**CONFIDENTIAL**

November 5, 2015

The Honorable ,

121 N. LaSalle St.,

Chicago, IL 60602

**Re: Case No. 151696.Q/Volunteer Board Service**

Dear,

On November 2, 2015, you and I spoke about the restrictions imposed on you by the Governmental Ethics Ordinance (the “Ordinance”) should you become a volunteer member of a fundraising committee for an event for church, in Chicago neighborhood (“Church ”), as the church’s community activities have strongly impressed you. You said that this position would involve fundraising efforts. I advised you that nothing in the Ordinance prohibits this, but that there are some restrictions you would need to observe. This letter summarizes these restrictions.

At the outset, however, I do advise you to seek counsel as to whether there may be some provision in the City’s Municipal Code or in Illinois state law that would prohibit you from becoming affiliated, even on a volunteer basis, with the board of a religious institution. In other words, please seek legal advice on whether there may be a “church-state” law or rule that addresses whether an elected official (like you) of a home rule unit of government (like the City) may be prohibited from serving on the board of a religious institution. You may wish to seek the advice of the City’s Corporation Counsel, or of your own attorney. In any event, there is nothing in the Ordinance that prohibits this service.

The restrictions in the Ordinance to which would be subject, should you join this board, are:

1. Fiduciary Duty. Under §2-156-020, entitled “Fiduciary Duty,” you owe a fiduciary duty to the City at all times in the performance of your public duties. The way our Board has construed this duty, means, for example, that all of your actions and decisions—and votes, should you become a voting member of [the church’s] board—must be, in your judgment, in the best interests of the City. If, in the odd circumstance, there is some action that the board is considering, that, in your best judgment, would be contrary to the City’s best interests, I advise you to recuse yourself from that vote, or vote against it. Moreover, under this provision, and to avoid even the appearance of impropriety, consistent with the spirit of the aspirational code of conduct in the Ordinance, §2-156-005(5),[[1]](#footnote-1) I advise you to recuse yourself entirely from any matters, no matter how routine, that [church] or its leadership may have before your City department .

2. Representation. Under §2-156-090(a), you may not “represent” a third party, such as [church], in any formal or informal transaction before any City department, agency, employee, of official (or be paid for such representation). This means, for example, that you may not act as a spokesperson for, or contact (by phone, in person, email, text, etc.) any other City officials or employees on behalf of—[church] —with respect to any dealings, matters, permits, purchases, licenses, grants, partnerships, etc. that it may have or wish to seek with the City. This prohibition is Citywide, [and includes all City departments and agencies, not just your own] , . And, it would include the entire panoply of City governmental actions, including purchases of adjacent lots, zoning matters, sidewalk matters, street closures, tax incentives, redevelopment agreements, etc. Someone else from [church] would need to make such contact and represent the church in these endeavors—not you. *See* Case Nos. 06027.Q; 15047.Q.

3. Unauthorized Use of City Property. Under §2-156-060, entitled “City-owned property,” you may not engage in or use any City property in the course of your work with, or to benefit, [church] . This includes the use of your City office, telephone, email address, business cards, or City-owned smart phones, computers, etc. Prior Board of Ethics case law addresses whether you could use your City title in connection with fundraising or other activities for [church] . See Case No. 96032.A. In light of your position as an elected City official, I advise you that you may allow [church] to use your name (of course) as a member of this committee, and may even have it prefaced by the term of address “The Honorable,” but, out of an abundance of caution, **not** to allow the use of your title on any publications, letterhead, websites, or other materials in connection with or by [church] .

4. Confidential Information. Under §2-156-070, entitled “Use or disclosure of confidential information” you may not use or divulge any confidential or non-public information in your volunteer service or to benefit [church] .

5. As we discussed, with respect to fundraising on [church’s] behalf, you are prohibited, under §2-156-142(h), from soliciting any gift or contribution on behalf of a third party (such as [church] ), if: (i) you know that the prospective donor is seeking administrative or legislative action from the City, and (ii) you are in a position to directly affect the outcome of that action. Merely having your name listed on letterhead (even with the honorific form of address “The Honorable” preceding it) does not constitute solicitation from a particular person in the way intended by the Ordinance, but I nonetheless do advise you, in order to avoid even the appearance of impropriety, that you review [church’s] mailing lists for its own fundraising solicitations prior to any mailing that would be on letterhead with your name on it, to ensure that it does not go to any business or person that you know has matters pending before [your department] .

As stated above, my conclusions and advice do not necessarily dispose of all the issues relevant to your inquiry, but are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in the letter. If those facts are inaccurate, please notify me, as a change in facts may change the conclusions.

Please contact me with any questions or follow-up requests for guidance.

As always, I very much appreciate your conscientiousness.

Yours very truly,

Steven I. Berlin

Executive Director

1. This provision is aspirational, and “shall guide the conduct of every official and employee of the City.” It provides that, as a City official, you shall “act impartially in the performance of [your] duties, so that no private organization or individual is given preferential treatment.” [↑](#footnote-ref-1)