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

August 14, 1991

C O N F I D E N T I A L

[REDACTED]

Re: Outside Employment
Case No. 91072.A
ADVISORY OPINION

Dear [REDACTED]:

On July 12, the Board of Ethics received your request for an advisory opinion regarding your outside employment with an Organization [REDACTED] during a one-year leave of absence from the City. You accepted a temporary, full-time position as a [REDACTED] with the Organization to assist it in fulfilling its City contracts for [REDACTED] at the City's Qs. Based upon the facts presented in this case, it is the determination of the Board that the Governmental Ethics Ordinance does not prohibit you from this employment.

We appreciate your bringing this matter to the Board's attention and your efforts to follow the ethical standards embodied in the Ordinance. This letter sets forth the facts of your case and the Board's analysis of those facts according to the applicable provisions of the Ethics Ordinance.

FACTS: You explained that, in your City position, you are a [REDACTED] for the [REDACTED] X [REDACTED] Department, assigned to the [REDACTED] as a [REDACTED]. In this position, you have basically two responsibilities: (1) to provide [REDACTED] support to the [REDACTED] Department's users of [REDACTED]; and (2) to review the department's requests and grants for [REDACTED]. You do not work with any of the X Dept. operations at the City's Qs.

Outside of your City job, you are now employed as a [REDACTED] in a one-year position with the Organization [REDACTED]. This position will be a full-time job during a one-year leave of absence from the City, beginning July 1, 1991.



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The organization conducts research and training in [redacted] and [redacted]-related topics. The organization currently has two contracts with the City of Chicago that concern your work. The first is to provide technical assistance to the Department of [redacted] for [redacted] and [redacted]-related projects at the City's Qs [redacted]; the second is to manage the R Project [redacted] at the Qs [redacted].

The R project is a result of the recently-enacted [redacted] regulations mandating the upgrade of [redacted] at all major Qs [redacted] in the United States. The organization's contract for the R project is being paid with federal funds administered by the [redacted] Office of the [redacted] Program, the City agency overseeing the R project [redacted].

You described your position as involving technical analysis in supporting a [redacted] at the Qs [redacted] and in the development of the R Project operations at the Qs [redacted]. Your duties are strictly technical in nature: you review specific proposals for the use of [redacted] in any given project to determine whether the [redacted] that have been proposed will actually produce the results desired. There are no facts to indicate that you will be promoting the interests of the organization to the City in any way, either during this year or once you have returned to your City job. This information has been confirmed by [redacted] of the R project for the organization [redacted].

Your salary is being paid from the organization's regular payroll, and your office is located in space leased by the organization at [redacted]. You said you are responsible only to the organization's management, reporting directly to the Assistant Director of the [redacted]. You have been granted a one-year leave of absence from the City, without pay, in order to accept this position.

LAW AND ANALYSIS:

The Ethics Ordinance presented five issues for the Board to analyze in this case: (1) the applicability of the Ordinance to City employees on leave of absence; (2) financial interest in City business (§ 2-156-110); (3) receipt of money for advice

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or assistance on City business (§ 2-156-050); (4) representation of persons other than the City (§ 2-156-090); and (5) improper influence and conflicts of interest (§§ 2-156-030 and 2-156-080). The relevant provisions of the Ordinance and the Board's analysis of each issue is presented below.

(1) LEAVE OF ABSENCE

Issue: Is a person on leave of absence from the City subject to the Governmental Ethics Ordinance?

You asked whether or not the applicability of the Ethics Ordinance to this case was affected by the fact that your temporary employment with the Organization occurs during a leave of absence from City service.

The Ordinance defines an employee as "an individual employed by the City of Chicago, whether part-time or full-time, but excludes elected officials and City contractors." (§ 2-156-010(j))

In a past case, the Board held that an employee's leave of absence from the City should not be treated as a resignation from City service (case no. 88041.A). In that case, a City employee who had been granted an indefinite leave of absence was still considered an employee of the City for the purposes of the Ethics Ordinance. In the same way, you have not resigned from City employment, but are on a leave of absence. Therefore, you are still subject to the Ordinance as a City employee.

