

Advisory Opinion
Case No. 06054.A, Post-employment

To: Mr. John Smith

Date: xxxx xx, 2006

On xxxxx xx, 2006, after serving for xx years as an engineer in the City's Department of [X] you retired from City service. On xxxx xx, 2006, you wrote to the Board of Ethics. You explained that you are scheduled to begin work on xxxx xx, 2006 with [Y] Inc., a City contractor, and asked whether, under the City's Governmental Ethics Ordinance, you may assist your prospective employer on certain City projects (identified below).

After careful consideration of the facts presented and the relevant law, the Board has determined, in summary, that you are prohibited for one year from the date you left City service, that is, until xxxx xx, 2007, from assisting or representing [Y], Inc., or any other person, on any business transaction involving the City related to the construction (including the design) or operation (including maintenance) of the City's [facilities] system.

A recitation of the facts, the relevant law, the Board's analysis and the Board's specific determinations in this matter are set forth below.

FACTS: City Employment. You graduated from [B] University in 19xx with a Bachelor of Science degree in [yyyyy]. In July 19xx, you began City employment as a "Civil Engineer I in the Department of [X], now called the Department of [X] ("the [X] Department" or "the Department"). While working for the City, you supplemented your field work with academic course work in the evenings. In 19xx you received your [Facilities] Operator's License from the Illinois [Administration], and in 19xx you received your Professional Engineer's license from the State of Illinois. When you retired on xxx xx, 2006, you held the title of Assistant Engineer of [Facilities Distribution].

During the first five years of your City service, your work focused on the construction aspect of [facilities] installations, with you serving as a resident (or field) engineer on various [facilities] installation projects. During the next nine years, your work focused on the operations aspect of the City's [facilities] system--which consists of approximately [diverse equipment] and serves the City as well as approximately [many other] communities. Your duties during this period included monitoring [facilities] information, recommending [facilities] improvements by utilizing computer modeling, and monitoring the [equipment as part] of the City's [facilities] system.

In 19xx, the Department instituted a [Facilities Improvement] Program and you were named its Project Manager. Under the Program, [facilities] installations—which historically had been performed almost exclusively by City crews—were “put out to bid” on an annual basis. Each year, the three “lowest responsible bidders” were selected from among the respondents and awarded contracts. As Project Manager, you were responsible for managing all aspects of construction by these private contractors. On this task, you were assisted by six City field engineers, whom you supervised. The six were divided into three teams, each consisting of a resident engineer and an assistant resident engineer. In 19xx, the Department transferred construction management responsibility from you to an outside consultant, Chicago [Corp.] (“[C]”). With this change, you became the Program’s coordinator and liaison to [C]. You continued in that role until you retired from City service in xxxxx 2006.

You stated that, in addition to your primary City duties described above, you occasionally provided engineering and/or administrative services on certain other Department contracts put out to bid for “specialty work” that City forces did not have the capability to perform, e.g., cleaning and [maintaining secondary facilities], etc. You also stated that at no time during your City tenure did you participate in the letting, award, negotiation, supervision or modification of any contract, subcontract or task order between the City and your prospective employer, [Y], Inc.

At your direction, Board staff consulted with your former supervisor, Deputy Commissioner Jane Doe. Ms. Doe stated that, to the best of her knowledge, your description of your City duties, summarized above, is accurate.

Post-City Employment. [Y], Inc. is a national engineering consulting firm with offices in Chicago. To your understanding, [Y] envisions utilizing you primarily as a “[facilities] engineer.” Among the projects to which you may be assigned (upon commencing work with [Y]) are the construction of an [special] facility in Hometown, Illinois and the resolution of an operations problem at a [different special system] in Metropolis, Illinois. However, [Y] has a number of City contracts. You have asked whether, under the City’s Governmental Ethics Ordinance, you may assist your prospective employer on three specific projects/contracts, discussed below.

1. [Facilities] Study. The City is in the in the process of reassessing the [profit margin] it [obtains through] [installing/operating facilities]. The [X] Department has retained [Y] to conduct a [profit] study. As you understand it, among the factors [Y] will be examining are some or all of the following: [facilities charges] in other major U.S. cities; current [and future] demand [for facilities], both within the City of Chicago and by [third parties]; the current state of the City’s [facilities] infrastructure; projected infrastructure improvements; and the cost of the same.

To the best of your belief, [Y] has already commenced work on this project. In your estimation, your knowledge of the City’s [facilities] system, particularly its [“special facilities”], would be of particular benefit to [Y] in completing its study. You stated that you had no involvement in the formulation, negotiation, award or execution of [Y]’s agreement with the Department to perform this

study. You also stated that during your City tenure you had no involvement of any kind with any [similar] study by the City and/or its consultants.

2. [ZZZ] Green Roof Project. [Y] has been retained by the [X] Department to design and build a “green roof” atop the City’s [ZZZ Facilities]. [Y] would like you to assist on this project. Your assistance could, as you understand it, entail any or all of the following: providing civil engineering services; performing “cost accounting” services; and/or serving as [Y]’s liaison to the City to coordinate/resolve issues of scheduling, payments and project “add-ons.”

To the best of your belief, [Y] was retained on this project, prior to your resignation from City service, pursuant to a task order under an existing term agreement with the Department for professional services. You stated that during your City tenure you had no involvement in any aspect of the formulation, negotiation, award or execution of either [Y]’s term agreement with the Department or the “[ZZZ] Green Roof Project” task order.

