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Board of Ethics

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CONFIDENTIAL

January 12, 1994

Re: Representation
Case No. 93048.A

Dear

On this office received your written request for an advisory opinion on whether the City's Governmental Ethics Ordinance would allow you to engage in the private practice of law in an "of counsel" capacity, under the terms you outlined in that letter.

Pursuant to your request, the Board has reviewed your proposal, and concludes that your proposed relationship with a private law firm, which is restated below, will not violate the provisions of the Ordinance.

You anticipate that this firm might represent clients whose matters would come before the City Council or City agencies, or represent clients whose interests are adverse to the City's in court or administrative proceedings. In recognition of this possibility, in your "of counsel" relationship with a private law firm, you propose that you must and will:

1. not participate in any matter on behalf of the firm or its clients before any City agency, commission, or the City Council, nor attempt to influence such decisions in any way;
2. not solicit any City business for the firm, nor solicit the representation of any clients seeking City business;
3. not share any information with respect to your official City duties or activities with any person at the firm;
4. not vote or take any other action on any matter, before the City Council or any of its



Committees, in which the firm is interested or represents any party;

5. receive no compensation for the firm's representation of any party before any City agency or the City Council; rather, your entire compensation would comprise fees based on your work for the firm's other clients, unrelated to representation of clients before any City agency or in any proceeding in which the City's interests are adverse;
6. be screened by the firm from any information with respect to any firm, or client matters that could be related to City business.

The Board has previously addressed an elected official's "economic" relationship to an entity with interests in City business. Its reasoning provides support for the conclusion that the arrangement you propose satisfies the restrictions of § 2-156-090 of the Ordinance, "Representation of Other Persons." That section states, in relevant part:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature ...

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

§ 2-156-010 (i) of the Ordinance defines an "economic interest" as "any interest valued or capable of valuation in monetary terms." In Case no. 89103.A, the Board, in deciding that the Ordinance allowed an elected official to serve as an attorney with a large City contractor (in which the official did have an economic interest), in effect recognized a screening and fee arrangement analogous to the one you have proposed. Figuring critically in the Board's reasoning were, essentially, three factors: first, that the elected official's compensation from the entity be totally severed from that entity's City business (a "fee arrangement"); second, while performing duties with the entity, that the elected official maintain a complete separation of his or her own functions from the entity's City business; and third, while performing official City duties,

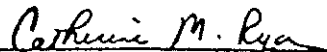
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that the elected official not participate in any City decisions that may benefit the entity (collectively, a "screening arrangement"). You have taken great care to see that all of these elements are present in the arrangement proposed in your letter.

Based on the preceding reasoning, the Board concludes that the Ordinance does not prohibit you from practicing law in an "of counsel" relationship with a private law firm if you adhere to the conditions described in conditions 1 through 6, listed on pages 1 and 2 of this letter. Please note that the conclusions we have drawn are based on solely the facts and conditions outlined in your letter, and are strictly limited to the facts and concerns you addressed in that letter. Any change in these facts could alter the conclusions. Also, we ask you to note that the reasoning and conclusions stated in this letter are limited to an application of the City's Governmental Ethics Ordinance solely to the facts and arrangement you describe. Other rules or laws might apply to your situation, none of which we address in this letter.

We appreciate your bringing this matter to our attention and your willingness to abide by the ethical standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,


Catherine M. Ryan
Chair

cc: Susan Sher
sib/93048.L1