**CONFIDENTIAL**

March 6, 2009

The Honorable

Alderman,  Ward

121 N. LaSalle St.

Chicago, IL 60602

**Re: Case No. 09007.Q**

Dear Alderman [ ],

This letter is a follow up from our letter to you in Case No. 07018.Q, dated April 27, 2007. On February 18, 2009, you requested that we update our advice from that earlier case: specifically, you asked whether the City’s Governmental Ethics Ordinance prohibits or restricts you from serving as the unpaid, part-time Executive Director of the [museum] , a not-for-profit museum in your ward, or alternatively, from serving were the [museum] to pay you symbolic compensation of $1 per year. You also asked whether the Ordinance restricts you from approaching private donors, such as the Joyce or MacArthur Foundations, on behalf of the [museum], given that these foundations probably also fund other institutions in your ward. As we advised you orally, and consistent with our advice in the earlier 2007 case (in which you asked about the restrictions were you to serve as an [museum] Board member), nothing in the Ordinance prohibits you, as an elected City official, from serving as the [museum]’s paid or unpaid Executive Director or from engaging in these other fundraising activities. However, certain restrictions apply, and there are certain considerations we advise you to weigh. They are as follows.

**1. Fiduciary Duty.** First, as the [museum’s] Executive Director (whether paid or unpaid), you owe a fiduciary duty to it. And, as an alderman, you owe a broad fiduciary duty to the City, under § 2-156-020. (See Case No. 03027.A.) This fiduciary duty obligates you to use your City position and authority responsibly and in the best interests of the public, and to give undivided loyalty to the City in the discharge of your official duties. See also Case Nos. 06021.Q; 96032.A; 93041.Q. Were the City’s interests to conflict with those of the [museum] in any particular matter, you would be required to resolve that conflict in the City’s favor. If, in your best judgment as alderman of the ward, you believe that an action the [museum] or its Board is considering is not in the City’s best interests, you must advise the [museum] or its Board accordingly. Were this to rise to the level of an aldermanic recommendation or other action, you would be required to act in accordance with the City’s, not the [museum]’s, best interests. (See below, under “Representation,” for a further discussion of this point).

Our Board has also recognized that the fiduciary duty provision also prohibits a City official or employee from using his or her City title or authority for any private purpose or to benefit any person other than the City. See Case No. 96032.A. This section of the Ordinance does not prohibit you from approaching private foundations on the [museum’s] behalf (or, for that matter, government agencies other than those of the City–e.g. the National Endowment for the Arts), but it does prohibit you from using your City title or authority in doing so. We advise you to exercise great care while fundraising on behalf of the [museum ]. Specifically, to minimize any appearance of impropriety, as long as you serve as both alderman and the [museum’s] Executive Director, we advise you to be vigilant as to any actual or potential grant application the [museum] is considering that will compete for the same monies with other institutions, particularly those in the City, and in your ward, and, further, as soon as you become aware of the potential competition, to remove yourself from any further participation in the application process, and then disclose this in writing to the [museum]’s Board. See Case No. 05067.Q.

**2. Representation.** § 2-156-090(a), “Representation of Other Persons,” prohibits you from “representing” the [museum] before any City agency, including the City Council or any of its Committees, or the Departments of Buildings, Cultural Affairs, Zoning and Land Use Policy, etc. The provision states, in relevant part:

**No ... elected official may represent ... any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency’s action or non-action is of a nonministerial nature; provided that nothing in this subsection shall preclude any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.**

The Board has interpreted the term “represent” to include a broad range of activities in which one person acts as a spokesperson for someone other than the City, and seeks to communicate or promote that other party’s interests, such as attending or speaking at face-to-face meetings, making telephone calls or signing documents submitted to a City department or agency on that party’s behalf. The provision also contains an exception: it does not prohibit you, as an elected official, from in effect representing the [museum] in City transactions in your capacity as alderman of the ward in which it is located.

