

CONFIDENTIAL

ADVISORY OPINION

[Date], 2012

[Mr. Larry Huddle]  
c/o [Terry Martin], Esq.  
[123 Main]  
[Chicago IL 60600]

**Case No. 12042.A, Interest in City Business**

You are a [City employee], who has been employed by the Chicago Department [of X] since 20[xx]. On [Date 1], 2012, you called Board staff, at the suggestion of [Joan Smith] (who had already communicated with Board staff). [Ms. Smith] is the Executive Director of the [Do Good Council] (“[Council]”), which is the service provider for Special Service Area (SSA) # [99].<sup>1</sup> You provided some facts during that call and, again on [Date 2], you spoke with Board staff, and presented the facts stated in this opinion regarding your participation in a company named [ABC LLC] (“ABC”). [ABC] is owned 100% by your wife, and has had one or more contracts with the [Council], in its capacity as the contracting agent for Special Service Area (SSA) #[99]. The issue before the Board is whether, under the facts you presented, you have violated the City’s Governmental Ethics Ordinance.

At its [Board Meeting Date], 2012 meeting, the Board carefully considered all the facts presented in this opinion in light of prior Board investigations and opinions. As fully explained below, the Board has determined that you violated § 2-156-110 of the

---

<sup>1</sup>In a conversation on [Date 2], 2012 with Board staff, [Ms. Smith] explained, and later offered to document, that the [Council] is under contract with SSA #[99] to be a “service provider.” This SSA itself, like all SSAs in Chicago (there are about 45 City-wide) is established by ordinances enacted by City Council, pursuant to the authority granted to the City by Article VII, Sections 6(l) and 7(6) of the Illinois Constitution, and by the Special Service Area Tax Law, 35 ILCS 200/27-5 *et seq.*, and by the Illinois Property Tax Code, 35 ILCS 200/1-1 *et seq.* As the Board has recognized, the SSAs are thus, for purposes of the Governmental Ethics Ordinance, City Commissions, and their Commissioners, who are appointed by the Mayor and confirmed by City Council, thus City appointed officials. See Case Nos. 93013.A; 12007.A-1 and 12007.A-2; Board minutes of 1/13/93 meeting. SSAs are authorized by their enabling ordinances to spend City-administered funds they are appropriated by the City Council for designated neighborhood improvement and other projects. SSAs do not have their own full-time staff (their Commissioners are volunteers, and Department of Housing and Economic Development (“DHED”) staff provides assistance to all SSAs in the City). Thus they contract with service providers—typically local chambers of commerce—to secure and hire appropriate persons and firms and to enter into (sub)contracts necessary to accomplish these projects, and expend their City-authorized and -administered funds for these purposes. SSA Commissioners approve these subcontracts.

Ordinance (entitled "Interest in City Business"), and that several City subcontracts were entered into between SSA #[99]'s service provider and [ABC] (which employed you) and then performed in violation of the Ordinance. The Board has made recommendations to your department, the Department of [X], and to the Department [of Y], near the end of this opinion.

**FACTS.** During conversations you had with Board staff on [Dates 1 and 2], 2012, and which your attorney had with Board staff on [Date 3], the following facts were presented. You have been a [City employee] with the City since 20[xx] and taken the Board's online ethics training each year since 20[yy]. You were also, as of [Date 4], 2012, a paid employee<sup>2</sup> of [ABC]. [ABC] is wholly owned by your spouse. It performs [facilities] services. You were a[n] [ABC] employee since you founded the company in 19[zz]. You gave as examples of your current work for [ABC] on-site work, billing, and fixing items at its office. You also said that [ABC] has had contracts to perform its services with either SSA #[99] or with the [Council] in its capacity as the SSA's service provider, and also has had contracts with other SSAs, but did not know which (you said you would have [ABC] contact our office to provide more details), and that [ABC] has been awarded such contracts for approximately 10 years. In one conversation with staff on [Date 1], you agreed to attempt to provide copies of any current contracts [ABC] has or had with SSAs; then, at staff's suggestion, you said that staff could obtain [ABC's] contract with SSA #[99] from [Ms. Smith].<sup>3</sup> When staff asked you what your current pay is from [ABC] as a salaried employee, you said you would not respond without speaking with your attorney.<sup>4</sup>

