

ADVISORY OPINION

CASE NO. 01037.A

Post-Employment

To: [John], [Manager], [Alph Inc.]/[Beta Inc.]
[Bob], [Administrator], [Department 1]

Date: November 14, 2001

On June 30, 2001, [John], [Administrator] of the [Division 1] of the City's [Department 1], resigned from City service and assumed the post of [Manager] of the [Alph Inc.] and the [Beta Inc.].

On August 2, 2001, [John] requested an advisory opinion from the Board regarding his post-City employment. Specifically, [John] asked the Board to address whether the post-employment provisions of the Governmental Ethics Ordinance would prohibit him, either permanently or for a period of one year, from assisting or representing his new employer in connection with a City-supported real estate development known as [Development A].

On September 14, 2001, [Administrator] [Bob] requested an advisory opinion on behalf of the [Department 1] regarding the restrictions imposed by the Ordinance on [John's] activities in connection with the [Development A], as well as two Chicago Housing Authority (CHA) developments, the [Developments B and C].

After careful consideration of the facts presented by [John] and the Department, the purpose and language of the post-employment provisions of the Ordinance, and prior Board opinions, the Board concludes that:

1) while a City employee, [John] exercised "contract management authority" over developer [Gamma Inc.'s] agreement with the City to develop [Development A], and is, therefore, permanently prohibited from assisting or representing any person other than the City on that contract;

2) while a City employee, [John] participated personally and substantially in the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N], and is, therefore, prohibited for a period of one year from the date

he left City service from assisting or representing [Beta], or any person other than the City, with the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N];

3) while a City employee, [John] exercised “contract management authority,” with regard to the selection of [Zeta Inc.] as developer for [B] and with regard to the awarding of [D1] subsidies to [Zeta], and is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Zeta] to develop affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Zeta] and approved by the City in [Zeta’s] RFP response;

4) that, while a City employee, [John] participated personally and substantially in the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N], and is, therefore, prohibited for a period of one year from the date he left City service from assisting or representing [Beta], or any person other than the City, with the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N]; and

5) while a City employee, [John] exercised “contract management authority,” with regard to the selection of [Theta Inc.] as developer for [C] and over the awarding of [D1] subsidies to [Theta Inc.], and is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Theta Inc.] to develop affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Theta Inc.] and approved by the City in [Theta Inc.’s] RFP response.

FACTS:

[Alph Inc.]/[Beta Inc.]

[John] currently serves as [Manager] of the [Alph Inc.] and the [Beta Inc.], two not-for-profit organizations that are active in the redevelopment of Chicago’s [P] and [Q] communities, respectively. [John] represented that the two organizations are separate corporate entities, with separate boards¹, to which [John] reports independently.

Among the matters in which [Alph] is currently involved is a City-supported real estate development

¹Board investigation revealed that the same individual serves as Chair of both boards.

project known as [Development A]]. The development is owned by [Gamma Inc.], a limited liability corporation, of which [Alpha] is a one third owner.²

Among the matters in which [Beta] is currently involved are two CHA developments, the [C] and [B] developments. [Beta] presently serves, at the invitation of the CHA, as a community representative to the [C] and [B] “working groups” established by the CHA.

[John’s] Former City Duties

A. City Duties Generally

Prior to becoming [Manager] of [Alph]/[Beta], [John] served as [Assistant Administrator] of the [Division 1] of the City’s [Department 1] from mid-1998 until his resignation on June 30, 2001. [John] was responsible for the day-to-day administration of a number of City loan and grant programs to assist in the development of affordable housing. City resources under his auspices included City land, Tax Exempt Bonds, Low Income Housing Tax Credits (LIHTC), Tax Increment Financing, Community Development Block Grants (CDBG), HOME and Corporate funds. In his role as [Assistant Administrator], [John] was directly involved in the selection of projects to be funded through these programs by the [Department 1].

