

Advisory Opinion
[Mary Jones]
Case No. 04041.Q, Post-employment
September 15, 2004

You are an Illinois attorney, and a former City employee who retired from City service on May 31, 2004. On July 29, 2004, you requested an advisory opinion addressing whether the City's Governmental Ethics Ordinance prohibits you from providing services (as a consultant, paid hourly) to [IL, Inc.] . As explained below, the Board has determined that neither the one-year nor permanent prohibitions in §100(b) of the Ordinance prohibit you from assisting or representing [IL] in the work you describe. This determination, however, is limited to the proposed responsibilities with [IL] described in this opinion. If your duties with [IL] (or any person) will involve assisting persons with respect to other real estate development projects or associated contracts, particularly under the [X] , [Y] or [Z] Programs, or with respect to any judicial or quasi-judicial proceedings pending as of May 31, 2004 involving condemned or conveyed real estate parcels, in which the City is involved or to which it is a party, you are advised to contact the Board for specific guidance, as the Ordinance's one-year or permanent prohibitions will likely restrict your ability to perform those duties.

FACTS: Your City Career. You spent nearly your entire professional legal career with the City's [O] Department, beginning in 1978 as a summer clerk in the [N] Division, then becoming an [S] in that division. In the early 1980's you transferred to the [P] Division, where, after about 3 years, you became a Senior [] attorney, the position you held until retirement. During your approximately 20 years in that position, you said, the majority of the work you did was transactional: representing the City in the conveyance of real estate. This included negotiating redevelopment agreements with real estate developers and their attorneys, preparing conveyance documents and ordinances for adoption by City Council to authorize the conveyances, attending closings and managing post-closing matters. You stated that your City "clients" were the Departments of [A] , [B] , [C] , and on occasion, [D] . You estimate that, during your years of City service, you personally handled over 400 conveyances, and your staff of ten attorneys in the [N] Division handled over 1,000 such conveyances. Occasionally, litigation would ensue as to a conveyed or condemned parcel, and you would be involved as a consulting attorney in those proceedings (though not as counsel of record). You told staff that you also had litigated licensing, condemnation, civil rights and real estate tax matters. However, you said that, at the time you left City service, all pending judicial proceedings in which you

were involved were concluded, except for one which had been reassigned to another attorney in

the [N] Division.

In addition, you said that, for the last fifteen years of your City service, you supervised three attorneys working on three City programs involving the conveyance of City-owned real estate: the [X] , [Y] , and [Z] Programs. Under the [X] Program, operated through [A], the City identifies properties within blighted areas and on which taxes are delinquent, enters “no cash bids” on the parcels with the County, obtains tax deeds to these parcels and then conveys them to interested developers. Your responsibility was to handle and supervise the conveyances by the City to developers—the acquisitions (thousands of them over your career, you said) were performed by outside counsel before the County Division of the Cook County Circuit Court, not by [O] Department employees. You were available for consultation with outside counsel where necessary, but you do not recall handling any tax deed acquisitions. Under the [B]

Program (formerly known as the [H] Program), operated through [Y] interested persons apply to the City to request that the City acquire an abandoned property; the property is then acquired by attorneys in the [O] Department’s [T] Division through judicial proceedings in Circuit Court and conveyed to the applicant upon authorization by City Council, the applicant entering into a redevelopment agreement with the City to provide timely rehabilitation of the property. Your responsibility was to handle and/or supervise preparation of the redevelopment agreement, conveyance documents and City Council authorizing Ordinance; you do not recall participating in proceedings in which the City acquired property under this program. Under the [Z] Program (operated through [B]), applicants identify City-owned vacant lots and apply to the City to purchase them and develop [it] ; the applications must include site plans, floor plans and marketing plans, and be submitted to City Council for approval. You estimate that, during your City service, approximately 200 properties were conveyed to private developers through these programs, and that you were responsible for the review and/or drafting of the Ordinances presented to City Council for the associated conveyances.

