

xxxxxx, 2004

CONFIDENTIAL

Mr. Jack

Chicago, IL 606xx

Re: Case No. 04031A

Dear Mr. Jack:

You are a former employee of the Department of B (“B”) who retired from City service on xxxxxxxx, 2004. You are now an employee of Y (“Y”). On xxxxx, 2004, you wrote our office and requested an Advisory Opinion on how the Governmental Ethics Ordinance applies to your post-City employment. As explained in this letter, Staff has concluded that the post-employment provisions of the Governmental Ethics Ordinance prohibit you from assisting or representing Y, or any other person, for one year from your last date of employment until xxxxxxxx, 2005, on any environmental regulatory matters or compliance work at the City’s airport systems, either as part of normal airport operations or during construction (including, but not limited to, construction, demolition, restoration, maintenance, repair, replacement or capital improvements of airport facilities).

FACTS. You have a BA degree in environmental studies and geography, an MS degree in city and regional planning, and an MBA in economics. You began your career in xxxxxx 19xx with the City of R in land use and transportation planning and zoning. In 19xx, you became employed by the Village of P in the same capacity, where you worked until 19xx. You then worked until 19xx with the N Commission (a planning commission created by the State) in flood plain management, giving assistance to all cities and counties in Illinois’s xxxxxx region. You next worked from xxxxxx 19xx through xxxxx 19xx for N, the commuter railroad, in planning and programming capital improvements regarding train stations and parking lots. After your N position ended, you became employed by R, an environmental engineering and management company. You stated that, among other duties, you supervised underground storage tank removal, performed land fill and ground water investigation, reviewed certain counties’ landfill waste approval systems and performed an environmental audit for xxxxxx County.

You joined the City as a Coordinating Planner II in the A in xxxxxx 19xx. Throughout your City career, you worked only for the A. Essentially, your job was in the area of environmental regulatory compliance with a focus on water quality planning. This included programming water quality

improvements at xxxxxxxx airport (“P”) to capture de-icing fluid¹ and send it to waste water treatment facilities. You were also involved in environmental activities at X, II and P airports in the areas of: (i) water quality runoff; (ii) de-icing fluid going into creeks; (iii) air quality permitting (you drafted permit requests to the Illinois E (“E”), and monitored airlines to insure they did the same); (iv) soil contamination; (v) studying and insuring proper management of different de-icing agents that are more environmentally friendly and managing de-icing operations to reduce the amount of de-icing used²; and (vi) asbestos concerns. To regulate the free-floating asbestos arising from demolition at the airports you referred to the 1990 Federal Clean Air Act and to the Occupational Safety and Health Administration Act. Respecting water quality, you examined how surface water surrounding the airport was affected by various chemicals (including de-icing agents) used in airline and airport activities. You were concerned with activities by the A, contractors and tenants at the airports. The A Facilities Section employees sampled and tested water samples. You reviewed the data. The Facilities Section sent its report on the samples to the E monthly. In addition, on a quarterly basis, you sent a more comprehensive report to E. This report included, among other things, the status of water quality development projects at P that involved water containing de-icing fluids. The airport projects all involved water collection, containment and treatment. By way of example, one project was the construction of a retention pond.

You stated your responsibilities also included dealing with (i) fuel storage and spills and to insure compliance with water quality as a result of such problems; and (ii) monitoring development projects so that they were in compliance with all government regulations (including those of various federal agencies). You said the State and Federal statutes reciting the concern for water quality are general mandates for clean water. In order to assure City compliance with those standards, you stated you consulted industry standards other than in the field of aviation, as well as promulgations of industry standards from other airports. From these, you constructed your City airport-specific standards that you used to comply with the various laws’ general requirement for water quality.

The projects upon which you worked included bridges, fences, buildings and roadways being maintained or rebuilt by airport tenants or by the A.

You stated your office was at P and you were there xx% of the time. Your supervisor most of the time during your employment was G. Initially, as your supervisor, G’s title was Deputy xxxxxx of xxxxxx in the A, and, thereafter, Managing xxxxxxxx of xxxxxxxxxx.

You supervised no A employees, although you did supervise employees of A contractors who did report to you (none of whom were Y employees). These contractors were under term contracts (meaning the contractors performed under work orders on a job-by-job basis under the particular contract). You stated that the contractors, whose employees you supervised, were chosen from an

¹De-icing fluid is one of many chemical agents used in cold weather and applied to airline equipment and on airport runways to expeditiously remove ice, allowing continued airport operations.

²At P, the average de-icing fluid applied to airplanes was 2 million gallons per year, and to runways was 1 million gallons per year.

approved list provided by the City's Department of Z. You stated that, from the list of contractors provided by the Department of Z, you would choose one or more to whom you would send Requests for Qualifications or Requests for Services that you drafted, and you would review their responses. Upon review, you stated you would then make a recommendation to G who would decide which contractor with whom to contract (subject to any further approvals G was required to obtain within the A or City).

