

**CONFIDENTIAL
ADVISORY OPINION**

July 16, 2020

Chicago IL 606XX

Re: Board Case No. 20020.A

EXECUTIVE SUMMARY

On June 29, 2020, you sent the Board's Executive Director a written request for an advisory opinion addressing whether, under the facts presented in a Summary Report of Investigation ("Summary Report"), conducted and prepared by the Office of Inspector General ("OIG") in Case No. , dated , 2020, [Mr. B ("B"), a Building Inspector, committed one or more violations of the Governmental Ethics Ordinance ("Ordinance"). Your request asked that the Board address Ordinance §§2-156-030(a), "Improper influence," and -080(a), "Conflicts of interest; appearance of impropriety," and 2-156-150, "Statements of Financial Interests," and -160(a), "Contents of statements."¹ City records shows B, the subject of the OIG's investigation, has the title a Building and Construction Inspector for the Department of Buildings ("Buildings").

You sent the request having been advised by Board staff that: (i) any Board opinion would be based solely on the facts presented to the Board in the Summary Report; (ii) the Board will not have the benefit of any facts, arguments, or other information provided by B, as it would in a formal adjudication of the kind required by §§2-156-385 and 2-56-050(b) of the Municipal Code, and thus can determine only whether there is probable cause to conclude that B violated the Ordinance; and (iii) the advisory opinion must also be provided to B, per Board Rule 3.7.

The Board considered your request at its July 13, 2020 meeting, and voted unanimously to issue this opinion to you and, also pursuant to Board Rule 3.7, to those shown in the cc section at the end. As explained in this opinion, the Board has determined that:

1. The Summary Report demonstrates that: (i) B never received approval from his superiors in the Department of Buildings to have outside employment or operate an outside business; (ii) he was paid money to perform tasks for property owners whose properties he inspected while he was a City employee, and by others; (iii) he did not report these payments or income in Question No. 2 of his 2017 and 2018

¹ Your request specifically asked us to focus on the subject's conduct with respect to three (3) properties located in the City: P1, P2, and P3 and on the subject's filings of Statements of Financial Interests filed in 2017 and 2018.

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Statements of Financial Interests (“FIS”) forms; (iv) in 2016 he was paid \$5,000 by one property owner for work he performed; (v) in 2017, he was paid \$4,000 by another property owner for work performed; (vi) in 2016, he was paid \$7,600 for work he “probably” performed for the a property owner; (vii) for [a fourth property, P4] , he performed work for which he was paid “thousands”; and (viii) in 2016, his company was paid \$5,000 for designs and permits. **Therefore, the facts in the OIG’s Summary Report do demonstrate probable cause to conclude B violated §§2-156-150 and -190(d) of the Ordinance for the years 2017 and 2018 for knowingly not reporting outside income in excess of \$1,000 on his FIS forms.**

2. B’s actions would constitute violations of Ordinance sections §§2-156-030(a), “Improper influence,” or -080(a), “Conflicts of interest; appearance of impropriety,” *only if* there is evidence in the Summary Report that, *after* the remedial work was done by B’s “associates” or “friends,” he *then* certified, *as a Building Inspector*, that the properties he had previously inspected were in compliance with the City’s Building Code. **The Summary Report demonstrates, on its face, only a single *prima facie* violation of §2-156-080(a): when B accepted a check for \$5,000, on or about 2016, from [Property owner 3] three (3) days *prior* to making his City decision as a building inspector to “comply” her property, which he had earlier found to have been in violation of the City’s Building Code.**

3. Additionally, as Board staff advised you on July 3, 2020, upon this office’s intensive review of the Summary Report, **the Board has determined that the facts in it support findings that B *prima facie* violated three (3) sections of the Ordinance not mentioned in the Summary Report, and, accordingly, has added these determinations to this opinion: namely, §§2-156-020, “Fiduciary duty,” and “Offering, receiving and soliciting gifts or favors,” §§2-156-142(e) and (f) (the latter formerly numbered as §2-156-050, “Solicitation or receipt of money for advice or assistance”).**

FACTS

Your request is multiple, divided into sections and based upon three (3) property addresses located in the City, at each of which B had performed inspections under the City’s Building Code, and several years of B’s filings of Statements of Financial Interests (“FIS”) with the Board. We first address each property you asked about (plus an additional property you did not ask about), and then discuss his FIS forms filed in 2017 and 2018.

