

[Date/Month/2010]

CONFIDENTIAL

Advisory Opinion

Gifts, Case No. 10004.A

You are the [City position in department "X"]. On 2010, you contacted Board staff seeking advice and recommendations as to how the City's Governmental Ethics Ordinance applies to services you said you received from, and meetings you said you had with, an [X] subcontractor. You asked whether these services constitute a gift, and believe that they may.

The Board, at its meeting this afternoon, has carefully considered the facts you have presented, which are stated in this opinion, in light of the applicable provisions of the Ordinance and Board precedent. As explained in this opinion, the Board has determined that, by accepting these services, you did in fact violate §2-156-040(c) of the Ordinance. The Board recommends that: (i) you should immediately reimburse the [X] subcontractor , fair compensation for the approximately 50 meetings, sessions, or lessons you had with him from to the present; (ii) you should immediately cease taking such lessons from or having such meetings with [him] ; (iii) you should discuss this determination and the Board's recommendations with , and with consider a report thereon to be made to the ; and (iv) you report to the Board in writing by the date of its next scheduled meeting, 2010 as to the status of actions taken pursuant to the Board's recommendations.

FACTS: You [began your City position on date] . You said that one of [X's] responsibilities is to certain reports as part of a federal mandate to municipalities. [X] acquired this responsibility from [another City department] prior to your [assuming your position] . You explained to Board staff that, for at least four to five years, a City contractor, has been performing this [service] for the City through a subcontractor, , which is owned by ["O"] . You were introduced to [O] in or around as he was regularly meeting with [another X employee]. You said you noted [O's] heavy accent and, when you saw him, would greet him and he would respond. You advised Board staff that you have long attempted to retain and improve your knowledge of and skills. [After you had been in your City position for about 8 months], you and [O] routinely would speak when you would see him in the halls of your office suite, and you said that the two of you agreed to attempt to meet in your own office as often as possible so that you could converse and he could help you.

You said that, though you and [O] would often schedule to meet two or three times in any given week for what you described as lessons, such

lessons were sporadic. You also explained that, in addition to those times when you and [O] regularly saw each other in the office halls, you estimated that you had perhaps 50 lessons between and within weeks of your call to our office. The lessons occurred in your office, typically lasting 20-35 minutes. You said that, early in the series of lessons, you offered to pay [O] for his assistance, but he refused to accept payment. You said that you stressed to him that he could not add any monies to his invoice for services that he would submit to the prime City contractor, to reimburse himself for these lessons. You said that, during these lessons, you would speak to each other. Sometimes he would ask you to describe something, like your house; sometimes he would use [books and other teaching aids]. You also said that he loaned you several books for use during and between lessons and that you also used books you had in your office (and loaned to him). You also informed Staff that you asked [O] whether he was a licensed teacher, and he told you that he had thought about it, but had never become one. You said you attempted to arrange more frequent lessons in preparation for a trip that you were planning, but you ended up not going, and the number of lessons has reduced somewhat since that time.

LAW: The relevant provision of the Ordinance is §2-156-040(c), which states, in pertinent part:

No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction...and none of them shall accept ... an item or service other than a gift with a value of less than \$50.00...

ANALYSIS: The Board notes the following from the facts you presented: First, at all times relevant to this opinion, [in your City position] , you were, for purposes of § 040(c), in a position to substantially affect [O's] economic interest in its City subcontract to perform [services] for [X]. Second, it is reasonable to conclude that approximately 50 lessons, each lasting 25-30 minutes, have a value of at least \$50. Third, you described the meetings you had with [O] as lessons. Your description of what took place between the two of you in your office, including the use of books as aids , and his prompting you in the subject matters of your lesson , are activities common to lessons. Fourth, although it was never fully achieved, you and [O] did attempt to attain some regularity in scheduling regarding your lessons or meetings with him. Fifth, the lessons or meetings all occurred at the same place and their number and duration were more than *de minimis*. Sixth, you said that you made an offer to pay him for the

lessons, which he refused, and thus you recognized that these services warranted an offer of compensation from you to him. Seventh, there is no evidence before the Board that these meetings in any way affected [O's] subcontract or the services he provided to the City, or your City judgments, or was more than a friendly series of interactions and lessons. Last, eighth, you were intent on improving your [skills] especially given your plans to travel, and desired that [O] help you retain and improve your skills, both before and after that planned trip.