During a conference call you had with Board staff on [Date 2], 2012, staff re-stated advice given to you orally and by email on [Date 1], 2012: namely that, on the facts presented at that time, your employment and work with [ABC] appeared to constitute a violation of § 2-156-110 of the City's Governmental Ethics Ordinance. This section prohibits you, as a City employee, from having a financial interest in City business (here,

---

<sup>2</sup>On [Date 4], 2012, staff reviewed the web site for [ABC LLC]. It showed you as its President and gave your background (which included working for various [facilities] companies, which stated that you learned more about the field of [facilities] at Illinois State University and graduated with a B.S. in [Facilities] Business with a "[facilities] sequence," and "start[ed] [your] own [facilities] company and thus [ABC] was born."). [web address] visited [Date 4], 2012. Later that day, staff received an e-mail from your personal attorney, [Terry Martin], whom staff then called and who confirmed that: i) sometime prior to [Date 4], 2012, you ceased serving as the company's President; ii) as of [Date 4], 2012 you were no longer employed by or involved in [ABC]; and, thus iii) neither you nor he could provide any more information about the company, including contracts between it and any SSAs, as requested in Board staff's [Date 2], 2012 email to you. He did confirm there were no contracts between [ABC] and the City other than those with SSAs. In a call between staff and Mr. [Martin] on [Date 3], 2012, he confirmed that: (i) you became President upon [ABC's] incorporation ([Date 5], 19[aa]), but ceased to be its President approximately 2 years prior to [Date 4], 2012 when your spouse became its President; and (ii) you became [ABC's] registered agent when you became President but ceased acting as registered agent on [Date 4], 2012 when your spouse succeeded you as registered agent.

<sup>3</sup>Board staff spoke to [Ms. Smith] on [Date 2], 2012. She agreed to provide staff with the [Council]'s current contract for [facilities] that it had with [ABC], as well as the SSA's enabling ordinance, which included reference to the contracts (staff obtained these documents on DHED's public web site). She also said that the contract was for [xxx] years in the amount of \$[yyy],000.00, and that the [Council] had been contracting with [ABC] for [q] years, and suggested that staff obtain any other current contracts between [ABC] and other SSAs directly from [ABC], or from the appropriate City personnel. Since that conversation, Board staff unsuccessfully attempted obtaining contracts between [ABC] and other SSAs from your attorney and from appropriate City personnel (who required at least the identification of the proper SSAs involved).

<sup>4</sup>In an earlier conversation you had that day with one of the members of the Board staff—who was identified to you as sitting in on the later conference call --you told that staff member that you have been paid \$[amount] per week by [ABC].

[ABC]'s contract with the [Council] to perform services for SSA #[99]). In that conversation, and then again on [Date 2], staff advised you to immediately bring yourself into compliance with the Ordinance by terminating your employment with [ABC] and no longer participating in [ABC]'s operation or management; and last, staff advised you to confirm with the Board in writing that you have terminated your employment and involvement with [ABC]. You advised staff that you would do so.<sup>5</sup> The email staff received from your attorney (as described in footnote 2, above) was sent in response to all staff emails and requests; however, on [Date 3], staff received more facts from your attorney (See footnote 2).

Board staff reviewed four contracts between [ABC] and the [Council], as service provider to SSA #[99], and the accompanying ordinances enacted by City Council authorizing them. These are annual contracts between SSA #[99] and the [Council] beginning in 20[xx] and ending on December 31, 2012, By City Council ordinances (passed late in 20[xx]-20[yy], see, e.g., [ordinance date], for the following fiscal (calendar) years, budgets were approved for SSA #[99]. Included in these budget approvals were contracts between the [Council] and SSA #[99], and between the [Council] and other businesses—including [ABC]. These contracts were all included as part of the budget submissions approved by City Council.

A. 20[xx] Fiscal Year Ordinance. In the 20[xx] ordinance, SSA #[99]'s budget was approved for \$[???,][000]. Contained within the budget is the proposed contract between SSA #[99] and its selected service provider, the [Council], and a list of parties that the SSA was expecting to retain (or had retained) in 20[xx], along with the payments that the SSA was estimating would be made (or had been made) to these parties during or applied to in the 20[xx] budget year. The 20[xx] ordinance lists, among others, “[ABC LLC], [address], sub \$[\*\*\*],000 est.”

