

**ADVISORY OPINION  
CASE NO. 97056.A  
POST-EMPLOYMENT**

To: [Helen Smith]

Date: April 8, 1998

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In October 1997, the Board of Ethics rendered to you an advisory opinion in Case No. 97025.A, concerning your post-City employment. On December 3, 1997, you sent a letter to the Board requesting an additional advisory opinion to clarify issues not specifically addressed in the earlier opinion.

**BACKGROUND:** The facts as set forth in the earlier opinion. From November 1993 to September 1997, you were employed by the City, as described below. Before your City employment, you had a variety of experience related to law and aviation. Among other things, you worked as an [ ] Affairs Administrator for [ ] Airlines and as a Project Manager for [P] Partners . Both positions involved developing airport properties and negotiating contracts and lease agreements.

From November 1993 through April 1997, you were Deputy Commissioner in the [E] of the Department of [N] . You developed policies relating to the management of all City real estate, negotiated, drafted and analyzed certain use agreements and facilities leases<sup>1</sup> (e.g., for space), negotiated rental car and other ground transportation contracts, and supervised work within the [E] .

From May to September 1997, you were Deputy Director of Business Services in the Department of [V] , responsible for creating and implementing policies and procedures for licensing, tax administration, and intergovernmental affairs, helping the [A] Department draft legislation and managing a staff of over 80 employees.

On September 4, 1997, you left City employment. You have established your own business, [Smith & Associates], offering business, legal and advisory services to airports, airlines and others serving the aviation industry.

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<sup>1</sup>However, you did not in your City job assist in negotiating or drafting the “ Use Agreement and Facilities Lease,” the “ Use Agreement and Facilities Lease,” or the “ Use Agreement and Facilities Lease,” all of which are discussed below.

Summary of the Board's earlier determinations. In Case No. 97025.A, the Board addressed whether you could assist or represent clients in transactions involving retail services . The Board determined and/or advised you of the following:

- The post-employment provisions of the Ethics Ordinance prohibit you for one year after leaving City employment from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of the transaction is the management of real estate ;
- The one-year provision does not prohibit you from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of the transaction is the management of space for food, beverage or retail concessions ;
- The Ethics Ordinance prohibits you permanently from assisting or representing any person in connection with any contract, lease or agreement over which you exercised management authority during your City employment.

Your additional questions. In your December 1997 letter, you asked the Board to clarify the application of the Ethics Ordinance's one-year and permanent post-employment restrictions to a number of possible circumstances. After a statement of the relevant law, we will address each of your questions in turn.

**LAW:** Section 2-156-010 of the Ethics Ordinance, entitled "Post-Employment Restrictions," provides:

**(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.**

**(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.**

"Assisting" and "representing" a person in a business transaction involving the City encompasses helping a person to seek a contract as well as to perform a contract. (See Case Nos. 89119.A, p. 8; 92035.A, p. 6.) 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.**

## QUESTIONS:

### Questions One and Two: City Use Agreements.

*Are you permanently prohibited from assisting or representing an airline in connection with City Use Agreements (e.g., by providing general legal advice to a [party] on its obligations and rights pursuant to such an agreement, or advising on the drafting and negotiation thereof)?*

*Are you prohibited for one year from assisting or representing an airline in connection with the Use Agreement?*

A Use Agreement is an agreement between the City and a group of [companies] that defines the terms of the relationship between the City and the [companies] with respect to a particular . All of the [companies] operating at a Chicago sign a single Agreement, with identical terms. This Agreement governs every aspect of operations and defines the terms of all economic activity at the , including the terms under which the City is to issue bonds for construction and development and how fees and payments from the [companies] are to be used in retiring those bonds. It allocates space to each airline for its exclusive use (in exhibits attached to each [company] s) copy of the Agreement) and defines the responsibilities that each party will have in the operation and maintenance . Three Use Agreements are relevant to your questions: the " A Use Agreement and Facilities Lease" (" Use Agreement"), most recently renegotiated in 1983/85 and expiring in 2018; the " B Use Agreement and Facilities Lease" (" Use Agreement"), entered into in 1990 and likewise terminating in 2018; and the " C Use Agreement and Facilities Lease" (" Use Agreement"), expiring in 2002.

All of these Use Agreements were negotiated, drafted and entered into prior to your City employment. You said you were not involved at any time in the negotiation or drafting of the A Use Agreement or the B Use Agreement. At the time of the negotiation of the C Use Agreement, you were employed by [P] , which represented the [companies] who were entering into the Agreement, and you assisted your employer in drafting it.

