

CONFIDENTIAL
ADVISORY OPINION
November 14, 2012

M[s]. [Leslie Smith]
[Address]
[Address]
[Address]

Case No. 12065.A, Interest in City Business

You have been a member of the Chicago Public [Institution] Board (“Institution Board”) since your appointment in 19[]. On [], 2012, you spoke with the Executive Director of the Board of Ethics, and, at his urging, wrote the Board of Ethics on []. In your letter, you explained that you are the majority owner of [] Associates [] (“Associates”), a construction and engineering management services firm. In [Date], Associates signed a sub-consultant agreement (“Sub-contract”) with [] (“Inc”). Inc is under contract (the “Prime Contract”) to provide program management services to the Public [City Sister Agency] (“Agency”). You wrote that you recently became aware that Associate’s sub-contract could pose a problem under the City’s Governmental Ethics Ordinance (the “Ordinance”), and that, as soon as you realized that, and at the advice of the Mayor’s Office, you asked our Board for an advisory opinion addressing how the Ordinance affects your situation. You confirmed with Board staff that Associates has been providing construction management services to Inc, on construction projects for which Agency has contracted with Inc to build [facilities] for the Chicago Public [Facilities] system. You wrote that you felt there was a [problem requiring options to effect a resolution].

After carefully considering the facts that you and other sources have provided to our office (you gave Board staff permission to obtain additional facts from third parties), and applying the relevant law, the Board has determined that you do have a financial interest in work and business of the City, in violation of §2-156-110 the Ordinance. Our analysis and recommendations for further action follow.

FACTS. Institution Board. As a member of the Institution Board, you are an appointed official of the City for purposes of the Ordinance.¹ You are also a member of the [Institution] Board’s Committee on

¹ As set forth in Article I §1 of the “Bylaws of the Board of Directors, Chicago [Institution Board] and the Chicago Public [Facilities] System” (Rev., Sept. 2010) (“Bylaws”), the “Board of Directors is vested with the powers and duties set forth in the Illinois [Facilities] System Act,” which is __ ILCS __/1 *et seq.*, and the Illinois Local [Facilities] Act, which is __ ILCS __. These statutes read together “establish the Chicago Public [Facilities] and the Chicago Public [Facilities] System[.]” The Illinois [Facilities] System Act states, in relevant part: “A [facilities] system shall be established in the following manner: The formation of a [facilities] system of 10 or more public [facilities] or of a public [facility] serving a city of over 500,000 population shall first be approved by the boards of directors of the participating public [facility] or [facilities], followed by the election or selection of a board of directors for the [facilities] system as provided in Sections 5 and 6 of this Act.” __ ILCS __/4(a). In relevant part, the Act further states: “Each [facilities] system created as provided in Section 4 of this Act shall be governed by a board of directors numbering at least 5 and no more than 15 person, except as required by Section 6 for [facilities] systems in cities with a population of 500,000 or more [and being served by a single [facility]].” *Id.* §5. However, the [Institution] Board itself does not initiate [facility] construction. It is “[t]he [Agency] of Chicago and the City of Chicago, working together through an intergovernmental agreement, [which] join [with] the Chicago Public [Facilities] building program.”

Administration and [] (“Admin Committee”). Until [] 20__, you served on the Board’s Committee on Facilities (“Facilities Committee”). You said that much of your work on the Institution Board consists of attending meetings about the [facilities] and servicing communities. You explained that, notwithstanding the language in the Bylaws, you and the Institution Board do not exercise such broad powers as therein stated.² Instead, Board members hear reports from other committees or those overseeing special programs. However, an [Agency] representative occasionally attends executive sessions of an Institution Board meeting, if the [Agency] is planning to build a [facility], in order to present the plans and identify the location. You said that the Institution Board generally votes only to approve expenditures of monies involving information technology and other supplies in [facilities] operation (the vendors are usually not identified unless the expenditures are large); however, you said, on occasion there have been votes to approve acquisition of land to build a [facility]. You also told staff that a member of the City’s Department of [X] (“X”) or representatives from the [Agency] have provided the Facilities Committee status reports on particular [facilities] rehabilitation or construction projects. You said that the only times when the Facilities Committee has heard about specific costs, or learned the names of entities retained on specific projects (such as construction companies), are when representatives from X or the [Agency] have reported that there are major delays or if a specific entity has been performing poorly.

