

**CONFIDENTIAL**

xxxxxxx, 2006

Ms. Mary Smith  
123 Main Street  
Chicago IL 606\_\_

**Re: CASE NO. 05071.Q, POST-EMPLOYMENT**

Dear Ms. Smith,

On xxxxxxxxxxx, 2005, you contacted this office to request a post-employment opinion regarding possible employment with the [XYZ] Family Foundation [“Foundation”].

CITY EMPLOYMENT

You began your City service in xxxxx 19xx with the Department of W, now the Department of WW. You worked there for 9 months as a [Facilities] 1 before moving to the Department of WWW, where you became a [Facilities] 3. You held that position for approximately 9 months as well. After nine months, the Department of X was formed and your section of the Department of WWW was transferred to the Department of X. During this time, you changed positions from a [Facilities] 3 to a [Facilitator] 1.

You left City employment the first time in 19\_\_ and, for 6 months, worked as a [coordinator] doing consulting work for [Beta] and Associates. After 6 months, you returned to City employment with the Department of WWW as a [Facilitator] 1. You held that position for 2 years. You were then offered a position in the Department of X as a[n] [Special] Development Coordinator. You were with the Department of X approximately 4 to 5 years, and you were promoted to the Assistant Commissioner after 1 year.

During your employment with the Department of WWW, you had no contact with the Foundation, although you did have responsibility for the area that includes [North Side] during 19\_\_-19\_\_. At the time, you worked in the [Special Projects] Development Division, which dealt with [special facilities] rehabilitation projects. Also, you managed several projects, including the [T] Program, which were located throughout the City, and the [E] Improvement Program, which included specific neighborhoods, including [the North Side].

As Assistant Commissioner of X, your area of responsibility was bounded by either [1<sup>st</sup>] Avenue or [2<sup>nd</sup>] Street on the

north, the [Quick] Expressway on the East, [Main] or Interstate [1] on the South and the Chicago city limits on the west. This area includes [the North Side], which is the area that the Foundation covers.

Interaction with the Foundation. During your City employment as Assistant Commissioner, you met with the Foundation to discuss various projects that it was interested in funding. One such project, which began during your City employment, is an [expedited facilitation] project. A large consortium of organizations, including the Foundation, is looking to purchase City property to construct [such facilities], which would employ formerly incarcerated individuals. While this would not involve a direct contractual relationship between the City and the Foundation, the consortium has founded a 501(c)(3) organization to purchase the land and oversee the project. Personnel from the Foundation will sit on the new foundation's board. You participated in discussions regarding this during your City employment.

In explaining further, you stated that this land may be donated to the new foundation (name unknown) free of charge, and that the transfer of property would more than likely go through the office of X, your former department, and the Community Planning Commission. You also stated that this project, had you still been employed with the City, ultimately would have been supervised by you and/or people that would have reported to you.

You also stated that, near the time you ended your City service, there was a proposed project before the Department of X that is now being considered by the Department of WWW under the Chicago [special facilities] program. You stated that you never saw any specific plans, only the general area that it would encompass. You stated that the project did not appear to fall under the Department of X's area of responsibility, which is why you did not become more involved in the planning or review of that project. You did say, however, that the Department of X issued an RFP for [a special facilities] development on First Ave. and the Foundation did not respond.

#### [XYZ] FAMILY FOUNDATION

Since 1986, the [XYZ] Family Foundation has concentrated its grant-making and programs in [the North Side], a neighborhood on Chicago's [North] side. By dedicating time, money, and skills, this small family foundation works in partnership with local residents and institutions to build and enhance the North [Side] community. The Foundation has seven strategic goals: to build relationships, to develop networks, stimulating policy change, to build physical and organizational infrastructure, and to develop individual and organizational capacity. To achieve these goals, the Foundation assumes a variety of roles, including that of grant-maker.

In this role, the Foundation gives grants to [the North Side] organizations that pursue goals in line with the foundation's strategies and provide clear outcome and evaluation measures. Examples of its programs include (1) bringing together several [the North Side] financial, [facilities], educational, and credit counseling agencies, which, in turn, formed the [Y] Collaborative, which has developed the "[Help Now]" program to encourage [the North Side] residents to save for [increased facilities] and higher education; (2) convincing [the Neighborhood Facilities Services of Chicago] to set up a [North Side] office, which is actively

working to rebuild [varied facilities] in the neighborhood; (3) and giving to the Chicago Public Schools in the vicinity.

The Foundation is not a City vendor, nor does it have any upcoming or pending contracts with the City. No City monies, that you are aware of, have ever been paid to the Foundation, and the Foundation has never been a delegate agency of the City, although it may have funded delegate agencies in the past.

