

ADVISORY OPINION
Case No. 00018.A
Post-Employment

To: [John]

Date: October 11, 2000

In a telephone call on September 1, 2000 you requested an advisory opinion on how the Governmental Ethics Ordinance applies to you as you consider post-City employment with [Alpha], a Chicago-based distributor of [mechanical] systems and supplies for governments and private corporations. In a letter dated September 6, 2000 and in a subsequent meeting with staff, you described your responsibilities as [a manager] in [the Department], as well as your anticipated responsibilities at [Alpha], which recently sold twenty-three [electronic devices] to the City.

Based on an analysis of both the facts presented and the law and prior advisory opinions, the Board finds that the Ordinance's post-employment restrictions will prohibit you from assisting or representing [Alpha], or any other person, for one year, in any business transaction with the City that involves [certain electronic devices] or their component parts. Additionally, the Board finds that the Ordinance's provisions will permanently prohibit you from assisting or representing [Alpha], or any other person, in any business transaction involving five City contracts (delineated below) with which you were personally involved as a City employee.

FACTS: First, we detail your responsibilities as a City employee, including your involvement with City contracts; second, we describe [Alpha's] business transactions with the City; finally, we discuss your anticipated responsibilities with [Alpha], should you accept an offer of employment there.

Your responsibilities as a City employee: You began City employment in October 1995 with [another Department], as [a manager] at [a transportation facility]. In this position you coordinated the daily receipt and delivery of [...] supplies from City vendors; when supplies ran low, you advised the office staff to reorder them from the appropriate vendors.

In May 1998 you transferred to your present position as [a manager] with [the Department]. You stated that you are responsible for the installation and maintenance of the City's approximately 28,000 [electronic devices].

The City currently operates two types of [these devices]: [Type 1 and Type 2]; and your duties regarding each type of [device] differ in subtle but important ways. We provide a brief account of your administrative role with regard to each type of [device] and the five City contracts related to them.

(1) [Type 1 Devices]: The vast majority of the City's [electronic devices] are [Type 1 devices], each consisting of [components A, B, C, D and E]. As [a manager], you supervise three groups of employees who install and maintain [Type 1 devices]: mechanics, who install and maintain [components C, D, and E]; laborers, who install and maintain [components And B]; and engineers, who survey installation sites and maintain a database of the City's [Type 1 and Type 2 devices].

Since the spring of 1999, you have also been responsible for ordering the necessary spare parts for [Type 1 devices], though you indicated that in the following instances you do not have discretion to select a particular vendor or negotiate a price for the needed spare parts. The City has existing contracts with various manufacturers that detail the price of each part; you simply make purchase requests under the terms of those contracts. You stated that though you presented the Department's request for these contracts (with [Beta], [Gamma], and [Delta]) before the City's Sole Source Review Board in 1998, you have had no role in the formulation, evaluation, negotiation or supervision of the contracts, before or after they took effect in June 1999. Rather, since the start date of the contracts, you have simply made purchase requests under the existing terms of these contracts.

You also stated, however, that you have been personally involved in the preparation and/or supervision of four City contracts related to two current projects involving [Type 1 devices]. On the first project, you worked with [Michael (a deputy director in your department, and your immediate supervisor)] in 1999 to set the minimum specifications for the purchase of 8,000 replacement units for the City's downtown [Type 1 devices]. Each unit consists of an electronic [version of component D] (purchased from [Gamma]), a [component C] (purchased from [Epsilon]), and a black-colored [version of component E] (purchased from [Beta]). After your preliminary work on the bids, contracts were signed with each company; and since June 2000 you have made purchase requests under the terms of these contracts.

The second project is an ongoing program that you and [Michael] are directing to replace the City's aging stock of mechanical [versions of component D] in [Type 1 devices] with electronic [versions of component D]. Together, you evaluated electronic [versions of component D] from several manufacturers, finally deciding to purchase the parts from [Gamma]. [Michael] then authorized the Department's purchasing staff to sign a contract with [Gamma] to supply the parts as needed at a set price.