Although your responsibilities primarily involved the legal work attendant to the disposition of City-owned property, you said you did perform legal work, from time to time, on a few transactions in which the City acquired real estate parcels (including hiring and managing outside counsel to assist the City in acquiring some “high-profile” parcels, such as the [P] and the [R]). However, you said that the acquisition of property by the City (for whatever purpose) was typically handled by other attorneys in another section of the [N] Division. After the City acquires property, “property management” responsibilities are then required: certain tax-related functions must be completed, namely, real estate exemption petitions must be filed with the Cook County Board of Review, which would make a recommendation and forward the file to the Illinois Department of Revenue for final approval. Thereafter, delinquent taxes from prior years would have to be extinguished by filing applications for certificates of error with the Cook County Assessor. You said that these functions were handled by personnel from [A], [B], [C] and [D], and, where needed, other attorneys or paralegals from the [N] Division. Your involvement in this area, you said, was limited to attending meetings with the Division Chief and other supervising attorneys about managing caseloads, and providing occasional advice to paralegals in the [O] Department and personnel in other departments in problematic cases. You said your work throughout the years was involved primarily with disposing of property, and that typically the property management work

had already been done by others before it reached you and your section, because it was ready for conveyance by the City.

Your Work with [IL] _____. [IL] _____ is a City contractor that performs engineering, surveying, appraisal and land acquisition work for the State of Illinois, City of Chicago and other municipalities. You have been hired by [IL] _____ as an hourly consultant/subcontractor to assist in certain property management functions. Specifically, your work at [IL] _____ will be with respect to "property management" for parcels of property acquired by other [IL] _____ personnel on behalf of the City's Department of [W] _____ for improvements _____.¹ Your primary responsibilities will be to: (1) identify the large backlog of property being held by [W] _____ for which real estate tax exemptions have not been granted; (2) file the necessary documents to ensure that real estate exemptions are granted by the Illinois Department of Revenue²; (3) file applications for certificates of error with the Cook County Assessor, where necessary; and (4) take steps required to ensure that Plats of Opening or Plats of Subdivision are signed by the County Clerk so that the City can begin work. The actual acquisition of parcels, you said, will be handled by other [IL] _____ personnel.

LAW, ANALYSIS AND CONCLUSIONS.

1. Section 2-156-100(b). Section 2-156-100(b) of the City's Governmental Ethics Ordinance, entitled "Post-Employment Restrictions," 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.

You are, as a former City employee, prohibited by this section, for one year after leaving City service (i.e. until May 31, 2005), from assisting or representing any person (including [IL] _____) in a business transaction involving the City if, during your City service, you participated personally and substantially in the subject matter of that transaction. Also, you are permanently prohibited from assisting or representing any person (such as [IL] _____) in a contract if, during your City service, you

1. You said that you had no involvement in negotiating or managing [IL] _____'s contracts with [W] _____ nor in approving any of the services [IL] _____ has provided to the City under any of those contracts.

2. While appearing in court on the City's behalf, and while under contract as a consultant to [IL] _____, you (and any other [IL] _____ contractor or employee appearing on the City's behalf) would be acting as a "Special Assistant Corporation Counsel." That is because under Chapter 2-60 of the City's Municipal Code, only the Corporation Counsel or his or her designees may represent the City's interests in legal proceedings. This fact does not affect the Board's analysis or conclusions under the Governmental Ethics Ordinance; it is, for purposes of this opinion, a matter of nomenclature.

exercised “contract management authority” with respect to that contract.³

Clearly, [IL]’s contract with [W], the performance of which [IL] has engaged you to assist it in, constitutes a business transaction with the City. The primary purpose of that transaction is that [IL] perform real estate acquisition activities—specifically, using criteria established by [W] to locate, negotiate the purchase of, and obtain title to real estate parcels, and to perform post-closing activities to ensure that the property is officially recognized as public, such as prosecuting tax exemption proceedings. See Case No. 04032.Q. The subject matter of your work for [IL], as you have described it, then, is the provision of services and support for the acquisition and “property management,” particularly of tax-exempt status, of real estate.

