

**ADVISORY OPINION
CASE NO. 99046.A, Part 1
Post-Employment**

To: [James]

Date: January 12, 2000

On November 8, 1999, you asked the Board of Ethics for an advisory opinion about how the post-employment provisions of the Governmental Ethics Ordinance apply to your proposed activities in response to the City's forthcoming Requests for Proposals to develop properties at [facility]

The Board has concluded that the activities you described are not prohibited by the Ordinance's post-employment provisions. We set forth below our analysis of the situation you presented under the relevant provisions of the Ordinance, and our determination.

FACTS: You served as [title] of the City's Department of [Q] from January 1, 1993 until May 31, 1997, when you resigned from City service.¹ You then formed a real estate consulting firm, [A], of which you are the sole shareholder and one of two employees. You also are a practicing attorney.

In your City position, you said you were responsible for managing (1) real estate transactions, (2) planning activities, and (3) design and construction projects at the City's [facilities]. Three [titles], each responsible for one of these types of activities, reported to you. Most of your City work, you said, involved facilitating the City's acquisition of "collateral land" at [facility] formerly owned by the U.S. [military], and overseeing the initial re-use planning process for this land. This area comprises about 350 acres in the northeast quadrant of the [facility]. Once the City has gained ownership of this land (anticipated by Spring 2000), it plans to lease it in parcels to contractors who will develop the area in ways beneficial to the airport and the surrounding community. Potential developments include hotels, office space, warehouses, and industrial use.

¹ Immediately upon leaving City service, you contracted with the City for work on various projects; that work is discussed in a separate document identified as 99046.A, Part 2, attached.

The City has announced plans to issue one or more Requests for Proposals (“RFPs”) to contractors in April to begin active redevelopment of this collateral land area. The Department of [Q] , you said, will then evaluate the proposals received and choose one or more developers with whom to negotiate and enter into leases. In your letter of November 8, 1999, you said you “would be interested, either through [A] or in some other capacity, in working with or on behalf of a third party developer, in connection with the Department’s proposed re-use and leasing of the military property.” You explained that you would consider consulting for a developer through your real estate company, working as an employee of a developer or subcontracting firm, or serving as legal counsel to a developer. You stated that your involvement might include assisting a developer in the following: understanding the various real estate aspects of a development; formulating a re-use proposal for specific sites; writing a response to the City’s RFP; and negotiating the ground lease of the land, and possibly other financial transactions, with the City.

During your City employment, you had direct daily involvement in both the acquisition of, and the preliminary re-use planning for, the collateral land area. You told staff that, from 1995 until you resigned in May 1997, you spent approximately 80 percent of your City time working on these projects. You negotiated the land purchase with the military, and you supervised representatives of [B] , the consulting firm that served as the Department’s real estate advisor on this project and that formulated preliminary re-use studies for the area.

Given that the post-employment activities you have proposed relate to assisting contractors on City contracts for leasing and developing the collateral land area, the aspect of your City work that is relevant in this case is your work on the preliminary re-use planning studies of this area that preceded the City’s issuance of the (forthcoming) RFPs. With respect to this preliminary re-use planning project, you said you were the person primarily responsible for writing the Request for Qualifications (“RFQ”) the Department issued in 1993 to find a real estate consultant to manage the collateral land re-use project. You said you also were one of six or seven members of the evaluation committee that reviewed the respondents to the RFQ, and that you participated in that committee’s recommendation to the Department Commissioner that [B] be retained to head up the project. Once [B] was selected, you negotiated the firm’s contract with the Department, including participating in the formulation of the contract specifications establishing the scope of the work to be performed. In addition, you said, you personally supervised [B’s] performance of the contract, working with its representatives on a daily basis to complete every aspect of the plan. You read drafts of their reports, reviewed evaluations they completed, attended weekly progress meetings, and facilitated whatever meetings were necessary between [B] representatives and City airport officials. You said you were the “central coordinator” of [B’s] work with the City, but that you reported to (then) [Q] Department Commissioner [Ron] , who exercised all the final decision-making authority in the planning process.

The nature of this preliminary plan, you said, was a feasibility study whose purpose was to project revenue and job opportunities that might be generated through a variety of potential developments. You also referred us to [Jane] the current [title] in the Department of [Q], who confirmed this description. According to you and [Jane], the preliminary plan was designed broadly to investigate what land uses could be developed in this area to generate the greatest economic benefit to the [facility] and the surrounding community. It included such things as an inventory of the vacant land; market research on purchase prices and property taxes on various parcels of land; market research on current vacancy rates and rental rates for office, hotel, and warehouse space; an economic impact study estimating the real estate and sales taxes that might be generated; and a “needs assessment” study envisioning potential developers and what they might pay for the land. These preliminary plans were general projections only, you said, to enable the Department to evaluate the financial worth and economic potential of the land. [Jane] explained that various land uses were projected in the feasibility study in order to estimate the potential revenues, but that the land uses identified at that time were “extremely flexible.” The [Q] Department knew these ideas would have to be revised later, she said, because market analyses would change by the time the City was ready to issue RFPs, and because no infrastructure planning for the area had been undertaken.