Properties

P1 . On March 22, 2016, in the course of his City job, B inspected this property for violations of the City’s Building Code and issued a violation for repair of a parapet wall. [Property owner 1] . After [Property owner 1] unsuccessfully attempted to find contractors to correct the violation, it communicated with B, requesting contractor referrals, which B gave. One referral was to B’s friend, EF [Expeditor Inc.] , an expeditor company, which then obtained construction work permits from the City for this work. Thereafter, B occasionally came by to observe the work in progress. B’s company, [QC LLC] (the OIG concluded that B is its owner/manager/sole employee), submitted an invoice to [Property owner 1] dated 2016 for “the brake [*sic*] down for the repair of the parapet wall...” in the amount of \$7,600, which [Property owner 1] paid that same day. [Property owner 1’s] agent told the OIG that he assumed B drew the necessary architectural plans for the remediation of the building violation that B had

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identified. There are no facts in the Summary Report showing that B either re-inspected the property as part of his City job to determine whether the violation had been remediated, or that he “complied” the property (showing proper remediation) in City records.

P2 _____. The Summary Report states on page 1 in the “Introduction” that the OIG identified two properties, P1 _____ discussed above, and P2, _____, “for which B conducted [Building department] inspections, issued violations, referred the owners to his business partners, and later received payment in his capacity as a private contractor.” However, the Summary Report contains no evidence that B actually did inspect this property, although a table on page 42 prepared by the OIG states he “inspected and violated” it on _____ 2017.² B stated in his OIG interviews only that he performed consulting work and drafting of plans for this property for its owners, [Mr. and Mrs. U]. _____. Although he does not state what was paid, the Summary Report has a table based upon [B’s and QC’s] bank accounts. [R Bank] is B’s and his company, QC LLC’s, bank. The table shows deposits into the QC account from [Mr. and Mrs. U] in 2017 and 2018, each deposit(s) being in excess of \$1,000 per year, totaling \$45,600 over two years. This fact is repeated in another Summary Report table (with a slight mathematical mistake) on page 42. This property is listed in [Expedito Inc.’s] list of properties referred to it by B, and, in that listing, it states that the permitting and the plans are incomplete.

P3 _____. On _____ 2016, in the course of his City job, B inspected the property, a first-floor commercial condominium unit, for violations of the City’s Building Code and issued a violation for replacement of broken glass. The condominium owner told the OIG that B noted other violations as well, but on the common areas of the property. City records dated _____ 2016, do not show a re-inspection by anyone, but do show that the property was in compliance (that it was “complied” on that date). B stated in an OIG interview that he “complied” this property’s violation. The owner did not state any City inspector came until B’s next inspection. B, on the other hand, states he inspected the property about the glass on 2016; however the repair was not made until _____ 2016. Upon B’s re-inspection on _____ 2016, he found other violations (appearing to be in common areas) but noted that the “first floor [business] _____ pass [sic] inspection...” [V Corporation], the president of which was the owner of the condominium, [Property owner 3] _____ wrote a check payable to QC in the amount of \$5,000, dated _____ 2016. [Three (3) days later] on _____ 2016, this check was deposited into QC’s _____ account. The check’s memorandum stated, “consultant work.” [Property owner 3] stated it was for architectural plans for the first-floor commercial condominium and its surrounding fence. She told the OIG she wanted the plans if needed in litigation. According to [Property owner 3], on an unknown date, B offered to help with those matters and dropped off plans to her dated _____ 2016. B stated that [Property owner 3’s] business partner communicated with him about plans; B was reluctant to engage in this work, and attempted unsuccessfully to refer her to [Expedito, Inc.], but did ultimately complete the plans himself; and was paid by her company; and completion of those plans was well after his inspection of the subject property. B was unclear about the dates on the plans. B told the OIG he “complied” the violation before the windows were installed because he knew, based upon the window company suggestion to the owner, that the owner had put a temporary protective film on the broken windows.

