

REDACTED

CONFIDENTIAL

August 15, 2012

[REDACTED]

**Re: ADVISORY OPINION, Post-Employment
Case No. 12043.A**

I. BACKGROUND

On April 17, 2012, you advised the Board staff that you would be retiring [REDACTED] from your position as an Assistant [REDACTED] for [the Department]. You told us then that you were contemplating positions as either a program manager or consultant to companies with [REDACTED], in anticipation of the City issuing a request for proposals (“RFP”) for those systems. [REDACTED] has now offered you a position as a Project Leader for its [REDACTED] project. [REDACTED] is bidding for the City’s [REDACTED] contract and all [REDACTED] are due by [REDACTED]. You asked us what Governmental Ethics Ordinance (“Ordinance”) restrictions would apply to your post-employment activities.

After careful consideration of the facts presented and the information available, the Board has determined that: (1) you are prohibited by §2-156-105 for two years after leaving your City position, or until [REDACTED], from lobbying [the Department]; (2) neither the permanent nor one-year restriction in §2-156-100(b) of the Ordinance prohibits you from pursuing the position of Project Leader with [REDACTED], or other positions with companies that operate [REDACTED]; and (3) although you performed [REDACTED] work throughout your City service, the “tradesman exception” applies and you would not be restricted from working as an [REDACTED] for a company with a City contract. The Board’s reasoning is as follows:

II. FACTS

A. Your City Duties

From [REDACTED], you worked as an [REDACTED] in the City’s [REDACTED]. From [REDACTED] until you retired [REDACTED], you worked as an Assistant [REDACTED] for [the Department], [REDACTED].¹ You have not worked in any other City department. [An]

¹ In [REDACTED], [the Department] absorbed the [REDACTED] from the [REDACTED] and renamed it the

Assistant [REDACTED] is a Shakman-exempt position.

You also told Board staff that you did not participate, assist, or represent anyone in any judicial or administrative proceedings involving the City. You explained that, during your tenure as an Assistant [REDACTED], you did not draft, review, negotiate contract terms or supervise contract performance as part of your regular job duties. However, you said that approximately two years ago, you were part of a committee to select a consultant from several bids for a contract to upgrade the City's [REDACTED], and that [REDACTED] was awarded the contract. As the City's consultant, [REDACTED] managed the project but once a [REDACTED] was upgraded, maintenance of the [REDACTED] reverted to [the Department]. That project was funded through the federal Recovery Act.

You explained that, as an Assistant [REDACTED], you oversaw and managed the day-to-day operation and general maintenance of the City's [REDACTED]. You managed a crew of approximately 250 persons, including [REDACTED] and administrative staff, and dispatched repair crews when problems regarding [REDACTED] were reported. Those repair crews were [REDACTED] that handled the actual maintenance of [REDACTED]. If an [REDACTED] experienced any problem in repairing [REDACTED], he contacted his foreman and then proceeded up the chain of command for assistance. You said that you did not work on [REDACTED] repair problems directly because there were several tiers in the chain of command before it reached you.

As an [REDACTED], you said you worked on [REDACTED] matters, meaning that you worked on the [REDACTED] systems within the City's facilities, which included [REDACTED]. You stated that knowledge of the City's [REDACTED] system, internal or public-way, was information known to all of the City's [REDACTED] and not information that was unique to you in your position either as an [REDACTED], or later as an Assistant [REDACTED].

B. [REDACTED]

[REDACTED] are generally described as an upgrade to [REDACTED]. The [REDACTED] are [REDACTED] and produce [REDACTED]. In [REDACTED], the City amended [REDACTED] to include [REDACTED] within [REDACTED] in Chicago. [REDACTED] at [the Department], advised Board staff that the City issued the [REDACTED] RFP, and that bids are due by [REDACTED].

According to the RFP, the City is seeking a contractor to provide, implement, operate, maintain, and repair a [REDACTED], "which includes furnishing any and all hardware, equipment, software, construction and other services necessary or appropriate for the functioning of the [REDACTED]." The contract term will be for five years with up to three two-year periods of extensions. The City wants up to [REDACTED] within [REDACTED]. You stated that prior to your retirement you were not involved in any aspect of the formulation of the RFP for the solicitation of bids for a Citywide [REDACTED].

