

**Advisory Opinion
Mr. John Smith, Post Employment
Case No. 05055.A
November 17, 2005**

On _____, 20__, you asked the Board to address whether and how you, a former employee in the City's Department of C ("C"), would be limited by the post-employment provisions of the City's Governmental Ethics Ordinance ("Ordinance") from working (either on a self-employed basis or as an employee of ****, J) as an expediter before C.

On _____, 20__ and _____, 20__, you were interviewed by Board staff.¹

After consideration of the facts presented, and the relevant law, the Board has determined that the Ordinance prohibits you, for one year from the date you left City employment, that is, until _____, 20__, from assisting or representing any person other than the City (including our own customers or those of ***, J) on any matters before C (or any other City department) involving the process by which the City considers, and decides upon, building permit applications.

FACTS: Background. You entered City service on _____, 19__. Before that you worked in the construction industry for approximately 40 years, primarily in the fields of general contracting and carpentry.

City Service.

Zoning Department. You entered City service as a trainee Plan Examiner in the Department of Zoning. After a short absence, you returned to that department in _____ 19__ as a Plan Examiner. As a Plan Examiner, you reviewed applications for building permits. Your job was to ensure that there were no zoning problems in the application, or in any of the plans attached to the application. For example, you determined whether the descriptions of certain interior work in the application were consonant with the interior rooms as shown on the plans.

¹ Subsequently, with your permission, Board staff also spoke with Mr. T, your supervisor at the Department of Zoning; Mr. G, your supervisor at the Zoning Board of Appeals; and Ms. V, your supervisor at C.

In addition, you determined whether the work, for which a permit was required, was allowed under the Zoning Ordinance. You stated that you approved at least 90% of the applications you reviewed, giving the application a date stamp and signature. If you found a discrepancy between the Zoning Ordinance and the application, or if you found a problem in the application, you would fill in a correction slip (identifying the problem and remedy) and refer the application and correction slip to your supervisor. The supervisor would either: (i) make a referral of the application or the applicant to another department to help the applicant, *e.g.*, business license, planning department; or (ii) return the application to the applicant with the correction slip so that the applicant could correct the application and resubmit it. The supervisor might also issue a denial letter, which would allow the applicant to go to the Zoning Board of Appeals. You estimate that you serviced at least 40 applicants each day. You said that during your tenure in the Zoning Department, you were not involved in the letting, award, negotiation, formulation or supervision of any City contracts. You also stated that you did not participate in any capacity in any City hearings during your tenure in the Zoning Department.

Zoning Board of Appeals. In _____ 20__, you transferred to the staff of the Zoning Board of Appeals. You characterized your duties as similar to those which you performed in the Zoning Department, except you dealt more with applicants' representatives, *e.g.*, architects, than with applicants. After you would initially review a denial letter, you would open an appropriately constructed file for the Board that often contained, among other things, further forms from the applicant; architectural plans; site plans; Sanborn maps²; notes on whether the property had been accorded a special use status (perhaps a property use that has been "grandfathered in"); relevant pages from the book showing Chicago's zoning districts; water and address maps; other relevant drawings; the denial letter; and the application for the building permit. The packages you assembled were then forwarded to the Board for its monthly meetings. You did not send notices to relevant parties about the meetings. You did act as a sergeant-at-arms at the meeting, *e.g.*, you ensured that people acting as witnesses signed in, and then you gave the list to the Chairperson. Other than noted above, you stated that you did not participate in any capacity in any City hearings during your tenure in the Zoning Board of Appeals. You also said that during your tenure in the Zoning Board of Appeals, you were not involved in the letting, award, negotiation, formulation or supervision of any City contracts.

