

**ADVISORY OPINION
CASE NO. 04052.A
POST-EMPLOYMENT**

**To: [Employee]
Date: October 27, 2004**

You are a former [Title] of the [Department] who retired from City service on [Date 1]. On [Date 2], you wrote to the Board of Ethics asking for an advisory opinion regarding your post-City employment. Specifically, you wanted to know whether the Governmental Ethics Ordinance imposes any restrictions on your proposed work promoting the interests of the [Client] as a Consultant with [Future Employer].

After careful consideration of the information that you have submitted and the relevant law, the Board concludes that neither the permanent prohibition nor the one-year prohibition of Section 2-156-100(b) of the Governmental Ethics Ordinance imposes any restrictions on your considered employment with [Future Employer].

FACTS

[Department Employment Site 1]. [Department Employment Site 1], where you worked as a City employee, is overseen by the [Department], and was included in the [Report] produced by the [Agency 1] at the request of [Legislative Body]. Based on that report, as well as a Department forecast and various other previous planning efforts, the Department developed [Plan] for [Department Employment Site 1]. The [Plan] consists of three separate programs: (1) the [Program 1], which includes [REDACTED PHRASE/SENTENCES]; (2) the [Program 2], which covers [REDACTED PHRASE/SENTENCES]; and (3) the [Program 3], which includes [REDACTED PHRASE/SENTENCES]. [REDACTED PHRASE/SENTENCES]. The [Program 2] and the [Program 1]; however, are overseen by the Department and result from previous planning efforts. Your duties and responsibilities, as explained below, fell under the [Program 1].

Your City Employment. You worked for the City for [Number] years and retired [Date 1]. Upon entering City employment, you worked for the [Department A] from 1976 until 1984, and were responsible for [REDACTED PHRASE/SENTENCES]. The capital programs that you worked on were often run jointly by the [Department A] and the [Department B], which is the predecessor to the [Department C]. You stated that at no time during your employment with the [Department A] did your work involve [Subject 2] or any other type of [Subject 1]. You left City employment from 1984 until 1986, and, upon returning, you worked with the [Department] until your retirement. The last title you held was the [Title] of the [Department]. As the [Title], you

were responsible for all of the Department's [REDACTED PHRASE/SENTENCES], including projects under the [Program 1], although you were not the head of the [Program 1]. You explained that every project over \$100,000 fell under the [Program 1], including expenditures related to [matters]. Only minor maintenance projects fell outside your area of responsibility. Further, the Department Directors of [REDACTED PHRASE/SENTENCES] all reported to you.

You stated that very few of your responsibilities at the Department related to [Subject 1] and that you had no role in bringing the [Agency 2] [Existing Project 1] to [Department Employment Site 1]. You also stated that you had no role in bringing [Agency 3] [Subject 2] to [Department Employment Site 1]. However, you explained that the Department has a contract with [Agency 3] for an easement to expand a bridge. Because the easement involved a property issue, it fell under the scope of your responsibilities. In addition, you assisted the [Agency 2] in its effort to bring [Future Project 1] to [Department Employment Site 1]. The [Agency 2] is currently planning [REDACTED PHRASE/SENTENCES]. You clarified that [Future Project 1] is being implemented through [Agency 2] and [Department C], not the [Department], and while you did not work on the project *per se*, you helped coordinate their efforts as it pertained to [Department Employment Site 1].

Not only did you work under [Program 1], but you asserted that you assisted in obtaining a Letter of Intent from the [Agency 1] in the amount of [REDACTED PHRASE/SENTENCES], which was to help finance [Program 2]. You explained that the funds were solicited for capital improvements in connection with the [Program 2]; however, when the City began to work towards [Program 3], the projects that the funding was sought for were "shelved." This occurred in the Summer of 2001. You emphasized that you had no major participation in day to day management or functions of [Program 3] because [REDACTED PHRASE/SENTENCES]. Your primary work with [Program 3] was ensuring that there were no construction timing or other possible conflicts between [Program 1] and [Program 3].

As noted above, the [Plan], which consists of the [Program 2], the [Program 1] and the [Program 3], originates from a Department forecast, as well as other forecasts, analyses and updates. You explained that the Department forecast from which the [Plan] originated was completed during your tenure in the Department, in the summer of 1998, and projected [REDACTED PHRASE/SENTENCES]. The [Department] forecast itself is publicly available; however, it is not the basis of the [Program 3] portion of the [Plan]. As you explained, [Program 3] created its own forecast, which is independent of the [Department]'s forecast. Further, [Program 3]'s forecast is based on the [Agency 1] [Report], and [Program 3] is relying solely on its own forecast.

[Client]. Founded in 1993 and formerly known as [REDACTED PHRASE/SENTENCES], the [Client] is a membership-based, not-for-profit trade association that advocates [REDACTED PHRASE/SENTENCES]. According to the [Client]'s website, [REDACTED PHRASE/SENTENCES]. In creating such a network, the [Client] promotes [REDACTED PHRASE/SENTENCES]. Its members include individuals, chambers of commerce, municipalities

and corporations. Currently, the [Client] has no role in [Program 3], no plans have been submitted to [Program 3], and there are no existing contracts. According to your representation, the [Client]'s goal is to promote the idea of [Subject 3] in the hopes that the City will implement or include it in future plans.

According to its website, the [Client] envisions a plan around [Department Employment Site 1], which it refers to as [Future Program 2]. [REDACTED PHRASE/SENTENCES].

