

November 21, 2005

**CONFIDENTIAL**

[John Smith]  
[C] Department

Chicago, IL 606

**Re: Case No. 05067.Q**

Dear [Mr. Smith] :

On November 3, 2005, you contacted our office and asked whether an employee under your supervision, Grants Specialist [O. Henry] has a conflict of interest or is otherwise not in compliance with the City's Governmental Ethics Ordinance by virtue of his service for the [ABCD Project] , and his work with respect to a grant [ABCD] is submitting to the [P Foundation] . After reviewing materials you sent to us that day, we informed you orally of our conclusion that Mr. [Henry's] activities with respect to [ABCD] do not place him in a conflict of interest or otherwise place him in a position that is non-compliant with the Ordinance. There are, however, several restrictions to which he is subject, and of which you should be aware. This letter details our conclusion, and reviews those restrictions.

Mr. [Henry] is a full-time Grants Specialist with your Division of the [C] Department . He manages federal grants focusing on [topic 1] and [topic 2] . On his non-City time, he also has been serving, since , as the first President of [ABCD]. He is not compensated for this work. [ABCD] is a non-profit 501(c)(3) organization, established in , as the funding arm of the [ABCDE] . [ABCDE] itself is also a non-profit organization, founded in part by Mr. [Henry] in 2002. Its mission is to help practitioners , to better understand and implement the principles of [topic 3]

[ABCDE] has sponsored conferences statewide, and conducted training and technical assistance seminars in schools and public safety agencies. [ABCDE's] Coordinating Council (of which Mr. [Henry] is a member) determined that a non-profit should be created to apply for funding in support of its mission. Hence, [ABCD] was established in with Mr. [Henry] as its first President. About that time, two Coordinating Council members learned that the [P] Foundation had identified Illinois as its second statewide initiative location, and allocated funds to use for an Illinois "Model Project." [ABCD] has applied to the Foundation for a grant of \$100-125,000 per year for 3 years under this project. The grant, if awarded, would fund: 1) more extensive training programs [ABCDE] would conduct for clergy, judges, and "training the trainers"; 2) university-based researchers

retained by [ABCDE] who would design a data collection and self-evaluation protocol; and 3) expansion of [ABCDE]'s listserve and website. Concurrently, you said, the [C] is applying to the Foundation's

Program for a \$1.5 million grant to fund the Department's [K] initiative. [K] is a system of related internet-based programs designed to transmit relevant information to the public, and create and store [C] records online. Mr. [Henry] has not worked on this application. In the materials you sent us, Mr. [Henry] writes, and you have confirmed, that this [C] application, if awarded, would be funded from a source within the Foundation, namely the [U] Program, that is different from the source to which [ABCD] has applied and which would fund its grant, namely the Model Project, and that the [ABCD] request is not "in competition with" [C]'s request. In addition, he also writes, and you have confirmed, that he has discussed with you his participation in [ABCD] and [ABCDE], and the latter's application to the [P] Foundation.

On these facts, we conclude that, by virtue of his service for [ABCD] and [ABCDE] and his involvement in [ABCD's] grant application to the [P] Foundation, Mr. [Henry] does not have a conflict of interest, and has not acted in a way that does not comply with the Governmental Ethics Ordinance. Several sections of the Ordinance are relevant to this conclusion, and there are several related restrictions on Mr. [Henry's] conduct, of which both he and you should be aware, prospectively, regarding his [ABCD] and [ABCDE] service. We discuss each in order.

First, Section 2-156-020, "Fiduciary Duty," provides that City employees, at all times in the performance of their public duties, owe a fiduciary duty to the City. Our Board has interpreted this general provision to require that a City employee use his City position and time responsibly and in the public's best interest, and that he give undivided loyalty to the City in the discharge of his public duties. And, it precludes the use of City time and resources to obtain a personal benefit or promote a purely private interest. Case Nos. 96032.A; 03037.Q. As President of [ABCD], and as a Governing Council member of [ABCDE], Mr. [Henry] would also owe a fiduciary duty to both organizations; in the event that his fiduciary duties to the City and these organizations were to conflict, he would be required to resolve the conflict in the City's favor. Our conclusion that Mr. [Henry] has not compromised his fiduciary duty to the City is based on the following: i) neither [ABCD] nor [ABCDE] receive funding from the City of Chicago; ii) neither [ABCD] or [ABCDE] compete directly with the City or with [C] for funding through the [P] Foundation; and iii) Mr. [Henry] been involved in the [K] application to the Foundation. However, we advise you and Mr. [Henry] to ensure that, to avoid any appearance of impropriety, as long as he serves as an [ABCD] or [ABCDE] officer or Council member, he bring to your (or his other supervisors') attention any actual or potential grant application that [ABCD] or [ABCDE] is considering that would compete with [C] or any of its grant opportunities as soon as he becomes aware of the potential competition, and that he remove himself from any further participation in the application on behalf of [ABCD] or [ABCDE] and disclose this in writing to [C] and to [ABCD] or [ABCDE].

Second, Section 2-156-090, "Representation of Other Persons," prohibits a City employee from "representing" any person, such as [ABCD] or [ABCDE], before any City agency or department with respect to any non-ministerial action or decision of that agency or department. Our Board has interpreted the term "representation" to include a broad range of activities in which one person acts as a spokesperson for another person, or seeks to communicate and promote the interests of one party to another, such as making personal appearances before [C] or other City agencies on behalf of another, making telephone contact on another's behalf with City employees and officials, submitting written requests or proposals on their behalf to City agencies, or signing contracts on their behalf with City agencies. See Case Nos. 91047.A, 96032.A., 03037.Q. Nothing in the facts presented to us indicates that Mr. [Henry] has represented either [ABCD] or [ABCDE] before [C] or any other City department or agency—but we advise you prospectively that he is subject to this restriction with respect to his activities on behalf of [ABCD] and [ABCDE].

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Third, Section 2-156-060, "City-Owned Property," prohibits a City employee from the unauthorized use of City property, including City time, equipment or supplies, to carry out his duties for [ABCD] or [ABCDE]. Fourth, Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits a City employee from using or revealing confidential information he has acquired during the course of his City job, whether to benefit [ABCD], [ABCDE] or any other person. Nothing in the facts presented to us indicates that Mr. [Henry] has either engaged in the unauthorized use of City property or used or revealed confidential information--but we again advise you prospectively that he is subject to these restrictions with respect to his activities on behalf of [ABCD] and [ABCDE].

Our conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our conclusions. Please note that other laws or rules may apply to this situation, and that a City department may adopt and impose rules or policies stricter than those contained in the Governmental Ethics Ordinance.

We appreciate your bringing this matter to our attention and your and your staff's concern to abide by the standards embodied in the City's Governmental Ethics Ordinance. If you have any further questions about this or any other matter, please contact us.

Yours very truly,

Steven I. Berlin  
Deputy Director

approved:

Dorothy J. Eng  
Executive Director

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