

EMUS



ADVISORY OPINION
CASE NO. 94001.A, POST-EMPLOYMENT

[REDACTED]
[REDACTED] 1994

City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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You are a former member [REDACTED] of the [REDACTED] Commission. You resigned from the [REDACTED] Commission on [REDACTED]. By letter to the Board of Ethics dated [REDACTED], and by telephone [REDACTED], you inquired whether and to what extent you could assist and represent a new client in a matter that may come before the [REDACTED] Commission.

After carefully considering your inquiry, we have determined that, under § 2-156-100(a) of the Ethics Ordinance, you are permanently prohibited from assisting or representing any person other than the City in a proceeding involving the City or any of its agencies, including but not limited to the [REDACTED] Commission, if your assistance or representation involves any [REDACTED] proposal, project or application submitted to the [REDACTED] Commission during your service on it. The Board also has determined that, pursuant to § 2-156-100 (b) of the Ordinance, you are, for one year after you left the [REDACTED] Commission, prohibited from assisting or representing any person other than the City in a transaction involving the City or any of its agencies, including but not limited to the [REDACTED] Commission, if that transaction concerns a [REDACTED] site [REDACTED] of parcels of real property that was the subject of any [REDACTED] proposal, project or application submitted to the [REDACTED] Commission during your service on it.

FACTS: You resigned from the [REDACTED] Commission on [REDACTED]. You had served [REDACTED] from [REDACTED] through [REDACTED]. You are presently a partner of the law firm [REDACTED]. A client has asked you to represent it in connection with an application [REDACTED] (the "Project") that may be submitted to the [REDACTED] Commission. You state that, during your tenure with the [REDACTED] Commission, this client never appeared before it, nor did the [REDACTED] Commission consider the Project. You are not sure whether the [REDACTED] Commission ever considered any proposals, projects or applications for the same [REDACTED] site [REDACTED] on which this client now wishes to develop the Project, but will ascertain this.



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The [redacted] Commission itself has [redacted] members. [redacted] are appointed by the Mayor and do not hold City office or positions; the remaining [redacted] are ex-officio members who do hold offices in City government.

The [redacted] Commission has three areas of responsibility. First, it reviews proposals for [redacted] (developments"), and makes recommendations on these for final decision by City Council. Second, it makes final decisions on all proposed developments that fall within the ambit of the [redacted] Ordinance, [redacted] of the Municipal Code [redacted]. Third, [redacted], it holds advisory hearings for the disposition of certain property in the City.

Type 2

The client currently seeking your representation wishes to apply for approval to complete a Type 1 development under the [redacted] Ordinance. By telephone on [redacted], you also asked whether you may represent clients who submit development proposals, projects, or applications under the [redacted] Ordinance. You said you do not expect to be asked to represent persons involved in property disposition, as they do not normally use private attorneys.

As you explained, Type 1 developments are specially approved uses of [redacted] rights. The [redacted] Ordinance defines what type of projects qualify as [redacted] developments. Examples of typical Type 1 developments include [redacted]. Similarly, Type 2 developments are specially approved [redacted] projects proposed to be completed within the districts covered by the [redacted] Ordinance.

With each Type 1 or Type 2 development proposal, applicants submit [redacted] plans, and other reports, such as [redacted] to the Department of [redacted]. As required by law, the Department evaluates the proposal according to the criteria enumerated in both the [redacted] and [redacted] Ordinances, then prepares and submits its written report to the [redacted] Commission, which conducts public hearings on each application. By law, all [redacted] Commission proceedings are open to the public, and all agendas are announced in advance. All proceedings are recorded by a court reporter. The [redacted] Commission uses its own procedural rules for questioning witnesses and taking testimony. These rules and regulations were considered and adopted in [redacted], during your tenure [redacted]. Under them, attorneys for applicants typically prepare opening presentations. The [redacted] Commission may question witnesses, such as the projects' [redacted], etc. You

stated the Commission does not conduct "executive sessions"--all of its proceedings and deliberations remain open to the public.

For each ██████████ development proposal, the ██████████ Commission then prepares its own written report with recommendations. In making recommendations, the ██████████ Commission applies evaluative criteria, identified as "Guidelines" in § ██████████ of the ██████████ Ordinance. These include the projects' practical and aesthetic impact on adjoining properties, businesses, parks, individuals, and environment; traffic volumes; and overall conformance with the purposes of the ██████████ Ordinance. The Commission sends its written report, which must also include the report of the Department of ██████████, to the ██████████ Committee of the City Council. If that Committee approves the project, it recommends passage of a special amendment to the ██████████ Ordinance. The Committee may not consider a ██████████ development ordinance until it has received the ██████████ Commission's report and recommendations.

For proposals, projects and applications to be developed under the ██████████ Ordinance, the ██████████ Commission uses essentially the same procedures, except that it applies the evaluative guidelines set forth in § ██████████ of the ██████████ Ordinance, and renders final decisions, not recommendations.

