

Advisory Opinion

Case No. 07048.A, Employment of Relatives or Domestic Partners

To: The Honorable [John Doe] , Alderman, 51st Ward

Date: November 14, 2007

On [date] 2007, your Chief of Staff contacted our office at your direction. She asked whether the Governmental Ethics Ordinance would prohibit you from hiring your mother as a member of your personal staff under the "1012" payroll rubric. As explained in this opinion, the Board has determined that the Ordinance does not prohibit you from hiring your relative (here, your mother) under this "1012" payroll rubric as a member of your personal staff.

FACTS: [Your Chief of Staff] , and of the Committee on Finance, confirmed that "1012" persons are hired under a specific line item in the Annual Appropriation Ordinance for City Council, namely, account 015-100-2005-9001. This account's description says it is:

For the employment of personnel as needed by the aldermen to perform secretarial, clerical, stenographic, research, investigations or functions expressly related to the office of alderman, provided that no expenditure shall be made from this account for the purpose enumerated unless the comptroller shall be so authorized in writing by the chairman of the committee on finance (204,000 hours at a minimum of \$6.50)

The amount appropriated for this account in 2007 and 2008 is \$1,326,000.

The City's Law Department explained to Board staff that "1012" is the identifier of the payroll used to pay certain workers hired by the City Council under the account described above, and that being paid through that payroll does not itself determine whether an individual is an employee or a contractor. That determination is made using common law principles and the Internal Revenue Code. Thus, the Law Department said, some individuals on this payroll may be employees, and some may be contractors. [Your Chief of Staff] explained that your mother would be hired using a "Personal Services Contract," which provides, among other things, that it would be entered between "the City of Chicago, a municipal corporation of the State of Illinois, acting through [John Doe] , the elected Alderman of the [51st] Ward of the City, (hereinafter referred to as the 'City') and [name] (hereinafter referred to as the Contractor)." Thus, it appears that you intend to hire your mother as a "contractor."

LAW AND ANALYSIS: The Ordinance provides, in § 2-156-130(a), entitled "Employment of Relatives or Domestic Partners," that:

No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision or control, any person (i) who is a relative ...

of said official or employee ... provided that the prohibition in (i) applies to City Council Committee staff but not to personal staff of an alderman.

This section of the Ordinance prohibits you from hiring your mother (who is your “relative” under § 2-156-010(w), which defines “relative”) to work as an employee on a City Council Committee on which you serve or over which you exercise authority, supervision or control, but does not prohibit you from hiring her as an employee to work on your personal staff.

If your mother would be not an “employee” but a “contractor”—which appears to be your intention—then the issue is whether § -130(a) would in effect permit you to “employ” your mother as a “contractor” to work on your personal staff. We conclude that it does.¹ First, we believe that the term “employ” is used as a generic verb in this section, which contemplates the engagement of persons to work as either “employees” or as “contractors.” “Employ” means “to make use of; to hire; to use as an agent or substitute in transacting business,” and, “when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for a compensation.” Black’s Law Dictionary, 5th Ed., at 471; 8th Ed., at 564. The apparent intention behind the “1012” budget rubric is to grant to aldermen funds for the “employment of personnel” to perform certain tasks at their direction. There is no specification that such persons be City employees; aldermen have the discretion to hire such persons to serve on their personal staffs as employees or as contractors, and, in fact, persons serving as contractors and as employees are both paid from this account. Second, the Law Department confirmed that it is not aware of any rule or provision that requires that aldermanic workers, including aldermanic personal staff, be either employees or contractors. Aldermen have the authority in the budget to hire both employees and contractors. Third, our conclusion is consistent with the prohibition in § -130(b) (and thus also § -130 (c)). The former provision states:

No official or employee ... shall exercise contract management authority where any relative or the domestic partner of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

Under this section, you would be prohibited from signing the contract contemplated here if it were, say, with a professional services corporation of which your mother was the sole shareholder, because then you would be exercising contract management authority over a City contract with a person that employs your relative. Cf. Case No. 99010.A. However, § -130(b) does not apply here, because you intend to hire your mother via a contract between her personally and the City (through you, its agent). Section 130(b) would not—were the contract between you/the City and your mother personally—prohibit you from hiring her to work as a direct contractor on a City Council Committee on which you serve or exercise authority. Nor would §-130(b) prohibit a City employee from exercising contract management authority over a personal services contract directly with that employee’s relative. Yet the Ordinance’s clear intention is still to prohibit both situations: the prohibition must therefore fall under § -130(a). That is, the Ordinance, through § -130(a), prohibits an alderman from “employing” a relative directly as a contractor to work on a City Council Committee on which he/she serves or exercises authority, supervision or control, and prohibits a City employee from “employing” a relative by signing or supervising a personal services contract directly with that relative. But if that is so, we

1. The Board stresses that this opinion does not intend to—and does not—decide whether your mother would be a “contractor” or an “employee.” While that issue is important for other purposes, including taxation, liability, benefits eligibility, etc. (including whether she would be subject to the Governmental Ethics Ordinance as a contractor or as an employee), it is not important for purposes of the issue before us. Our conclusions in this case apply regardless whether your mother is an “employee” or a “contractor.”

conclude that it must also be that an alderman is not prohibited from hiring or “employing” a relative as a direct contractor to serve as a member of his/her personal staff—i.e. from “exercising contract management authority” over a City contract directly with a relative to serve on his/her personal staff.

We point out one other restriction. Section 2-156-111(b), entitled “Prohibited Conduct,” provides that “no elected official ... shall retain or hire as a City employee or City contractor any person with whom any elected City official has a business relationship.” This section prohibits you from hiring your mother to serve on your personal staff as either an employee or contractor (or from hiring any other member of your staff, or any member of a City Council Committee on which you serve or exercise authority, for that matter), if you or any other elected City official have a business relationship with her. A “business relationship” means any contractual or other private business dealing between you (as the elected official), your spouse, domestic partner, or any entity in which you or your spouse or domestic partner have a “financial interest” (in this context, that means an ownership interest that represents 10% or more of the entity) and another, if that contract or dealing entitles you, your spouse/domestic partner or that entity to compensation of \$2,500 or more in a calendar year. See § 2-156-080(b)(2)(ii).

Last, we point out one more obligation. Section 2-156-115, entitled “Time Records for Aldermanic Staff,” provides that each alderman shall maintain a daily record of the attendance of his or her personal employees; the record must be certified as correct by either the alderman or a designee; all records must be made available for public inspection under the Illinois Freedom of Information Act. While we have not concluded whether your mother would be a “contractor” or an “employee,” we nonetheless advise you to include her in these records, as she will be a member of your personal staff and in that sense your “personal employee.”

DETERMINATIONS: The Board determines that the City’s Governmental Ethics Ordinance: 1) **does not prohibit you** from hiring or employing your relative (here, your mother) as either a City employee or City contractor under the “1012” payroll rubric to serve as a member of your personal staff, provided that neither you nor any other elected City official (nor your/ their spouses/domestic partners or any entities in which any of you or your spouses/domestic partners have a financial interest) have a business relationship with her; and 2) **does prohibit you** from hiring or employing your mother as either a City employee or City contractor under the “1012” rubric to serve on any City Council Committee on which you serve or exercise authority, supervision or control.

Our determinations do not necessarily dispose of all issues relevant to this situation, but are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our opinion. Other laws or rules may also apply to this situation.

RELIANCE: This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

Michael Quirk, Vice Chair Pro-Tem
Chair