Complying with this section of the Ordinance will require vigilance on your part. For as long as you serve as both an elected City official and the [museum]’s Executive Director, you will need to “walk the fine line” between aldermanic representation and prohibited representation of a third party. As we advised you in Case No. 07018.Q, while you are a staff (or in that case, Board) member of the [museum], your roles as alderman and Executive Director can easily be confused or misunderstood, thereby exposing you and the [museum] to a charge that you are “representing” the [museum] before a City agency not as its alderman, but as its Executive Director, and thus giving the appearance that the [museum] is receiving favorable treatment. So we advise you to exercise prudence, and not represent the [museum] in any formal or informal proceedings before the City Council or any other City agency or department. If there are actions the [museum] requests that can be approved only by its alderman, we advise you delegate that approval, where legally allowable, to another alderman or to one of your aldermanic staff. Where such delegation is not legally possible, we advise you to state clearly in writing on any documents to be submitted to the City that, in your judgment as the Alderman of the [ ]th Ward, the action is in the City’s best interests, and that you are approving it without compensation and as the alderman of the [ ]th Ward.

Please note that the [museum] is not itself subject to this prohibition, which is personal to you. It and you may–and must, under these circumstances–delegate to another [museum] staff or Board members responsibilities normally performed by or expected to be performed by the Executive Director, that is, transactions and interactions with other City of Chicago employees and officials.

**3. Money for Advice.** Next, whether paid or unpaid as the [museum]’s Executive Director, you may not, under § 2-156-050, (entitled “Solicitation or Receipt of Money for Advice or Assistance”) accept money or other thing of value from the [museum] in return for advice or assistance on matters concerning City business. That provision states, in relevant part:

**No official ... shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official ... from accepting compensation for services wholly unrelated to the official’s or employee’s City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.**

There are no Board cases interpreting whether there are any City transactions or City business that would be “wholly unrelated” to an alderman’s official responsibilities. Nonetheless, staff believes it unnecessary to draw a conclusion at this time. Rather, we advise you, in the exercise of prudence and good judgment, and consistent with advice we have given you and your colleagues in the past: 1) to accept no compensation from the [museum] with respect to any matters involving the City[[1]](#footnote-1); and 2) so as not to detract from the integrity of your official votes and actions, that, when you are acting as the [museum]’s Executive Director, you recuse yourself from any [museum] matters involving the City, including grants, zoning or license matters, or other matters, and allow another [museum] staff member to handle those matters; and 3) to avoid giving any advice or assistance to the [museum] or its Board regarding City of Chicago matters.

**4. Conflict of Interests; Appearance of Impropriety.** Were you to be paid even symbolic compensation of $1 from the [museum], you would have an “economic interest” in the [museum] different from that of all other alderman and the general public. Consistent with prior advice given by the Board under §§ 2-156-030(a); -080(a), we advise you not to make, take part in or attempt to use your City position to influence any City decisions or matters involving the [museum], whether those decisions or matters are pending before the City Council (or any Council committee) or another City department (such as Cultural Affairs, Buildings, Transportation, Mayor’s Office, etc.). Moreover, were the [museum] to have any matter pending before the City Council or any Council committee, we would advise you, under § 2-156-080(b)(1), to publicly disclose your part-time position with the [museum] on the records of Council proceedings, and notify our agency in writing within 3 days of becoming aware of the pendency of the matter, and then abstain from voting on that matter.

**5. City Property; Confidential Information.** Last, §§ 2-156-060, “City-Owned Property,” and -070, “Use or Disclosure of Confidential Information,” also apply to your service as the [museum]’s Executive Director. The former prohibits you from the unauthorized use of City property, including City time, or supplies, to carry out your duties on behalf of the [museum]; the latter prohibits you from using or revealing confidential information you have acquired during the exercise of your elected City office.

Board staff’s conclusions and advice are based solely on the application of the City’s Governmental Ethics Ordinance to the facts summarized in this letter. If these facts are incorrect or incomplete, please notify our office immediately, as any change may alter our conclusions. Our office sincerely appreciates the opportunity to advise you, your bringing this matter to our attention, and your concern to abide by the standards embodied in the City’s Governmental Ethics. If you have further questions about this or any other matter, please contact me.

Yours very truly,

Steven I. Berlin,

Executive Director

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1. 1. Moreover, any money or other item of value given to you could be construed as a gift given to you in your aldermanic capacity. Under § 2-156-040(c), you are prohibited from accepting any item or gift of cash (in any amount) or other single gift worth $50 or more from the [museum]. Because you are the alderman of the ward in which the [museum] is located, any item or money could be misconstrued as a prohibited gift. To avoid such a possibility, we advise you simply to accept nothing of value from the [museum]. [↑](#footnote-ref-1)