

**CONFIDENTIAL**

December 20, 2006

[ EMPLOYEE ]  
[ ADDRESS ]  
Chicago, Illinois 60618

RE: Case No. 06060.A

Dear [ EMPLOYEE ],

You are a [ TITLE ] in [ DEPARTMENT ]. On September 26, 2006, you contacted this office, requesting guidance as to whether your potential employment with [ COMPANY ] is prohibited by the post-employment provisions of the City of Chicago Governmental Ethics Ordinance. It is the Board's opinion that, based on the facts presented in this opinion, the Ordinance's post-employment provisions do not prohibit you from assisting [ EMPLOYER ] with the day-to-day management of [Major Public Facility], as you have described it; however, you are prohibited, for a period of one year after leaving City service, from assisting [ COMPANY ] with respect to any work involving energy efficiency as it relates to any City-owned or City-leased properties.

**CITY EMPLOYMENT**

You began working for the City in October 2000 in [ DEPARTMENT ], first in [ BUREAU 1 ], and subsequently in [ BUREAU 2 ], where you currently serve as a Project Manager. As described on the City of Chicago website, the [latter] Bureau manages the renovation and reconstruction of City-owned health care and human services facilities, public safety buildings, and cultural institutions. It also prepares the designs for all landscaping of City-owned property, develops architectural and engineering consultant selection criteria and is responsible for RFQ and RFP development and advertising for the same, performs architectural and engineering design team selection, and develops and manages consulting contracts, from project programming through the completion of construction. As a Project Manager, you said that your day to day activities include making site visits and coordinating meetings at various projects, coordinating moves by City departments from one facility to another, auditing and processing various contractor invoices, and performing certification work for prospective LEED (Leadership in Energy & Environmental Design) projects.

In conjunction with LEED projects, you said that you have reviewed bid sheets submitted by prospective natural gas suppliers and worked with the City's

natural gas consultant to determine the best times to purchase gas. You were also involved in renewable energy and efficiency surveys, meaning that you worked with renewable (wind, solar, and/or thermal) energy suppliers to supplement the City's energy portfolio, and you reviewed billing histories and conducted building audits to determine possible energy efficiency upgrades. You also explained that you helped draft and negotiate some of the specifications for the City's electrical contract with [Company 2]<sup>1</sup> and assisted in the natural gas contracting process.<sup>2</sup> You also stated that you provided project management for the [Public Facility], and LEED certification for six public libraries. As you explained, a project manager for the City works with general construction contractors, architecture and engineering firms, sub-contractors and City tradespeople to oversee, direct, and ensure the viability and success of a given project.

### **PROPOSED EMPLOYMENT**

You have been offered a job managing [Major Public Facility] for [Company] and, potentially, providing energy consulting services for electrical and natural gas efficiency to [Company] for any or all properties it manages. [Company] is a full-service real estate organization that provides asset and facilities management, leasing, tenant representation, real estate development, project management, and investment services. The firm has provides these services to corporations, institutions, professional organizations, private investors, and non-profit agencies throughout the Midwest and East Coast.

**[Company] Consulting Services.** As you have explained, there is a 3-prong approach to analyzing energy efficiency. As a consultant on any of the properties managed by [Company], you would first analyze approximately two years' worth of energy bills. During the review, you would perform an audit, evaluate usage, and check for any accounting mistakes. Second, you would perform an energy audit by bringing in an engineer to examine the equipment currently in use, such as light fixtures, light bulbs, boilers, furnaces, etc. During this stage, you would make assessments on what equipment needs to be maintained or replaced and what can be done to use energy more efficiently. Third, you would look at how [Company] is currently purchasing its utilities and how it could purchase them going forward. As you explained, natural gas is deregulated in Chicago and can be purchased from anyone. Similarly, electricity will be deregulated in January 2007, and can be purchased from anyone. You would be in control of obtaining bids from other supplies and seeking to obtain energy at lower cost.

**[Major Public Facility]** In September, [Company] was awarded a City contract for property management services at [Major Public Facility]. You have been offered the job of managing this contract by a friend you have known since attending grammar school, [David Roberts], the President of the Midwest Region for [Company]. You have been informed that you could assume the position "within the next month." As you understand it, your duties could include, but would not be limited to, customer service at [Major Public Facility], and managing the

---

<sup>1</sup> [Company 2] was signed to a short-term contract in order to provide the City with flexible cost-options, in case [Company 3's] prices do not decrease upon deregulation.

<sup>2</sup> The natural gas contracts were General Industry Standards Board contracts – standardized contracts that remain unaltered from the standard format and terms.

subcontractors in charge of general upkeep and maintenance, parking and event coordination at [Major Public Facility].

