

CONFIDENTIAL

June 29, 2001

[Mr. John Jones]
XXXXXXXXXXXXXXXX
Chicago, IL 606__

*FIC B
contract/sister agency
MPEA*

Re: Case No. 01029.Q
Outside Business Ownership

Dear Mr. [Jones]

On June 22, 2001, you called the Board and asked whether the City's Governmental Ethics Ordinance imposes any restrictions on or prohibits you, as a City employee, with respect to operating a gumball concession at Navy Pier. As explained in this letter, it is Board staff's opinion that nothing in the Ordinance prohibits you from operating this concession as you have described it to us, though the Ordinance does impose certain restrictions on your conduct in your City position, as described in this letter.

You are a [Title Z] in the City's Department of [K]. In your position, you said, you are responsible for inspecting property when there have been reports of [damage] , and you assess whether the City or one of the other public utilities may be responsible for any repairs or damage. You said that, in this position, you may be called upon to inspect property owned by the Metropolitan Pier and Exposition Authority ("MPEA"), though this has not happened in your City service.

On January 2, 2001, you entered into a revocable, non-transferrable license with the MPEA that allows you, as the sole proprietor of "The Gumball Coaster," to lease a particular space in order to provide and operate a gumball machine on the parking garage level of Navy Pier; the machine dispenses gumballs at retail prices. Under the license, you are required to pay MPEA a minimum monthly license fee of \$100 per month or 25% of the machine's gross sales. The license's term is for the period January 2, 2001 through December 31, 2001, and you said that you would like to seek to enter into a similar license with MPEA for 2002. You also said that you are responsible for keeping the machine supplied, and for paying your own insurance as required in the license.

Under state law, and as recognized by the Board of Ethics in previous cases,

MPEA is not a City agency for purposes of the Governmental Ethics Ordinance, and has the power to enter into its own concession contracts. See Case Nos. 90013.A; 96022.Q. Applying these cases to your situation, Board staff's concludes that your concession at Navy Pier does not constitute a contract, work or business of the City, and that you do not have a prohibited financial interest in City business under § 2-156-110 of the Ordinance by virtue of your agreement with MPEA. Accordingly, it is Board staff's opinion that nothing in the Ordinance prohibits you from operating this concession as you have described it to us, though the Ordinance does impose certain restrictions on your conduct in your City position, as set forth below.

These restrictions are relevant to all City employees who have ownership interests in businesses outside of City government. They are delineated in the summary we sent to you, together with a copy of the Ordinance itself, on June 25, 2001. Specifically, Sections 2-156-030 and 2-156-080 of the Ethics Ordinance prohibit you from making, participating in, or in any way attempting to influence City governmental decisions or actions in which you have an economic interest. Because you have an economic interest in your gumball business and MPEA lease, you are prohibited from making, participating in, or attempting to use your City position to influence City decisions or actions that are related to or may enhance either of these. Board staff cautions you that any departmental decision you would make or attempt to influence that involves Navy Pier or the MPEA could be perceived as an attempt to benefit your concession license or its continuation in later years, and to therefore recuse yourself from taking part in or influencing the outcome of any such decision or matter. Additionally, you owe a fiduciary duty to the City at all times in the performance of your public duties (§ 2-156-020); you are prohibited from soliciting or accepting any money or other thing of value in return for giving advice or assistance on matters concerning City business (§2-156-050); you are prohibited from the unauthorized use of City-owned property (§2-156-060); you are prohibited from using or disclosing confidential information gained by reason of your City employment (§2-156-070); and, except in the performance of your official City duties, you are prohibited from representing or having an economic interest in the representation of any person other than the City in any non-ministerial transaction before your own or any other City agency or department (§2-156-090(a)).

As you were advised by Board staff previously, our opinion does not necessarily dispose of all issues relevant to your situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion. Other laws or rules may apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment. In addition, we remind you that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the City's Governmental Ethics Ordinance.

Case No. 01029.Q

June 29, 2001

Page 3

We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. Please contact us if you have further questions.

Very truly yours,
[Signature]

Steven I. Berlin
Deputy Director

Approved by:
[Signature]

Dorothy J. Eng
Executive Director