B. City Duties Specific to the Real Estate Developments at Issue

[Development A]. On January 20, 1999, the [Area P] Tax Increment Financing District (TIF) was approved by City Council. On June 21, 1999, in connection with a proposal it submitted to the [Department 2] to purchase and develop 23 parcels of City-owned land³, [Gamma Inc.] applied to the [Department 1] for a subsidy under the [X Housing] program.⁴ The subsidy application was reviewed and approved, in an amount not to exceed \$240,000, by a committee chaired by then-[Asst. Administrator] [John]. The terms of that [X Housing] subsidy were subsequently incorporated into a Redevelopment Agreement, signed on May 11, 2001, between the City and [Gamma Inc.]. In addition, [Assistant

²The other owners are the [Epsilon Inc.] and the [Iota Inc.], organizations with which [John] is not affiliated.

³The parcels are located on [Street L], between [Avenues 3 and 4].

⁴According to [Mary], [Department 1's Officer] for [Development A], the application to purchase the property was not made in response to a City RFQ or RFP; instead, it was initiated by the developer. The [Department 2] has subsequently consented to the sale and, according to [Mary], the City Council’s Finance Committee was expected to approve the sale to [Gamma Inc.] on October 29, 2001.

Administrator] [John] served as chair of the [Department 1's] [Specification Council], a Mayoral-appointed peer committee charged with reviewing design drawings for each of the development's proposed model homes. The designs, as approved by the committee, were also incorporated into the Redevelopment Agreement. The Agreement, drawn up by the City's Law Department pursuant to requests from the [Departments 1 and 2], provides for the development of a mixed-income residential community of up to 26 new single-family homes or two-flat buildings, at least six of which are to be developed in accordance with the [X Housing] Program. According to both [Administrator Bob] and [John], the development contemplated by that agreement is [Development A]. In addition to chairing the committees that reviewed and approved the developer's [X Housing] subsidy and construction drawing applications, [John] attended at least 6 meetings of the [Development A] project development team⁵, during which he participated in discussions relating to financing, budget, materials and construction specifications for the project.

[B] Development. On October 16, 2000, the [Delta Inc.] (acting as the Court-appointed receiver for the CHA) and the City of Chicago [Department 2] issued an RFP to develop the former [Place 1] properties site located on [Avenue 1] between [Streets M and N]. According to the RFP, the [B] development will be made up of 200 total housing units, consisting of approximately 25% public housing units, 25% affordable units, and 50% market rate units.

The RFP was developed by the [B Planning Group], which included representatives from the [Department 1] and [Beta].⁶ The [Department 1's] designated representative to the working group was [Susan], a project manager. [John] did not supervise [Susan]. [John] attended a number of these meetings in his capacity as [Assistant Administrator], although [Susan] served as the Department's official voting representative,⁷ and [John] was not involved in developing the RFP. [Beta] assisted in the drafting of the RFP, taking part in the discussions that determined the site, the number of buildings and units, the structuring of financing, and the design and construction specifications. Following the issuance of the RFP, [Beta] recused

⁵The project development team also included representatives of the [Department 2], the [Department 3], the [Department 4], the [Department 5], [Alph]/[Beta] and [Gamma Inc.].

⁶The [B Planning Group] also included representatives from the [Department 2], the CHA, [Delta Inc.], the U.S. Department of Housing and Urban Development, [Alderman Jane], the [Q Community Group], the [C Community Group], and the [Group D].

⁷The [Department 1's] alternate voting representatives were [Mary] and [Michael].

itself from the selection process.⁸

After the [Planning Group] chose two finalists for the RFP award, [John] served on the committee that interviewed both finalists and selected [Zeta Inc.] as the developer. The RFP was awarded to [Zeta] on April 15, 2001. On April 30, [Zeta Inc.] applied to the [Department 1] for \$365,000 in Low-Income Housing Tax Credits and \$100,000 in [Department 1] loans. [John] chaired the loan committee that reviewed [Zeta's] application and recommended that it be approved. Both the Tax Credit and loan to [Zeta] have since been approved by City Council, and contract negotiations between the CHA, City and [Zeta] are ongoing.⁹ Following the selection of [Zeta] as the developer, [Beta] resumed an active role on the working group and continues, to date, to participate in group discussions and decisions relating to the construction of the development. [John] has stated that as [Manager] of [Beta], he would be expected to attend these meetings.