Currently, there is a contract between A and Y. You said that you were in no way involved with A contracting with Y. During your years at A, you only had known one person at Y, although you had heard of the company. The only person you knew from Y was H, Y's xxxxx Vice President, whom you merely had met in the early 19xxs, before you were employed at A. During your A tenure, you had several meetings with the City's Department of Z concerning wetland management at P. At two meetings, H attended the meetings as a Z representative. This was so because Y was a subcontractor to AAA's Services, which had a contract with Z. To the best of your knowledge, Y did not obtain any work that arose from these meetings.

You explained you became employed as Senior Transportation Planner at Y on xxxxxx, 2004. To your best knowledge and belief, you said Y hired you because of your background with N and public sector transportation. Y has asked you to perform transportation planning, meaning preparing studies for developing and improving transit or roadway services. You mentioned that, recently, Y unsuccessfully bid on a contract with N. The scope of that contract was railway line extensions by N lines into different communities. If the N contract had been obtained, you would have analyzed various alternatives in line extensions and developed project requirements.

You further stated that Y hired you to perform transportation planning for agencies of the City of Chicago, and other public authorities. As an example, you said you were are working on a study to determine a Irv shuttle service to the N north-central rail line.

In addition, you stated that Y was interested in obtaining a possible future construction management contract between itself and the A in which you might be involved. Currently, Y is interested in two possible future contracts. The first involves extending runways at P. The second is a capital improvements project at P that involves on-going maintenance and rehabilitation activities of, among other things, taxiways, runways, buildings, roads and fencing. Your job, if that contract were to materialize, has not been determined at this point since the City's Request for Qualifications has not been issued. Most likely it would involve some form of construction administration and management. You felt it was possible that such a position could cause you to be a technical advisor in the area of environmental regulatory compliance. You could not predict what percentage of this job might include environmental regulatory compliance work

Your current job with Y is specifically transportation and transit planning, and you are working on the following projects: (i) designing and installing bike lanes in, and for, the City of V; and (ii) the Irv shuttle to N mentioned above. Y currently has Requests for Proposal ("RFP") outstanding with the Regional Authority and for the Ford Area Transportation Study (including the City of Ford and adjacent counties), and also, for N signs. However, consultant selection for these projects has not yet been made.

The present A - Y contract involves the following functions: (i) inspecting construction progress to insure the contractor is following specifications; (ii) coordinating City employees, other firms and contractors in the performance of specific tasks in order for a contractor to perform a portion of its job; (iii) completing the necessary paperwork, whether reporting or otherwise; and (iv) verifying contractor billing.

You stated that there is one contract between Y and A for construction inspection services at the two airports, P and II, but that you did not know there was a contract between A and Y until you interviewed with Y about the position. Only after you were a Y employee did you become aware of the five projects already covered in the contract. Each project has an average value, by Y, at approximately \$200,000. The projects are: (i) modernization of 23 escalators in Terminals 1, 2 and 3; (ii) demolition of 24 elevator cabs and construction of 22 new cabs and associated equipment in the Elevated Parking Structure (also painting of lobbies and relocation of chilled water lines); (iii) reconstruction of elevators and moving pedestrian walks in the terminals; (iv) structural restoration and modification of Utility Ring Tunnel; and (v) eliminating ball-joints in the Heating and Refrigeration Plant, which includes the high temperature water pipes and conduits. Further, you stated that there is a sixth pending project under the A and Y contract: low voltage power distribution equipment replacement in Building No. 5. You stated that none of these projects include compliance work on environmental regulatory requirements. All five of the projects are at P. T does not have any pending work at II.

In addition, you stated that though (i) through (iv) in the A - Y contract above were not your areas of expertise, but that you could be asked to perform associated tasks. You felt this was especially true because of your knowledge of the physical layout at the airport and personnel that work at the airport. You stated that you could be put on the A project to do strictly various types of administrative work. You clarified this as your being responsible for coordinating A, Y, contractor and airline employees through meetings. For instance, you would be responsible for all relevant parties knew that certain elevators would be shut off or certain corridors closed so that overall airport construction would proceed smoothly.

LAW AND ANALYSIS: The section of the Governmental Ethics Ordinance at issue in this case is Section 2-156-100, entitled "Post-Employment Restrictions," specifically part (b), which 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.

Section 2-156-010(g) defines "contract management authority" as follows:

"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.

Section 2-156-100(b) prohibits a former City employee from assisting or representing any person, other than the City, in any business transaction involving the City for one year after leaving City service, if he or she "participated personally and substantially in the subject matter of the transaction" while a City employee. That section further provides that if the employee "exercised contract management authority" with respect to a contract, the prohibition shall be permanent as to that contract.

