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Darryl L. DePriest
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Fr. Martin E. O'Donovan

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-5996 (TT/TDD)

Advisory Opinion
Case No. 93003.A, Post-Employment
[REDACTED]

Date: February 25, 1993

On January 26, 1993, you called this office, and on January 27 you came to the office with a letter seeking an opinion about how the City's Ethics Ordinance would affect your proposed position with a [REDACTED] consultants' firm. You left employment with the City's Department of [REDACTED] at the end of [REDACTED].

It is the Board's opinion that, if you are correct in your assessment of your job duties, then the post-employment provisions of the Ordinance would not prevent you from carrying out your expected duties to your new employer. This opinion is primarily intended to provide you general guidance about how the Ordinance may affect your duties in your proposed employment.

FACT: At the end of [REDACTED], you left your job as an assistant to the [REDACTED] in the City's Department of [REDACTED], a job you held since [REDACTED]; you had been located at [REDACTED]. You had been employed in that department since [REDACTED]. You provided us with documents describing your duties for the City. As an assistant you have been an office manager and have been responsible for various operational activities, for example, ordering supplies, helping to prepare and monitor the annual departmental budget, and administering and coordinating departmental meetings, as well as special meetings, such as those for [REDACTED]. You also had responsibility for special projects -- you were responsible for the [REDACTED], and for [REDACTED]. You said your tasks have been focused on matters of in-house operations [REDACTED], and that you have not dealt directly with field operations. You state that you have not worked with consultants, and have only dealt with them in superficial ways, such as by arranging meetings. You state that you have no technical knowledge about [REDACTED], but have been engaged in administrative, operational activities.



Your proposed position is as executive secretary to a senior executive in what you describe as a national [REDACTED] consultants' firm. You state that the firm primarily deals with technical field operations, which would include, you state, matters such as [REDACTED]

[REDACTED]; the firm consults on a [REDACTED] task force attempting to reduce [REDACTED]. This firm, you state, deals with [REDACTED] all over the country. You expect your work would include typing, taking dictation, handling appointments, making travel arrangements, taking messages, arranging meetings, and similar activities of an executive secretary.

Because you have at this time only a description of very general proposed duties, without a description of, for example, specific projects on which you may be working, this letter will provide general guidance. If later you feel you need more specific guidance, please feel free to return to us with your questions, and we will try to assist.

LAW -- POST-EMPLOYMENT RESTRICTIONS: The section of the Governmental Ethics Ordinance that deals with employment after leaving a City position is § 2-156-100, entitled "Post-employment Restrictions." The relevant parts state:

(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.

Section 2-156-010(g) defines "contract management authority:"

"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.

Under these sections, a former City official or employee is subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition that applies if the person exercised contract management authority.

"Assisting" and "representing" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (See Case No. 89119.A.) Transactions that involve the City are not limited to transactions directly with the City. (See Case No. 92035.A)

The term "representation" applies to a broad range of activities in which one person acts as a spokesperson for another person, seeks to communicate and promote the interests of one party to another, makes contacts (including personal appearances) on behalf of another, or signs his or her name as representing one party to another, as in the submission of a request or proposal to the City or entering a contract.

Section 2-156-100(a) deals with former employees who were involved in administrative or judicial proceedings while with the City; because you have said you were not involved in any such proceedings, we have not cited that provision.

DISCUSSION OF POST-EMPLOYMENT RESTRICTIONS: You stated that you participated in writing specifications for two contracts, one for [REDACTED], and the other for [REDACTED], and that your new employment would not involve either of these two subjects. Therefore you do not believe that the permanent prohibition will be applicable to the tasks that you might be asked to do in your new position.

The prohibition that is likely to be most relevant is the one that prohibits you from assisting or representing anyone in a transaction involving the City if you were personally and substantially involved in the subject matter of that transaction while you were employed by the City. Past opinions have interpreted this to mean that if you participated personally and substantially in a particular project, contract, or business transaction while with the City, you may not, for one year, assist or represent anyone with respect to that matter. (See Case Nos. 92010.A, 92022.A and 92032.A)

Please note that the post-employment provision of the Ordinance does not prohibit you from accepting a position with a firm that deals with your former agency; rather, that provision of the Ordinance seeks to regulate your conduct in whatever position you may take after you have left City employment. Also, the Ordinance does not prohibit you from dealing in your new job with your former agency. The critical question for you under the post-employment provision appears to be whether you have participated personally and substantially in a particular matter in your City employment; if so, then the Ordinance would prohibit you from assisting or representing your new employer with respect to that matter for one year after your departure from City government, whether or not in your new employment you are personally dealing with the City. (See Case Nos. 92010.A and 92035.A)

You anticipate that in your proposed new position you will be doing secretarial work, and that the subject matter of the projects in which your immediate superior will be engaged, and in which you may assist, will involve *field operations*; you believe that because your employment with the City focused on matters *of in-house operations*, you will not be asked in your new employment to assist in any projects or transactions involving the City in which you have personally and substantially participated. If you are correct in your assessment of your job duties, then the post-employment provision of the Ordinance would not appear to prevent you from carrying out those duties for your new employer. However, because your potential employer does engage in transactions involving the City, and because in your City job you had responsibilities for some matters relating to the entire department, the Board advises you to be alert concerning matters on which you have worked while with the City, and to seek advice of the Board if you have questions about specific issues.

CONFIDENTIALITY -- LAW: In addition to the post-employment provisions discussed above, § 2-156-070, governing the use of confidential information, also applies to former City employees. This section states:

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.

This section prohibits current and former officials and employees from using or revealing confidential information they may have acquired during the course of their City job.

DISCUSSION OF CONFIDENTIALITY: You have stated that in your City job, you did not have access to confidential information. However, you apparently had some important responsibilities in your City job, and directly assisted people who had broad authority; in the event that you did have access to some confidential information that may not occur to you at this moment, the Board reminds you that you are permanently prohibited from revealing or using such information.

CONCLUSION: It is the Board's opinion, from the facts presented, and your assessment of your job duties as executive secretary, that the City's Ethics Ordinance does not prohibit you from carrying out your expected tasks with your proposed employer. However, the Board advises you to be alert in your new employment for projects or areas of activity that might be prohibited under the Ordinance, in ways that have been discussed in the course of this Advisory Opinion. The Board has issued this Advisory Opinion for your general guidance. If later you have more specific facts about your new position, and are uncertain how the Ordinance applies to them, please feel free to call the Board for further guidance.

The determination in this case is based on the application of the City's Governmental ethics Ordinance to the facts stated in this opinion.



Catherine M. Ryan
Chair

NOTICE OF RECONSIDERATION

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.