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

October 9, 1991

CONFIDENTIAL

[REDACTED]

Re: Case No. 91078.A
Outside Employment, Advisory Opinion

Dear [REDACTED]

On July 30, 1991, you telephoned the Board of Ethics office with a question regarding outside employment. You stated that you are currently employed by the City [REDACTED]

[REDACTED]

You asked if anything in the Governmental Ethics Ordinance prohibits you from working as a [REDACTED] for private companies while employed with the City. You also asked for general guidance in engaging in such employment. We appreciate your consulting with us and your efforts to follow the ethical standards embodied in the Ordinance.

In response to your inquiry, please be advised that the Ethics Ordinance does not prohibit your dual employment, but rather, depending on your circumstances, may impose certain restrictions on what you can do in your outside employment, including recusal under certain circumstances explained below. Based on the facts presented in this case, we provide our analysis of the relevant provisions of the Ordinance and the conditions imposed on you in your outside employment.

FACTS: You explained that in your position [REDACTED]

[REDACTED]

[REDACTED] your general duties are to investigate and report on [REDACTED]

[REDACTED]

[REDACTED] Others [REDACTED] collect data, from which you formulate a report [REDACTED]



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[REDACTED] The report is forwarded to your supervisor and the commissioner of your division. The report is confidential and is not presented to anyone outside the City government. You stated that if [REDACTED] the City then informs the responsible party that they must rectify the situation. However, the City cannot compel the responsible party to take action because the City does not have [REDACTED] such power. [REDACTED] the City may bring the situation to the attention of the Illinois or Federal [REDACTED] Agencies, which both have regulative powers.

The outside employment you seek would be [REDACTED] for private companies, either as part of a consulting firm or as your own independent business. In either case, you stated that your responsibilities would include some responsibilities similar to your City responsibilities. [REDACTED] However, you also stated that the sorts of projects you would undertake for a private company were completely different from those you do in your City job.

[REDACTED]

You explained that the evaluations you make for the City are never provided to private companies. Moreover, you were confident that the reports you create in your outside employment for private companies would not be used by your City department, as they do not rely on outside reports, nor would the reports be presented to your department by the private company.

You informed us that your department has not established or foreclosed a recusal policy that automatically allows you to defer a project to one of your City colleagues if you have an outside interest in that [REDACTED]. You stated that you do not believe such a situation would arise.

Finally, you informed us that you hold a degree in [REDACTED]. The skills involved in the outside employment you wish to seek are skills you learned in obtaining this degree and in three years of work for a private company prior to your City employment.

LAW AND ANALYSIS: Although your duties as a private consultant would bear a similarity to your duties as a City employee, the Ethics Ordinance does not necessarily prohibit this. There are several sections of the Ethics Ordinance

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that would govern your conduct if you engage in the outside employment described above. The relevant sections and the conditions they impose are described below.

Section 2-156-090, entitled "Representation of Others," states:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other 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; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

As the Board has interpreted it, the term "representation" here applies to a broad range of activities in which one person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another. Under this definition, representation includes actions such as making personal appearances before City agencies, making telephone contact with City employees and officials, and signing documents that are submitted to City agencies.

You informed us that you do not believe the reports you would formulate for private companies would be presented to any City agencies. Nonetheless, please be aware that, in your work as a private consultant, you are prohibited from representing others before any City agency.

Section 2-156-020, entitled "Fiduciary Duty," states that City employees "shall at all times in the performance of their public duties owe a fiduciary duty to the City." This means that you must use your City position responsibly and in the best interest of the public. For example, your outside employment tasks cannot be performed on City time. You have already assured us that you will not be using City time to perform your consulting services.

Section 2-156-030, entitled "Improper Influence," and section 2-156-080, entitled "Conflicts of Interest," state, in relevant part:

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

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has reason to know that he has any economic interest distinguishable from its effect on the public generally. (Section 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. (Section 2-156-080)

The term "economic interest" is defined in the Ordinance as "any interest valued or capable of valuation in monetary terms" Section 2-156-010(i). These sections prohibit you from participating in or trying to use your City position to influence any governmental decision or action of the City in which you have an economic interest arising from your outside employment.

Based on the facts you presented to us, it does not seem likely that, in your City job, you will have the opportunity to make or influence decisions on matters in which you will have an economic interest by virtue of your outside employment. Nonetheless, you should be aware of this restriction and the action that you should take in the event of such a conflict. For example, you might be asked to [REDACTED] ^{review} for the City a *project* [REDACTED] that you are assessing as a private consultant. In that situation, because you would have an economic interest in the [REDACTED] ^{review} of and in decisions regarding that *project* you would have a conflict, and under the Ordinance, you would be required to recuse yourself from participation in those governmental decisions. See case no. 89103.A. If your department does not permit you to recuse yourself, then you may be forced to resign your City job at that time.

There are two additional sections of which you should be aware in regard to your outside employment. Section 2-156-060, entitled "City-Owned Property," prohibits you from using any City property or resources in your non-City employment or for any private benefit. Section 2-156-070, entitled "Confidential Information," prohibits you from using or revealing confidential information you may have acquired during the course of your City job.

Finally, if you or the company for which you work plans to enter into any contracts with the City, please contact us and we will explain additional provisions of the Ordinance that might be relevant.

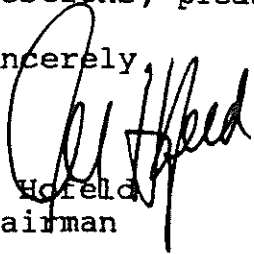
CONCLUSION: Based on the facts presented, the Board

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determines that the Governmental Ethics Ordinance does not prohibit you from working outside your City job as a [REDACTED], as you described to us, either for a consulting firm or for yourself, as long as the provisions stated above are met. The Board's determination is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.¹ Other rules or laws, including departmental rules, may be applicable to this situation.

The Board appreciates your willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance. We enclose the Board's procedural rules that apply after it renders a decision. If you have any further questions, please do not hesitate to contact us.

Sincerely


Al Horeld
Chairman

Enclosure

cc: Kelly Welsh, Corporation Counsel

mk:91078.L

¹ If the facts presented in this letter are incorrect or incomplete, please notify us immediately, as any change in the facts may alter the Board's determination.

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.