(2) [Type 2 devices]: In addition to overseeing the City's [Type 1 devices], you also supervise the City's pilot program to test [Type 2 devices]. [Type 2 devices] accept payment for multiple [locations]; patrons enter their location on the [device's] electronic touchpad, pay for the desired amount of time, and receive a printed receipt which they must display [...]. You stated that this pilot program was approved by the City Council and initiated by [the Department] a year before you began your present job. The program entailed an initial test of seven [Type 2 devices] in various locations, followed by the installation of twenty-three [Type 2 devices] along [X Street], pending selection of the best model among those tested.

When you assumed responsibility for the program in October 1998, the initial testing phase was not yet complete. You worked with [Michael] in late 1998 and early 1999 to evaluate the models and determine the minimum acceptable specifications for the purchase of the remaining twenty-three [devices] for [X Street]. In May 1999, the City placed the bid according to your specification, and in June 2000, the contract was awarded to [Zeta], whose products are distributed in Chicago by [Alpha]. The [X Street devices] will be installed as soon as the ward's Alderman approves the installation plans.

In the meantime, [Michael] authorized the installation of four of the [Type 2 devices] along [Y Street]. You supervised the installation (though representatives from [Alpha] physically installed the equipment) and are responsible for their maintenance, which for one year is provided under warranty by [Alpha]. Continued maintenance will eventually require the purchase of spare parts (paper for receipts, electronic components, etc.) from [Alpha], but the City does not yet have a contract with [Alpha] to provide these parts. You have encouraged [Michael] to negotiate such a contract, but you do not have the authority to do so.

[Alpha's] business transactions with the City: [Alpha] represents a number of manufacturers of [electronic devices] and supplies in the Chicago area; in some cases it serves as the exclusive local distributor of a corporation's product. You estimated that [Alpha] sells ten to twelve product lines, including electronic gates, automated valet systems, and multi-space parking meters, as well as the spare parts to maintain the products.

Until recently, [Alpha] did not sell products or spare parts for single-space parking meters; but in the last year it has become the exclusive local distributor of [Eta], which manufactures locking mechanisms for [Type 1 devices]. You stated that the City currently uses [Eta] locks as spare parts, but that it purchases them through a contract with [Theta]; [Theta] must in turn buy these locks from [Alpha], but the latter is not a party to the City contract.

Case No. 00018.A
October 11, 2000

[Alpha] does have a contract with the City, however, for the sale of the aforementioned twenty-three [Zeta-produced Type 2 devices]. The contract includes maintenance under a one-year manufacturer's warranty. [Alpha] also sells spare parts for [Zeta-produced Type 2 devices], but it does not have a contract with the City to provide them.

Your anticipated responsibilities with [Alpha]: By your account, if you accepted a position at [Alpha], you would work with a range of the company's products, not just its [Type 2 devices]. For whichever products you represented, your responsibilities would be fourfold: to work with clients to customize the parking systems they order; to coordinate the installation of new systems; to order spare parts for the systems; and to supervise the maintenance of these units during their warranty period.

LAW:

Post-employment: Section 2-156-100(b) of the Ethics Ordinance, "Post-Employment Restrictions," states in relevant part:

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.

To "assist" and "represent" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (*See* Case No. 89119.A.). The Ordinance defines "contract management authority" as:

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. (§2-156-010(g).)

Section 2-156-100(b) of the Ordinance imposes both a one-year and a permanent prohibition on former City employees' post-employment activities. The one-year prohibition applies to business transactions involving the City whose subject matter the former employee participated personally and substantially while employed by the City; this prohibition begins the day an employee leaves City employment, not on the date the employee stops performing a particular task. (*See* Case No.

94011.A). The permanent prohibition applies to contracts over which a former employee exercised contract management authority. We will analyze in the next section how both the permanent and the one-year prohibitions would apply to your work for [Alpha].

ANALYSIS:

The one-year prohibition: Section 2-156-100(b) of the Ethics Ordinance prohibits you for one year after leaving City employment from assisting or representing [Alpha], or any other person, in a business transaction involving the City if you participated “personally and substantially in the subject matter of that transaction” during your City employment. On the basis of the facts you presented, which are noted above, the Board finds that as [a manager] in [the Department] you are personally and substantially involved in the evaluation, installation and maintenance of [Type 1 and Type 2 devices] and their component parts. We therefore conclude that the Ordinance prohibits you for one year from assisting or representing [Alpha], or any other person, in any business transaction with the City that involves [Type 1 and Type 2 devices] or their component parts.