The Board’s review of your City career indicates that your work, while it involved real estate, was focused on performing and managing legal functions pertaining to the disposal of property by the City, not to the acquisition of property by the City or to establishing its tax-exempt status. Although the City real estate programs you worked on involved both the acquisition and conveyance of property, your responsibilities were to handle and/or supervise the conveyances and dispositions; property ready for conveyance was readied by others in the [O] and other operating departments. Specifically, the involvement you had with respect to what you described as “property management” or tax-related functions (which will be the focus of your work with [IL])—including identifying parcels requiring tax exemption work, prosecuting proceedings before the Cook County Board of Review and the Illinois Department of Revenue, and preparing and finalizing certificates of error with the Cook County Assessor—was limited and only occasional. You do not recall participating in any proceedings before the Board of Review, Revenue Department or Assessor, and you did not supervise the attorneys or other departmental personnel who regularly performed these functions.

Based on these facts, the Board concludes that you were not personally and substantially involved in providing services for acquiring and managing the tax-exempt status of real estate. Thus, we conclude that neither the one-year nor permanent prohibitions in §100(b) of the Ordinance prohibit you from assisting or representing [IL] in the work you described (as a consultant, paid hourly, but acting in court, by authority of the Corporation Counsel, in the capacity of “Special Assistant Corporation Counsel”). This conclusion, however, is limited to the proposed responsibilities with [IL] described in this letter. We remind you that our review of your City career indicates that you did participate personally in, and likely exercised contract management authority with respect to, numerous City real estate development projects and associated contracts—particularly with respect to the Tax Reactivation, Preserving Communities Together and City Lots for City Living Programs. Therefore, the Board cautions you that, if your duties with [IL] (or any other person) become

3. This permanent prohibition is not at issue in your case, as the facts presented do not indicate that you exercised contract management authority with respect to any of [IL]’s City contracts. However, from the description of your duties in the [N] Division of the [O] Department, it appears that you have exercised contract management authority on any number of other City contracts and development agreements. Therefore, in the event that your post-City employment plans change and involve other firms that have City contracts or development agreements, you are advised to contact the Board for specific advice, as there may well be permanent and additional one year prohibitions to which you would be subject.

different from those described in this letter, or will involve assisting persons, that have City contracts or are interested in any of the programs named above, you should seek specific guidance from our office, because the Ordinance's one-year or permanent prohibitions will likely restrict your ability to perform those duties.

2. Section 100(a). Section 2-156-100(a) of the Ordinance states:

No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office.

Under § 100(a), you are, as a former City employee, prohibited from assisting or representing any person other than the City (such as [IL]) in any judicial or administrative proceeding involving the City if you were counsel of record or participated personally and substantially in that proceeding. The facts presented indicate that you were neither counsel of record, nor did you participate personally and substantially, in any judicial or administrative proceedings in which [IL] would likely be involved. Nonetheless, from the description of your duties, it appears that you worked on at least one judicial proceeding that was still pending at the time you left City service (although your work on has been reassigned to other attorneys). Therefore, in the event your employment plans change and involve the possibility that you would work on judicial proceedings or litigation pending as of May 31, 2004 involving condemned or conveyed real estate parcels, in which the City is involved or to which it is a party, you are advised to contact the Board for specific advice, as there may well be prohibitions to which you would be subject under the Ordinance.

We remind you that Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from using or revealing confidential information acquired through your City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

DETERMINATIONS: Based on our analysis under the Ordinance's post-employment provisions of the facts you have presented, the Board determines that neither the one-year nor permanent prohibitions in §100(b) of the Ordinance prohibit you from assisting or representing [IL] in the work you describe (as a consultant, paid hourly, but acting in court, by authority of the Corporation Counsel, in the capacity of "Special Assistant Corporation Counsel"). This determination, however, is limited to the proposed responsibilities with [IL] described in this opinion. If your duties with [IL] (or any person) will involve assisting persons with respect to other real estate development projects or associated contracts, particularly under the [X] , [Y] and [Z] Programs, or with respect to any judicial or quasi-judicial proceedings pending as of May 31, 2004 involving condemned or conveyed real estate parcels, in which the City is involved or to which it is a party, you are advised to contact the Board for specific guidance, as the Ordinance's one-year or permanent prohibitions will likely restrict your ability to perform those duties.

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The Board's determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other City rules or policies may also apply (as may the Rules of Professional Conduct of the Illinois Supreme Court). If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those conclusions. The Board congratulates you on your retirement, wishes you best in the future, and expresses its sincere appreciation for your willingness to abide by the standards embodied in the Ordinance.

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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

Darryl L. DePriest,
Chair