You explained that [REDACTED] typically are installed as "stand alone" structures, but also

could be mounted onto existing City infrastructure or equipment. For example, you explained that a third party contractor could use the City's infrastructure, such as a light pole, to mount its equipment but that the third party, and not the City, would be responsible maintaining its own equipment. The RFP calls for bids on both types of installation methods. However, you said that [the Department's] [REDACTED] department, and not the division where you worked, is responsible for determining the viability for a third party's use of the pole. Your former division's role would be limited to [REDACTED].

C. [REDACTED]

The [REDACTED] would operate similarly to the current [REDACTED], which [REDACTED]² installed, operates and maintains. You said that the [REDACTED] is its own structure, constructed separately from the [REDACTED], although it could use the City's infrastructure for mounting, and that your department and bureau's role was limited to [REDACTED] where [REDACTED]. There are currently [REDACTED] in the City. You said that similarly, a private contractor would install, operate, and maintain the [REDACTED] independent of the [REDACTED], although it would also rely on the City's [REDACTED].

D. Project Leader with [REDACTED]

You told Board Staff that [REDACTED] intends to bid on the [REDACTED] contract, and that it has offered you a position as Project Leader. As a Project Leader, you would manage the day-to-day operations of the [REDACTED], if [REDACTED] were awarded that contract. You described "project management" as including oversight of all programs, work groups, and ensuring that [REDACTED] meets the contract timelines [REDACTED] per year.

E. Other Potential Post-Employment Positions

In considering future employment opportunities, you said you were interested in seeking a position as a program manager or consultant for upcoming City projects with a company that operates [REDACTED]. As you generally described it, a program manager position would oversee the implementation of Citywide [REDACTED] within [REDACTED]. As a consultant, you would advise the company you work for on what City projects to bid on. For both positions, you stated that you would rely on your expert and extensive knowledge of the City's [REDACTED], which you said is common knowledge to all your department's [REDACTED].

III. LAW AND ANALYSIS

1. Lobbying Restriction

As an Assistant [REDACTED] at [the Department's] [REDACTED] (and before that in the [REDACTED]) for the last sixteen years, you were in a Shakman-exempt position. The applicable Ordinance section regarding the lobbying restriction is §2-156-105(b), which states, in

² There have been three [REDACTED] contracts between the City and [REDACTED] with various modifications/amendments: [REDACTED]. Each contract specifies that [REDACTED] will maintain, support, and repair the [REDACTED], and includes an extensive description of [REDACTED] work responsibilities.

relevant part:

Any employee who holds an exempt position in a City department, board or other city agency on or after May 16, 2011... shall be prohibited from lobbying the department, board or agency in which he or she was employed for a period of two years after that employment ends.

Accordingly, you are restricted for two years after leaving that City position, or until [REDACTED], from lobbying [the Department], the City department in which you served.

Section §2-156-010(p) defines “lobbyist,” in relevant part, as follows:

“Lobbyist” means any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action,” ... “however a person [will] not be deemed to have undertaken to influence any legislative or administrative action solely by ... responding to a City request for proposals or qualifications.

This Ordinance provision prohibits you from meeting with [the Department] regarding those issues in which you would seek to influence [the Department] action relative to your new employer, such as seeking a new contracts, contract renewals or extensions. The Ordinance does not prohibit you from lobbying other City departments.

2. Permanent Restriction

The relevant Ordinance section that contains a “permanent” restriction is §2-156-100(b), which states:

(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 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.

Section 2-156-010(g) defines “contract management authority” as follows:

*“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 (emphasis added).*

You stated that you did not draft, review, negotiate contract terms or supervise contract

performance as part of your job duties. However, you were part of a committee that evaluated bids, and ultimately selected [REDACTED] as the consultant, for a contract to upgrade the City's [REDACTED]. The [REDACTED] contract has since been completed and is now expired.

Based upon the facts as presented, and in accordance with prior Board decisions, we conclude that you exercised contract management authority when you evaluated the bids for the contract to upgrade the City's [REDACTED]. Thus, you would be permanently prohibited by §2-156-100(b) from assisting or representing any person or business regarding that contract for the life of the contract, but we note that its terms have already expired and maintenance of those [REDACTED] has already reverted back to [the Department]. This conclusion is consistent with the Board's decisions in Case Nos. 99028.A (evaluation of bids constituted contract management authority), and 94011.A (supervising the process by which a vendor's contract performance was reviewed constituted contract management authority).

However, the facts presented here warrant the conclusion that you had no involvement regarding the RFP for [REDACTED], and the permanent prohibition in §100(b) would not restrict you from pursuing the position of Project Leader with [REDACTED], or other positions you are considering as a program director or consultant for upcoming City projects with a company that operates [REDACTED].