(2) INTEREST IN CITY BUSINESS

Issue: Does the Organization's payment to you for your technical services performed to fulfill the Organization's contracts with the City give you a financial interest in City business?

Section 2-156-110 of the Ordinance states:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

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"Financial interest" is defined in the Ethics Ordinance as "(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit." Under this section, a City worker may engage in outside employment as long as it does not constitute a "financial interest" as defined in this section.

The question before the Board here was whether, for the purpose of section 2-156-110, your employment with the Organization constitutes a financial interest in either of the contracts that the Organization has with the City. In its City contracts, the Organization is compensated either from City funds or, in the case of the R project, from federal funds administered by a City agency. But your compensation for your [REDACTED] position, which is more than \$2,500 per year, is paid directly from the Organization, not from funds derived from or administered by the City, as stipulated in section 2-156-110.

In your case, the Board determines that your salary from the Organization does not give you a financial interest in the Organization's contracts with the City. This is so even though your work is performed to fulfill the Organization's City contracts. In other words, for the purpose of section 2-156-110, you do not have a financial interest in City business by virtue of your work with the Organization.

(3) SOLICITATION OR RECEIPT OF MONEY FOR ADVICE OR ASSISTANCE

Issue: Is your service as a [REDACTED] to the Organization wholly unrelated to your City duties and responsibilities?

Section 2-156-050 of the Ordinance states:

No official or employee ... shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee ... from accepting compensation for services wholly unrelated to the official's or employee's

City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

This section restricts City employees from accepting outside employment if the employment includes giving advice or assistance on the operation or business of the City. However, it is not intended to prohibit employees from such employment if the work is wholly unrelated to their City duties, and it is rendered as part of their non-City employment, occupation, or profession.

It is the case here that you are accepting compensation in return for assisting the Organization in fulfilling its City contracts. Assuming this constitutes advice or assistance on matters concerning the City, the Board determines that your employment with the Organization is wholly unrelated to your City duties and is rendered as part of your non-City employment.

In your City job, you had no involvement with any [REDACTED] activities or [REDACTED]; neither did you work with any [REDACTED] operations or any other systems at the City. Qs. These statements were confirmed by your Department supervisor, Mr. Z [REDACTED]. In your position with the Organization you do not work with any [REDACTED] or other programs that were related to your City job. In addition, your work for the Organization also is rendered as part of your non-City employment.

Since your circumstances fulfill both conditions for exclusion from the prohibition provided in section 2-156-050 of the Ordinance, it is the Board's determination that this section does not prohibit you from this dual employment.

(4) REPRESENTATION OF OTHER PERSONS

Issue: In working with the Organization, are you representing the Organization in a formal or informal proceeding or transaction before a City agency?

The Board also considered whether any of the activities in which you are engaged for the Organization could be interpreted as representation, under section 2-156-090 of the Ordinance.

This section states in relevant part:

No elected official or employee may represent, or have an economic interest in the representation of, any person other

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than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature.

The Board has construed the term "representation" in this provision to mean acting as a spokesperson for another person or seeking to communicate and promote the interests of one party to another. The purpose of the section is to prohibit City workers from using their City positions to influence or affect any governmental decisions or actions by which they could derive a private benefit. As such, representation includes actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and signing or submitting proposals, contracts or other documents to City agencies, employees or officials on behalf of others. See case nos. 90077.A and 89087.A.

According to your statements and those of your supervisor, the extent of your contact with City officials in the course of your work for the Organization will be minimal. The character of your work for the Organization is strictly technical in nature. Organization officials and the vendors to whom they subcontract the work will present proposals for meeting the City's technical specifications on the projects. You will review those proposals and report whether what has been proposed is feasible or can actually function. You told us you have no authority to make recommendations regarding any changes in the terms of the Organization's contracts, in the City's specifications, in the types or brands of equipment that have been employed for the job, or in the way funds are being spent.

Your technical findings will be presented to Organization officials, and sometimes will be reported in the context of meetings that Y Department personnel, as the "clients" in this circumstance, will attend for the purpose of receiving updated information on the project.

