

CONFIDENTIAL
ADVISORY OPINION
[Mr. Smith]
Case No. 08026.A, Post-Employment
August 27, 2008

In your City career, you were Principal of Systems [Work] at the Office of [X], Principal of Systems [Work] (Network Architect) at the Department of [Y] and Managing Deputy Director at the Office of [Z]. On June 3, 2008, you requested a written advisory opinion from the Board of Ethics (“Board”) addressing how the City’s Governmental Ethics Ordinance (“Ordinance”) would restrict your post-City employment. You gave staff permission to speak with certain City personnel and your current employer. As discussed in the opinion, the Board has determined that the post-employment provision of the Ordinance prohibits you, for a period of one year from the date you left City service, that is, until April __, 20__, from assisting or representing any person (including your employer, its parents, subsidiaries or affiliates) with respect to designing and maintaining security systems and their supporting LAN and WAN networks, including hardware and software encompassing video surveillance and access control.

FACTS:

Current Employment

You are Senior Project Manager at [AT] Associates, Inc. (“AT”), which is a diversified, international engineering, project management and technical services company. You stated the City terminated your employment on April __, 20__ and you began working as a Senior Project Manager at AT on June 1, 2008. Specifically your tasks comprise: (i) the design of networks, sometimes known as infrastructures¹; (ii) ensuring how and which cabling and fiber optics works or fits; and (iii) ensuring that what goes on “the end” or outside of the infrastructure but attached to it, namely, a computer, printer, access security system, cameras, or another network appliance, *etc.*, works correctly.

You asked whether, under the Ordinance’s Post-Employment provision, you would be able to represent and assist your employer to respond to and then perform a Department of Q (“Q”) RFP/Contract (“Q Contract”)²

¹Infrastructure comprises the “wires” that connect points in a “spider web” using cable, wires, wireless communication, fiber, and the network resides on the infrastructure. The equipment is located at the “points” of the spider web, *e.g.*, computers, routers, cameras, door control devices (equipment plus software). The overall “spider web” may be considered *in toto* as a network, either being LAN (local area network, smaller, less sophisticated and localized, for instance, in an office space), or WAN (wide area network being, quantitatively, larger and more complex).

²#xxxxx “Technical Support and Maintenance of Software and Hardware of [certain projects] (‘Support’) at [certain City facilities].”

whose subject is an integrated security (hardware and software) system, requiring managing, monitoring and controlling of the security and safety at the City's [facilities] using video surveillance, monitoring, access control of doors and windows, security badge reader equipment and associated handwriting checks ("Security System"). You would review and modify certain design work for the Security System, including addressing any concerns involving maintenance support. Specifically, you and personnel working with you would review the old system, and, when necessary, perform modified designs of the Security System. Pursuant to the [Q] Contract, and your job, you would perform maintenance and repair of the Security System, part of which would be to review and decide on changes in the Security System, and part of which would be to perform work to accomplish the changes or replacements of components. Your design work would be on an as-needed basis. Also, your team would make Security System determinations, *e.g.*, how to ensure security videos are working, what are the levels of access into and out of the [facility], how to accurately produce security badges.

Specifically you would work on the Security Systems' network (which you have previously described as comprising either or both a LAN and WAN configuration). The network would be rather complex, involving "backend" security applications, proprietary elements and high maintenance requirements. You would, as needed and to the extent needed, design, modify or redesign the network, making sure the network was operating properly. You would determine whether a door was not working but a security badge was all right, and what problem exists in the network to cause this discrepancy. You could be redesigning the network, or replacing a component (routers, switches). You also oversee the entire Security System. For example, you would perform preventive maintenance before any disaster could occur, *e.g.*, determine equipment end-of-life, whether it was out-of-warranty, perform mechanical calibrations, re-certification of registered equipment, such as, fire extinguishers, and repair tasks would include servers, network equipment (such as routers), door locks, cameras, and equipment for identification badges and a machine to print the badges. In connection with consultation, if [Q] would desire a new or substitute product, then, you stated, you would be the expert to evaluate between Companies A, B and C as to which has a "hydraulic hammer" (*i.e.*, a new product necessary for the Security System) by reviewing specifications, and a matrix that would include comparisons and show what was best, with its drawbacks, for instance, door locks that needed changing. You also said that you may conduct feasibility studies. For example, you might need data to be transmitted to the Department of Energy or integrate the U.S.A.'s "ten most wanted" into identification badge security review, and you would determine the length of time to perform the task, its costs, tools necessary to so perform, and then you would detail a plan to present to [Q].

