibition. The permanent prohibition on privately assisting in contracts which you have previously participated in as a City employee would hold regardless of any variation in your career plans.

We hope that this adequately answers your inquiry. If you have any questions, please feel free to call the office of the Board at 744-9660.

Sincerely,



Albert F. Hofeld  
Chair