² The Board was not provided with underlying interview transcripts or other documents amassed by the OIG in this investigation; evidence for the OIG’s conclusion that B “inspected and violated” this property may be in those materials.

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Additional Property³

P4 . B did not inspect this property. The owners and the business located at the property wanted to perform renovations. After a City inspection (not by B) in 20 , employees of the business retained a contractor who, in turn, referred plan drafting business to B. B referred the owner, and sent the plans, to [Expeditor, Inc.]. The permit was approved in 2016. The business paid \$5,000 to QC on , 2016, and the check noted “Deposit for Designs & Permits.” In 2017, City inspectors (not B) inspected and finally approved the work completed at the property. A second check from the business was issued to QC on 2017 for \$2,500, and on the check was noted “Inv. A-XXX-17.”

Statements of Financial Interests

B’s 2017 Statement of Financial Interests Filing.

The Summary Report shows that B and QC had accounts at [R Bank] during the relevant period.

As to [P1] , OIG reviewed with B a check from its owner, to QC in the amount of \$7,600, as well as an invoice from QC to [its owner] for work performed by B at this address (\$7,600, via check on 2016 for architectural work).

As to [P3] , according to QC’s [R Bank] account records, a check in the amount of \$5,000, dated , from the property owner was deposited into the QC account by b on 2016. During her OIG interview, [P3’s acknowledged that she had written this \$5,000 check from her company account and given it to B for architectural plans. As noted above, in the check’s memo line, she wrote in “consulting work.”

As to [P4] , the business owner located at that address, [P4 LLC], paid \$5,000 to QC on 2016, and the check noted “Deposit for Designs & Permits.”

The 2017 FIS forms prescribed by the Board pursuant to §§2-156-160(a)(1) and -170 of the Ordinance asked filers, for the prior calendar year, whether they “serve[d] as an employee, officer, director, associate, partner, or proprietor, or in any advisory capacity, for any professional, business or organization ... in the previous calendar year from which you received or derived income of more than \$1,000?” For this year, B filed the FIS and answered “no.”

B’s 2018 Statement of Financial Interests Filing

A second check from [P4 LLC, the business owner located at [P4] , dated 2017, for \$2,500, stated in the memorandum section “Inv. XX-XXX-17,” without an explanation of “A 768-17.” (Notably, this invoice number is the same recited in the Summary Report’s [R Bank] table with respect to the 2018 payment by [Mr. and Mrs. U] , not analyzed here.)

³ While you did not request an advisory opinion about B’s conduct with respect to this property, our detailed review of the Summary Report leads us to additional determinations.

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Additionally, B worked on one of the projects in 2017 for a proposed daycare center on [P5 address]. This occurred when a contractor named NL approached B and asked him to design a floor plan for the property, located at [P5]. While working on plans for the property, B received two checks for his work, each for \$2,000, from the property owner, [PO].

As to [P2], the owners, [M. and Mrs. U], issued two checks to B's company, QC, during this reporting period (two more were issued in 2018, not here under consideration). Regarding this property, B acknowledged that he undertook secondary employment by doing consulting work and drafting plans for its owners. B does not know exactly how much money the property owners paid him, but he agreed it is in "the thousands" of dollars. [R Bank] records for 2017 for QC show deposits from [Mr. and Mrs. U] of \$31,600 for this year as follows: (i), in the amount of \$20,000 per [invoice #CCC]; and (ii) 2017 in the amount of \$11,600 per [invoice # VVV].

Like the 2017 FIS forms, the 2018 FIS forms prescribed by the Board pursuant to §§2-156-160(a)(1) and -170 of the Ordinance asked filers, for the prior calendar year, whether they "serve[d] as an employee, officer, director, associate, partner, or proprietor, or in any advisory capacity, for any professional, business or organization ... in the previous calendar year from which you received or derived income of more than \$1,000?" For this year, B filed the FIS and answered "'no."

RELEVANT LAW

§2-156-020. Fiduciary duty. "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the city."