[C] Development. On September 15, 1999, the [Delta Inc.] and the City of Chicago [Department 2] issued an RFP to develop the former [C] properties site located on [Avenue 2] between [Streets M and N]. The redevelopment plan for the [C] properties calls for 743 replacement housing opportunities, including the construction and acquisition of 141 units of scattered site housing within the [Q] neighborhood and another 100 units to be built on the [C] property. In addition, 200 scattered site units will be built or acquired within the City of Chicago but outside the [Q] neighborhood. Section 8 certificates and vouchers are to provide for another 302 units.

As with the [B Planning Group], the [C Planning Group] included representatives from the [Department 1] and [Beta].¹⁰ The [Department 1's] designated representative to the working group was [Susan]. Again, [John] did not supervise [Susan]. [John] attended a number of these meetings in his capacity as [Asst. Administrator], although [Susan] served as the Department's official voting representative,¹¹

⁸[Beta] reportedly recused due to a conflict of interest created by [Beta's] relationship with, or to, one or more of the respondents to the RFP.

⁹According to [D1] staffer [Susan], it will be "at least 6 months" before the CHA, the City and the developers enter into Redevelopment Agreements relating to the [C] and [B] developments.

¹⁰The [C Planning Group] also included representatives from the [Department 2], the CHA, [Delta Inc.], the U.S. Department of Housing and Urban Development, [Alderman Jane], and the [Group D].

¹¹The alternate voting representatives were [Mary] and [Michael].

and [John] was not involved in developing the RFP. [Beta] assisted in the drafting of the RFP, taking part in the discussions that determined the site, the number of buildings and units, the structuring of financing, and the design and construction specifications. As with the [B] Development, following the issuance of the RFP, [Beta] recused itself from the selection process.¹²

[John] served on the committee that interviewed both finalists and selected [Theta Inc.] as the developer. The RFP was awarded to [Theta Inc.] on June 16, 2000. On April 30, 2001, [Theta Inc.] applied to the [Department 1] for \$2,000,000 in Low-Income Housing Tax Credits and \$6,489,000 in [Department 1] loans. [John] chaired the loan committee that reviewed [Theta Inc.'s] application and recommended that it be approved. Both the Tax Credit and loan have since been approved by City Council, and contract negotiations between the CHA, City and [Theta Inc.] are ongoing. Following the selection of [Theta Inc.], [Beta] returned to an active role on the working group, participating in discussions relating to the construction of the development. [John] stated that as [Manager] of [Beta], he would be expected to attend these meetings.

LAW: Section 2-156-100 of the Governmental Ethics Ordinance (Post-Employment Restrictions) states:

(b) 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.

Under this provision, former City employees, such as [John], are subject to both a one-year prohibition and a permanent prohibition after leaving City service. First, for one year after leaving City employment, a former employee is prohibited from assisting or representing a person, other than the City, in any business transaction involving the City or any of its agencies, if he participated personally and substantially in the subject matter of that transaction during his City employment. "Assisting" or "representing" a person in a business transaction involving the City includes helping a person perform a City contract. (See Case No. 92035.A.) Second, a former City employee is permanently prohibited from assisting or representing any person on a contract if, as a City employee, he exercised "contract management authority" over that contract. Section 2-156-010(g) of the Ordinance defines the term "contract management authority" as:

¹²Again, [Beta] reportedly recused due to a conflict of interest created by [Beta's] relationship with, or to, one or more of the respondents to the RFP.

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.

Case Law

A. Permanent Prohibition

The Board has previously addressed what type of conduct constitutes "contract management authority." In Case No. 94019.A, the Board determined that a former City employee's evaluation of real estate development proposals while working for the [Department 1], or his exercise of direct supervisory responsibility over the department's staff and their evaluation of such proposals, which subsequently resulted in contracts under City programs, constituted "contract management authority" over the resulting contracts. (*Id.*, p. 5.) The City programs at issue in that case included programs used by developers of affordable housing for land acquisition and financing. The Board found, under Section 2-156-100 (b), that the City employee was permanently prohibited from assisting or representing any person, including himself, in any business transaction involving the City with respect to any City contract that resulted from a proposal that he evaluated or over whose evaluation he exercised direct supervision. (*Id.*) Further, the Board determined that the permanent prohibition applied to all City contracts over which the former City employee exercised contract management authority, regardless of the department or program under which they originated. (*Id.*; *see also* Case Nos. 99028.A and 98052.A.) In Case No. 94044.A, the Board determined that an employee's activities with regard to a potential contract for the sale and development of a parcel of real estate, including inspecting the property, determining that the City should obtain easements in it, and conferring with other City employees with the aim of determining the parcel's price, constituted "personal involvement" in the preparation of contract specifications during his City employment, and thus constituted the exercise of contract management authority, even though no contract had yet been negotiated. Therefore, the employee was prohibited from assisting or representing any person other than the City with respect to any contract that ensued from his work. (*Id.* at 11.)