AT has been and is currently a City contractor. It currently has several contracts with the City. You were not involved in any of them while with the City nor are you involved in any of them as an employee of AT.³

³AT has a master consulting contract with [Y] allowing [Y] to use AT as needed for technical consultation; currently [Y] uses AT on its (a) "C2: Certification and Compliance" project involving MBE/WBE certification support for software implementation to aid the Department of [R]; and (b) Non-Security Network Support at the City [facilities] including 12 tasks that comprise maintaining and managing the facilities' GroupWise (basically email) server (among other things), under which it uses subcontractors to support operations of [facilities'] LAN/WAN networks, (being separate from the [facilities'] safety/security infrastructure); AT provides help to [Q] personnel, *e.g.*, cannot access computer files, computer not working, help do a computer query, [facility] display signs are down and must be fixed, invoices need be reviewed. AT also has a City contract involving a portion of the City's Biometric Time and Attendance project. In the past, [Y] retained AT to help draft an RFP respecting carriers

City employment

Office of [X]

You started your City career with the [S] Department on September 19__; in January 19__, you transferred to a new office created from [S] called the Office of [X] (“X”). In this department, you designed email systems, communication systems (LAN - Local Area Networks and WAN - Wide Area Networks), integrated the operation of these systems, and performed general systems’ development, *e.g.*, you wrote the program and coded the “Troubled Ticket System,” which is an application program that a technical support person or engineer calls with a problem, usually used for computers, walkie-talkies, and telephones within the City. You also stated you integrated systems between [S] and [X]. In performing these tasks, you worked on approximately 25 [facility] buildings, and other headquarters, and 105 [other facilities], creating plans that would apply to each building, as well as developing a Wide Area Network (“WAN”), allowing communication between these locations. You accomplished the latter by using the existing network, modifying some parts of it and creating new portions of the WAN using components, including fiber optics and network appliances such as converters, switches and routers.

You did not know about AT until 20__, when they were working on middleware (meaning a server like computer that converts an application to display in a new “size” such as to a PDA, or a Blackberry® device). You stated that none of the City contracts that TA has are to be assigned to you unless permitted in this advisory opinion. When you were at the City, you worked on several contracts, none of which are AT contracts.⁴ You said you did not draft, negotiate, award, sign or supervise any of these or any other City contracts.

Department of [Y]

(“Y”)

In October 20__, as Principal of Systems [Work], you joined [Y]. Your position was that of Network Architect. Your job as Part of [Y’s] architecture team was to build (and deliver) sound network architecture and look into future technologies for the City’s enterprise network. Network architecture means designing, if necessary, and connecting, controlling, and expanding the network use of City offices, departments and the connectivity to outside entities such as sister agencies and other government entities or the Internet. Network use includes data communication and access to applications.

for cellular phones (which RFP was terminated) upon which you worked aiding AT while you were a City employee.

⁴Evaluating online bill payments for a City vendor; an RFP respecting an Enterprise Case Management system for telecommunications in connection with AT&T; Municipal WiFi system, but you recommended terminating the initiative; Automated Meter Reading with the Department of Water as technical recommendations; Reviewing the selection for a Mobile Solutions Handset project; and a CivicNet Project which was not awarded. You stated that you worked on a City telecommunications carrier contract, namely, with AT&T; once it was under contract and providing services to the City, you monitored, through meetings, whether the City’s choices for services under the contract were *all* that were being provided to the City, including that no sites shut by the City were receiving services under the contract.

Specifically, your City job was to design (including the making of actual drawings) from scratch the engineering for the network (servers and connections between them) for equipment, such as streaming video, mobile computing, wireless appliances, and the networking to be used by the City departments as its standard IT tools/applications, e.g., cameras and software to broadcast on the City's internal TV network, and, in addition, to keep the network operating ([a company] was doing day-to-day operations), preventing third parties from accessing the network, regularly evaluating and recommending new products for the network, and reviewing how well a device, e.g., camera, worked that is linked to the network (and, in turn, is linked to a number of servers), paying attention to vendor specifications or those you developed.

You were concerned with how the servers fit into the network, and the connections between them, for either a LAN or WAN network, and, further, whether this fit would tie to the PCs, cameras, and other physical things for obtaining information (or to put information in). You said you did not operate the network after you completed your network design work. You explained that as part of your job you had to control the City network as to who had access to it, and to protect that data that is in the computer system or in transit in the network.

You said that your job in [Y] included an upgrade initiative of the existing City network as you found it, including all the network's equipment and software. The network connected various locations of City offices, etc., to each other, and to outside entities.

Office of [Z]

You joined the Office of [Z] ("Z") in September 20__ as Managing Deputy Director, directing Technology. You managed the "uptime" of the 911 network and all its applications, and supervised 200 plus employees and 12 plus City contractors (AT was not included in the [Z] list of contractors).

As part of your job, you said you collaborated with the FBI in designing a private network between [Z] and the FBI's Chicago office that was generally similar to those same networks upon which you had worked for the City, and which you had described earlier.

LAW AND ANALYSIS: Post-Employment. Section 2-156-100(b), "Post-Employment Restrictions," of the Ordinance states, in relevant part:

No former...employee shall, for a period of one year after the termination of the employee's...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...employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Permanent Prohibition: A former City employee is permanently prohibited from assisting or representing any person on a contract if he or she also exercised "contract management authority" over that contract while employed by the City. "Contract management authority," defined in Section 2-156-010(g):

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.

Based on the Board's review of your career, we conclude that this permanent prohibition is not at issue with respect to any of AT's City contracts.