§2-156-030(a). Improper influence. "No official or employee shall make, participate in making or in any way attempt to use his position to influence any city governmental decision or action in which he knows or has reason to know that he has any financial interest distinguishable from its effect on the public generally, or from which he has derived any income or compensation during the preceding twelve months or from which he reasonably expects to derive any income or compensation in the following twelve months."

§2-156-080(a). Conflicts of interest; appearance of impropriety. "No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any financial interest distinguishable from that of the general public, or from which he has derived any income or compensation during the preceding twelve months or from which he reasonably expects to derive any income or compensation in the following twelve months."

§2-156-142. Offering, receiving and soliciting of gifts or favors.

(e) No person shall give or offer to give to any official, candidate for city office, employee or city contractor, or the covered relative of such official, candidate, or employee, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, candidate for city office or city contractor, concerning the business of the city

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would be influenced thereby. It shall be presumed that a nonmonetary gift having a value of no more than \$50 does not involve such an understanding.

(f) No official or employee, or the covered relative of such official or employee, 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 or employee, or the covered relative of such official or employee 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.

§2-156-160. Content of statements. (a) Statements of financial interests shall contain the following information: (1) The name, address, and type of any professional, business or other organization (other than the city) in which the reporting individual was an officer, director, associate, partner, proprietor or employee, or served in any advisory capacity, and from which any income in excess of \$1,000 was derived during the preceding calendar year, and the category of such income as specified in subsection (b).

ANALYSIS

§2-156-020. Fiduciary duty.

The Board has, over the years, repeatedly affirmed that a City employee or official violates his or her fiduciary duty to the City by using City time, property and/or resources to obtain a personal benefit or to promote a purely private interest. *See, e.g.* Case Nos. 92014.A; 09034.A.⁴ Further, the fiduciary duty provision requires that a City employee exercise professional judgment free from conflicting duties or obligations to another entity. *See, e.g.* Case No. 92041.Q.⁵ (*See also U.S. v. Vrdolyak*, 536 F. 2d 899, 909 (N.D. Ill. 2008).

With respect to [P1] _____, B _____ inspected the property, found violations, referred the owners to his business partners and later received payment from the property owner in his capacity as a private contractor for “design” work and the break down and repair of a parapet wall. The same is true for [P2] _____. With respect to [P3] _____, B _____ complied a property that he had originally inspected and found to have violations, after receiving payment from the property's owner.

The Summary Report demonstrates that B used his position as a City building inspector to refer business to himself on at least three (3) occasions and, in turn, profit from those referrals. He was not, as the law requires, exercising professional judgments in his capacity as a building inspector, free from conflicting duties or obligations to another entity, namely QC _____. Rather, he was benefitting economically from

⁴ https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_OutsideEmployment/92014.a.pdf;
https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_FiduciaryDuty/09034A.pdf

⁵ <https://www.chicago.gov/content/dam/city/depts/ethics/general/Deck%20Chairs/LXIV/92041.Q.pdf>

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decisions he made with respect to the properties he had already inspected, and his actions call into question the objectivity with which he inspected the properties at issue.

§2-156-030. Improper influence/§2-156-080(a). Conflicts of interest; appearance of impropriety.

As this Board has recognized in more than one hundred advisory opinions over the years (*see* those collected here: https://www.chicago.gov/city/en/depts/ethics/supp_info/ao-outsideemploy.html), these provisions prohibit a City employee like B from making, trying to use his City position to influence a City governmental decision in which he knew or had reason to know he had an ownership interest that differed from the general public's, or from which decision he had received compensation in the preceding twelve months or reasonably expected to receive compensation in the next twelve months. Hence, B's actions would constitute *prima facie* violations of these Ordinance sections ***only if*** there is evidence in the Summary Report that, ***after*** the remedial work was done by his "associates" or "friends," he then certified, *as a Building Inspector*, that the properties were in compliance with the Building Code, ***or*** that, when he decided in his City job as a building inspector that there were Building Code violations, he knew or expected *at that time* that he would be paid for remedial work on those same violations. However, in none of the instances cited in the Summary Report is there evidence that he knew he would be paid or even expected to be paid—either his "friends" or "associates" or the property owners could have used another architect or consultant to work on the remedial work.