B. One-Year Prohibition.

The Board has also opined on conduct that constitutes "personal and substantial involvement" in a particular subject matter. In Case No. 97062.A, the Board determined that a former City employee who had administered the awarding of Low-Income Housing Tax Credits to developers of low income housing was personally and substantially involved in the subject matters of the development of residential and affordable housing and the creation and administration of financing programs for affordable housing, and was therefore prohibited, for one year, from assisting or representing any persons in any business transaction involving these subject matters. (*Id.* at 4.) In Case No. 92033.A, the Board found that an employee who participated in the planning stages of a City project, played an advisory role in the formulation of an RFQ for that project, and evaluated responses to that RFQ, had participated personally and substantially in that project, and was therefore prohibited for one year from assisting or representing any person on that project. (*Id.* at 5.)

ANALYSIS: For purposes of the application of 2-156-100(b) to the facts presented, the Board addresses the [Development A] and the two Chicago Housing Authority developments separately.

[Development A].

Permanent Prohibition. The facts presented establish that [Development A] is being developed by [Gamma Inc.] under a Redevelopment Agreement with the City dated May 11, 2001. Included in the terms of the agreement is a subsidy to the developer, in an amount not to exceed \$240,000, in accordance with the [Department 1's] [X Housing] program. The developer's application for that subsidy was reviewed and approved by a [D1] committee chaired by then-[Asst. Administrator] [John]. The Redevelopment Agreement also contains design specifications for each of the proposed model homes for the project. Those designs were reviewed and approved by the Department's [Specification Council], also chaired by [John].

Consistent with previous cases, the Board finds that in reviewing and approving the developer's [X Housing] subsidy (*see* Case No. 94019.A), and in reviewing and approving design specifications for the development's model homes (*see* Case No. 99028.A), [John] has exercised "contract management authority," within the meaning of Section 2-156-010(g), over [Gamma Inc.'s] May 11, 2001 agreement with the City to develop [Development A]. Under Section 2-156-100(b) of the Ordinance, therefore, [John] is permanently prohibited from assisting or representing any person other than the City, including [Gamma Inc.] or the [Alph Inc.], on that contract.

One Year Prohibition. Because [John's] post-City activities, in relation to the [Development A], are subject to the permanent prohibition, the Board need not address the issue of the one-year prohibition with respect to that development.

[B].

One Year Prohibition. Under the Ordinance, for one year after leaving City employment, [John], as a former City employee, is prohibited from assisting or representing a person, other than the City, in any business transaction involving the City or any of its agencies, if he participated personally and substantially in the subject matter of that transaction during his City employment. The facts presented establish that [Beta] is participating in a business transaction involving the City, specifically, the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N]. Consistent with its opinions in Case Nos. 97062.A and 92033.A, the Board finds that, by his day-to-day administration of a number of City loan and grant programs designed to assist developers in the creation of affordable housing, by his attendance at meetings where the RFP for the [B] project was developed, by serving on the committee that selected the developer for the project, and by serving as chair of the loan committee that reviewed and approved this developer's applications for [D1] loans and/or tax credits, former [Asst. Administrator] [John] participated personally and substantially in the development of

affordable housing on the [B] site while in City service. Therefore, the Board determines that [John] is prohibited, for a period of one year from the date he left City service, from assisting or representing [Beta], or any other person other than the City, with the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N].