You also stated that, although your office was located at the [ZZZ] facility, you had no involvement with any capital improvement project at the facility; your work focused, as noted above, on the City’s [facility] system. To the best of your belief, and to that of Deputy Commissioner [Doe], the “[ZZZ] Green Roof Project” in no way implicates or relates to the design, construction or operation of the City’s [facilities] system. Finally, you stated that during your City tenure you had no involvement of any kind with the design or construction of “green roofs.”

3. [Alternative Facilities] Reconstruction Projects.

You estimate that, during your last five years of City service, approximately twenty percent (20%) of your time was devoted to addressing issues related to the restoration of [alternative facilities] damaged in the course of [facilities] installations and/or repairs. This restoration work – which included [maintenance] as well as reconstruction – was performed, you stated, either by another department’s crews or outside contractors under contract to the Department of X.

You stated that you did not serve as the field or supervising engineer on any of these restoration projects¹; instead, you functioned, in essence, as a liaison between the [X] Department; the City crew or private contractor performing the restoration work; and other [third party] agencies involved in, or affected by, the restoration work. In that role, you coordinated the resolution of issues such as scheduling, traffic and scope of work, e.g., [A work] versus partial [B work].

You stated that your prospective employer, [Y], did not serve as contractor or subcontractor on any

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The field engineer on these restoration projects typically was an employee of [C]. The field engineer was supervised by, and reported to, a [C] supervising engineer. Between them, routine field issues were addressed and resolved. Non-routine issues were brought to your attention by the supervising engineer—or, on occasion, by the field engineer—for resolution.

of the [alternative facilities] restoration projects with which you were involved as a City employee. However, [Y] currently has a contract with the Chicago Department of [N] (“[N]”) to perform street restoration work. You have asked whether you may assist [Y] in any capacity on this contract. To the best of your knowledge, and to that of Deputy Commissioner Doe (although neither of you is certain), the [alternative facilities] restoration work that [Y] will be performing for [N] has no relation to the work of the [X] Department or its contractors.

STATEMENT OF THE LAW: 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.

Law and Analysis: Ordinance Section 2-156-100(b) prohibits a former City employee 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.

1. The One Year Prohibition: Personal and Substantial Participation. We first address the one-year prohibition. Based upon the duties you performed during your xxxxx years of City service, as described above, the Board concludes that, during the term of your City employment, you were personally and substantially involved in the construction and operation of the City’s [facilities] system.

The Board determines, therefore, that under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until xxxx xx, 2007 from assisting or representing [Y], Inc., or any other person, on any business transaction involving the City related to the construction (including the design) or operation (including maintenance) of the City’s [facilities] system.

This prohibition includes, but is not limited to, assisting [Y] on its [Facilities] study (described above) for the Department of [X], given that the study will examine, among other factors, current and [future facilities] demand, both within the City of Chicago and by [third parties]; the current state of the City's [facilities] infrastructure; projected infrastructure improvements; and the cost of the same.

This prohibition does NOT include assisting [Y] to design and build a "green roof" atop the City's [ZZZ Facilities], given that, on the facts presented, there is no indication that the project directly implicates or relates to the construction or operation of the City's [facilities] system.

Also, this prohibition does NOT include assisting [Y] on its contract with [C] to perform [alternative facilities] restoration work, given that, on the facts presented, the Board concludes that, during the term of your City employment, you were not "personally and substantially involved" in the restoration of City [alternative facilities] within the meaning of Ordinance Section 2-156-100(b).

2. The Permanent Prohibition: Contract Management Authority. As noted above, 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.*"

You stated that at no time during your City tenure did you participate in the letting, award, negotiation, supervision or modification of any contract, subcontract or task order between the City and your prospective employer, [Y], Inc. Based on your representations, the Board concludes that you did not exercise contract management authority, within the meaning of Ordinance Section 2-156-100(b), over: 1) [Y]'s contract with the [X] Department to perform a [facilities] study (described above); 2) [Y]'s contract with the [X] Department to design and build a "green roof" atop the City's [ZZZ Facilities]; or 3) [Y]'s contract with [C] to perform [alternative facilities] restoration work. Therefore, the Board determines, therefore, that after xxxx xx, 2007, you are not prohibited under Section 2-156-100(b) of the Governmental Ethics Ordinance, from assisting [Y], Inc. on its [facilities] study for the [X] Department.

NOTE: This advisory opinion addresses the application of the permanent prohibition contained in Ordinance Section 2-156-100(b) only to the three contracts identified above. **Should you, in the future, have a question regarding the application of the permanent prohibition to some other City contract** with which you may have been involved as a City employee, we advise you to contact the Board for specific guidance regarding that contract.

DETERMINATIONS: After careful consideration of the facts presented and the relevant law, the Board has determined that, under Section 2-156-100(b) of the Governmental Ethics Ordinance:

1. **you are prohibited for one year from the date you left City service, that is, until xxxx xx, 2007 from assisting or representing [Y], Inc., or any other person, on**

- any business transaction involving the City related to the construction (including the design) or operation (including maintenance) of the City's [facilities] distribution system;
2. this prohibition includes, but is not limited to, assisting [Y], Inc. on its [facilities] study (described above) for the Department of [X];
 3. this prohibition does NOT include assisting [Y], Inc. to design and build a "green roof" atop the City's [ZZZ Facilities];
 4. this prohibition does NOT include assisting [Y], Inc. on its contract with [C] to perform [alternative facilities] restoration work; and
 5. after xxxxx xx, 2007, you are NOT prohibited from assisting [Y], Inc. on its [facilities] study.

Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

CONFIDENTIAL INFORMATION: We also bring to your attention Section 2-156-070 of the Governmental Ethics Ordinance, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

RELIANCE: This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

Darryl L. DePriest
Chair