

MEH



October 27, 1989

City of Chicago  
Richard M. Daley, Mayor

[Redacted]

Board of Ethics

Board Members

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- Angeles L. Eames
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- Catherine M. Ryan

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

Re: [Redacted] Case No. 89142.A

Dear [Redacted]

At its October 17, 1989 meeting the Board of Ethics issued the following advisory opinion concerning the application of post-employment provision 26.2-10(b) of the Governmental Ethics Ordinance to [Redacted] a former City employee who is now a partner at your firm.

FACTS:

Proposed Employment: A law firm would like to have a former City employee participate in its representation of a national car rental agency ("A"). The law firm has been retained by the rental agency to provide legal advice concerning the possible re-allocation of rental car facilities, and hence the relocation of the rental agency at O'Hare Airport.

Specifically, the construction of the "People Mover" automatic guideway transit system may require that support columns be located on land presently assigned by the City in a concession agreement to another car rental agency ("B"). (Concession Agreement "B"). In the summer of 1989 Agency ("A") received notice from the Department of Aviation that, pursuant to the provisions of a concession agreement executed by the City and Agency "A" (Concession Agreement "A"), it would be required to transfer to "B" certain rental car facilities currently assigned to "A" and relocate certain of Agency "A" 's operations to other facilities at the Airport. Agency "A" has sought said law firm's legal advice with respect to its rights and obligations under the Agency "A" Concession Agreement.

City Employment: The employee served as Deputy Corporation Counsel for the City of Chicago from [Redacted] As Deputy Corporation Counsel, the employee supervised and directed the legal

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work of the Law Department. *He/she* supervised the work of approximately thirty to forty lawyers, paralegals and support staff. Most of the day-to-day work was done by other lawyers to whom *said City employee* or a division chief assigned work.

*The City employee* participated directly in a wide variety of matters related to O'Hare Airport, including the City's planned expansion and improvement program. These matters included the issuance of general airport revenue and special facility bonds, negotiation and interpretation of the airport use and lease agreements between the City and various airline parties, regulation and interpretation of various airport concession agreements and review and approval of contracts for construction and equipping airport improvements, including the People Mover.

*The City employee* said that most concession agreements were form documents. The Department of Aviation usually negotiated the terms of the agreement and the Law Department put the agreement into legal form. More complex agreements, such as those for food and beverage concessions, were usually handled by outside counsel who provided the Deputy Corporation Counsel with status reports.

The agency "A's" Concession Agreement was originally signed in 1972. It was amended in 1974 and 1980. While *this City employee* was Deputy Corporation Counsel *he/she* did not discuss the agency "A's" Agreement with anyone in City government, nor did *he/she* review it or interpret it for any purpose. To *his/her* knowledge, during *his/her* tenure as Deputy Corporation Counsel, no issues concerning the agency "A's" Agreement came through the Law Department.

The "B's" Concession Agreement, like the "A's" Agreement, was originally signed in 1972. *This City employee's* only involvement with the "B's" Agreement while with the City concerned a provision of the Agreement relating to the ability of an Airlines to operate a baggage check-in and ticketing operation at "B's" rental car facilities.

As to other rental car companies, *this City employee* had a "passing involvement" in discussions with City officials concerning the ability of the City to charge percentage rental fees to rental car companies operating at off-airport locations.

The People Mover contract was signed in 1984, before *this City employee* joined the Law Department. *He/she* described the contract as a long, very complex document. While Deputy Corporation Counsel, *he/she* was called upon to interpret the contract on specific issues. However, *he/she* did not participate in any discussions concerning the impact of the construction of the People Mover on any of the rental car facilities at O'Hare. *He/she* did not recall that the issue had even arisen when *he/she* was in the Law Department.

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ISSUE: Whether *this City employee's* involvement as Deputy Corporation Counsel with concession agreements and with the People Mover contract at O'Hare disqualifies *him/her* pursuant to Section 26.2-10(b), from engaging in the representation of *agency "A"* Car Rental.

LAW: Section 26.2-10(b) of the Governmental Ethics Ordinance 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.

ANALYSIS: The intent of post-employment restrictions 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 government agencies. By preventing both the actual abuse of influence as well as its appearance, the restrictions promote 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. Post-employment restrictions also ensure that City employees will not be influenced in the performance of their public duties by the thought of later reaping a benefit from a private individual. In addition, such restrictions reduce the possibility of a former employee's intentionally or inadvertently disclosing or using confidential government information for private gain.

In the one-year prohibition, 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. In the case of *this City employee's* proposed representation of *agency "A"* the subject matter of the transaction is concession agreements at O'Hare. The terms of these agreements are affected by the People Mover contract. While *this City employee* was a Deputy Corporation Counsel, *he/she* participated directly in "regulation and interpretation of various airport concession agreements." Although *he/she* did not

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regulate or interpret the agency "A" or agency "B" Concession Agreements, as well as the People Mover contract, are within the areas of City business for which he/she had responsibility while he was Deputy Corporation Counsel. Therefore, the one-year prohibition would apply to this City employee's proposed participation in advising agency "A" on its concession agreement.

The permanent prohibition prevents a former City employee who exercised contract management authority over a specific contract from ever representing someone other than the City as to that specific contract. "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."

From the information provided, it appears that this City employee had no involvement with the agency A's Concession Agreement while he/she was a City employee. His/her only involvement with the agency "B's" Concession Agreement related to the airline's baggage check-in at agency B's facilities; legal advice on this one issue does not seem to rise to the level of "contract management authority." As to the rental car concession agreements, the permanent prohibition does not apply.

This City employee's degree of involvement with the People Mover contract is less clear. The contract was already in place when he/she came to the Law Department. On several unspecified issues he/she interpreted the contract. However, none of the issues concerned the impact of the People Mover on rental car concession agreements. For purposes of this opinion regarding representation of a rental car company affected by the People Mover, his/her involvement with the People Mover contract while a City employee does not appear to bar him/her permanently from advising such a rental car company.

#### CONCLUSION:

It is the opinion of the Board of Ethics that the Governmental Ethics Ordinance prohibits this employee for one year from the end of his/her City employment from participation in advising agency "A" Car Rental on its rights and obligations under the agency "A" Concession Agreement.

RECONSIDERATION: This advisory opinion is based upon the facts which are 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

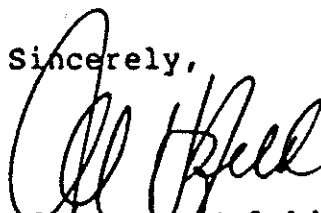
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reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date

RELIANCE: This advisory 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 which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Should you have any questions, please contact the Board of Ethics at 744-9660.

Sincerely,



Albert P. Hofeld  
Chairman

BS: 89142.L