Rather, the Summary Report demonstrates, on its face, only one violation of §2-156-030(a) and -080(a), when B accepted a check for \$5,000, on or about _____, 2016, from [P3's owner] _____ three (3) days *prior* to making his City decision as a building inspector to "comply" her property that he had earlier found to have been in violation of the Building Code.

In all other instances cited in the Summary Report, the evidence does not support a conclusion that B violated either section. The evidence adduced in the Summary Report show that he found building violations and then referred the property owners to his "friends" or "associates" for remedial work in exchange for payments-behind-the-scenes from them. But this alone is insufficient to establish a violation of these Ordinance sections: for us to be able to conclude there were *prima facie* violations of these sections, there must evidence that B was looking for Building Code violations *ab initio* with the intent of referring remedial work for these violations to such associates or friends who would then compensate him for his work, or that he then complied these properties, knowing that he did or could expect payment for that from his friends or associates.⁶

§2-156-142(f). Offering, receiving and soliciting of gifts or favors.

-142 (e). This Ordinance provision prohibits a City employee like B from accepting anything of value based on a mutual understanding, either explicit or implicit, that the employee's judgments, decisions, or official actions concerning City business would be influenced thereby. In the single instance in which he accepted \$5,000 from [P 3's owner] _____, B committed a *prima facie* violation of §2-156-142(e),

⁶ See Board Case nos. 98062.A

https://www.chicago.gov/dam/city/depts/ethics/general/AO_OutsideEmployment/98062-AO-redact.pdf (City employee's outside employer would benefit by employee's City actions); and 91059.A
https://www.chicago.gov/dam/city/depts/ethics/general/AO_OutsideEmployment/91059.A.pdf.

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which is in essence an anti-bribery provision, in that he apparently accepted this payment just three days prior to making a decision as building inspector to “comply” her property at [P3] — implying a mutual understanding between the two that the payment would lead to his decision to “comply” the property.

-142 (f). B’s outside business was clearly related to his City job as a building inspector: he would find Building Code violations, then accept payments from property owners or “friends” or “associates” for performing remedial work himself or for referring remedial work to these “friends” or associates, or he would undertake work then used to obtain City permits. This Ordinance provision prohibits a City employee like B from accepting anything of value from any person in return for providing advice or assistance on matters concerning City business, though it has an exception that B clearly may *not* avail himself of: were the advice or assistance “wholly unrelated” to his City work, accepting such things would be permissible. Based upon his training and experience, B inspected properties to determine the existence of Building Code violations. However, related to inspections he made in his City job on the properties at [P1], [P2], and [P3], he also solicited or agreed to accept money to consult with property owners or other service providers in remedying those same violations. We note here that his conduct would constitute a *prima facie* violation of this provision even if he had *not* performed the original inspections – he was prohibited from receiving any of value in return for providing assistance on any matters involving the City’s Building Code, even if the inspection was performed by others. This proposition is demonstrated pursuant to the facts surrounding the property at [P4].

Nonetheless, the Summary Report shows that B inspected the [P1], found Building Code violations, and then received \$7,600 for performing architectural plan work that would help remediate those same violations. *See* Summary Report at pp. 12, 16, 17, 34. He did the same with respect to the properties at [P2], inspecting the property on 2017, and receiving at least \$45,600 over the next two (2) years for drawing up plans to be used in obtaining City permits for remediation of these same violations, and for the property at [P3], receiving \$5,000 from the property owner for what the owner claimed was work “for architectural plans for the interior and exterior of her business.” *See* Summary Report at pp. 1, 7, 8, 12, 24, and 42.

Finally, he also solicited or agreed to accept money to consult with and draw architectural and other plans for private owners of property for properties going through the City Building Code permit process on properties he himself did not inspect. For the property at [P4], he has been paid \$7,500 for performing this work. *See* Summary Report pp. 7, 12, 15, 19, 20.

