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ADVISORY OPINION
Case No. 97025.A, Post-Employment

To: [REDACTED]
Date: [REDACTED]

On [REDACTED], you requested an advisory opinion from the Board of Ethics regarding your post-City employment. From [REDACTED] until [REDACTED] you were a City employee, serving in the Departments of A [REDACTED] and B [REDACTED]. You left City employment on [REDACTED], and have started your own business, J [REDACTED]. You plan to offer business, legal and advisory services to airports, airlines and others serving the aviation industry. You have asked us to address how the Governmental Ethics Ordinance will apply to you in transactions involving the City of Chicago. You have specifically asked us about transactions involving marketing the concession services of retail businesses to the City's airports. We set forth below the facts as you have presented them, our analysis of the Ordinance, and our determinations.

FACTS: You provided us with a letter and résumé summarizing your pre-City employment and your work in the Departments of A [REDACTED] and B [REDACTED]. Before starting work for the City in [REDACTED], you had a variety of experience related to law and aviation. Among other things, you had worked as an [REDACTED] Administrator for [REDACTED] and as a Project Manager for [REDACTED], Inc. Both of these positions involved developing airport properties and negotiating contracts and airport lease agreements.

From [REDACTED] through [REDACTED], you were [REDACTED] in the [REDACTED] Division of the Department of A [REDACTED]. You developed policies relating to the management of all City airport real estate; you negotiated, drafted and analyzed airport use agreements and facilities leases (e.g., for hangar space); you negotiated rental car and other ground transportation contracts; and you supervised work within the [REDACTED] Division.

For [REDACTED] months, from [REDACTED], you were [REDACTED] of [REDACTED] Services in the Department of B [REDACTED]. You were recruited to reorganize the [REDACTED] Division of the Department, and you were responsible for creating and implementing policies and procedures for licensing, tax administration, and intergovernmental affairs. You said that your work



included helping the law department draft legislation and managing a staff of over 80 employees.

On [REDACTED], you left City employment. You are in the process of establishing your own business, under the name J [REDACTED]. You will offer business, legal and advisory services to airports, airlines and others serving the aviation industry. You said that for one year you will limit your dealings with City of Chicago airports to representing food and beverage services and retailers before airport administrators in order to obtain concession agreements. You have asked us specifically to address whether the Ethics Ordinance allows you to represent clients in these types of transactions with the City of Chicago.

You told us that in your City employment, you did not handle any matters involving food, beverage or retail concessions. You did not manage the leasing of space for food, beverage and retail concessions at the City's airport terminals, and you did not participate directly or indirectly in preparing Requests for Proposals or Requests for Qualifications in connection with such concessions. You explained that the skills and knowledge required to administer concessions space (including, e.g., familiarity with the retail industries) are substantially different from those required to manage other airport real estate, such as hangars, fuel farms, heliports, terminals, and baggage-claim space. Concession administration does not involve the same considerations of environmental impact, long-range planning, and competing uses as does real estate management. The terms of lease agreements for concessions are different from those of other real estate, you explained, and often involve payment to the airport of a percentage of intake. Concession space was administered in a different section of your [REDACTED] Division than the one in which you worked, in a separate location with separate staff; currently it is handled outside of [REDACTED] your [REDACTED] Division altogether, under the direct supervision of the First Deputy Commissioner in the Department of A [REDACTED]. We confirmed this with Mr. [REDACTED], who also confirmed that you had nothing to do with managing space for food, beverage or retail concessions in your work for Dept. A [REDACTED].

LAW AND ANALYSIS: The provision of the Ethics Ordinance most relevant to your situation is Section 2-156-100(b), entitled "Post-Employment Restrictions." It states:

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.

"Assisting" and "representing" a person in a business transaction involving the City encompasses helping a person to seek a contract as well as to perform a contract. (See Case Nos. 89119.A, p. 8; 92035.A, p. 6.) Section 2-156-010(g) defines "contract management authority":

"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.

Under these sections, a former City employee is subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition. For one year after leaving City service, you are prohibited from assisting or representing any person or client in a business transaction involving the City if, while a City employee, you participated personally and substantially in the subject matter of the transaction. Please note that the one-year period begins on the date your City employment terminates, not on the date you stop performing particular tasks.

Next, as a former City employee, you are permanently prohibited from assisting or representing any person in any contract over which, as a City employee, you exercised "contract management authority," as defined above. This prohibition applies to contracts with which you were personally involved or which you had direct supervisory responsibility for formulating or executing -- for example, by preparing specifications, reviewing proposals, selecting vendors, negotiating terms, or supervising performance -- whether in the Department of A [REDACTED] or in the Department of B [REDACTED].

The Permanent Prohibition The facts you presented indicate that you exercised management authority over a number of contracts, leases and use agreements during your City employment. Although you have not indicated that you intend to work on any of these contracts, leases or agreements in your post-City employment, be advised that the Ethics Ordinance permanently prohibits you as a former City employee from assisting or representing any person in

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connection with any contract, lease or agreement over which you exercised management authority as a City employee.

The One-Year Prohibition In your work for the Department of A [REDACTED], you handled a number of responsibilities related to airport real estate, including developing policy, negotiating contracts, and managing employees. On these facts, it is clear that you participated personally and substantially in the management of real estate at the City's airports (not including the management of space for food, beverage, and retail concessions). The one-year provision therefore prohibits you for one year after leaving City employment (until [REDACTED]) from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of the transaction is the management of real estate at the City's airports.

You did not, however, manage space for food, beverage or retail concessions at the City's airports. Concessions administration was handled within a different section of the [REDACTED] Division, and involves significantly different knowledge and considerations. It therefore appears that you did not participate personally and substantially in that subject matter. We conclude that the one-year provision does not prohibit you from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of the transaction is the management of space for food, beverage or retail concessions at the City's airports.

Although your anticipated work, as you described it to us, is not related to the work you did in the Department of B [REDACTED], please be advised that the one-year provision also prohibits you from assisting or representing any person in a transaction involving the City or any of its agencies, if you participated personally and substantially in the subject matter of the transaction while in the Department of B [REDACTED].

We also advise you that § 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

CONCLUSION: Based on the facts as you have presented them, the Board determines that the post-employment provisions of the Ethics Ordinance prohibit you for one year after leaving City employment from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of

the transaction is the management of real estate at the City's airports. In addition, the Board determines that the one-year provision does not prohibit you from assisting or representing any person in a business transaction involving the City or any of its agencies, if the subject matter of the transaction is the management of space for food, beverage or retail concessions at the City's airports. Finally, be advised that the Ethics Ordinance prohibits you permanently from assisting or representing any person in connection with any contract, lease or agreement over which you exercised management authority during your City employment.

Our determinations and advice are based on an application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our conclusions. Please note that other laws or rules also may apply to this situation.

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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.


Darryl L. DePriest
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