

1.11.92

Advisory Opinion
92016.A, Post-Employment
██████████

Date: June 24, 1992

On April 30, 1992, ██████ Mr. A ██████, Assistant Commissioner of the Department ██████ ██████, contacted this office asking whether a former City employee of that department was prohibited by the City's Governmental Ethics Ordinance from participating in the Department ██████ ██████ Loan Program. The Board determined that the Governmental Ethics Ordinance did not preclude him from participating in the loan program.

FACTS: ██████ Mr. A ██████ explained that Mr. B ██████ resigned from his City position as ██████ ██████ in the ██████ ██████ Division approximately eight months ago. According to Mr. A ██████, while Mr. B ██████ was with the City, he was "substantially" involved in the formulation of the ██████ Loan Program. Mr. A ██████ and Mr. B ██████ worked together on the program representing their particular areas of expertise. Mr. A ██████ stated that he was primarily responsible for drafting the ordinance that put the program into effect, while Mr. B ██████ performed research for the ██████ Program and helped him formulate the enabling ordinance. Mr. A ██████ explained that ██████ Commissioner ██████ made the determination of which ██████ would be a part of the Program.

After he left City employment, Mr. B ██████ applied for a loan under the ██████ Loan Program for his private ██████, which, according to Mr. A ██████, Mr. B ██████ owned while he was a City employee. Mr. A ██████ stated that there is no real competition for the funding available. He also confirmed that there is no confidential information that Mr. B ██████ could use in applying for the ██████ Program loan as it is a very basic program.

LAW AND ANALYSIS: Only two provisions of the Governmental Ethics Ordinance apply to the conduct of former City employees. These two provisions are section 2-156-070, entitled "Confidential Information," and section 2-156-100, entitled "Post-Employment Restrictions."

Confidential Information

One relevant section, section 2-156-070, states:

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.

As indicated above, Mr. (A) stated that there is no confidential information Mr. (B) could have used in obtaining the loan as there is no confidential information regarding the process. Therefore, it appears that under the facts presented, Mr. (B) could not violate this section by applying for a loan under the Program.

Post-Employment

The other relevant section of the Ordinance, section 2-156-100(b), 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.

Section 2-156-010(g) defines the term "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.

According to these sections, a former City employee is subject to two restrictions after leaving City service: a one-year prohibition and a permanent prohibition. A former City employee is prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if while a City employee he or she participated personally and substantially in the subject matter of that transaction. Under the permanent prohibition, a former City employee is permanently prohibited from assisting or representing any person in a particular business transaction involving the City if, while a City employee, he or she exercised "contract management

authority," as defined above, with respect to the particular transaction. See case number 92010.A, p. 3.

CONCLUSION: Having reviewed the circumstances of this case, the Board is of the opinion that the conduct in question was not intended to be covered by the post-employment provisions of the Ordinance. Some of the factors the Board considered before coming to its opinion were: (1) the transaction that is the focus of this case is not the kind let out for bid, where only one contracting party is chosen and where insider information acquired as a result of City employment could give the former employee unfair advantage over other interested parties, (2) this is a program available to any citizens of the City who qualify, (3) the loan application was not submitted while Mr. B [REDACTED] was a City employee. Therefore, based on the facts presented, the Board concludes that Mr. B [REDACTED] is not precluded by the Governmental Ethics Ordinance from participating in the [REDACTED] Loan Program.

Other rules or laws may apply to this situation. Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented in this opinion are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.

Catherine M. Ryan

Catherine M. Ryan
Chair