The Board concludes that, in three instances, B solicited or agreed to accept money (and did accept money) to consult with and draw architectural and other plans for private owners of properties. In two instances, his drafting was to assist the permit expeditor to whom he had referred the owner to obtain permits to remediate the Building Code violation that in his City inspection he had discovered. In the third instance, his drafting was to assist the permit expeditor to whom he had referred the owner to obtain City permits for property renovation. All these actions constitute *prima facie* violations of §2-156-142(f) of the Ordinance.

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Statements of financial interests. §2-156-160. Content of statements. The facts disclose that: (i) QC , B's company, received over \$1,000 in each of the FIS filing years of 2017 (pertaining to calendar year 2016) and 2018 (pertaining to calendar year 2017); (ii) for work B performed as employee-owner-manager of QC for third parties (whether property owners themselves, or his "friends" or "associates" who performed the work; and (iii) when required in each FIS to state whether he so received monies in excess of \$1,000, he answered "no." Given that B disclosed no outside income for either calendar year, the Board concludes that he knowingly furnished false or misleading information to the Board, constituting *prima facie* violations of §2-156-160(a)(1) and -465.

DETERMINATIONS

The Board's determinations in this matter are subject to the following conditions and limitations: (i) any Board opinion would be based solely on the facts presented to the Board in the Summary Report; (ii) the Board did not have the benefit of any facts, arguments, or other information provided by B, as would be the case in a formal adjudication of the kind contemplated by §§2-156-385 and 2-56-050(b) of the Municipal Code; and (iii) a copy of this advisory opinion must also be provided to B, per Board Rule 3.7.

In response to your requests, the Board determines as follows:

(i) As to B's obligation to comply with his fiduciary duty to the City, the OIG's Summary Report adduces facts in three (3) separate instances from which the Board determines there is probable cause to conclude that he breached that fiduciary duty. Specifically, his inspection of properties at [P1] , [P2] and [P3] , subsequent finding of violations, and then referral of work to his construction company for payment created a situation in which he was not upholding his primary fiduciary duty, which was to the City.

(ii) The OIG's Summary Report adduces one *prima facie* violation of §2-156-030(a) and -080(a) committed by B when he accepted a check for \$5,000, on or about , from [Property owner 3] (3) days *prior* to making his City decision as a building inspector to "comply" her property, at [P3] , that he had earlier found to have been in violation of the Building Code.

(iii) The Summary Report adduces facts in three (3) separate instances from which the Board concludes there is probable cause to determine that B violated the Ordinance's gift provision in three (3) separate instances where he solicited or accepted money for giving advice and assistance regarding business of the City that was directly related to his work as a Building Inspector, in *prima facie* violations of §2-156-142(f), namely: the properties at: [P1] , [P2] and [P4] ; and, additionally, a *prima facie* violation of §2-156-142(e) of the Ordinance for his acceptance of a \$5,000 payment from the property owner of [P3] three (3) days before he "complied" the property; and

(iv) The Summary Report adduces facts from which the Board determines there is probable cause to conclude that, in two separate filing years, 2017 and 2018, B knowingly filed false or misleading answers on his FIS forms, by failing to disclose outside income in amounts in excess of \$1,000, as required by §§2-156-160(a)(1) and -465 of the Ordinance.

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Our determinations do not dispose of all issues relevant to this situation, such as those arising out of the City's Personnel Rules or the Illinois criminal statute against bribery, 720 ILCS 5/33-1(d), but are based solely on the application of the City's Governmental Ethics Ordinance to the facts presented to the Board in the OIG's Summary Report. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our determinations.

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.

RECONSIDERATION

This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this matter, either [you] or B may request reconsideration of the opinion. A request for reconsideration must: (i) be submitted in writing; (ii) explain the material facts or circumstances that are the basis of the request; and (iii) be received by the Board of Ethics within fourteen (14) days of the date of the opinion.

William F. Conlon, Chair

cc: The Honorable Lori Lightfoot, Mayor
Mark Flessner, Corporation Counsel
Joseph Ferguson, Inspector General
Judy Dever, Deputy Corporation Counsel
Jessica Higgins, Deputy Chief of Staff, Office of the Mayor
 , Assistant Commissioner, Department of Buildings
B