

MEH



City of Chicago
Richard M. Daley, Mayor

[REDACTED] June 15, 1989

Board of Ethics
Harriet McCullough
Executive Director

[REDACTED]

Sol Brandzel
Chair

Re: Case No. 89108.A

Mary Milano
Vice Chair

Margaret Carter
Angeles Eames
Russell Hardin
Rev. A. Patterson Jackson
Marlene O. Rankin

Dear [REDACTED]

Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

You submitted a request to the Board of Ethics for an advisory opinion. From the information you have provided, we understand that you are presently a registered architect and a *City employee dealing with zoning* for the City of Chicago. Your employment with the City will end sometime in *the near future*, and you would like to open an "architectural/planning consultancy" at that time. You requested an advisory opinion regarding permissible post-City-employment activities under the Governmental Ethics Ordinance.

The Board of Ethics considered your question at its *monthly* meeting and concluded that the post-employment provisions of the Governmental Ethics Ordinance do not prohibit your establishment of an architectural and planning firm after leaving City employment. However, as discussed in the opinion below, some of your activities will be restricted.

For one year after leaving City employment, you may not negotiate on, testify regarding or otherwise advocate to any City agency an amendment of the Zoning Ordinance on behalf of a client. In addition, you may not render direct or indirect assistance to a client in securing approval of an amendment of the Zoning Ordinance. You are not prohibited from working as an architect on plans submitted to the City for approval, nor are you prohibited from certifying that building plans conform to applicable laws. Finally, the Governmental Ethics Ordinance permanently prohibits your use or disclosure of confidential information gained in the course of or by reason of your position or employment with the City.



This advisory opinion is based on the facts outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

FACTS: You are an employee dealing with zoning of the City of Chicago and a registered architect. When your employment with the City ends, you intend to open an architectural and planning consultancy.

CITY WORK: As an employee dealing with zoning, ("the [redacted], you work with [redacted] the Department [redacted] which is responsible for the enforcement of the Chicago Zoning Ordinance. The Zoning Ordinance divides the City into zones and districts and restricts and regulates the location, construction, alteration and use of buildings, structures and land for residence, business, commercial, manufacturing and other specific uses.

No construction in Chicago may be done without a building permit, and no building permit may be issued without certification that the proposed building or construction complies with the Zoning Ordinance. The process of obtaining a building permit begins when an architect submits sealed plans to the Department of Zoning with a signed representation that the plans are drawn by a licensed architect and comply with applicable laws and regulations.

As an employee dealing with zoning you supervise employees [redacted] who review all building plans (approximately 18,000 a year) for compliance with the Zoning Ordinance. Your direct involvement in the review process is usually limited to exceptional cases such as large development projects.

[redacted] you are also a [redacted] member of the [redacted] (Municipal Code, Sec. 21-41 through 21-43.). [redacted] Commission reviews City policies and programs for compliance with long-range planning policies and goals. It reviews Zoning Planned Developments and makes recommendations to the City Council Committee on Zoning prior to submittal to the City Council

for final action.¹

On occasion, [REDACTED] you also advise the Zoning Committee of the City Council on zoning matters such as amendments of the ordinance (e.g., map changes, planned developments).

PROPOSED WORK: You intend to establish "an independent architectural/planning consultancy...[which] would include advising clients on architectural and planning feasibility, preparing documents and other related tasks." You state that all these activities are considered part of the practice of architecture.

You maintain that if you work as an architect on projects in Chicago, you cannot avoid contact with the departments, commissions and committees of City government with which you worked while a City employee. To obtain a building permit in Chicago, even for the most modest construction project, an architect must submit signed, sealed plans for review by [REDACTED] your Department [REDACTED]. If a construction project must be approved as a planned development, the principal architect is usually called upon to testify before the [REDACTED] Commission and the Zoning Committee of City Council. The principal architect may also be involved in negotiating with [REDACTED] Department on matters related to planned development.

DISCUSSION: Section 26.2-10(b) of the Governmental Ethics Ordinance states:

"No former...employee shall, for a period of one year after the termination of the...employee's term of...employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the...employee participated personally and substantially in the subject matter of the transaction during his term of...employment; provided, that if the...employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract."

¹ Some projects may have to be established as Planned Developments because of their specialized purpose, size, location and character of proposed use. Among the requirements for the establishment of a planned development is favorable action by the [REDACTED] Commission, the City Council Committee on Zoning and the City Council following public hearings on the proposal. The architect for a proposed development very often testifies at such hearings to explain the design.

[REDACTED]

The intent of the one-year restriction is to impede the operation of the "revolving door" through which government employees move from their employment in government agencies to representation of private interests having business before those agencies. By preventing both the actual abuse of influence as well as its appearance, the restriction promotes public confidence in the fairness of governmental decisions. It limits a former employee's ability to reap improper benefits for himself or new clients by using his influence with government agencies and personnel that he worked with while in public service. In addition, the restriction reduces the possibility of a former employee's intentionally or inadvertently disclosing or using confidential government information for private gain.

The Board has understood "subject matter of [a] transaction" to mean not just the content of a particular transaction, but the general area of City business in which the transaction occurs. Generally, the subject matter in which you are involved as a City employee is zoning. From the information provided, it appears that you have personal and substantial involvement in all aspects of zoning and with all parts of the zoning apparatus. According to information which you provided, your personal involvement with approval of Planned Developments (a type of amendment of the Zoning Ordinance) is greater than with approval of routine building plans submitted to the [REDACTED] Department. You are personally and substantially involved in the work and decisions of the [REDACTED] Commission as well, and, at times, in the work of the Department [REDACTED]. By reason of your testimony before and advice to the Zoning Committee of City Council, you are also personally and substantially involved in the zoning decisions of the Council.

The term "representation" is not defined in the Governmental Ethics Ordinance. The Board has interpreted it to cover any of a broad range of activities in which one person acts as the spokesman for another person. Such activities would include making appearances before City agencies on behalf of non-City parties, contacting City officials by phone or by letter on behalf of other persons, and signing petitions and proposals which are submitted to City agencies for review.

Applied to your post-City-employment activities, you would engage in prohibited representation if, on behalf of another person, within one year of leaving City employment, you negotiated on, testified regarding or otherwise advocated to any City agency an amendment of the Zoning Ordinance or a particular decision on City planning by the [REDACTED] Commission. The prohibition would also apply to both direct and indirect assistance that is aimed at securing approval for amendment of the Zoning Ordinance on behalf of a client. For example, you would be precluded from contact with

City agencies or officials to try to procure approval of a Planned Development.

You would not be precluded from working as an architect on plans which are presented to a City agency for approval.² However, you would not be permitted to attempt to influence in any way, beyond designing and drafting, the City's decisions regarding such plans and the Zoning Ordinance because you were personally and substantially involved in such decisions as a City employee.

You would not be prohibited from participating in the application for a building permit by acting as the licensed architect who certifies on sealed plans submitted to the [redacted] Department that the plans comply with all applicable laws and regulations including the Zoning Ordinance.

Section 26.2-7 of the Governmental Ethics Ordinance permanently prohibits your use or disclosure of confidential information. It states: "No current or former 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 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." For your reference, a copy of the Freedom of Information Act is attached.

The Board of Ethics hopes that this opinion answers your inquiry. If you have any questions regarding this matter, please do not hesitate to call the Board at 744-9660.

Sincerely,


E. Brandzel
Chair

² Of course, you can work immediately without any restriction as an architectural and planning consultant outside the city of Chicago.