You said, and [Jane] confirmed, that this preliminary stage of the re-use planning process was completed by mid-1996, and was set aside at that time because the City could not proceed any further with development planning until it had acquired the property. You said you had no further involvement with these preliminary plans during your City employment and are not aware of any further updates that may have been made to them.²

[Jane] told us that the planning process for this area has evolved significantly since 1996 and 1997. She explained that, since then, the Department directed [B] to perform another market analysis for the area (which it completed in 1998) and to refine its earlier re-use plans based on that information. ([B] continues to serve as the Department’s advisor in the lease of the collateral land property, but under a new contract renegotiated after you left your City job, according to [Jane] .) Then, last October, the Department published a project website that incorporated its most recent projections. The website issues an invitation to developers to submit “letters of interest,” which are informal proposals that indicate in general terms the developers’ concepts and schedule, acreage requirements, past development experience, financing capabilities, and a projection of the economic benefits of their plan to the City. Last November, the City also held an information session for

² There is one exception to your knowledge of updates to the preliminary plans, you said. At the City’s request, you performed consulting work for the [Q] Department for four months *after* you resigned from City service. This work—approximately 37 hours during the period from June through September 1997—consisted of reviewing and commenting on [B’s] market analysis to that date.

developers to publicize its plans for the area further. The deadline for the City's receipt of the letters of interest is January 21, 2000. The project website indicates that [B] will assist the Department in evaluating the letters. Based on the letters of interest it receives and the Department's most recent available market analyses, [Jane] said, the Department will then decide how to divide up the specific parcels of land, finalize its infrastructure plans for the area, and set out design and construction regulations—and then it will issue the RFPs reflecting this specific information.

By contrast to the preliminary feasibility study, the RFPs the City expects to issue in April essentially will be individual blueprints for specific types of developments, and will provide far more details than could be envisioned in the earlier plan, [Jane] said. The RFPs will designate specific types of land uses for specific parcels of land, and will include infrastructure details (the locations and specifications of roadways, water and sewer lines, and natural gas and electrical lines), up-to-date revenue studies, environmental reports, design guidelines (what kinds of construction materials may be used), and a sample lease. The Department only began to formulate these RFPs, she said, once [B] had completed its 1998 market analysis study, which was more than a year after you left City employment, and two years after you completed your work on the re-use planning process. All of the RFPs, she said, are still in the process of being formulated, and will be revised further once the Department has evaluated the letters of interest it receives. When asked specifically about how the forthcoming RFPs will relate to the preliminary plan, [B] said that the RFPs most likely will reflect some of the same conceptual ideas set out in the earlier plan (e.g., which general areas might be best for hotels and which for office space, etc.), but that market conditions and projections have changed since 1996. More significantly, she said, the RFPs will carve up the land into specific parcels, project infrastructure details, and set out architectural design and construction regulations that were beyond the purview of the earlier plan, and that could not have been foreseen in 1996.

You told staff that, to the best of your knowledge, there were no other City contracts involved in the Department's preliminary re-use planning for this land. You discussed with Board staff other contracts over which you exercised decision-making authority during your City employment, including contracts related to the acquisition of the collateral land. These contracts, however, either have expired or do not appear to be relevant to the proposed post-City employment you described to us. You also stated that you did not participate in any judicial or administrative proceeding connected to the acquisition or preliminary re-use planning of the collateral land at [facility] . (To the best of your knowledge, you said, there was only one administrative proceeding involved, which resulted in a resolution by City Council approving the purchase of the military sites, and that proceeding has been completed.)

You informed the Board that you are aware of obligations that the Ethics Ordinance imposes on all former City officials and employees not to reveal confidential information gained during your City employment.

LAW: The relevant provision of the Ethics Ordinance is Section 2-156-100(b), under the title of "Post-employment Restrictions," which 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.

Because you left City employment in 1997, the one-year provision of Section 2-156-100(b) is no longer relevant in your situation. However, the permanent provision of Subsection (b) is still pertinent. According to this provision, you are permanently prohibited from assisting or representing any person with respect to any contract over which you exercised "contract management authority" during your City employment. Contract management authority is defined in Section 2-156-010(g) of the Ordinance 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.

