

CONFIDENTIAL

April 20, 2009

[REDACTED]

RE: Case No. 09015.Q

Dear [REDACTED]:

On April 20, 2009, you sent me a letter, disclosing your future involvement as an unpaid junior board member of [REDACTED], a non-profit organization, and seeking guidance as to restrictions imposed on your service by the City's Governmental Ethics Ordinance. You said that your duties will consist primarily of attending regularly scheduled Board meetings, helping to plan fundraising events, attending those events, and mentoring [REDACTED]. You also said that you will not personally have any dealings with the City of Chicago in this position, and that as of the date of your letter, [REDACTED] does not seek nor receive any funding from the City of Chicago. You said you do not anticipate [REDACTED] will seek City funding in the future, but in the case that it does, you would have no director indirect role in funding or other City matters, and you have no future plans to have any role that would involve you in such matters.

Based on these facts, I advise you that the City's Governmental Ethics Ordinance does not *per se* prohibit you from serving as an unpaid junior board member of [REDACTED]. However, it does impose the following restrictions on your conduct, both in your City employment and in your service as a [REDACTED] Board member:

1. Fiduciary Duty. As a [REDACTED] junior board member, you owe a fiduciary duty to the organization. And, as a City employee, you owe a fiduciary duty to the City, under § 2-156-020. This duty obligates you to use your City position and authority in the best interests of the public, and give your undivided loyalty to the City in the discharge of your official duties. See Case Nos. 09007.Q, 07002.Q, 06021.Q, and 96032.A. If, in your judgment, the City's interests were to conflict with those of [REDACTED] in any particular matter, you would be required to resolve that conflict in the City's favor—if the matter is scheduled for a vote of the board, this would mean stating your concerns on the record and voting against the proposal. Also, the Board of Ethics has interpreted the fiduciary duty provision to prohibit City employees from using City time and City resources, including their City title, to obtain a personal benefit or promote a purely private interest (such as [REDACTED]), and you would be subject to that restriction as well.

Because you anticipate helping ██████████ in planning fundraising events, and attending them, there are a few more points on which to advise you. First, nothing in the Ordinance restricts your or ██████████ use of your name as a junior Board member on letterhead, other printed materials or on the organization's website. Moreover, there is nothing that *per se* prohibits you from engaging in fundraising activities. However, given the sensitive nature of your City position, and consistent with the Board's decision in Case No. 96032.A (attached), I would advise you that neither you nor ██████████ list or use your City title for any purpose, including fundraising, and that you not sign any letters that ██████████ would send for fundraising purposes. If you yourself plan to engage in fundraising activities on ██████████ behalf (e.g. by email or telephone), then the Ordinance would prohibit you from using your City title.

2. Representation. Section 2-156-090(a) prohibits you, as a City employee, from "representing" any person, including ██████████, in any formal or informal non-ministerial transaction before any City agency. The Board has construed "representation" broadly, to include any of the following activities, if done on behalf of an outside person or organization: making personal appearances before City agencies/departments, making telephone or email contact with City employees/officials, signing or submitting written requests or proposals to City agencies/departments, and/or signing written contracts with, or other submissions made to, City agencies/departments.) You said that ██████████ does not seek nor receive any funding from the City of Chicago. Please note that the organization is not itself subject to this prohibition, which is personal to you. ██████████ may seek City funding in the future, provided you do not represent it before any City agencies or personnel.

Moreover, in order to help you to minimize or avoid any appearance of favoritism or impropriety that may result from your board service with an organization that could seek City funding and services, I also advise you (as you have said you would) to refrain from advising or assisting ██████████, even "behind the scenes," with respect to its potential City grants, contracts, permit matters, etc., and to apprise the other ██████████ House board members in writing that you will not assist the board or the organization in any such matters. These steps are not specifically required by the Ordinance (in part because your position would be uncompensated), but they are consistent with prudence and good judgment and with advice we have given others in past cases.

3 & 4. City Property; Confidential Information. Last, §§ 2-156-060, "City-Owned Property," and -070, "Use or Disclosure of Confidential Information," also apply to your board service. The former prohibits you from the unauthorized use of City property, including City time, or supplies, to carry out your duties on behalf of ██████████; the latter prohibits you from using or revealing confidential information you have acquired during your City employment.

If any of the facts recited in this letter are incorrect or incomplete, please notify my office, as a change in the facts may alter this advice. And, should your duties or position with ██████████ change, I would similarly advise you to contact my office for further advice.

Please note also that this advice does not necessarily dispose of all issues relevant to your situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts recited. Other laws or rules may also apply to your situation. We note, for example,

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that any City department may adopt rules that are more restrictive than those imposed by the Ordinance. Therefore, we advise you to review your planned [REDACTED] board service with your department head, the [REDACTED], to ensure that it is not inconsistent with department policy.

I very much appreciate your inquiry and your concern to abide by the standards embodied in the City's Governmental Ethics Ordinance. Should you have any further questions about this matter, please contact me.

Yours very truly,

Steven I. Berlin
Executive Director