

FICB

March 15, 2002

[John]
[]
Chicago, IL
606[]

Case No. 02008.Q

Dear Mr. [John]:

On March 8, 2002, you asked the Board of Ethics for a staff opinion on what restrictions, if any, the Governmental Ethics Ordinance would place on your participation in the purchase of land from the City. You stated that you are an employee of the [Department].

You are also a member of an investment group that is seeking to purchase a vacant lot from the City. The lot is located adjacent to a building the group owns at [1234 Main Street]. The prospective purchase of the property was initiated by a member of the investment group, who approached the Department of Planning and Development and requested that the City consider selling the property. Following negotiations between the Department of Planning and the representative from the investment group, the Department agreed to sell the property for \$9,500.00. The City did not seek to sell the property through competitive bidding; the offer to sell was made solely to your investment group, subject to the City's terms and conditions, namely that the property not be developed or used for any purpose other than parking. You stated that if the sale goes through, you would have a 1/4 interest in the property, an interest worth approximately \$2375.00. You stated that you did not participate, in your capacity as a City employee or as a member of the investment group, in the negotiations to purchase the property, and that you played no role in influencing the price or conditions set by the Department. You further stated that you do not, and will not in the future, make any decisions concerning the sale or disposition of this property in your City job. Finally, you stated that you not take on any responsibilities, as a member of the group of investors, which would entail appearing before any City board or agency or signing documents to be submitted to the City.

Board staff concludes that the purchase of the City-owned lot by the investment group would not give you a prohibited financial interest in City business, as your resulting 1/4 share would have a value of less than \$2,500.00—an amount under the monetary threshold for a financial interest under the Ordinance. However, the Ordinance does place limitations on your conduct. The relevant provisions and staff's analysis are reviewed

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 as a result of 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 lot by the investment group would not give you a prohibited financial interest in City business, given that the lot has a combined appraised value of approximately \$9,500, and that your resulting 1/4 share in the lot would have a value of approximately \$2375.00.¹ 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 potential purchase of the property by virtue of your 1/4 interest. While such an economic interest is not prohibited under the Ordinance, both Sec. 2-156-030 and 2-156-080 prohibit you, in your City position, from making, participating in making, or using your position to influence, any City governmental decisions or actions with regard to the sale, purchase, or other disposition of the property. If property is purchased by your investment group, you must refrain from making any decisions in your City job concerning 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 did not participate in the initial proposal to purchase the property, or in any

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 \$9,500. However, even if this occurred, and even if such purchase price was \$20,000 or more, thereby conferring upon you an interest with a cost or present value of more than \$5,000.00—which is 1/4 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 purchase of the property from the City. (See Case Nos. 93034.A; 95016.Q.)

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of the subsequent negotiations with the Department of Planning and Development. You have informed staff that you will not take on any responsibilities which would entail appearing before any City board or agency or signing documents to be submitted to the City. As long as this remains true, you are not "representing" the group of investors within the meaning of the Ordinance. In the event that this situation changes, or if you wish to sign and submit documents to the City, staff advises you to request an advisory opinion from the Board.

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
[Signature]

Approved by:
[Signature]

Dorothy J. Eng
Executive Director