You explained that your position also involves minimal contact with Mr. A [REDACTED], [REDACTED] of the Y Department, who is in charge of [REDACTED] at [REDACTED], and who is ultimately in charge of the [REDACTED] project the Organization is constructing. You said your contact with Mr. A [REDACTED] would involve only occasional memos or telephone calls to keep him informed of the progress being made on the project. There probably would be additional meetings with him once the construction has been completed, to instruct him in the

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management of the system when it is ready to be turned over to the ██████████ Y Department.

As stated above in your and Your Supervisor's explanations of the nature and purpose of your contacts with City employees, it appears that your role in this regard is restricted to providing project updates and technical instruction. Neither you nor the City personnel with whom you have contact appear to be in positions to affect any changes in the Organization's business with the City. Under these circumstances, the Board determines that your contacts with City employees do not constitute communicating or promoting the interests of the Organization to the City, advocating the Organization to City officials, or attempting to influence the decisions or actions of City personnel in regard to the Organization.

Applying the purpose of this provision of the Ordinance to your contacts with City personnel during your work with the Organization, as these have been described to us, it is the Board's determination that these contacts do not include the kinds of activities or circumstances that the Board has defined as "representation," and that, therefore, section 2-156-090 does not prohibit you from performing the activities involved in this employment.

(5) IMPROPER INFLUENCE AND CONFLICTS OF INTEREST

Issue: While employed with the Organization, will you be in a position to make any governmental decisions or use your position to influence any City governmental action or decision in which you have an economic interest?

There are two provisions governing improper influence in governmental decisions and conflicts of interest:

No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally.
(§ 2-156-030)

No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public. (§ 2-156-080)

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These sections prohibit influence or participation in any governmental decision in which the official or employee has an economic interest. You stated and Mr. Z confirmed that, in your City job, you were not in a position to affect any governmental decisions or actions in which you had an economic interest. Neither do you have the ability to do so during this year's leave of absence. Based on these statements, it is the Board's opinion that your employment with the Organization is not prohibited by sections 2-156-030 and 2-156-080 of the Ordinance.

OTHER APPLICABLE PROVISIONS OF THE ETHICS ORDINANCE: Please be aware that there is another provision of the Ordinance that is relevant to your situation during your leave of absence from the City this year. Section 2-156-070, entitled "Use or Disclosure of Confidential Information," states:

No current or former official or 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 of or by reason of his position or employment.

Under this section, an official or employee of the City who is engaging in outside work must be careful to avoid using or revealing any confidential information he or she may have acquired during the course of his or her City job.

DETERMINATION OF THE BOARD: Based upon the facts presented and upon past Board policy, the Board determines that your employment with the Organization is in compliance with the provisions of the Ethics Ordinance.¹ We base this on the following conclusions:

- (1) According to Board policy, an employee on personal leave from City service retains the status of City employee and, therefore, remains subject to the Ethics Ordinance as such.
- (2) Your Organization salary does not give you a financial interest in the Organization's contracts with the City.

¹ Our determination in this case is based upon the facts as presented in this letter. If they are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our decision.

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(3) Your employment as a [REDACTED] with the Organization is wholly unrelated to your City duties and is rendered as part of your non-City employment.

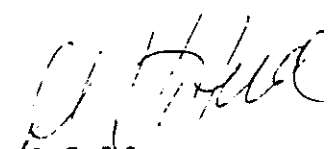
(4) Your contacts with City personnel while working as a [REDACTED] for the Organization, do not constitute representation within the intended meaning of the Ordinance.

(5) No conflict of interest or improper influence exists since you are not in a position, either in your City job or in your present position with the Organization, to affect any governmental decisions or actions in which you have an economic interest.

Please be advised that, if the activities involved in your employment change with regard to the issues discussed in this advisory opinion, we recommend you contact the Board at that time.

Thank you again for bringing this matter to the Board's attention. We appreciate the thoroughness with which you have presented your situation to the Board, both in writing and in telephone conversations with the staff of this office. We enclose a sheet that sets forth the Board's procedural rules after it renders a decision. For your information, we also enclose a copy of the Ethics Ordinance. If you have any further questions regarding this matter or some related issue, please do not hesitate to contact us.

Sincerely,


Al Hofeld
Chairman

enclosures

/cc: Kelly Welsh, Corporation Counsel

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NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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.