3. One-Year Restriction

The Ordinance section regarding the one-year restriction is §2-156-100(b), and it states:

No former ... employee shall, for a period of one year after the termination of the ... employee's ...employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the ... employee participated personally and substantially in the subject matter of the transaction during his ... employment.

A. [REDACTED]

The "subject matter" of the "transaction involving the City" in which you have been asked to work for [REDACTED] is the installation and maintenance of the City's [REDACTED]. The question here is whether you "participated personally and substantially" in this "subject matter" during your City employment.

Having reviewed the RFP for the [REDACTED], and your City employment history, we conclude that you did not. The work that you would perform with the proposed [REDACTED] involves a distinct and separate subject matter from your oversight and management of the [REDACTED]. We note first that we have previously recognized that [REDACTED] constitute (for purposes of the Ordinance's one-year post-employment restriction) a separate subject matter from [REDACTED], Case No. 12016.CNS. The City's [REDACTED] also constitute a different subject matter because they are constructed, operated and maintained independent of the other two systems. For example, there are currently [REDACTED] and the City wants [REDACTED].

See, [REDACTED]. The two [REDACTED] constitute their own independent structures, even if the equipment is mounted onto an existing City infrastructure, such as a light pole. In addition, although the RFP for the [REDACTED] was initiated while you were still a City employee, you were not involved in its formulation. Of course, both the [REDACTED] and the [REDACTED], supplied and maintained by the City, but knowledge of the [REDACTED] is common to all [REDACTED] working for the City. *See*, Case No. 06001.A (former employee not prohibited from accepting a position to install fiber optic cable given the tradesman nature of the work done in accordance with industry-wide standards both during and after City employment).

Based upon the facts you have presented, we conclude that you were not “personally and substantially” involved in the subject matter at issue, which is the [REDACTED]. Therefore, the one-year restriction in §2-156-100(b) would not restrict you from pursuing the position of project leader with [REDACTED], or other positions you may seek as a project manager or consultant with companies operating [REDACTED]. This determination is consistent with the Board’s decisions in Case Nos.: 01030.A (employee not subject to one-year restriction because she was not personally and substantially involved in the subject matter); 98020.A (employee not prohibited from working on projects with which he was not involved as a City employee); 94006.A (one-year restriction not applicable to employee not personally and substantially involved in the subject matter).

However, should the requirements under the RFP differ from those described in this advisory opinion, or if you decide to pursue other employment opportunities not addressed herein, please contact us for further guidance as any changes may alter our conclusions and advice, and impact the application of §2-156-100(b) as it relates to your restrictions.

B. Tradesman Exception

You also asked the Board staff to provide you with general information relative to any post-employment activities you may engage in. You are, by trade, [REDACTED]. The Board has consistently found that prohibiting former City employees from working in their trade, in which there is an “absence of any specialized knowledge of City-specific ... standards or regulations,” “would not further the purpose and intent of the Ordinance’s post-employment provisions.” *See*, Case Nos.: 89119.L, 91098.A, 94006.A, 98020.A, 04021.A, 06001.A, and 06027.Q. The work you performed as a [Department] [REDACTED], and supervised as an Assistant [REDACTED], was based on industry-wide standards that are learned and can be performed by any [REDACTED] without prior knowledge of the City system. Additionally, all the [REDACTED] who maintain the [REDACTED] are also familiar with their [REDACTED] system and operation, and that system-wide knowledge is not information that was unique to you in your position as an [REDACTED] or Assistant [REDACTED].

Based on the information you provided, and through the application of previous Board determinations regarding the “tradesman exception,” we conclude that, even though you performed [REDACTED] work throughout your City service, you would not be restricted from working as [REDACTED] for a company with a City contract.

IV. CONFIDENTIAL INFORMATION

Please be advised that pursuant to Ordinance §2-156-070, entitled “Use or Disclosure of Confidential Information,” you are permanently prohibited from using or revealing confidential information that you acquired through your City employment. For purposes of this section, *confidential information* means any information that may not be obtained pursuant to the Illinois Freedom of Information Act. 5 ILCS 140/1 *et seq.*

The Board’s conclusions and determinations are not necessarily dispositive of all issues relevant to this situation but are based solely on the application of the City’s Governmental Ethics Ordinance to the information provided. If the information is incorrect or incomplete, please notify the Board immediately, as any change may alter our determination.

V. RELIANCE

This opinion may be relied on by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Sincerely,

Miguel A. Ruiz
Board of Ethics, Chair