LAW: Section 2-156-100 of the Governmental Ethics Ordinance, entitled "Post-employment Restrictions," states:

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(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 of 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.

The Board has held that "assisting" and "representing" a person include, but are not limited to, activities such as rendering legal advice, appearing before any City Commission, Board, Department, or agency, negotiating contracts, or preparing or submitting documents on behalf of that person. Case No. 89144.A. The Board has also

held that "assisting" and "representing" persons in business transactions "involving the City" encompass conduct that leads to submission of a proposal to the City, if undertaken by the former employee or official after he or she becomes or reasonably should have been aware that the likely outcome would be submission of a proposal to the City. This remains true even if the former employee did not actually participate in that submission, and the transaction itself was not "with the City," but rather, simply directed toward City action, thereby "involving the City." Case No. 92035.A.

ANALYSIS AND CONCLUSIONS: Subsection (a): Permanent Prohibition. Section 2-156-100 (a) permanently prohibits a former City official from assisting or representing any person other than the City in any proceeding involving the City or any of its agencies, if the official participated personally and substantially in the proceeding while in office.

Applying this prohibition to your case, the Board finds that the **[REDACTED]** Commission's consideration of development proposals, projects and applications clearly qualifies as "administrative proceedings involving the City" for purposes of § 100 (a). So do any follow-up hearings or actions on these proposals, projects and applications conducted by or involving other City agencies, including but not limited to the **[REDACTED]**. The Board further finds that you participated "personally and substantially" in all proceedings on development proposals, projects and applications conducted by the **[REDACTED]** Commission during your tenure on it.

Therefore, the Board determines that you are permanently prohibited from rendering services to a client on a particular development proposal, project, or application which was the subject of proceedings before or was considered by the **[REDACTED]** Commission while you served on it, if that proposal, project or application involves proceedings conducted by or involving any City agency. Further, applying the Board's rationale in Case No. 92035.A, you would violate the Ordinance by assisting or representing your client in proceedings involving the City or any of its agencies if, at the time you render services, you know or should reasonably expect that its proposal, project, or application will need to be submitted for further proceedings that involve any City agency. This would be so even if you do not personally take part in that submission or those proceedings, or are no longer retained by the client at the time of that submission or those proceedings.

The Board notes, however, that it has already determined that your partners and law firm may represent persons before the **[REDACTED]** Commission, even though you personally would be prohibited from doing so. Case Nos. 91041.A and 89091.A.

Subsection (b): One-year Prohibition. Section 2-156-100 (b) contains both one-year and permanent prohibitions. The first prohibits you, as a former City official, for one year after leaving the [REDACTED] Commission, from assisting or representing any person in a business transaction involving the City if, while with the [REDACTED] Commission, you participated personally and substantially in the subject matter of that transaction.

To apply this prohibition to your case, the Board must define the subject matter of the transactions in which you participated substantially and personally while with the [REDACTED] Commission. The [REDACTED] Commission gathers testimony and reviews reports with respect to each parcel of real estate, or site, in order to ^{type} make its recommendations or determinations with respect to [REDACTED] and [REDACTED] developments. The reports analyze each proposal's, project's, or application's impact on surrounding residential, commercial, and/or recreational areas, conformance with the purposes of the [REDACTED] and [REDACTED] Ordinances, and alternative uses for the sites. For this reason, the Board finds that the "subject matter" of each development proposal, project or application before the [REDACTED] Commission, that is, the subject matter of each "transaction involving the City or any of its agencies" in which you "participated personally and substantially," is each site or parcel of real estate on which the proposal, project or application is to be developed.

Thus, the Board determines that, in addition to being subject to the permanent prohibition described in the preceding section, you are also prohibited by the Ethics Ordinance, for one year after leaving the [REDACTED] Commission, i.e. until [REDACTED], 1994, from assisting or representing any person in any transaction involving the City or any of its agencies, if that transaction involves a site or parcel of real estate on which the [REDACTED] Commission considered any development proposal, project, or application while you served on it. Further, again applying the rationale of Case No. 94035.A, you would be violating the Ordinance by assisting or representing your client in a "transaction involving the City or any of its agencies" if, at the time you render services, you know or should know that this transaction will involve the City or any of its agencies. This would remain so even if you are no longer rendering services or involved in the transaction at the time the City or any agency becomes involved in it.

Subsection (b): Permanent Prohibition. The second provision of § 2-156-100 (b) permanently prohibits a former official from assisting or representing any person in any contract involving the City if the official exercised "contract management authority" over that contract. The facts as presented in this opinion do not appear to warrant application of this provision.

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Our determination in this case is based upon the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to your situation. We note that a City Department or Commission may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered, and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Thank you again for bringing this matter to our attention. If you have any further questions, please contact us.

Catherine M. Ryan
Catherine M. Ryan
Chair

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