Given the comprehensive nature and scope of these Use Agreements, many of your decisions and activities in your City job, like those of other Department of [N] employees, were subject to the terms of the Use Agreements. In addition, you said, in your position with the Department of [N] you were involved in the process of preparing materials for amending the exhibits attached to the Agreements when the space allocated to a particular [company ] for its exclusive use needed to be changed. These amendments would consist primarily of a new set of exhibits showing the changed allocation of space. These amendments also required the assent of all the signatory [companies]. You would hire consultants to perform measurements and create the exhibits, and direct the preparation of the paperwork needed to recommend the amendments to City Council.

Because of your legal training and your pre-City experience with Use Agreements (such as your work with the Agreement), you said that you sometimes assisted other divisions of the Department of [n] in understanding the terms of the Agreements as they related to those divisions. Also, because of your knowledge of [company ] personnel gained through your prior employment, you occasionally assisted when disagreements arose between a division of the Department and an [company ] concerning their respective rights or responsibilities under the Use Agreements, and helped to mediate the dispute before it became a matter for litigation. These roles were not an official part of your City responsibilities, however, and you had no legal authority to give definitive guidance as to the Agreements' meaning.

**Analysis and Conclusions.** Based on the facts as you have presented them, the Board concludes that your involvement with the Use Agreements identified above does not constitute contract management authority over any of those Agreements. You did not, in your City employment, participate in the drafting or the negotiation of those Use Agreements, and your involvement in the amending of those Agreements concerned only one subject they covered, namely reallocation of [companies'] exclusive use premises, as laid out in exhibits to the Agreements, and did not affect the general terms of the Agreements. While you served, on the basis of your pre-City training and expertise, as a *de facto* authority on the meaning of the Use Agreements, you had no formal responsibility or authority over their interpretation or execution, except as it came to bear on the matters within your official responsibility, . For all these reasons, the Board concludes that the Ordinance's post-employment provisions do not prohibit you permanently from assisting or representing any person in connection with these three Agreements.

However, the Board does conclude that, by virtue of your day-to-day involvement in the working interpretation of the Use Agreements, and your involvement in the amending of their exhibits, you did participate personally and substantially in the subject matter of interpreting, executing or amending these Use Agreements. The post-employment provisions therefore prohibit you for one year from assisting or representing any person in a business transaction involving the City whose subject matter is interpreting, executing or amending Chicago's Use Agreements--including the Agreements for [A] and [B] , and for [C] . This prohibition includes assisting clients in drafting or negotiating City Agreements or amendments to City Use

Agreements (concerning real estate or other matters) or advising clients on their rights and responsibilities under those Use Agreements.

The above discussion and conclusions concern the specific Agreements cited--the [A] Use Agreement, the [B] Use Agreement, and the [C] Use Agreement. We note that, as you said, in context the term "use agreement" can also refer to any contract between the operator of a [facility] (such as the City) and certain persons conducting business at the [facility] (such as a [service 1] company). During your City employment, you were involved in negotiating and drafting such use agreements for space and [service 1] properties, among other things. Negotiating and drafting an agreement constitutes contract management authority over that agreement. The Board advises you, therefore, that you are permanently prohibited from assisting or representing any person in connection with any such use agreement over which you exercised contract management authority by negotiating or drafting while a City employee (such as, for example, any agreements for you helped draft or negotiate).

**Question Three: Representation in a Court of Law or Other Forum.**

*Are you prohibited from assisting or representing an airline with respect to a City [facility] use agreement in a court of law or other judicial or quasi-judicial forum?*

As described above, disputes between the City and an [company] with respect to each other's rights and responsibilities under the City's Use Agreements may become litigation proceedings. Given your experience working with Use Agreements (in your pre-City employment as well as in your City job), you believe it is possible that a client will want you to assist in such a proceeding. You said you were not involved in any judicial or administrative proceedings during your City employment.

**Analysis and Conclusions.** The Ethics Ordinance prohibits a former official or employee from assisting in a judicial or administrative proceeding only "if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment." § 2-156-100(a). The facts do not indicate that you were either counsel of record or participated personally and substantially in any judicial or administrative proceeding during your City employment. On the basis of these facts, the Board concludes that you are not prohibited from assisting or representing an airline in a judicial or legal proceeding with respect to a City use agreement in a court of law or other judicial or quasi-judicial forum.

**Questions Four and Five: [Service 1].**

*Will you be prohibited from assisting or representing [Service 1] operators in connection with agreements at [City facility 1] after the end of their current agreements and any extensions thereof?*

*Are you prohibited from assisting or representing [Service 1] operators with respect to negotiations involving new agreements at [City facility 2]?*

Each [Service 1] operator at [City facility 1] is party to two separate agreements: the "Lease of On-Service Facility" and the "License of" . Each operator enters into its own agreement, but the agreements are generally negotiated collectively. The current set of agreements was entered into in late 1996 or early 1997, and have a maximum duration of five years (a three-year base term, with two optional one-year extensions). At [City facility 2], however, during your City tenure and up to the present, [Service 1] operators have been operating under month-by-month agreements, rather than under a long-term agreement.

