

Xxxxx, 2004
CONFIDENTIAL
Mr. John

Chicago, IL 606xx

Re: Case No. 04032A

Dear Mr. John:

You are a former employee of the Chicago Department of C (“C”) who retired from City service on xxxxxx, 2004. You are now a temporary employee (on an hourly basis with no benefits, hereinafter referred to as “employee”) of Ct (“Ct”). On xxxxx, 2004, you wrote our office and requested an Advisory Opinion on how the Governmental Ethics Ordinance applies to your post-City work as an employee with Ct. As explained in this letter, Staff has concluded that the post-employment provisions of the Ordinance do not prohibit you from assisting or representing Ct in the work described in your letter, namely, processing real estate tax exemptions for private property that has been acquired for City of Chicago Department of C for road, bridge and/or transit public improvements.

FACTS: You are an attorney licensed to practice law in xxxxx since xxxxx. You spent practically your whole professional career as an employee of the City of Chicago, leaving only recently. You stated you were with the City’s Q Department from 19xx - 19xx (with a small hiatus) and with C from 19xx - 2004.

In the Q Department you spent your first 4 years primarily representing the City in administrative proceedings involving liquor license violations. You spent the next 2 years involved in real estate condemnation proceedings. You stated you spent the next 1.5 years representing the City in hearings dealing with city taxes on behalf of the City’s Department of S and also in the same period setting up special service taxing districts in the City. During the remainder of your time in the Q Department you performed grant management for all City departments, reviewing grant applications.

For example, you explained that the Department of I might want to operate a community-based AIDS education program through a delegate agency with federal funds. You would examine for form and legality the grant application from the Department (forwarded to you from the Office of M). If acceptable, you would return the application to the Office of M. If the grant application were not acceptable, you would return it to the Office of M with comments and the M Office would request that the originating Department make the necessary corrections to the grant application.

In C, where you started xxxxx, 19xx, you processed grants and monitored the same type of enabling legislation you wrote in the Q Department. For 3 years in C you put together grant packages for the C and processed them through the M Office. The grant packages all involved transportation or transit grants. You gave an example involving the BBB. In a typical procedure, the City, on behalf of the BBB would be applying for grant monies from federal funds in order to reconstruct an elevated station. Federal employees would be involved with their C grant counterparts and with the appropriate C project manager. After the project manager assembled enough data about the grant to the City respecting the BBB project, he or she would write a grant package, *e.g.*, rebuilding a BBB elevated station, including, among other things, all technical specifications. You stated that the grant package would come to you for review and assembly before you passed it to the M Office. You would insure that all elements necessary were contained in the package, including, but not limited to certificates demonstrating compliance with minority contracts or references to proper enabling legislation.

You did not deal with any contract employees. In your work, you did not deal with employees of C vendors.

In the remainder of your time at C, you were classified as an attorney and you were placed in the L Division of the Bureau of AP where you supervised one non-xxxxxx staff member. You again wrote legislation for any grants not covered in the enabling legislation that impacted C, *e.g.*, a certain non-City agency working with C needed an indemnification but had no ordinance allowing it to either obtain or give one; you stated you would write the ordinance to allow that agency to obtain or give the indemnification.

On xxxxx, 2004 you became an employee working 100% of your time with Ct. Your duties at Ct are to obtain tax exemptions for private property C acquired for public improvements. You believe that Ct's initial contract with C was to negotiate to obtain ownership of private properties for public purposes, including bridge, road or transit public improvements. Later, the scope of the contract was expanded to contain the task of obtaining tax exemptions. Generally, tax exemption work is an administrative task, mainly in the Cook County BR, in which a government entity attempts to remove property from the tax rolls by removing the PIN

(Permanent Index Number for taxes) from the parcels it has purchased from private citizens and, accordingly, now owns as a public authority. This process involves filing exemption petitions with the Cook County BR and receiving approval from the B and the State Department of ST. If this is not timely and correctly done, there are various negative consequences, such as not being able to file certain necessary plats with the Recorder, which is the act officially opening a public way.

You told staff that you believe you were asked to work with Ct because of your general City government and legislative knowledge and would be able to facilitate the exemption process. All parties could benefit from your experience in City government because you would know to whom to turn in the City to answer questions respecting tax exemptions. Further, Ct felt that, with your legislative background and a law degree, you could perform the tax exemption process which was made part of the C contract.