B. 20[yy] Fiscal Year Ordinance. In the 20[yy] ordinance, SSA #[99]'s budget was approved for \$[???,][000]. Contained within the budget is the proposed contract between SSA #[99] and its selected service provider, the [Council], and a list of parties that the SSA was expecting to retain (or had retained) in 20[yy], along with the payments that the SSA was estimating would be made (or had been made) to these parties during or applied to in the 20[yy] budget year. The 20[yy] ordinance lists, among others, “[ABC LLC],[address], [Facilities] \$[\*\*],000 Fees.”

C. 20[zz] Fiscal Year Ordinance. In the 20[zz] ordinance, SSA #[99]'s budget was approved for \$[???,][000]. Contained within the budget is the proposed contract between SSA #[99] and its selected service provider, the [Council], and a list of parties that the SSA was expecting to retain (or had retained) in 20[zz], along with the payments that the SSA was estimating would be made (or had been made) to these parties during or applied to in the 20[zz] budget year. The 20[zz] ordinance lists, among others, “[ABC LLC], [address], [Facilities] \$[\*],000 P.” [The column of monies is headed by “Fees (P/E)”.]

---

<sup>5</sup> Board staff sent you two emails on [Date 2], 2012: (i) providing clarification about Company contracts with sister-agencies; and (ii) requesting further information, including the names of the other [service providers] having contracts with [ABC].

D. 20[aa] Fiscal Year Ordinance. In the 20[aa] ordinance, SSA #[99]'s budget was approved for \$[???,][000]. Contained within the budget is the proposed contract between SSA #[99] and its selected service provider, the [Council], and a list of parties that the SSA was expecting to retain (or had retained) in 20[aa], along with the payments that the SSA was estimating would be made (or had been made) to these parties during or applied to in the 20[aa] budget year. The 20[aa] ordinance lists, among others, "[ABC LLC], Anticipated, [address], Supplier, \$[\*\*\*\*],000, Estimated."

#### **LAW AND ANALYSIS:**

The relevant provision is § 2-156-110, "Interest in City Business," which states:

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 is authorized by ordinance ...* (emphasis added).

"Financial interest," defined in §2-156-010(l), means, in relevant part:

"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 ... but shall not include (a) *any interest of the spouse or domestic partner of an official or employee which interest is related to the spouse's or domestic partner's independent occupation, profession or employment ...*" (emphasis added).

The provisions together prohibit City employees and elected officials from having an ownership interest in a City contract (or subcontract), work or business that yields or entitles the City employee to more than \$2500 in a year. As the Board has interpreted these provisions, if a company or firm is owned completely or partly by a City employee, and that company or firm has contracts or business with the City, the value of the employee's ownership interest in the firm's City contract or business is calculated by taking the gross amount of the company or firm's City contract, work or business, and multiplying it by the employee's percentage of ownership interest in the company or firm. Case Nos. 04049.A, 97019.A; 90077.A; 12007.A-1; 12007.A-2. If the City employee's interest (which effectively must be an ownership interest) in the City contract, work or business) *yields to the employee, or entitles the employee to receive*, income of more than \$2,500 per year, then the employee has a prohibited financial interest in City business and is in violation of the law. However, the Ordinance also provides that, if the spouse or domestic partner of a City employee or spouse has a financial interest in City contracts, work or business, the City employee does *not* have a prohibited financial interest in City business *as long as* the spouse's or domestic partner's business constitutes his or her independent business, occupation or profession.

The question we address, then, is whether you had a "financial interest in your own name or in the name of any other person" (namely, in the name of your spouse, through her 100% ownership in [ABC]) in [ABC]'s contracts with SSA #[99], and any other SSAs, during the time in which you served as [ABC]'s paid employee and/or President and/or registered agent. If yes, then you had a prohibited financial interest in City contracts (paid

with funds authorized by City ordinance) for years 20[xx]-20[aa]. Answering this question in turn requires us to address two subquestions: 1) did your spouse, as the 100% owner of [ABC], have a financial interest in City contracts? And 2) if so, was [ABC] your wife's "independent occupation, business or profession?" If the answer to either question is no, then you did not violate the Ordinance. But if the answer to both questions is yes, then you did.