You stated that you had no involvement with the [Client] or any of its predecessor groups during your tenure with the [Department]. However, you stated that one of your [Department] staff members, of his or her own volition, attended a general information meeting hosted by the [Client] several years ago. You stressed that “[the meeting] was not anything specifically geared toward the City.” You also stated that [Future Project 3], on a local or regional basis is not, to the best of your knowledge, a consideration of [Program 3].

Proposed Employment. After you retired from City employment, you were approached by [Future Employer], to work with him as a Consultant to promote the interests of the [Client]. Final details have yet to be discussed, and, as such, you have had no contact with the [Client]. According to the [Client]'s website, it (1) promotes public policies that will spur the development of [Future Project 3]; (2) educates the general public, civic leaders and elected officials about the [REDACTED PHRASE/SENTENCES] and economic benefits of [Future Project 3]; (3) keeps its members informed with a quarterly newsletter and action alerts; (4) represents its members at public hearings; (5) provides a speakers bureau for civic and neighborhood organizations; (6) hosts regular membership meetings and public forums; and (7) serves as a source for the media. As a consultant to a lobbyist, you assume that you may be working in any or all of these areas.

You stated that the [Client] is not, and would not be, seeking financing through [Program 3], but instead is attempting to find a receptive audience for the idea of [Future Project 3]. To the best of your knowledge, [Program 3] had not allocated any funds to the promotion of [Future Project 3] on a local or regional basis. As to the [Client]'s plans regarding [Future Project 3A], you explained that it would possibly be built and implemented at the same time as [Program 3], but the project would remain separate and independent from [Program 3].

ISSUES PRESENTED

In your request, you asked the Board to address the following issues:

1. Whether you are permanently prohibited from assisting or representing [Future Employer] and/or the [Client] in connection with promoting [Future Project 3] to [Department Employment Site 1]; and
2. Whether you are prohibited for one year from assisting or representing [Future Employer] and/or the [Client] in connection with promoting [Future Project 3] to

[Department Employment Site 1].

APPLICABLE LAW AND ANALYSIS

Section 2-156-100(b). The provision of the Governmental Ethics Ordinance (hereinafter, the “Ordinance”) that is relevant to your request is Section 2-156-100(b), entitled “Post-Employment Restrictions,” which provides that:

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.

Under Section 2-156-100(b), a former City employee is subject to two employment restrictions after leaving City service; a permanent prohibition and a one-year prohibition. Both of these prohibitions will be discussed in further detail below.

A. Permanent Prohibition

Under Section 2-156-100(b), you, as a former City employee, are permanently prohibited from assisting or representing any person, such as the [Client], in any contract over which, as a City employee, you exercised “contract management authority.” Section 2-156-010(g) of 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.”

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 contracts between the [Client] and either the [Program 3] or the Department. However, from the description of your duties at the 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.

B. One-Year Prohibition

Under Section 2-156-100(b), you, as a former City employee, are prohibited for one year after leaving City service from assisting or representing any person, such as the [Client], in a business

transaction involving the City if, during your City employment, you participated personally and substantially in the subject matter of the transaction. The one year period begins as of the date your City employment ended, not as of the date you stopped performing particular tasks. (Case No. 01030.A, p. 6). In the past, the Board opined that “‘assisting’ and ‘representing’ a person in a business transaction involving the City encompasses helping a person to seek a contract as well as to perform a contract.” (Case 01030.A, p. 6)

The second issue before the Board is whether the Ordinance prohibits you from assisting or representing [Future Employer] and/or the [Client] in connection with promoting high speed rail travel to [Department Employment Site 1] for one year. This is determined by first examining the subject matter of the transaction. In this instance, the subject matter consists of the [Client]’s (and thus of [Future Employer]) efforts *vis-a-vis* the City in promoting [Future Project 3] at [Department Employment Site 1]. The Board’s review of the facts presented indicates that while you were at the [Department], you were responsible for capital improvement projects, excluding maintenance, that fell under the [Program 1]. None of your responsibilities involved any type of [Subject 1], including [Future Project 3]. The only connection you had to [Subject 1] was acting as a conflicts liaison for the [Agency 2] and [Department C] in bringing [Future Project 1] to [Department Employment Site 1]. Furthermore, you stated that you did not have any role in the planning or implementation of [Program 3], you had no contact with the [Client] or any of its predecessors, the [Client] did not seek your attention specifically, nor the attention of the [Department] generally, nor, to the best of your knowledge, was [Future Project 3] a consideration of [Program 3] while you were employed by the City. Based on those representations, it is the Board’s conclusion that you did not participate personally or substantially in any projects pertaining to bringing [Subject 3] to [Department Employment Site 1]. Therefore, the Board concludes that the Governmental Ethics Ordinance’s one-year prohibition does not restrict you from representing [Future Employer] and/or the [Client] in promoting [Future Project 3] to [Department Employment Site 1].

C. Other Prohibitions

Finally, the Board brings your attention to Section 2-156-070 of the Governmental Ethics Ordinance, entitled “Use or Disclosure of Confidential Information,” which reads as follows:

No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, “confidential information” means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Under this Section, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of City employment. Please note that this is a permanent prohibition.

DETERMINATION

Based on the facts that you have presented, the Board determines that neither the Governmental Ethics Ordinance's permanent prohibition nor the one-year prohibition restricts you from assisting [Future Employer] to represent the interests of the [Client] as it pertains to promoting [Future Project 3] to [Department Employment Site 1].

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the applicable sections of the Governmental Ethics Ordinance to the facts as you have represented them. If the facts stated are incorrect or incomplete, please notify the Board immediately, as this may change the outcome of our analysis. Other laws or rules may also apply to this situation.

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.

Michael F. Quirk
Acting Chair