Besides handling a number of day-to-day matters involving [Service 1] operators at both [City facilities] --such as parking issues, locations for bus pick-ups, and timely payment of fees to the City--you said you also actively participated in the negotiation and development of the Request for Proposals for the current agreement with all the [Service 1] operators at [City facility 1] . You want to know whether under the Ethics Ordinance you will be prohibited from assisting [Service 1] operators in connection with future agreements, after the current agreement and any extensions have expired. At [City facility 2] at the time you left City employment, the process of negotiating a long-term lease had not yet started, and you therefore did not participate in the negotiating of drafting of such an agreement. You are asking whether the Ordinance prohibits you from assisting rental car operators in connection with negotiations for a long-term lease that will replace the current month-by-month arrangement at [City facility 2] .

**Analysis and Conclusions.** The facts indicate that you exercised contract management authority over the current agreement with the [Service 1] operators at [City facility 1], thus the Ordinance's permanent prohibition applies to your potential assistance to or representation of [Service 1] operators as to that contract. You, recognizing this, have asked whether the Ordinance's permanent prohibition prohibits you from assisting or representing any person in connection with: 1) agreements at [City facility 1] after the end of the current agreement's term and any optional extensions thereof; and 2) any new agreements for such services at [City facility 2]. Because these agreements would be new contracts, separate from the [City facility 1] agreements over which you exercised management authority and separate from the month-to-month agreements at [City facility 2] that you worked with, the Board concludes that the Ordinance's permanent prohibition would not restrict you permanently from assisting or representing a client (or any person) in connection with them.

However, the facts indicate that you did participate personally and substantially in the subject matter of [Service 1] agreements generally during your City employment. The Ordinance's post-employment provisions therefore do prohibit you for one year from assisting or representing a client (or any other person) in any business transaction involving the City if the subject matter of the

transaction is airport rental car agreements--including negotiation of any short- or long-term leases for [Service 1] operators at [City facility 2].

**Question Six: [Facility 3] .**

*Are you prohibited from performing general consulting work with respect to [Facility 3] ?*

You said that your only involvement with [Facility 3] as a City of Chicago employee consisted of a single visit as a member of a "good neighbor" delegation from the Chicago Department of [N] around the time of the signing of the [Contract G] , the agreement that established the [Facility 3] Authority. You offered some professional advice to the [Facility 3] Director, and some legal advice to [Facility 3] officials regarding form agreements and negotiation. You had no further involvement with the [Facility 3] or with the [Contract G].

**Analysis and Conclusions.** The Ordinance's post-employment restrictions do not restrict the post-employment activity of a former employee in business transactions that involve governmental entities other than the City, as long as those transactions do not also involve the City. The consulting services you describe relate to the operations of [Facility 3] and do not concern business transactions involving the City. To the extent this remains the case, the Board concludes that the Ethics Ordinance's post-employment restrictions do not prohibit you from performing the consulting services you describe.

**DETERMINATIONS:** In summary, the Board determines the following:

Use Agreements: The Ordinance's post-employment provisions do not prohibit you permanently from assisting or representing any person in connection with the [A] Use Agreement, the [B] Use Agreement, or the [C] Use Agreement. However, they do prohibit you for one year from assisting or representing any person in a business transaction involving the City whose subject matter is the interpretation, execution or amending of Use Agreements. You are also permanently prohibited from assisting or representing any person in connection with any use agreement that you helped negotiate or draft in your City employment.

Representation in a Court of Law or Other Forum: The Governmental Ethics Ordinance does not prohibit you from assisting or representing an airline in a judicial or legal proceeding with respect to a use agreement in a court of law or other judicial or quasi-judicial forum.

[Service 1] : You are prohibited for one year from assisting or representing a client (or any other person) in a business transaction involving the City, if the subject matter of the transaction is [Service 1] agreements. Also, you are permanently prohibited from assisting or representing any

person in connection with the current agreement between the City and the [Service 1] operators at [City facility 1]. However, you are not prohibited from assisting or representing [Service 1] operators in connection with agreements at [City facility 1] after the end of the current agreement's term and any optional extensions thereof, nor are you prohibited, after September 3, 1998, from assisting or representing any person in connection with any new agreements for such services at [City facility 2].

[Facility 3]: The Ethics Ordinance's post-employment restrictions do not prohibit you from performing the general operations consulting work for [Facility 3] that you described (e.g., assisting with marketing, programs for [Service 1] etc.).

Our determinations in this case are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determinations. Other laws or rules may also apply to this situation.

**Confidential Information.** The Board also advises you that § 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from using or disclosing confidential information you acquired in the course of your City employment.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

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Darryl L. DePriest  
Chair