Based on all of these factors, the Board concludes that [O] gave you, and you accepted, services worth \$50 or more while you were in a position to substantially affect his economic interest in a specific City business (namely his subcontract). And, therefore, the Board concludes and advises you that you violated § 2-156-040(c) of the Ordinance by accepting these lessons.

DETERMINATION: After carefully considering the facts you presented and the relevant law, the Board has determined: i) that you violated §2-156-040(c) of the City's Governmental Ethics Ordinance; and ii) that further action by you is warranted, given the sensitivity and nature of your position.

RECOMMENDATIONS: Accordingly, the Board recommends that:

- (i) You should immediately reimburse the [X] subcontractor fair compensation for the approximately 50 meetings, sessions, or lessons you had with him;
- (ii) You should immediately cease taking such lessons from or having such meetings with [O];
- (iii) You should discuss this matter and the Board's determinations and recommendations with the [], and, together with [that person], consider a report thereon to be made to []; and
- (iv) You should report to the Board in writing by [date of its next meeting] describing your actions pursuant to the Board's recommendations.

In making these recommendations, the Board has considered the following factors:

- (i) You occupy a sensitive and high-ranking position in City service;
- (ii) There is nothing before the Board to suggest that these meetings in any way affected [O's] subcontract or the services he provided to the City, or

your City judgments, or were more than a friendly series of interactions and lessons;

(iii) The Board is keenly aware that you have come to our office in good faith for confidential advice and guidance, and the Board shall, consistent with its legal power and duty, preserve the confidentiality of this advisory opinion and of your request; but

(iv) In the Board's judgment, its determination, as explained in this opinion, should, in the City's best interests, be brought to the attention of the []; and

(v) The Board, based on the conclusions and determinations it has made in this opinion, has reasonable cause to initiate an investigation into this matter, pursuant to Rules 4-1 through 4-4 of the Board Rules and Regulations, which are available on our website at

[http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL
/rules-reg-4web.html](http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/rules-reg-4web.html)

In light of these factors, the Board, pursuant to the discretion, power and duty granted it in §§ 2-156-380 (b), (e) and (l), declines to investigate this matter.¹

ADMONITION: In addition, the Board admonishes you that, by accepting these services from a City subcontractor with whom you regularly interact, and over whose City business you have authority, during the workday and in your offices, you created a situation that could reasonably have been interpreted—or *misinterpreted*—as compromising the independence of your judgments as a high-ranking City official, even though, the Board notes, you clearly took steps to counter such a perception, such as offering to pay [O] for his services, and telling him that he was not to bill the City for them, and there is nothing before us to suggest that your judgments were in any way compromised. Thus, we advise and remind you in the future to be constantly mindful of the perception that could easily be created by such interactions—going beyond everyday courtesies—between a high-ranking public official and a contractor or subcontractor, on City property, during the regular workday, even where, as here, there is no evidence of anything other than a friendly series of interactions. Cf. Case

1. But, the Board notes that, under § 2-156-380-(a) and (b), it has the authority to initiate, refer or conduct, and conclude an investigation into this matter, and further, that, were such an investigation conducted, whether on the Board's own initiative or by a complaint that the Board received, it would, based on the facts presented and determinations made in this opinion, and any additional facts gathered as part of such investigation, pursuant to § 2-156-390(b), be required to issue an investigative report containing this opinion and its determinations and recommendations and send that report to the [persons identified in the law].

Nos. 88081.A; 90074.Q. (department head and vendor advised, respectively, to refrain from accepting or offering any gift or service worth more than \$50, even if not prohibited, or, to make donation to a charity equal to the value of the benefit).

Our determination, recommendations and admonition do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts presented in this opinion. If these are incomplete or incorrect, please notify us immediately, as any change in the facts may alter our conclusions, determination or recommendations. Other law or rules may also apply here. Specifically, we refer you to the City's Personnel Rules, especially Personnel Rule [], which the Board does not have within its jurisdiction to administer or interpret. Hence, we advise you to discuss the application of these Rules with [].

RELIANCE: This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz
Chair