1. Did Your Spouse Have a Financial Interest in City Business? As in several recent prior cases we decided (See Case Nos. 12007.A-1 and 12007.A-2), we note here that [ABC] is not and has not been a *direct* City contractor, but, rather, a City subcontractor. That is, the [Council], using City-administered funds appropriated to SSA #[99] by City Council ordinance, was authorized to and then did enter into these contracts with [ABC]. The contracts were thus, in effect, City subcontracts. The names of the proposed subcontractors, including [ABC], were disclosed to and then voted on and approved by City Council in public meetings—and had already been approved by SSA Commissioners.

In Case Nos. 97019.A and 04049.A, we addressed the circumstances under which a City employee would have a prohibited financial interest in a City contract if a firm owned in part or wholly by the employee were to become a *subcontractor* on a City contract. In those cases, the firms were City-certified MWBEs, and, as such, the firms' names were required to be listed on the prime contractors' bid proposals, so the City could exercise discretion and evaluate the proposed subcontractors. Considering that fact, we determined that, where the participation of particular subcontractors is disclosed in advance and is a component in the City's consideration of the (prime) contract award, those subcontractors have an "ownership" interest in the City contract, and of course in their own City subcontract(s). And, we said, where a subcontractor is listed on the prime contractor's bid proposal (whether as an MBE/WBE or, as here, otherwise), the participation of that subcontractor becomes subject to the City's approval, and thus the subcontractor has an "ownership" interest in City business, even though it typically is not paid by the City directly. Here, the subcontracts were actually awarded by the [Council], but were also voted on and approved by both the SSA and the full City Council. In other words, under Board case law, your spouse *could* have had prohibited financial interests in City contracts, work or business through these subcontracts if your spouse (through [ABC]) -- received or was entitled to receive \$2,500 or more per year through them. Case Nos. 90077.A; 04049.A.

Confirming the mathematics, your spouse owned 100% of [ABC] in years 20[xx] at least through [end date], 2012 (the date you were no longer a[n] [ABC] employee; neither you nor your attorney said that she no longer owns it). This being the case, and consistent with prior Board cases, your spouse had an ownership interest in several City (sub)contracts—in the name of another, namely, in that of [ABC]—in the amounts of \$[\*\*\*],000 in 20[xx], \$[\*\*],000 in 20[yy], \$[\*],000 in 20[zz] and \$[\*\*\*\*],000 in 20[aa]. She thus had (and still may have, unless she is no longer an owner of [ABC]) a financial interest in City business.

However, the Ordinance does not prohibit the spouse of a City employee or official from having a financial interest in a City contract or in City business. Rather, as stated above, the prohibition is upon the City employee or official him- or herself—and there is a

violation of the law if his or her spouse's or domestic partner's business is not an "independent business, occupation or profession."

2. Was [ABC] Your Spouse's Independent Occupation, Business or Profession? In past cases, the Board has developed a fact-based test in order to determine whether a spouse's business constitutes his or her "independent business, occupation or profession." Under it, the business is independent as long as the City employee or official does not "participate in the operation or management" of the spouse's or domestic partner's business. See Case Nos. 91052.A; 98017.A; 98021.A and 06051.A. To determine your participation under this test, we review the facts and apply the law.