[Major Public Facility] is bordered by [A Street] to the west, [B Street] to the east, [C Street] to the North and [D Street] to the South, and is a division of the City of Chicago Department of [X]. You said that you have not, during the course of your City employment, had any involvement with any aspect of [Major Public Facility] operations, contracting or leasing, nor have you been involved in any way with the formation or execution of [Company's] contract with the City. You said that you do not know and have not reviewed any of the details regarding the contract that you would be working under, other than the fact that you would be in control of day-to-day management of the [Major Public Facility]; however, you have been informed that it is tied to the Department of X.

#### City Involvement with [Company]

In the course of your City service, you interacted with [Company] on one occasion: when you helped effect a move of the [Y] Office from [address], a building managed by [Company]. In that instance, you had to notify [Company] regarding the planned moving date, use of the freight elevator, cleaning of the space and disconnection of IT cable hook-ups. To the best of your recollection, you have not had any other involvement with [Company].

### APPLICABLE LAW AND ANALYSIS

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

**(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.**

This section prohibits you, as a 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, it permanently prohibits you from assisting or representing any person on a specific contract if, during your City employment, you exercised "contract management authority" with respect to that contract.

One-Year Prohibition. This prohibition would restrict you from assisting [Company] with respect to its contract to manage [Major Public Facility] if the business transaction involving the City has a subject matter in which you were personally and substantially involved during your

City employment. The subject matters in which you were involved during your City employment included, among other things, evaluating and contracting for the City's energy needs for its facilities, managing contractors on projects, and managing facility moves. In some previous cases involving an actual contract, the Board determined that the subject matter has been the purpose or goal of that particular City transaction, pursuant to the terms of the contract. *Cf. Case No. 96001.A.* In this instance, the Board believes that, due to the unique nature of [Major Public Facility], its size, location, and the varied purposes its serves, the "purpose or goal" of the City transaction is providing property management services for [the Major Public Facility]. Thus, we conclude that the subject matter of your prospective employment is day-to-day management of the [Major Public Facility] facilities, including customer service and oversight of the contractors hired to perform landscaping, maintenance, parking, event coordination and similar work. During your City employment, you were not involved, at any time, with management or operations at [Major Public Facility]. While you were involved in the oversight of contractors during the course of your City employment, you were responsible for construction, engineering and architecture matters – none of which would be a part of your duties in connection with [the Major Public Facility]. As such, the subject matter of your prospective employment as it relates to [Major Public Facility] is not one in which you were personally and substantially involved during your City service. Thus, you are not subject to the one year prohibition as it relates to [Major Public Facility].

However, the Board's review of your City career warrants the conclusion that, during the course of your City service, you were personally and substantially involved in various different functions – including, but not limited to, auditing possible energy efficiency upgrades, finding energy sources and reviewing bids from energy suppliers – that you anticipate performing for [Company]. Based on your personal and substantial involvement, you are prohibited, for a period of one year following the effective date of your termination from City employment, from assisting [Company] or anyone else on any matters related to finding energy sources for the City. This prohibition applies to assisting anyone to find energy providers for City-owned and City-leased property.

Permanent Prohibition. Based on the Board's review of your City job responsibilities, we advise you that there are likely to be many contracts on which you are permanently prohibited from working or assisting [Company] or any other potential employer or client. However, none of those contracts and/or proceedings is at issue here. Therefore, the Board finds it unnecessary to address the permanent prohibition in this opinion. However, should your proposed employment change, we advise you to contact us for specific guidance, as the Ordinance's permanent prohibition may apply.

Other Prohibitions. Finally, the Board brings 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, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of City employment. Please note that this is a permanent prohibition.

### **DETERMINATION**

Based on the facts presented in this opinion, the Board determines that the Ordinance’s post-employment provisions do not prohibit you from assisting [COMPANY] with the day-to-day management of [Major Public Facility], as you have described it; however, you are prohibited, for a period of one year, from assisting [COMPANY] with any energy consulting for energy efficiency for any City-owned or City-leased properties. Should your actual job responsibilities differ from those described in this opinion, we advise you to contact us for further guidance, as you may be restricted by the Ordinance’s post-employment provisions from assisting your proposed employer, or any other person, with respect to that work. Also note that we have addressed only two specific projects. Based on the Board’s review of your City career, we believe that the Ordinance may prohibit you, for a period of one year after your effective date of termination from City employment, and/or permanently, from working on various other projects or contracts. Thus, we advise you to contact us for further guidance if your responsibilities for your proposed employer change.

Please note that our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the applicable sections of the Governmental Ethics Ordinance to the facts as you have represented them. If the facts stated are incorrect or incomplete, please notify the Board immediately, as this may change our determination. Other rules and/or laws may also apply to this situation.

### **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.

Very truly yours,

Darryl L. DePriest  
Chair