ANALYSIS AND DETERMINATIONS: During your City employment, you clearly had management authority over various contracts (including contracts connected to the acquisition of the military sites at [facility]) that are not at issue for the proposed post-City employment you described to us. Nevertheless, the permanent post-employment provision of the Ethics Ordinance prohibits you from assisting or representing any person with respect to any of these ongoing contracts over which you exercised management authority during your City employment.

The area of your City work at issue for your proposed post-employment involves the preliminary re-use planning for the collateral land at [facility] . While this work included your exercising management authority over [B's] preliminary re-use planning contract with your department—(you personally participated in formulating the contract and you directly supervised [B's] performance of the contract)—[Jane] told us that agreement has expired.

In your post-City employment, you propose to consult with, or do work for, potential developers responding to the RFPs that the Department of [Q] expects to issue this Spring. These RFPs will initiate separate and distinct contracts between the City and individual development companies for the lease and development of specific parcels in the collateral land area of [facility]. The relevant issue for the Board to decide in this case, therefore, is whether your involvement as a City employee in the preliminary feasibility study for the re-use of the collateral land at [facility] constitutes “contract management authority” over *these* contracts—i.e., those initiated by the forthcoming RFPs.

In some past opinions, the Board has determined that a City employee’s activities prior to a City contract constituted personal involvement in formulating that contract and, therefore, that the employee had contract management authority over the ensuing contract, even though no contract had yet been negotiated (e.g., Case Nos. 98043.A, 94044.A).³ In all cases where contract management authority arose from work preliminary to a contract, the Board concluded that the City employee’s activities had significantly shaped the contract that eventuated, by setting the basic terms or specifications of the contract.

In your circumstances, however, it does not appear that the work you performed during your City employment on the re-use feasibility study for the collateral land at [facility] will significantly shape the RFPs the City will issue for the actual development of that land, because the preliminary study did not set out the terms or specifications of those RFPs. You and [Jane] have characterized the preliminary re-use feasibility study as general projections to enable the Department to evaluate the financial worth of, and potential revenues that could be generated by, the collateral land area. [Jane] stated that the various land uses that were projected in order to estimate the potential revenues were “extremely flexible” and, in fact, have since been revised as a result of more recent market analyses undertaken by [B] in 1998. According to statements by you and [Jane], your work on this preliminary stage of the re-use planning process was completed by mid-1996, and you had no further involvement with these plans during your City employment. Even though you reviewed one additional aspect of [B’s] work (a market analysis) as a consultant to the City during the first four months after you resigned your City job, [Jane] told us that plans for the area have evolved significantly since that time, based on more recent work by [B]. She said these plans will be revised even further once the Department has evaluated the letters of interest now

³ In Case No. 98043.A, an employee exercised contract management authority over a contract that was expected to follow directly from the ‘scope of work’ for that contract that the employee had recommended to the department staff. In Case No. 94044.A, the Board determined that an employee exercised contract management authority over a contract to convey property because he was involved in determining a term of sale (the price) for the property; but in contracts to convey other properties where his preliminary work did not involve him in determining any terms of sale, the Board concluded he did not exercise contract management authority over the conveyance contracts.

being submitted by potential developers.

According to both you and [Jane] , the contracts that result from the RFPs, as well as the RFPs themselves, will be of a different nature and scope than the preliminary planning work with which you were involved. While the RFPs most likely will reflect some of the same conceptual ideas set out in the earlier plan, [Jane] explained that these RFPs will be individual blueprints for specific types of developments, and will be far more detailed than the previous plan, designating particular types of land uses for specified land parcels. The RFPs will include infrastructure details, up-to-date revenue studies, environmental reports, design and construction guidelines, and a sample lease, all of which were beyond the scope of the earlier feasibility study. The Department only began to formulate these RFPs, she said, once [B] had completed its 1998 market analysis. In fact, the RFPs are still in the process of being formulated, she said; final revisions will be made to their specifications once the Department has evaluated the letters of interest it receives.

Based on this information the Board determines that, for the purposes of the post-employment provisions of the Ethics Ordinance, your participation in the preliminary re-use planning study for the collateral land at [facility] during your City employment does not constitute contract management authority over the collateral land RFPs to be issued this Spring or over the contracts that eventually will result from developers' responses to these RFPs. Therefore, the post-employment provisions of the Ordinance do not prohibit you from assisting or representing potential developers (1) in responding to the Spring 2000 Department of [Q] RFPs for the leasing and development of the collateral land parcels at [facility] , or (2) in any contracts that result from developers' responses to those RFPs.

If you have any questions about how this Board opinion applies to any particular post-employment opportunity that arises, or if situations arise that this opinion does not address, we invite you to return to the Board for guidance at that time.

We remind you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may 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.

Darryl L. DePriest
Chair