Department of Construction & Permits. In ____ 20__, you began work as a Project Manager in the newly formed Department of C (drawn from the Department of B), utilizing your services as a

² Since 1867, the Sanborn Map Company has drawn and modified maps in over 12,000 cities and towns in North America that are, and were, designed to assist fire insurance agents in determining the degree of hazard associated with a particular property and therefore show the size, shape, and construction of dwellings, commercial buildings, and factories as well as fire walls, locations of windows and doors, sprinkler systems, and types of roofs. The maps also indicate widths and names of streets, property boundaries, building use, and house and block numbers.

zoning expert, which, you stated, you are. During your initial months in C, you and approximately ten other C Project Managers (from, for example, Building, Planning, Water or Transportation departments) focused on the design of a more efficient process for the review of City building permit applications. (Among other things, you and your colleagues (i) spoke to officials of all departments that would be impacted by issuance of a building permit; and (ii) studied the mechanics of building stop orders.) As a result, in part, of the work of you and your colleagues, C (with your input) implemented certain changes to the permit application process - for example, C excluded departments it deemed unnecessary to include in the issuance process and devised a checklist to use in the permitting process. As a brief example only, the checklist included, among other things, certain necessary forms; a certain number of drawings; what those drawings would be; what the appearance of those drawings should be; a survey(s); electrical department applications; contractors' letters; color coding for plans (of certain rooms); and an energy code permit. Part of the checklist was a matrix of zoning and other City codes applicable, or not, in any particular case. In addition, C decided - depending on the type of application - what items on the checklist were requirements that must be met by the applicant for a Project Manager to issue a permit.

On _____, 20__, C's operations commenced. Your first job was locating lost plans and applications and deciding what to do with them. On _____, 20__, pursuant to appointments scheduled for you (and your colleagues) by the clerical staff, you began receiving applications for building permits (with attachments) from expeditors, owners and architects.

You estimate that you handled about five such appointments per day. First, you performed the intake of the application, ensuring that all essential documentation was present. (You stated that you and your colleagues had some discretion with regard to when ancillary documents had to be filed by the applicant.) Second, you reviewed the application, particularly with regard to the zoning portion of the checklist, and noted in the application package - as part of a correction sheet - any zoning problems or changes to the plans that should be made. Third, you decided where/how to route the application package (including, perhaps, the zoning department), and you would make those routing remarks on, or with, the application package, perhaps on the checklist (which became part of the application package). Fourth, you placed the package in a "bucket," and the "technical" personnel would retrieve the application package and, through the use of scanning and a bar code, electronically enter the application into C's monitoring system. Fifth, the application would be routed to various examiners (in different areas of expertise); the department's "technical" personnel would move it on to the next examiner - usually solely within C - on the routing list you had determined. Last, when (i) all examination was complete; (ii) the checklist, thus far, was completed; and (iii) all correction notations (if any) from one or more examiners appeared in proper form on the correction sheet, then the application package - with the Project Manager's name on it - would be placed in a bin. Next, a foreman would decide how severe the corrections to be made to the application were: if severe, the application was sent back to one or more examiners; if not, then there

would be an open plan review.³ If corrections remained after an examiner's re-review of an application, you would advise the applicant and return the application package to the applicant, advising what the applicant was required to do. Once the corrections were made by the applicant, the package was resubmitted to you (if you were the Project Manager for that application). After a successful open plan review or re-submission of a corrected application package, you would ensure the final items on the checklist were, indeed, checked off, time stamp and sign the application package, and advise the applicant. The applicant would come to C, pay a fee and pick up a computer-generated building permit. Typically, you were able to complete the processing of a building permit application in approximately 30 days.⁴

In _____ 20__, you began working in the E P Section of C. You worked on applications that did not involve structural changes to a building, for example, repair permit applications or applications respecting a free-standing garage. However, these applications required a zoning review as well, which you performed. (For example, a simple zoning review involved your examining whether the lot size could accommodate a garage under the Zoning Code.) If there were no problems with the application, you would note the proper fee on the package, sign off and send the application package to the intake person. If there were a problem, you would write a correction sheet - noting the zoning problem - and return the application package to the applicant. Once the zoning problem was corrected (with any other corrections to the application, typically, from plumbing or electrical), the applicant would bring the package back to you. You would then review the package to ensure that it was complete, *i.e.*, that any necessary corrections had been cured and that any necessary supporting documents were attached, and forward it to a co-worker in the E P Section for issuance of the permit.

You said that during your tenure in C, you were not involved in the letting, award, negotiation, formulation or supervision of any City contracts. You also stated that you did not participate in any capacity in any City hearings during your tenure in C. While still with the E P Section, you left City service on _____, 20__.

