

CONFIDENTIAL

ADVISORY OPINION

Case No. 10008.A, FIS

February 17, 2010

[Assistant Commissioner]

You are an [Assistant Commissioner] in the [City Department]. On [date], you contacted our office for advice on whether members of the [Commission]'s Board of Directors must file Statements of Financial Interests with the Chicago Board of Ethics. You provided materials for our review, such as the [Commission]'s by-laws, Articles of Incorporation, Co-Applicant agreement with [City Department], and tax exempt information.

After careful review, the Board has determined that the [Commission]'s Board of Directors is not a "City agency" as this term is understood for purposes of the Governmental Ethics Ordinance, and that therefore, its members are not required to file Statements of Financial Interests pursuant to §2-156-150 of the Ordinance. Our analysis and reasoning follow.

FACTS: The [Commission]'s Articles of Incorporation were filed with the State of Illinois September 3, 2004. You are listed as the registered agent. According to the Articles, the [Commission] Corporation was established to promote and improve the [quality of life] of the [underserved] population in and around the City of Chicago by: 1) providing oversight of the operation of a federally qualified [center] ("Center") by [City Department]; 2) establishing policies and procedures designed to ensure the [Center]'s provision of preventive, primary and supplemental [care services] to this population in a manner which will best meet their needs; and 3) otherwise providing leadership and direction to [City Department] and [Center] as required by applicable Federal and/or State law. The City Council's [Committee] met on July 18, 2006 to hear an ordinance introduced by Mayor Daley authorizing the use of City resources, including funds, staff, buildings, and supplies, to assist [Commission]. The July 2006 Journal of Council Proceedings indicated that the City receives much the funding for the centers in the form of state and federal grant funds. The measure authorizing the use of City resources to assist [Commission] was passed by a viva voce vote and reported on July 26, 2006.

Board Members: In the Bylaws you provided to Board staff, Article IV states, "The term 'member,' as used in these Bylaws, shall refer solely to members of the Board of Directors and/or members of Board committees." Article V, Section 1 of the Bylaws states, "The Board of Directors shall be comprised of a minimum of 11 persons and a maximum of 16 persons." Article V, Section 2(a) states, "A majority of the Board members shall be individuals who are served by the [Center] and who, as a group, represent the individuals being served by the [Center], in terms of demographic factors such as race, ethnicity, and gender." Article V, Section 2(b) states, "No more than one-half of the non-user Board members may be individuals who derive more than ten percent of their annual income from the [care] industry. The remaining Board members shall be representative of the community served by the [Center], and shall be selected

for their expertise in [care] delivery, community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial or industrial concerns, or social service agencies within the community.” Article V, Section 2(c) states, “No voting Board member shall be an employee of [Commission] or of the [City Department], or spouse, child, parent, brother, or sister, by blood or marriage, of an employee.” Article V, Section 2(d) states, “The Executive Director of the [Center] shall be an ex-officio, nonvoting member of the Board.”

The Co-applicant Agreement between [Commission] and [City Department]: You provided Board staff a copy of a co-Applicant agreement between the [Commission] and [City Department], which was submitted to the [U.S. Department], for recertification as a Federally Qualified [Center] “Look-Alike” entity. In the Agreement, the [Commission] and [City Department] sought to collectively operate the FQ[C] “Look Alike” [center] with the [Commission] operating as the co-applicant governing board, consistent with the requirements of §330 of the federal Public [Service] Act. That federal law outlines the governance authorities and operational responsibilities for the [Center]. [City Department]’s role includes, among other things, developing and approving the [Center]’s annual operating budget, prior to its submission to [Commission]’s governing board for final approval; establishing personnel policies and procedures which shall be applicable to all [City Department] employees who are assigned to work for the [Center]; assuring that the [Center] is operated in compliance with applicable federal, state, and local laws and regulations; directly employing or contracting [Center] personnel as may be necessary to effectively operate the [Center]; and, last, under the direction of the [Center]’s chief executive officer, [City Department] is be responsible for the management of the day-to-day business of the [Center].

ANALYSIS: The issue before the Board is whether members of the Board of Directors of the [Commission] must file Statements of Financial Interests with the Board of Ethics. The Ordinance requires all “appointed officials” to file Statements of Financial Interests unless the Board or Commission on which they serve is solely advisory in nature and has no authority to make binding decisions, to enter into contracts, or to make expenditures. (2-156-150 (a)(iii)).

Under the Ordinance, “appointed officials” are people appointed as members of a “City agency.” 2-156-010(q). The first step in the Board’s analysis, therefore, is to determine whether the board of the [Commission] is a City agency. Section 2-156-010 of the Ordinance defines “Agency” as:

City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City. In order for an agency to qualify as a unit or division of City government, it must either be financed primarily through the City budget, created by city ordinance, or its members must be subject to confirmation by the City Council.

The Board’s past jurisprudence contains cases that have developed elements so that it may determine what is a City agency under the Ordinance. In a case involving a body similar in important ways to the [Commission], Case No. 87083.E, the Board determined that the [other Commission] was not a City agency and therefore its members were not required to file Statements of Financial Interests. In that case, the Board stated that, in order for an agency to qualify as a unit or division of City Government, it must either be: i) financed primarily through the City budget, or ii) created by City ordinance, or iii) its members must be subject to confirmation by City Council. (87083.E, p.2). None of these elements are present with respect to the [Commission].

First, as is the [Commission] here, the [other commission] was primarily funded through state and federal sources. (87083.E, p.2). According to the [other Commission]’s Bylaws, the [other Commission]’s professional, clerical, and support staff was provided by the [City Department]. In this case, the [centers] are staffed through the [City Department] and the staff’s salaries are financed through the City budget, but you stated, and the July 2006 Journal of Council Proceedings confirms, that the City receives much of the centers’ funding in the form of state and federal grant funds. More specifically, you said to Board staff in an email, “the budget for the [centers] is almost completely comprised of corporate dollars and [Federal program] funding. Staff who work with the board are primarily if not exclusively paid for through corporate dollars as well.” Second, the [other Commission] was not created by City Ordinance. (87083.E, p.2). Similarly, the City Ordinance passed in July 2006 did not create the [Commission] or authorize its creation; rather, it authorized [City Department] to supply resources to [Commission]. [Commission] is not a City department, but a not-for-profit corporation organized under the laws of the State of Illinois, in accordance with §330 of the federal Public [Service] Act. The [centers] themselves are managed jointly by the [Commission] and [City Department]. Last, the appointed members of the [other Commission] were not subject to confirmation by the City Council. (87083.E, p.2). Here, too, the members of the [Commission]’s governing board are not subject to confirmation by the City Council.

Therefore, none of the facts pertaining to [Commission] correspond to the elements that are required to demonstrate the existence of a City agency, as set forth in Case No. 87083.E, and the Board concludes that it is not a City agency for purposes of the Governmental Ethics Ordinance.

DETERMINATIONS: Based on the facts described above, we determine that the [Commission] is not a City agency for purposes of the City’s Governmental Ethics Ordinance, and thus that the members of its Board of Directors are not required to file Statements of Financial Interests with this office under § 2-156-150(iii).

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.

Miguel A. Ruiz, Chair