The permanent prohibition: In addition, Section 2-156-100(b) of the Ethics Ordinance permanently prohibits you from assisting or representing any person in a contract involving the City if you exercised contract management authority with respect to that contract. For purposes of the Ordinance, contract management authority includes, without limitation, four types of involvement in a City contract: “preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.”

The Board does not find that you exercise contract management authority over the City’s contracts to purchase spare parts for [Type 1 devices] from [Beta] , [Gamma], and [Delta], because you were not involved in the formulation or negotiation of the contracts, and your subsequent role in their execution was non-discretionary, in that you merely requested purchases be made pursuant to the existing terms of the contracts. (*See* Case No. 94006.A; in which the Board found that mere use of a plan or contract without participation in its formulation or negotiation does not result in the exercise of contract management authority.)

The Board finds, however, that you exercise contract management authority with respect to the following five City contracts:

(1) City contract with [Alpha] for twenty-three [Type 2 devices]. The Board finds that you exercised contract management authority over this contract because you participated in the preparation of specifications for [Type 2 device] bid and because you supervise the execution

of the contract as it relates to installation of the [devices] by [Alpha]. (*See, e.g.* Case No. 94019.A; in which the Board found that evaluating proposals resulting in City contracts is exercising contract management authority.) The Board therefore concludes that you are permanently prohibited from assisting [Alpha], or any other person, in any business transaction involving this contract.

(2-4) City contracts for spare parts for 8,000 [Type 1 devices]. You participated in determining the minimum specifications for the purchase of 8,000 replacement units for the City's downtown [Type 1 devices]. The Board therefore finds that you exercised contract management authority over the resulting contracts with [Gamma] (for electronic [versions of component D]), [Epsilon] (for [component C]) and [Beta] (for [component E]). (*See* Case No. 94019.A; in which the Board found that either the evaluation of proposals resulting in City contracts or direct supervisory responsibility over the formulation of City contracts is exercising contract management authority.) You are therefore permanently prohibited from assisting [Alpha], or any other person, in any business transaction involving these contracts.

(5) City contract with [Gamma] for electronic [versions of component D] for [Type 1 devices]. You participated in determining the minimum specifications for a City contract to purchase electronic [versions of component D] to replace its mechanical [versions of component D] in [Type 1 devices]. You supervise the installation of these [components] under the terms of the resulting contract with [Gamma]. Based on these facts, the Board finds that you exercise contract management authority over this contract. (*See* Case No. 94019.A, described above.) You are therefore permanently prohibited from assisting [Alpha], or any other person in any business transaction involving this contract.

DETERMINATIONS: Based on an analysis under laws of the facts you have presented, the Board finds that the Ordinance's post-employment restrictions will prohibit you for one year after leaving City employment from assisting or representing [Alpha], or any other person, in any business transaction with the City that involves [Type 1 or Type 2 devices] or their component parts. The Board also finds that the Ordinance's provisions will permanently prohibit you from assisting or representing [Alpha], or any other person, in any business transaction involving the following five City contracts: (1) the contract with [Alpha] to purchase twenty-three [Zeta-produced Type 2 devices] ; the contracts with (2) [Gamma], (3) [Epsilon], and (4) [Beta] to purchase 8,000 [components D, C, and E], respectively; (5) and the contract with [Gamma] to purchase additional electronic [versions of component D] to replace the City's mechanical [versions of component D] in [Type 1 devices].

We also remind you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former City employees from using or disclosing

Case No. 00018.A
October 11, 2000

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.

Our determination does not necessarily dispose of all issues relevant to this situation, but is based solely on the 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 determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

Finally, should the nature or extent of your responsibilities as a City employee change before you leave City employment, you should contact the Board for further review of your case. As noted above, the one-year prohibition would begin the day you leave City employment.

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.

[Signature]

Darryl L. DePriest
Chair

00018-AO-redact.wpd