Post-Employment Expediting.

Being an Expediter. You desire to appear before C and act as a building permit application expeditor on behalf of property owners. You explained that you might need to appear before other

³ An open plan review included the applicant or his or her representative and one or more C examiners, and, sometimes, Project Managers; corrections usually were made at the review.

⁴ According to you, prior to the creation of DCAP, many building permit applications took up to two (2) years to process.

departments as well, for example, when attempting to obtain a business license on behalf of a customer. Your son has already retained you in an expediter capacity. Further, you intend to obtain your own customers and act directly for them as an expediter.

As an expediter, you would “stand in the shoes” of the owner, and aid the owner in attempting to obtain a building permit. You would bring plans and applications to C (and any other necessary departments). You stated that expediters are retained because owners do not have time to spend at C or the expertise to explain what they are seeking to C personnel. You stated you could be an effective expediter because you had been in the position - for the City - of the people to whom you would be speaking at C. You would also advise your owner on the application process.

Although your intent was to file building permit applications, you would be committed to help your customers in other ways. Accordingly, you stated you might do more than merely present an application. Therefore, you explained that you might meet with City inspectors at a job site to attempt to resolve a problem a C or other examiner might have identified. In addition, if C (or another department) refused you, as expediter, a building permit, you would be prepared to make requests to overcome the refusal. First, you might make an appointment to see, or, if possible, simply walk in to visit with, the Director at C to argue your point and ask for a favorable building code interpretation. You stated that you believe your familiarity with the C permit process, including the checklist you helped draft, and the knowledge you had acquired as a Project Manager would benefit your customers in obtaining a favorable interpretation. Second you would meet directly with a C examiner or Project Manager in order to point out where, in your opinion, an item on a correction sheet is unnecessary. Third, you would follow the appropriate Building Ordinance sections in order to appeal a permit refusal to the Building Board of Appeals. Fourth, if there were a refusal based on your customer using, for example, a building material not yet accepted under the Building Ordinance, you would represent the owner before the Commission on Standards & Tests. Fifth, you would attend the more “usual” meetings, such as an open plan⁵ meeting with C examiners. Sixth, you would also - should the occasion arise - make an appointment at the Mayor’s Office if you did not agree with a determination issued from C, or another department that is part of the building permit process, to argue in favor of a different outcome.

⁵ See footnote 3.

LAW, ANALYSIS AND DETERMINATIONS:

As you were advised during your discussion with Board staff, Section 2-156-100 of the City's Governmental Ethics Ordinance ("Ordinance"), entitled "Post-Employment Restrictions," contains the relevant portion of the Ordinance, and Section 2-156-100(b), states as follows:

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, you, as a former City employee, are prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if, during your City service, you participated personally and substantially in the subject matter of that transaction, and, if you exercised management authority over a contract, then the prohibition is permanent as to that contract.

We now address the one-year prohibition. You propose appearing before C (and possibly other City departments) as a building permit application expediter on behalf of property owners. You would also advise your customers on the building permit process; meet City personnel on-site; and officially or unofficially appeal any C or other City agency decision refusing, delaying or limiting your customer's building permit, including, but not limited to, meeting with the Director of C, attending conferences with C examiners, appealing to the Building Board of Appeals and consulting with staff at the Mayor's Office.

The Board first concludes that the process by which the City considers, and decides upon, building permit applications constitutes a "business transaction involving the City" within the meaning of Section 2-156-100(b). Accordingly, the issue before the Board becomes whether, during the course of your City service, you participated personally and substantially in that process.

The facts presented establish that during your City service, you were employed initially in the Zoning Department where you examined, primarily, the zoning portions of building permit applications to determine compliance with the Zoning Ordinance. Subsequently, while serving in the Zoning Board of Appeals you examined and analyzed zoning issues that came before you as part of a Zoning Department denial letter. Finally, as an employee of C, your primary job was to examine building permit applications, especially the zoning portion of building permit applications. Among your other

C activities, you would note zoning problems in the application package and appropriately route the application package to C, or other, City examiners, including those at the Zoning Department.