In this case, you were [ABC]'s founder, and its paid employee, and also its President through a date approximately two years prior to [Date 4], 2012, as well as its registered agent from [Date 5], 1999 through [Date 4], 2012, and, in addition, you were, as of [Date 2], 2012, performing some on-site work, fixing items at [ABC]'s office and working on its billing. Also, on [ABC]'s website, as late as [Date 2], 2012, you were clearly identified as [ABC]'s President (though your attorney advised Board staff you had ceased being President approximately two years prior to [Date 4], 2012). Accordingly, in the past you have, and perhaps still do, participate in the operation and management of [ABC]. See Case No. 98017.A (prohibited interest in City business found partially because of use of the term "General Manager" in City employee's letters on behalf of spouse's company). Moreover, you were [ABC]'s registered agent from [Date 5], 1999 through [Date 4], 2012. Thus, the inference that can be drawn from your use of the title of President and your acting as registered agent is that you have "played a role in the management and operation of" [ABC]. *Id.* And, you said you performed general, continuing "on-site" work and repair work at [ABC]'s office. Unlike in one case, your work is not "involvement in management [that] is narrowly limited—to one customer once a year..." Case No. 98021.A (City employee did not have interest in City business through his spouse by his management activity of a once-a-year sole customer negotiation). In addition, you performed [ABC]'s billing, which is financial control of at least a portion of the business. See Case No. 06051.A (citing Case No. 98017.A, using financial control as an element demonstrating that the spouse does not have an independent business from the City employee's involvement). These facts, taken together, warrant the Board's conclusion that, during the relevant times in which it had contracts with the [Council], [ABC] was not your spouse's "independent, occupation, profession or employment."

Thus, we conclude that you violated § 2-156-110 of the Ordinance by having a prohibited financial interest in City contracts, work or business in 20[xx], 20[yy], 20[zz] and 20[aa]. We note here that [ABC] may also have had contracts with other SSAs, through their service providers, but our opinion does not address them because we do not have those facts at hand. Nonetheless, the analysis would likely be the same.

**DETERMINATIONS:** For the foregoing reasons, the Board determines that you violated §2-156-110 of the Ordinance by having a prohibited financial interest in City contracts, work or business in 20[xx], 20[yy], 20[zz] and 20[aa] (and possibly in other years as well, if, in fact, there were similar contracts between the Company [ABC] and other SSAs' service providers).

The Board's determination does not necessarily dispose of all the issues relevant to

tspospo situation, but is based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter the Board's opinion. Other laws or rules may also apply. The Board notes that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

**RECOMMENDATIONS:** Given the possibility that there may be other similar violations of the Ordinance involving you, other SSAs, their service providers, and subcontracts entered into by those service providers, pursuant to the Board's powers and duties under § 2-156-380(e), the Board of Ethics recommends that:

A. Pursuant to §2-156-410(a), the Chicago Department of [X]<sup>6</sup>:

1) consider imposing employment sanctions on you as [X's] Commissioner deems appropriate, and report its action back to the Board's Executive Director; and

2) advise you that, if you are interested in remaining involved with the Company [ABC] which will pursue SSA or other City contracts or subcontracts on behalf of the Company [ABC], or you wish to yourself act as an independent contractor, you must consider terminating your City employment, or if your spouse's company, [ABC] (or its successor) or another company she owns, continues to obtain contracts (through service providers) with SSAs (or with anyone so long as [ABC] has SSA contracts), that you may not participate or be involved as an employee or otherwise in the operation or management of [ABC];  
and

3) require you to attend face-to-face ethics training.

B. Departments of [Y] and [Z]: The Board recommends that the Departments of [Y] and [Z]:

4) consider, pursuant to § 2-156-430, voiding the current SSA #[99] contract and any other SSA contracts with [ABC], which expires at the end of 20[aa];

5) advise SSA #[99] (and any other SSAs with which [ABC] has contracts) that, as long as Mr. Huddle remains as a City employee, he and any entities in which he has an ownership interest under Board case law are severely restricted (if not outright prohibited) from having any contracts with any SSA service providers;

6) consider whether, under § 2-156-440, the City should bring a lawsuit for an accounting of any pecuniary benefit received by [ABC], and to recover them.

Why is the Board not recommending specific discipline in this case? In most cases in which it determines that an employee has violated the Ordinance, the Board does not make specific recommendations for discipline. Rather, it leaves that decision to the

---

<sup>6</sup> Please be advised that, pursuant to Board Rule 3-8, we are sending our opinion to the Commissioner [of X], who can consider and act on our recommendations.

employee's department head, who is in a better position to know the employee's overall record. In those cases where the Board has recommended specific discipline, the employee(s) or official(s) have either committed repeat violations, or have sought and disregarded Board advice.

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.

Miguel A. Ruiz, Chair

cc: [Mr. White], Commissioner [of X]  
[Mr. Red], Department of [Y]  
[Mr. Blue], [Department of Z]