

FICB
Appointed Officials

Confidential

April 30, 2004

[Mary Doe], Program Director
[Department of D]

Chicago, IL 60602

Re: 04015.Q

Dear Ms. [Doe] :

On March 23, 2004, you contacted the Board of Ethics for advice regarding the possible appointment of John R and Joe T to the City's [G Commission]. Specifically, you asked whether, under the City's Governmental Ethics Ordinance, Messrs. [R and T] could have consulting contracts with the Mayor's Office for People with Disabilities (MOPD) while serving on the [[G Commission]]. You presented the following information regarding their consulting contracts and the circumstances surrounding their possible appointments.

FACTS: In October 2003, the City's Building Code, formerly Title 13 of the Municipal Code, now Title 18, was amended to include a new chapter, Chapter 11, containing provisions relating to accessibility to certain buildings in the City. MOPD was a driving force behind these amendments. Chapter 24 of the Building Code also was amended to provide for 2 new seats on the City's [G Commission]. One of the two new seats seat must be filled by a licensed design professional, architect or engineer who has architectural experience in accessibility design. MOPD is contemplating recommending that Mr. [R] be appointed to fill this seat. The other seat must be filled by an individual who is a member or authorized representative of an organization that represents the interests of people with disabilities. MOPD is contemplating recommending Mr. [T] to fill this seat. The function of the [G Commission], you explained, is to decide appeals taken by property owners from orders or decisions of the City's Commissioner of [K] pertaining to [] permits.

Mr. R is a licensed architect and owner of [U]. [U] currently has a consulting contract with MOPD. Under that agreement, Mr. R has served as a code consultant to MOPD since May 200X, assisting MOPD in drafting the language of the recently-added Chapter XX. U's consulting contract with MOPD is close to expiring. MOPD anticipates extending the contract for another year or two, so that Mr. r may assist MOPD in reviewing other Code chapters and drafting amendments to Chapter XX for coordination with those other chapters.

Mr. T is a licensed architect and owner of FGH Architects (FGH). Mr. T served, along with you, as co-chair of an ad hoc commission that advised MOPD on the recent amendments to the Code. A group of volunteers from building trades organizations and architectural firms comprised the commission. The commission, which met once or twice per month, reviewed and

commented on proposed code requirements.¹

Mr. T's firm, FGH, currently serves as a consultant on accessibility issues to the [3 Sister Agencies]. MOPD is close to finalizing an intergovernmental agreement with [Sister Agency 1] under which MOPD will manage a consultant who will do construction site inspection of [Sister Agency 1] developments for disability issues. Under this intergovernmental agreement, MOPD, not [Sister Agency 1], would enter into a contract with the consultant. MOPD has proposed to [Sister Agency 1] that FGH Architects serve as that consultant. If FGH is selected, Mr. T's duties, essentially, would entail conducting construction site inspections of [Sister Agency 1] developments to ensure that construction is in accordance with federally-mandated accessibility standards, e.g., that doorways are of the appropriate width to allow for wheelchair clearance. Mr. T would then prepare and submit an inspection report to MOPD which, in turn, would forward the report to [Sister Agency 1]. If construction did not meet standards, [Sister Agency 1] would then require the contractor to remedy the deficiency. You stated that Mr. T would be inspecting a variety of [Sister Agency 1] projects: new construction as well as properties being rehabilitated, senior housing as well as mixed-income developments, and projects involving private, as well as not-for-profit, developers.

Board staff inquired of you as to the possibility that some aspect of Mr. T's proposed inspection work, or some issue relating to [Sister Agency 1] developments themselves, might end up before the [G Commission]. As to [Sister Agency 1] projects already under construction, you stated that, in your opinion, such a scenario is unlikely but nevertheless possible: "These projects have already been designed, reviewed and permitted. They are 'beyond the [G Commission] stage.' However, once construction commences, if the contractor encounters an unforeseen circumstance or condition, modifications might have to be made to the design or construction, and those modifications to design or construction might require supplemental permits, which could result in some permit matter relating to the development going back before the [G Commission] for resolution." As to future [Sister Agency 1] projects, you stated that "...obviously, those projects would require permits and, therefore, the possibility for [G Commission] involvement exists." You did note, however, that the [G Commission]'s review of a [Sister Agency 1] development matter might well have nothing to do with accessibility issues, i.e., it might focus on the type of bolt or the depth of footings that the contractor proposes for the project.

LAW: Section 2-156-110 of the Governmental Ethics Ordinance, entitled "Interest in City Business," provides, in relevant part:

No elected official or employee shall have a *financial interest* in his own name or in the name of any other person in any contract, work or business of the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or

¹You noted that the commission's final proposed version of Chapter xx did not call for the creation of 2 new seats on the [G Commission]. Instead, the commission's version called for the creation of a separate body that would review appeals of the code interpretations made by the Commissioner of MOPD.

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is authorized by ordinance . . . No appointed official shall engage in a transaction described in this section unless the matter is *wholly unrelated* to the official's City duties and responsibilities. (emphasis added)

The term "financial interest," is defined, in relevant part, at Section 2-156-010(l) of the Ordinance 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;....

ANALYSIS AND CONCLUSIONS: For purposes of this discussion, it is assumed that Mr. R's interest in U's contract with MOPD constitutes a financial interest in City business within the meaning of the Ordinance. It is also assumed, for purposes of this discussion, that Mr. T's interest in FGH Architects' contract with MOPD would constitute a financial interest in City business within the meaning of the Ordinance.

Under Ordinance Section 2-156-110, an appointed official may have a financial interest in a City contract, provided the matter is "wholly unrelated" to the official's City duties and responsibilities. You are contemplating recommending the appointment of Messrs. R and T to the City's [G Commission]. The issue, therefore, becomes whether Messrs. R and T's consulting contracts with MOPD, as proposed, would be wholly unrelated to the work of the [G Commission].

The [G Commission] is created under Chapter NN of the City's [O Code]. Its function is to decide appeals taken by property owners from orders or decisions of the City's Commissioner of K pertaining to permits. Under his existing contract with MOPD, Mr. R has served as a code consultant to MOPD since May 2001, assisting MOPD in drafting the language of the recently-added Chapter XX of the Building Code. You stated that MOPD anticipates extending Mr. R's contract so that he may assist MOPD in reviewing other Code chapters and drafting further amendments to Chapter XX for coordination with those other chapters. Under Mr. T's proposed consulting contract with MOPD, he would be conducting construction site inspections of [Sister Agency 1] developments to ensure that construction is in accordance with federally-mandated accessibility standards. You stated that, as to [Sister Agency 1] projects already under construction, as well as future [Sister Agency 1] A projects, the possibility exists for [G Commission] involvement in the review of orders or decisions by the City's Commissioner of K relating to permits for those projects.

After reviewing the information you presented, it is Board staff's conclusion that neither Mr. R's work on additional amendments to the City's Code, nor Mr. T's work conducting construction site inspections of [Sister Agency 1] developments for accessibility issues, would be "wholly unrelated" to the work of the [G Commission] within the meaning of Section 2-156-110 of the City's Governmental Ethics Ordinance. It is Board staff's opinion, therefore, that Messrs. R and T could not have the above-described consulting contracts with MOPD while serving on the [G Commission]

Other Laws or Rules. Our conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our conclusions. Please note that other laws or

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rules may apply to this situation, and that a City department may adopt and impose rules or policies stricter than those contained in the Governmental Ethics Ordinance.

We appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Very truly yours,

Michael Haggerty
Deputy Director

Approved:

Dorothy J. Eng
Executive Director

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