The Board finds that zoning is a basic component of the City's review of, and decision on, building permit applications. The Board concludes that in utilizing the expertise that you acquired during your City service in City zoning issues, and exercising your judgment and discretion as to whether to approve or disapprove the zoning aspects of building permit applications, you participated personally and substantially in the process by which the City considers and decides upon such applications. *Cf.* Case No. 92010 (wherein the Board found that an architectural consultant, who had formerly served as Director of Plan Examination in the Department of Buildings, and had authority to manage the examiners, interpret the building code, review building permit applications and issue building permits, was prohibited for one year from assisting or representing persons on projects in which he was personally and substantially involved while a City employee).

Therefore, the Board determines that the Ordinance prohibits you, for one year from the date you left City employment, that is, until _____, 20__, from assisting or representing any person other than the City (including your own customers or those of your ***, J) on any matters before C (or any other City department) involving the process by which the City considers, and decides upon, building permit applications.

Based on your representation that, during the course of your City service, you did not participate in the letting, award, negotiation, execution or supervision of any City contract, the Board concludes that analysis of you situation under the permanent prohibition contained in Section 2-156-100(b) is not indicated.

Other Relevant Ordinance Provisions:

Lobbying. Section 2-156-210 et seq. (Lobbyist Registration). You stated that you expect that your activities as an expeditor on behalf of your clients would extend beyond merely filing an application for a City building permit: for example, you might meet with C plan examiners in an attempt to convince them to adopt a particular interpretation of the Building Code as it relates to an aspect of your client's plans.

Article 3 of the Governmental Ethics Ordinance, Section 2-156-210 et seq., regulates lobbying of City employees and officials and requires lobbyists to register and file semi-annual activity reports with the Board of Ethics. The term "lobbyist" is defined in relevant part at Section 2-156-010(p) of the Ordinance as "*any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any [City] legislative or administrative action...*"

Please be advised that it is highly likely you would be deemed to be a lobbyist under the Ordinance if you engage in conduct on behalf of your clients that extends beyond merely filing an application for a building permit. Obviously, whether you would be acting as a lobbyist within the meaning of the Ordinance would depend upon the particular conduct in which you engage.

By way of illustration only, the Board refers you to Case No. 02013.A in which the Board decided that you are not performing lobbying if your activities are limited to: (i) preparing and submitting permit applications; (ii) monitoring their progress; (iii) meeting with Plan Examiners and other Department of B [or C] personnel to clarify what needs to be corrected; (iv) acting as a contact person in the event of emergency, if listed on the permit as the “contact person;” and (v) inquiring as to the status of permit applications. Case No. 02013.A, at p. 8. (review of activities to determine whether expediter is a lobbyist). (The full text of the case is attached for your convenience and is located at www.cityofchicago.org/ethics.)

You are performing lobbying if your activities include attempting to persuade: (i) Department of B or C personnel to expedite permit processing, or advocating that a request for expedited permit processing be approved by the Department of B or C personnel; (ii) Plan Examiners or other Department of B or C personnel to adopt a particular interpretation of the building code, or attempting to influence their decision to approve a particular set of plans submitted as part of an application; and (iii) Aldermen, employees of the Mayor’s Office, or any other City employee or official to intercede in, promote or influence the permit application process in any of the following ways: a) requesting expedited permit processing; b) attempting to persuade Plan Examiners or other Department of B or C personnel to adopt a particular interpretation of the building code; c) attempting to influence the decision of Plan Examiners or other Department of B or C personnel to approve a particular set of plans submitted as part of an application. *Id.*

Confidentiality. Further, we advise you that Section 2-156-070, “Use or Disclosure of Confidential Information,” prohibits you, as a former City employee, from using or revealing confidential information acquired through your City employment. Confidential Information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

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 letter. Other City rules or policies may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

RELIANCE: This Board opinion should not be relied upon as a substitute for individual legal advice. It may be relied upon only by persons involved in the specific transactions or activities with respect to which the opinion is rendered.

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On behalf of the Board, we express our sincere appreciation of your willingness to abide by the standards embodied in the Ordinance. Please contact us with any questions.

Darryl L. DePriest
Chair