Permanent Prohibition. The Board notes that, although contract negotiations between the City, the CHA and [Developer Zeta] are ongoing, no actual agreement regarding the [B] development has been entered into to date. Nevertheless, the Board finds that, by serving on the committee that selected [Zeta] as the developer for the project and by chairing the [Department 1] loan committee that reviewed and approved \$365,000 in Low-Income Housing Tax Credits and \$100,000 in [Department 1] loans to [Zeta] to assist in the financing of the project, former [Asst. Administrator] [John] exercised “contract management authority,” within the meaning of Section 2-156-010(g) of the Ordinance. Consistent with its opinion in Case No. 94044.A and pursuant to the post-employment provisions of the Ordinance, the Board determines that [John] is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Zeta] to develop affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Zeta] and approved by the City in [Zeta’s] RFP response.

[C].

One Year Prohibition. The facts presented establish that [Beta] is participating in a business transaction involving the City, specifically, the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N]. Consistent with its opinions in Case Nos. 97062.A and 92033.A, the Board finds that, by his day-to-day administration of a number of City loan and grant programs designed to assist developers in the creation of affordable housing, by his attendance at meetings where the RFP for the [C] project was developed, by serving on the committee that selected the developer for the project, and by serving as chair of the loan committee that reviewed and approved this developer’s applications for [D1] loans and/or tax credits, former [Asst. Administrator] [John] participated personally and substantially in the development of affordable housing on the [C] site while in City service. Therefore, the Board determines that [John] is prohibited, for a period of one year from the date he left City service, from assisting or representing [Beta], or any other person other than the City, with the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N].

Permanent Prohibition. Again, the Board notes that, although contract negotiations between the City, the CHA and [Theta Inc.] are ongoing, no actual agreement regarding the [C] development has been entered into to date. Nevertheless, the Board finds that, by serving on the committee that selected [Theta Inc.] as the developer for the project and by chairing the

[Department 1] loan committee that reviewed and approved \$2,000,000 in Low-Income Housing Tax credits and \$6,489,000 in [Department 1] loans to [Theta Inc.] to assist in the financing of the project, former [Assistant Administrator] [John] exercised “contract management authority,” within the meaning of Section 2-156-010(g) of the Ordinance. Consistent with its opinion in Case No. 94044.A and pursuant to the post-employment provisions of the Ordinance, the Board determines that [John] is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Theta Inc.] to develop affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Theta Inc.] and approved by the City in [Theta Inc.’s] RFP response

DETERMINATION: Based on the facts presented, the Board determines that:

1) while a City employee, [John] exercised “contract management authority” within the meaning of Section 2-156-010(g), over developer [Gamma Inc.’s] May 11, 2001 agreement with the City to develop [Development A]. Under Section 2-156-100(b) of the Ordinance, therefore, [John] is permanently prohibited from assisting or representing any person other than the City, including [Gamma Inc.] or the [Alph Inc.], on that contract;

2) while a City employee, [John] participated personally and substantially in the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N], and is, therefore, prohibited for a period of one year from the date he left City service from assisting or representing [Beta], or any person other than the City, with the development of affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N];

3) while a City employee, [John] exercised “contract management authority” over the selection of [Zeta Inc.] as developer for [B] and over the awarding of [D1] subsidies to [Zeta], and is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Zeta] to develop affordable housing on the former [Place 1] properties site located on [Avenue 1] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Zeta] and approved by the City in [Zeta’s] RFP response;

4) that, while a City employee, [John] participated personally and substantially in the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N], and is, therefore, prohibited for a period of one year from the date he left City service, from assisting or representing [Beta], or any person other than the City, with the development of affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N]; and.

5) while a City employee, [John] exercised “contract management authority,” within the meaning of Section 2-156-010(g), over [Theta Inc.’s] selection as developer for [C] and over the awarding of [D1] subsidies to [Theta Inc.], and is, therefore, permanently prohibited from assisting or representing any person other than the City on any City/CHA redevelopment agreement with [Theta Inc.] to develop affordable housing on the former [C] properties site located on [Avenue 2] between [Streets M and N] that involves either these subsidies or the project specifications proposed by [Theta Inc.] and approved by the City in [Theta Inc.’s] RFP response.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is 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 determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

RELIANCE: This 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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

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 and circumstances that are the basis of the request, and (3) be received by the Board within fifteen days of the date of this opinion.

[Signature]

Darryl L. DePriest
Chair