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June 26, 2001

CONFIDENTIAL

[John]

[
Chicago, IL 60623

Re: Case No. 010027.Q

Financial Interest in City Business

Dear [John],

You are an [employee of the City, and you own a condominium unit in, and 1/6 of the [Condominium Association located at, [Road, Chicago. The Association wishes to purchase two City-owned lots located adjacent to its building. You have spoken to the Department of General Services regarding the procedures for purchasing the lots, and have been informed that the Association may, at any time, submit an offer to purchase the lots, or wait for the City to publicly advertise for sealed bids, at which point the lots would be sold to the highest qualified bidder. You told staff that the lots were appraised one year ago at approximately \$1,100 apiece. You also stated that you are not an officer in the Association; however, you believe that the other owners would like you to be president of the Association. In a conversation with Board staff on June 15, 2001, you requested an opinion from our office on the limitations, if any, on the prospective purchase of this property imposed on you and the Association by the Governmental Ethics Ordinance.

Board staff concludes that the Governmental Ethics Ordinance does not prohibit the Association from submitting an offer to purchase the property or from responding to a City advertisement to bid. The Ordinance does impose restrictions on your conduct, as outlined below.

Sec. 2-156-110 (Interest in City Business) of the Ethics Ordinance provides, in relevant part, that "Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City..." "Financial interest" is defined in relevant part as "(i) any interest in the future more which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more..." It is staff's opinion that, under the facts you have presented, the purchase of the two lots by your condominium association would not give you a prohibited financial interest in City business, given that the lots have a combined appraised value of approximately \$2,200, and that your



resulting 1/6 share in the lots would have a value of approximately \$367,000.¹ This is consistent with prior cases of the Board. (See Case Nos. 95044.A and 97010.A.)

Sec. 2-156-030 (Improper Influence) of the Governmental Ethics Ordinance states, in relevant part, that (a) 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 economic interest distinguishable from its effect on the public generally." Sec. 2-156-080 (Conflicts of Interest; Appearance of Impropriety) of the Ordinance states, in relevant part, that "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 economic interest distinguishable from that of the general public." An "economic interest" is defined by the Ordinance as "any interest valued or capable of valuation in monetary terms." Under these sections, you have an economic interest in the purchase of the property by virtue of your condominium ownership. While it not as clear whether you have an economic interest in the City's decision whether and by which process it sells the lots, staff cautions you to be mindful of the possible appearance problems that may arise, given your City title and position, were you to contact any City employees or officials regarding the sale. Therefore, staff recommends that you avoid all further contact with the Department of General Services (or with employees or officials in any other Department) regarding the sale of the property.

Finally, Sec. 2-156-090 (Representation of Other Persons) of the Ordinance provides, in relevant part, that "No...employee may represent, or have an economic interest in the representation of, 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." You have stated that you are not currently serving as an officer of the Association, and have informed staff that you will not take on any responsibilities which would entail appearing before any City board or agency or signing documents on behalf of the Association to be submitted to the City. As long as this remains true, you are not "representing" the association within the meaning of the Ordinance.² In the event that this situation changes, or if you wish to sign and submit documents to the City, e.g., as an officer of the association, staff advises you to request an advisory opinion from the Board.

¹Staff notes that if the property is sold pursuant to a public auction, the chance exists that the purchase price could be considerably higher than \$2,200. However, even if this occurred, and even if such purchase price was \$30,000 or more, thereby conferring upon you an interest with a cost or present value of more than \$5,000.00—which is 1/6 of the purchase price (see Case No. 90077.A)—such a public auction would fall under the exception in the Ordinance pertaining to "competitive bidding following public notice," and you would not have a prohibited financial interest in the Association's purchase of the property from the City. (See Case Nos. 93034.A; 95016.Q.)

²Similarly, you do not have an economic interest in the representation of the Association before any City agency.

Staff's conclusions are not necessarily dispositive of all issues relevant to this situation, but are 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 us immediately, as any change may alter our conclusions. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

We appreciate your inquiry and your concern to abide by the standards embodied in the Ethics Ordinance. We enclose a copy of the Ordinance for your convenience. If you have any further questions, please do not hesitate to contact us.

Very truly yours,

John H. Mathews
Legal Counsel

Approved by:

Dorothy J. Eng
Executive Director

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