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EMUS

CONFIDENTIAL

December 13, 1994

**Re: Case No. 94043.Q
Outside Employment**

Dear :

On , you contacted the Board of Ethics and requested guidance on whether you may maintain a part-time law practice as an attorney while you continue to work for the City. From the facts you presented, staff concludes that nothing in the Ethics Ordinance prohibits you from conducting this outside law practice while remaining employed in your City position. However, the Ordinance does impose certain restrictions on your practice, about which you should be aware. In this letter, we present a summary of the restrictions in the Ordinance that apply to your situation.

FACTS: You are an attorney licensed to practice law in Illinois. In your City position, you serve as

. In this position, you state, you review City contracts with City vendors, and are responsible for monitoring various factors affecting City resources

In your proposed outside employment, you wish to represent clients as a tax attorney. You said that your outside law practice would be limited to federal and state taxation matters, and that your clients would consist mainly of individuals, but might involve small corporate clients associated with those individuals. You anticipate assisting your clients in tax planning, preparing tax returns, and possibly representing them before the Internal Revenue Service, the Illinois Department of Revenue, or the United States Tax Court. You informed staff that you do not intend to represent clients in any matter or proceeding before any City agency, or against the City.



EMUS

Letter, Case No. 94043.Q
December 13, 1994
Page 2

LAW AND ANALYSIS: While nothing in the City's Governmental Ethics Ordinance prohibits you from conducting an outside tax law practice as you described it, there are several sections of the Ordinance that would restrict certain of the activities you may undertake in your practice, and of which you should be aware. We summarize them in the paragraphs that follow.

First, you should be aware of § 2-156-090, "Representation of Other Persons." Section 090(a) prohibits you, as a City employee, from "representing," or having an economic interest¹ in the "representation" of, any person other than the City in any formal or informal transaction before your own or any other City agency. Section 090(b) prohibits you from having 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 the person's interests are adverse to the City's. The Board has construed "represent" and "representation" to apply to a broad range of activities in which one person acts as a spokesperson for another. It includes activities such as making personal appearances before, making telephone contact with, or submitting written documents to any City personnel or agencies.

You believe that your outside tax practice will not require you to appear before any City agency or otherwise communicate with any City agencies on behalf of your clients. Also, you stated that your practice would be confined to federal and state taxation matters that would not involve the City as an adverse party. As long as this remains the case, this section of the Ordinance would not limit your activities in your outside law practice.

Second, § 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you, as a City employee, from accepting payment in exchange for giving advice or assistance on the operation or business of the City, but does not prohibit you from receiving compensation for rendering services that are wholly unrelated to your City duties and rendered as part of your non-City employment or profession. You said that the

¹ An economic interest, as defined in §2-156-010(1), is any interest valued or capable of valuation in monetary terms. An economic interest "in the representation" therefore includes, e.g., compensation in any manner by the client. Case No. 90035.A. Please note as well that a City employee who is employed by another person, e.g. a client, also has an economic interest in that person, by virtue of the employment. Case No. 89103.A.

EMUS

Letter, Case No. 94043.Q
December 13, 1994
Page 3

services you will render to your clients, namely, tax advice and related legal work, will not involve you in giving advice or assistance on matters concerning City business. As long as this remains the case, this section of the Ordinance would not limit your activities in your outside law practice.

Third, § 2-156-030, "Improper Influence," and § 2-156-080, "Conflict of Interest," prohibit you, as a City employee, from participating in, or in any way attempting to use your position to influence a governmental decision or action in a matter in which you have an economic interest different from the general public's. As discussed above, you would have an economic interest in your clients by virtue of your employment by them. Case No. 89103.A. Thus, provided you do not make, participate in, or attempt to influence any City decision affecting your clients, your outside law practice would not be affected by these provisions. If circumstances arise in which you were called upon to make, participate in, or influence such decisions, you would need to insure that you could remove yourself from that process. We advise you to contact the Board if such a circumstance arises.

Fourth, as a City employee, you owe your primary loyalty to the City. (§ 2-156-020, "Fiduciary Duty.") This section obligates you to use your City position responsibly and in the best interest of the public, and to exercise your professional judgments and City responsibilities free from conflicting duties to outside entities or clients. It also prohibits you from using your City position to obtain a private benefit, e.g. to benefit your outside law practice, or your clients' interests. Case No. 92014.A.

Fifth, § 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, including the benefit of any of your clients. Finally, the Ordinance also prohibits you from using or revealing, other than in the performance of your City duties, confidential information that you have acquired through your City employment. (§ 2-156-070, "Use or Disclosure of Confidential Information.") Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

You should also be aware of Personnel Rule XVIII, Section 1, no. 43, and Rule XX, Section 3. The first provides that engaging in a conflict of interest with present City employment may result in discharge. The second outlines conditions and criteria to be applied to outside employment, and the procedure

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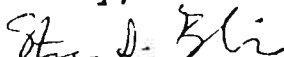
Letter, Case No. 94043.Q
December 13, 1994
Page 4

by which a City employee must submit a request to engage in outside employment to his or her supervisor. In any case, you may wish to discuss your plans with your supervisor.

Our conclusions in this letter are based only on the application of the City's Governmental Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, or if the nature of your outside law practice changes so that the statements made about it in this letter are no longer applicable, please notify the Board, as a change in the facts may alter our conclusions. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance. We enclose a copy of the Ethics Ordinance for your reference.

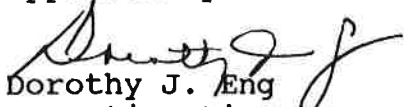
We appreciate your calling us about this matter, and your willingness to abide by the standards of the Governmental Ethics Ordinance. Please do not hesitate to contact us if you have any further questions or need further guidance.

Sincerely,



Steven I. Berlin
Deputy Director

approved by:



Dorothy J. Eng
Executive Director

enclosure

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