### PROPOSED EMPLOYMENT

According to you, your proposed employment has no direct involvement with the City, or with the [expedited facilitation] project (in reference to which you attended discussions during your City employment). Instead, you propose to work a maximum of 20 hours per week developing strategies for the Foundation, such as writing 5-year plans and suggesting possible new projects. You are to have no direct project management responsibilities and would most likely work 2 to 3 days per week.

### APPLICABLE LAW AND ANALYSIS

Section 2-156-100(b). The provision of the Ordinance that is relevant to your request is Section 2-156-100(b), entitled "Post-Employment Restrictions," which provides that:

**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.**

This section prohibits you, as a former City employee, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if you participated "personally and substantially" in the subject matter of that transaction during your City employment. In addition, you are permanently prohibited from assisting or representing any person on a specific contract if, during your City employment, you exercised "contract management authority" over that contract. Both of these prohibitions will be discussed in further detail below.

One-Year Prohibition. Under the Ordinance, you are prohibited from working on a business transaction involving the City for a period of one year if you "participated personally and substantially" in the subject matter of that transaction during your City employment. The one-year prohibition pertains to all activities performed during your City employment, and runs from the time you left City employment, not from the time you stopped performing a particular task, left a particular department, or assumed a different position. *See Case No. 01030.A, p. 6.*

The subject matter of your prospective employment, as you have defined it, is “goal setting and strategic planning” for the Foundation. You stated that at no time will you be directly involved with the City, nor will you be working in any type of a project management capacity as it relates to the City. In contrast, while working with the City, the subject matter of your former employment included performing in a project management capacity, overseeing and negotiating the details of projects in your designated area. You also stated that you will not be involved with the [expedited facilitation] project in any capacity, project management or otherwise, nor will you sit on the board of the 501(c)(3) that will actually be involved in the project. As your former and proposed employment do not involve the same subject matter, for purposes of the Ordinance, the one-year prohibition is inapplicable as it pertains to your proposed employment.

Permanent Prohibition. Under the Ordinance, you are permanently prohibited from working on a contract for any non-City employer if you exercised “contract management authority” over that contract. Section 2-156-010(g) of the Ordinance defines contract management authority as “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.”

You stated that during your City employment, you participated in meetings regarding [any expedited facilitation] project, though the final details of the program were not firmly established at the time of your departure. This Board has previously found that participating in meetings rises to the level of contract management authority where the meeting is a part of the contract’s formulation. However, you explained that your proposed employment will be with the organization that is funding the project. As such, you will not actually be working on the [expedited facilitation] contract. Resultantly, the permanent prohibition, in this instance, does not apply to the activity that you have described. However, if you find yourself in a position where you are asked to work or assist on the contract, you are permanently prohibited from doing so for the life of that contract.

You also referenced another Department of X project which involved the Foundation, in connection with which you attended meetings while a City employee. You stated that while the project was pending in your department, you saw the area that it was supposed to encompass, but you did not review any of the actual plans for the project, nor did you know the name of the project. You also noted that the project has since been moved to oversight of the Department of WWW. Due to your limited involvement with this project, you are not permanently prohibited from working on this project. However, should you be asked to become involved with this project, you should seek further guidance from this agency.

Other Prohibitions. Finally, we direct your attention to Section 2-156-070 of the Governmental Ethics Ordinance, entitled “Use or Disclosure of Confidential Information,” which reads as follows:

**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. For purposes of this section, “confidential information” means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.**

Under this Section, you are, as a former City employee, prohibited from using or disclosing any confidential information gained in the course of City employment. Please note that this is a permanent prohibition.

### **STAFF CONCLUSION**

It is the staff’s conclusion that neither the one-year prohibition nor the permanent prohibition in §2-156-100(b) of the Ordinance prohibits you from performing the work described in this letter on behalf of the Foundation. However, please note that should your employment with the Foundation change to include work on the [expedited facilitation] project, you are subject to the permanent prohibition. In addition, our review of your City service indicates that you may well have exercised contract management authority over any number of other contracts. Therefore, please be advised that this opinion is limited to your stated position with the Foundation only. If your duties with the Foundation, or any other employer, differ from those described in this letter, we strongly advise you to contact us for further advice, as the Ordinance’s prohibitions may restrict your ability to perform such duties.

Staff’s conclusion is 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 us immediately, as any change may alter these conclusions. If you have any additional questions, please do not hesitate to contact us at (312) 744-9660.

Very truly yours,

Briana N. Billingslea  
Attorney/Investigator

Approved by:

Dorothy J. Eng  
Executive Director