One-Year Prohibition. Under the first clause of §2-156-100(b), you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including AT, its parent, subsidiaries or affiliates) in any business transaction involving the City if you participated personally and substantially in the subject matter of that transaction as a City employee. Accordingly, we first assess whether there are "business transaction(s) involving the City" on which you have been asked to assist AT, then their "subject matter(s)," and finally, whether you "participated personally and substantially" in those subject matter(s) during your City employment. You will be prohibited from assisting or representing any person in those transactions for one year, after leaving City employment, if: (i) they involve the City; and (ii) you participated personally and substantially in their subject matter.

Specifically, in your request to the Board, you asked whether, under the Ordinance's Post-Employment provision, you were able to represent and assist AT respond to and then perform a [Q] Contract for the Security System. *See* fn. 2. Clearly, this is a "business transaction involving the City."

In connection with "subject matter," first you described the [Q] Contract requiring a Security System with an integrated security (hardware and software) system, requiring managing, monitoring and controlling of the security and safety at the City's [facility's] using video surveillance, monitoring, access control of doors and windows, security badge reader equipment and associated handwriting checks. Next, on the [Q] Contract, you said your employer desires, among other things, that you would review and modify certain design work for, and related concerns about, the Security System: (i) maintenance support; (ii) maintenance and repair of the Security System, part of which would be to review and decide on changes in the Security System; (iii) Security System determinations, *e.g.*, how to ensure security videos are working, what are the levels of access into and out of the [facility], how to accurately produce security badges; (iv) the Security Systems' network, comprising LAN and WAN components (design, modify or redesign the network perhaps to address whether a door was not working but a security badge was all right, and what problem exists in the network to cause this discrepancy); (v) redesigning the network, or replacing a component (routers, switches); (vi) preventive maintenance before any disaster could occur; (vii) repair tasks including network equipment (such as routers), door locks, cameras, and equipment for identification badges and a machine to print the badges; (viii) evaluate between Companies A, B and C as to which has a "hydraulic hammer" (*i.e.*, a new product needed in the Security System) by reviewing, for instance, door locks that needed changing; and (ix) feasibility studies, for example, you might need to integrate the U.S.A.'s "ten most wanted" into identification badge security review. You would oversee the entire Security System.

If AT is awarded the [Q] contract, AT would modify or expand and improve any existing [facility's] security systems. You would be in charge of the entire Security System and your work would include the necessary design or re-design and maintenance of the Security System including the areas of LAN and

WAN networks, the computer equipment and the safety components of the Security System. Accordingly, the Board concludes that the subject matter in this case is designing and maintaining security systems and their supporting LAN and WAN networks, including hardware and software encompassing video surveillance and access control. You would be prohibited for one year from engaging in work involving the subject matter on a City contract if you were substantially and personally involved in that subject matter while in City service.

You began your City service by working on communication systems (LAN - Local Area Networks and WAN - Wide Area Networks), and integrated the operation of these systems. In performing these tasks, you worked on many [City facility] buildings, allowing communication between these different sites, which was critical to the City's safety. You continued your City service as Network Architect which meant, among other things, network design (including WAN and LAN). Your work included network equipment, videos, cameras, "preventing third parties from accessing the network," reviewing how well equipment, such as a camera, worked in the networks, and "control [of the] City network as to who had access to it, and to protect that data that is in the computer system or in transit in the network." In addition, you upgraded the City's network, which included both the City's network equipment and its software. Also, you were involved in facilitating secure communications between the FBI and [Z] by designing a "private network" between those governmental agencies. Given your experience with these areas in several City departments, the Board concludes that you participated personally and substantially in designing and maintaining security systems and their supporting LAN and WAN networks, including hardware and software encompassing video surveillance and access control. Thus, the Board concludes that you are prohibited for one year from the date you left City service from assisting or representing your employer with respect to designing and maintaining security systems and their supporting LAN and WAN networks, including hardware and software encompassing video surveillance and access control.

Confidential Information. The Board takes this opportunity to remind you of your permanent prohibition from disclosing the City's confidential information as set forth in Section 2-156-070 of the Ordinance.

DETERMINATIONS: Based on the facts presented, the Board determines that the post-employment provisions of the Governmental Ethics Ordinance prohibit you, for a period of one year from the date you left City employment, that is, until April __ 20__, from assisting or representing any person, other than the City, with respect to designing and maintaining security systems and their supporting LAN and WAN networks, including hardware and software encompassing video surveillance and access control. The Board also determines, based on the facts you presented, that you did not exercise contract management authority over any of AT's City contracts, and, therefore, that the Governmental Ethics Ordinance's permanent prohibition does not restrict you from assisting or representing AT (or any other person) in any City contract it is seeking once the one-year prohibition has passed. The Board also cautions you that if, at any time within one year from your leaving City employment, you are asked to assist or represent any person (including AT, its parent, subsidiaries or affiliates) in preparing for or engaging in a business transaction involving or with the City (including the [Q] Contract) respecting any of the initiatives upon which you worked while in City service, and that are similar to the [Q] Contract, you seek specific direction from the Board as to such work.

Our 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 opinion.

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If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other rules or laws may also apply to your situation. We also note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

RELIANCE: This opinion may only be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz

Chair