You stated you were not involved in Ct obtaining the contract with C. You also stated that the group that hires independent contractors for C was in the same bureau as yours, but a different division, under Gxxxx. Also, you stated you did not participate in any court or administrative proceedings while at C. Specifically, you stated that you did not participate in, or serve as counsel of record in, any proceeding, administrative or otherwise, involving Ct while you were a C employee. Further, you did not draft, review or collate any documents involving any such proceeding involving Ct while you were a C employee. In addition, you stated that, prior to becoming an employee with Ct, you have not drafted any tax exemption petitions or other documents on behalf of Ct involving or to be presented to C.

LAW AND ANALYSIS: The section of the Governmental Ethics Ordinance at issue in this case is Section 2-156-100, entitled "Post-Employment Restrictions," specifically part (b), which 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 2-156-010(g) defines "contract management authority" as follows:

"Contract management authority" means 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.

Section 2-156-100(b) prohibits a former City employee, such as you, from assisting or representing any person, other than the City, in any business transaction involving the City for one year after leaving City service, if he or she “participated personally and substantially in the subject matter of the transaction” while a City employee. That section further provides that if the employee “exercised contract management authority” with respect to a contract, the prohibition shall be permanent as to that contract.

Permanent Prohibition. Based on the facts you presented, there is no indication that, as a City employee, you exercised contract management authority over the contract between Ct and C. Therefore, Staff concludes the permanent prohibition is not at issue in this case.

One-Year Prohibition. In order to address this one-year prohibition, there are three questions that must be answered: (i) does the contract on which you have been asked to work involve “business transaction[s] involving the City;” (ii) what is the “subject matter” of that contract; and (iii) did you “participate[d] personally and substantially” in that subject matter during your City employment.

(i) A Business Transaction Involving the City

Clearly, Ct’s contract with C, under which you have been preparing to provide tax exemption work, constitutes a business transaction involving the City.

(ii) Subject Matter of the Business Transaction

The primary purpose of the C transaction is that Ct perform real estate acquisition activities. In order to achieve C’s requirements under the contract, Ct must perform very specific services. Using C criteria, Ct must locate, negotiate, close and obtain ownership of privately-owned real estate for the public way. But Ct’s responsibilities under its contract with C do not end when the property is acquired by C. Ct must perform important post-closing activities. One of the most important, to insure that the property is officially recognized as public, is completing tax exemption proceedings in connection with the property acquired. Based on the facts of the obligations of the parties under the contract between C and Ct, the Staff concludes that the subject matter of that contract is providing services and support for the acquisition of real estate.

(iii) Personal and Substantial Participation in the Subject Matter

While you were an employee of the C, you did not participate in any tax exemption work.

Further, you did not perform or participate in any real estate acquisitions. In addition, you did not perform any tax services for C.

Staff's review of your career shows that, on the contrary, when you were employed by the C, you were primarily involved in processing grants and drafting enabling legislation for transportation and transit matters. After working with a City department's project manager, you would review and have corrected grant applications. Once corrected, you then passed them on to the Office of M. In addition, you drafted legislation on an as-needed basis that benefitted the C. You insured that City agencies working with C had authority for any requirements to complete a project by drafting enabling legislation.

Staff concludes that you did not participate personally and substantially in the process by which real estate is acquired. Therefore, the one year post-employment provisions of the Ordinance do not prohibit you from assisting or representing Ct in processing real estate tax exemptions for private property that has been acquired for City of Chicago C road, bridge and/or transit public improvements.

However, if your post-City duties or position should change (or you are no longer retained by Ct) prior to the one year anniversary of your termination with the City, you should contact the Board because you performed numerous duties as a City employee. Accordingly, we should review the new facts surrounding your new position and revisit facts surrounding your City duties. It is possible the permanent prohibition in the Ordinance may prevent your accepting a new position as the Staff may conclude, depending on your new position or employer, that you exercised contract management authority during your City employment implicating your newly changed position or employment.

The Board appreciates your willingness to inquire about, and comply with, the post-employment restrictions imposed upon you in the Governmental Ethics Ordinance.

Our conclusions are not necessarily dispositive 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 letter. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter Staff conclusions. 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.

Page 6
Case No. 04032. Q
XXXXX, 2004

Very truly yours,

Richard J. Superfine
Legal Counsel

Approved by:

Dorothy J. Eng
Executive Director