



March 29, 1989

City of Chicago
Eugene Sawyer, Mayor

[Redacted]

89087

Board of Ethics
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Suite 530
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RE: Professional Services Contract Between the City and a Consultant Whose Board President is a City Employee

Dear [Redacted]

This letter is in response to your request for an advisory opinion concerning the application of the Ethics Ordinance to a contractual arrangement between the City and X, ~~Chicago Alliance for Neighborhood Safety (CANS)~~

Based on the information we have received from you and from the Executive Director of X, the facts of this case are as follows:

The Mayor's Office has recently created an Advisory Committee on Police Dispatch Policy. This committee comprises forty-two persons. Its purpose is to study emergency call-for-services systems in general, and the improvement of Chicago 911 services in particular. In order to facilitate the Advisory Committee's work, the Mayor's Office would like to contract with a not-for-profit organization,

The services to be rendered are administrative in nature and would include providing secretarial services, preparing reports and research documents, setting up meetings and hearings, and overseeing subconsultants. This organization would receive approximately \$130,000 to provide and/or arrange for these services. Many of these services would not be performed directly by the organization but would be subcontracted to other agencies.

The president of the not-for-profit organization and of this organization's Board of Directors is individual A. Individual A is employed by the City.

We have been informed that, individual A receives no salary or compensation for his service as president of this organization and has no other type of economic interest in this organization or in the contract to



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be signed by ^{this organization} with the City of Chicago. You stated that he was in no way involved in negotiating the contract between ^{this organization} and the City.

In your letter to us dated February 28, 1989, you asked the Board for a "ruling on the above referred contract." Questions concerning the overall appropriateness of this contract are beyond our jurisdiction. However, the Ethics Ordinance does contain provisions concerning conflicts of interest which could have implications for the validity of a contract. In the present case the Board's responsibility is to determine whether the Ethics Ordinance would allow a City employee to serve in an uncompensated capacity as president for a not-for-profit organization which proposes to contract with the City; and if so, what restrictions would apply to this employee's professional conduct.

Based on the information we have received as summarized above, the Board has reached the following conclusions:

No provisions of the Ethics Ordinance would prohibit *individual A*, a City employee, from acting as the president of a not-for-profit organization that contracts with the City provided that; 1) he makes no effort to in any way use his City position as a means of influencing City decisions that could affect his organization or any persons subcontracting with this organization; 2) he does not use or disclose confidential information obtained by virtue of his City position, or in any other manner use his City position to give an advantage to *this organization* in its business dealings with the City; and 3) he does not in any way represent ^{this organization} before any City agency or employee. Under this prohibition on representation, *individual A* would be barred from (a) negotiating any business agreement between *this organization* and the City; (b) contacting City officials or employees, either in person, in writing, or by phone to promote the interests of *this organization*; or (c) signing any proposals, contracts, or other documents which are submitted to City agencies. In addition to these conclusions, the Board maintains that any previous effort by *individual A* to assist ^{this organization} in obtaining this City contract would constitute a violation of the Ordinance and might be viewed as grounds for invalidating the prospective contract.

These conclusions are based on a review of the information we have received under Sections 26.2-2, 26.2-3, 26.2-7, 26.2-8(a), and 26.2-9 of the Ethics Ordinance.

Section 26.2-2 of the Ordinance states that "officials and employees shall at all times in the performance of their public

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duties owe a fiduciary duty to the City." This provision establishes a general obligation never to use City employment as a means of obtaining some special or undeserved advantage for any person or group. This section would therefore prohibit individual A from in any way using his City position to give an advantage to this organization regardless of whether or not he receives compensation from this organization or has any economic interest in it.

Section 26.2-3 and 26.2-8(a) prohibit City employees and officials from in any way attempting to influence City decisions which might affect their personal economic interests. From the information we have received from the Corporation Counsel's Office as confirmed by this organization there is no indication that individual A maintains an economic interest in decisions concerning this organization or any of its activities. Therefore, under the circumstances described as summarized above, these Sections would not apply to him.

Section 26.2-7 states that:

No current or former official or employee shall use or disclose, other than in the performance of his public duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his employment....

"Confidential information" as defined in this same Section means "any information that may be obtained pursuant to the Illinois Freedom of Information Act as amended." According to the Freedom of Information Office such confidential information includes but is not limited to "proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made."

Under this prohibition on the use or disclosure of confidential information, individual A would be prohibited from using or disclosing any information designated as confidential under the Illinois Freedom of Information Act, including information which if it were disclosed would give an advantage to this organization in its efforts to enter into the Police Dispatch Policy contract with the City or to obtain any other contract with the City.

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Section 26.2-9(a) of the Ethics Ordinance states that:

No elected official or employee may represent or have an economic interest in the representation of any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature;....

The term "representation" used in this section covers any of a broad range of activities in which one person acts as the spokesperson for another person or group. Such activities would include making appearances before City agencies on behalf of non-City parties, contacting City officials by phone or by letter on behalf of other persons, and signing petitions, contracts or any other proposals and documents submitted by this organization to City agencies for review.

This section of the Ordinance would prohibit individual A from representing this organization before any City agency. In specific he would be prohibited from 1) negotiating any business agreement between this organization and the City; 2) contacting City officials or employees, either in person, in writing or by phone, to promote the interests of this organization as president of the Board of that organization; or 3) signing any proposals, contracts, or other documents which are submitted to City agencies.

In summary, the Board maintains that based on the information it has received concerning the circumstances of this case, it would not violate provisions of the Ethics Ordinance for individual A to serve as the board president of a not-for-profit agency receiving a contract from the City, but that he would be prohibited from attempting to use his City position to influence City decisions affecting this organization, and from representing it before the City in any manner. He may not contact City employees or officials on behalf of this organization or sign documents submitted to the City on behalf of it. He would be prohibited from allowing the use of his name in connection with this organization on any contract between that organization and the City. Finally, he may not use or disclose confidential information he may have gained in virtue of his City employment, including any information that would give this organization an advantage in obtaining any City contract.

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We appreciate your inquiry. If you have further questions regarding this matter, please don't hesitate to call our office.

Sincerely,

S. Brandzel
S. Brandzel
Chairman

Handwritten initials in a circle, possibly "HB", written in ink.