Based on the facts you presented, there is no indication that, as a City employee, you exercised contract management authority over the contract between Y and A. Therefore, the permanent prohibition is not at issue in this case.

In order to address the one-year prohibition, there are three questions that must be answered: (i) does the subject contract involve "business transaction[s] involving the City;" (ii) what was the "subject matter" of the subject contract; and (iii) had you "participated personally and substantially" in those subject matters during your City employment.

(i) A Business Transaction Involving the City

Clearly, Y's contract with A, under which you have been asked to provide environmental regulatory compliance work, constitutes a business transaction involving the City.

(ii) Subject Matter of the Business Transaction

The primary purpose of the A transaction is that Y perform inspection services respecting construction activities at P. In order to achieve A's requirements under the contract, Y must perform very specific services. Y's employees insure contractors working for the A are following task specifications; review contractors' invoices; coordinate the activities of usual employees working at the airport with those of contractors; and file reports with the A. Unless Y performs under its contract with A, the A will not know about contractors' progress, cost overruns or problems. Y must be conscientious and accurate. For instance, Y must insure that an airline's employees know, on a certain date, that a particular contractor is going to be closing a passenger corridor in the airport. Without Y as an overseer, airport contractors may not do their jobs, and, also, may cause airport operations to suffer.

(iii) Personal and Substantial Participation in the Subject Matter

While you were an employee of the A, you did not actually observe and report to A on the progress or problems of contractors working under the contract. You did not investigate contractors' invoices. You did preside at coordination meeting between airport airline staff and the crew chiefs for diverse contractors who worked on various construction projects at P.

What you did do, when you were employed by the A, was to be primarily responsible in environmental matters respecting the (then) xxxx City airports. For instance you concerned yourself with limited questions such as whether the quality of ground water running off airport runways or construction zones into areas on, and surrounding, P airport met environmental standards. The reporting you did was to E. Your reports involved the status of construction projects at the airport directed to collection, containment and treatment of water containing de-icing fluids.

However, you stated that, in the future, you might be asked by Y to perform environmental regulatory compliance pursuant to a construction, or similar, contract with the A at P airport. This contract could also be an extension of the scope of the current contract between Y and the A. Currently, no such contract (or contract expansion) exists. Thus, from the facts presented, as a City employee with the A, you were personally and substantially involved in the environmental regulatory compliance matters for the City's airport(s)' infrastructure, whether during normal airport operations or during construction, demolition, maintenance, replacement, repair or capital improvements at the City's airports. Therefore, you are prohibited for one year from the date you left City service from assisting any person other than the City, including Y (or any of its subcontractors), on any business transaction involving the City's environmental regulatory compliance work during airport operations or airport construction at P or II airport. Staff's conclusion is consistent with the Board's decision in Case No. 04010.A.³

In addition, you stated that you were involved in recommending certain contractors to A. Some of these contractors obtained contracts to work at one of the City's airports. Thereafter, some of the contractors' employees worked for you when you were at P and employed with the A. Y was not one of these contractors.

CONCLUSION: Accordingly, Staff concludes that the post-employment provisions of the Governmental Ethics Ordinance prohibit you from assisting or representing Y, or any other person, for one year from xxxxxxxx, 2004, your last date of employment with the City, and until xxxxxxxxxx, 2005, on any environmental regulatory matters, governance or compliance work at the City's airports, either as part of normal airport operations or during construction (including, but not limited to, construction, demolition, restoration, maintenance, repair, replacement or capital improvements of airport facilities).

However, you are not otherwise prohibited from participating in the contract between the A and Y so long as it involves you in no activities that include any element of environmental regulatory compliance.

Please note that Staff has not addressed whether you exercised contract management authority over any A contract during your City employment other than the current contract with Y. Based on our review of your City responsibilities, it appears likely that you might be permanently prohibited from

³In that case, the Board determined that a former foreman of electrical mechanics at O'Hare Airport had participated personally and substantially in "the maintenance, repair and operation of airfield and runway illumination equipment at the Airport" and, therefore, was prohibited for one year from the date he left City service from assisting any person other than the City on any business transaction involving that subject matter.

assisting or representing any person other than the City in environmental regulatory compliance to the extent you are employed by or affiliated with those A contractors whose proposals you reviewed, and upon which you made recommendations to G. Thus, you are advised to contact the Board for specific advice if you intend, or are asked, to assist or represent any person other than the City with respect to any particular contract that arose from your recommendations to G while you were employed by the A.

The Board appreciates your willingness to inquire about, and comply with, the post-employment restrictions imposed upon you in the Governmental Ethics Ordinance.

Staff's conclusions do not necessarily dispose of all issues relevant to this situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our conclusions. 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 Governmental Ethics Ordinance.

Very truly yours,

Richard J. Superfine
Legal Counsel

Approved by:

Dorothy J. Eng
Executive Director