2016

**CONFIDENTIAL**

The Honorable Alderman

**Re: Case No. 16043.Q**

On 2016, you advised me that you intend to purchase real estate located in the City of Chicago (and owned either by the City or third parties) at scavenger sales[[1]](#footnote-1) or other sales of property on which the taxes have been delinquent for two years or more, and might place title to this property into your [a relative’s] trust. You asked whether, under the Governmental Ethics Ordinance (the “Ordinance”), your bids on and purchases (if such bids are successful) would be prohibited, and whether the Ordinance addresses whether you may place title to that property into [the relative’s] trust.

Here are my conclusions and advice:

1) Based upon the holdings of past Board advisory opinions, I conclude that the Ordinance does not prohibit you from purchasing property at scavenger or other tax-delinquent sales, as such sales are conducted pursuant to public notice followed by competitive bidding. The relevant provision in the Ordinance is §2-156-110(c), which prohibits City employees and officials (like you) from having a “financial interest” in the purchase of City-owned property, unless that property is sold pursuant to a process of public notice followed by competitive bidding (a “financial interest, defined in §2-156-010(l), essentially means an ownership interest worth more than $1,000). The pertinent language states:

*Unless sold pursuant to a process of competitive bidding following public notice*, no elected official or employee shall have a financial interest in the purchase of any property that: (i) belongs to the city; (ii) *is sold for taxes or assessments*…(emphasis supplied)

Accordingly, unless a City employee or official, such as you, were in compliance with §2-156-110(c) of the Ordinance, he or she could not participate in a scavenger or other tax or assessment sale. The Board has previously addressed scavenger sales in two formal opinions: Case Nos. 87072.A, and 95023.A. In each, the Board approved a City employee’s and official’s purchase of real estate at a scavenger sale. The reason is that, in the case of scavenger (or tax or assessment) sales, the governing State law specifically provides for open public sale only after mandated public advertising of property being sold for delinquent taxes. Therefore, by and because of operation of law (in the case of scavenger sales), the City employee or official was not prohibited from taking advantage of the Ordinance’s exception to the prohibition on having a financial interest in purchasing City property or property sold for delinquent taxes. This, in turn, was so because the case(s) disclose that State law *mandated* public notice followed by competitive sale to the public. That State law has not changed. Note also that, in Case No. 95023.A, the Board reminded the City official that he was prohibited from using any confidential or non-public information in pursuing the purchase of tax-delinquent or scavenger sale properties, pursuant to §2-156-070, and thus we so advise you; and

2) Given that you are an alderman, your purchase of the scavenger or other tax-delinquent property may be subject to or limited by various laws of the State of Illinois. Thus, I advise you to consult with private counsel to ensure that you comply with any relevant State laws;[[2]](#footnote-2) and

3) The question of whether you could put any property into your [relative’s] trust does not fall within the purview of the Ordinance, and thus we cannot advise you on that question. You are advised to seek the advice of your estate planning attorney on that matter.

This conclusions and advice in this letter are based on the facts presented in it, and address only the provisions of the City’s Governmental Ethics Ordinance.  If those facts are incorrect or change, that may alter these conclusions and advice. I also advise you that there may be other laws or policies that apply, and you are advised to seek qualified legal counsel as to their applicability.

I appreciate your conscientiousness, as always, and wish you and your family all the best this holiday season. Please contact me with any questions about this matter.

Yours very truly,

Steven I. Berlin,

Executive Director

1. *See* “tax sale,” “A sale of property because of nonpayment of taxes.” Black’s Law Dictionary, 8th ed. p. 1366; and *see* fn. 2, below.

 [↑](#footnote-ref-1)
2. *See, e.g., generally,* 35 ILCS 200/21-110, -115, -120 and 145 (“Property Tax Code”), providing for the mandatory annual publication and advertisement by the County Collector of property (showing delinquent taxes) for the purpose of conducting “scavenger sales,” listing property upon which the Collector would apply [to the courts] for a judgment and, thereafter, sell those properties to the public. [↑](#footnote-ref-2)