The Admin Committee, you said, is concerned with [facility] staff budgets, State-provided funds, and allocating funds for purchasing [supplies]. The Admin Committee’s staff (who are not Public [facilities] employees) may suggest a [facilities] land acquisition, and the Admin Committee then decides whether to take the matter (without making a prior decision on the acquisition) to the full Institution Board. The Admin Committee is responsible for filing required reports with the State, and addresses audience concerns during the public portion of Institution Board meetings. It also monitors the status of private funds that are managed by non-City professionals. These are privately endowed funds, with their own fund managers, which exist to help the Public Facilities system. Occasionally, you said, both committees are addressed together. For instance, the City’s Institution Commissioner might speak to both committees about acquiring property. The Commissioner would identify the PIN(s) (permanent index number) for the property location(s), asking for approval from both committees. If each committee agrees with the Commissioner, the matter is then brought before the full Institution Board.

Association and the Sub-contract with Inc/Agency. Inc entered into the Prime Contract with the Agency in [Date] 20__.³ The Prime Contract is a “program management contract,” meaning that Inc has committed to manage any construction project the Agency assigns to it, including (but not limited to) [facilities], and to ensure the subject building is constructed pursuant to architectural plans, within budget, and on time.

[http://www.\[chicago.com/content/projects/\[\].asp](http://www.[chicago.com/content/projects/[].asp) visited [], 2012. That [Agency]-City agreement (“IGA”), dated [], 19__, specifically addresses [facilities] construction. It recites, among other things, that: (i) the City proposed to the [Agency] that it take on a project “on behalf of the [Facilities]” involving construction, Recital E; (ii) the [Facility] (that is, “The Chicago Public [Facility], a Department of the City,”) intends to “actively participate,” Recital G; and (iii) it is contemplated that the costs shall be paid by the City pursuant to the issuance of “City of Chicago General Obligation [Facilities] Bonds, Series 19__,” Recital F. The ordinance establishing the IGA passed [], 19__. The Department of [] confirmed to Board staff that this IGA was approved by City Council ordinance. On [], 19__, City Council enacted the ordinance authorizing the issuance of General Obligation bonds to finance the [facilities] work pursuant to this IGA. The bond itself was then issued in [] 19__. According to representatives from the City’s Departments of [] and [], all such bonds (and any [facilities] bonds not issued under the IGA) are issued pursuant to ordinance.

² See, e.g., Article V §7: “The Committee on Facilities shall have supervision for the design, construction, maintenance and repair of all physical facilities including the [General Facility], all [ancillary] facilities and other physical facilities of the [General Facility]...[T]his Committee shall also be charged with long range planning involving physical facilities for the [General Facility]...”

³The Prime Contract is dated [Date], 20__ as Contract __ #xxxxx, and it expires on [Date], 20__.

You own [a majority]% of Associates, and are its President, CEO, [] and registered agent.⁴ Associates entered into its Sub-contract with Inc on [Date], 20__, and, you said, began negotiating with Inc about serving as construction manager on the Prime Contract, about 2 months earlier, in [] 20__. Under the Sub-contract, Associates has agreed to serve as Inc's construction manager, ensuring that the general contractor (who is retained directly by the [Agency]) proceeds properly, that all architectural plans are followed and that correct materials are used in construction, and that construction proceeds on time and within budget.

You explained that, because the Prime Contract is a professional services contract, Inc did not receive it through a bid process with the [Agency]. Instead, Inc made a presentation to the [Agency] in order to win the award (you said that you do not know whether, in that presentation, Inc brought up Associates' name, record, or capabilities). Six months after the Prime Contract was awarded, Inc retained Associates. You said that all work Associates has performed on Chicago Public [Facility] projects has been as a construction manager.⁵ The Sub-contract covers all projects in which Inc has been retained by the [Agency], including building City [facilities]. You provided staff with a list of 15 Chicago Public [facilities] on which Associates has worked under this Sub-contract. There is no expiration term for the Sub-contract, but it expressly refers to and is subject to the Prime Contract between the [Agency] and Inc (which expires on [Date], 20__). The Prime Contract provides that each subcontract (including Associates') in turn shall provide that the [Agency] is a "third-party beneficiary to the subcontract, and may enforce any of the subcontract terms ..." Prime Contract §4.12. In the Prime Contract, the [Agency] is granted substantial control over many aspects of the Prime Contract. In Exhibit A, for example, the [Agency] "reminds" Inc that the [Agency] provides "planning, design and construction" to its "User Agencies," which include the City of Chicago (and the Chicago Public [Facilities] system), the Chicago Public Schools, the Chicago Park District, and Cook County, among others, and that the Agency "expects [Inc] to be essential to its efforts to deliver timely, cost-effective and productive services..." §3.1. You said that your only communications with the [Agency] have occurred when Inc has not been timely paid under the Prime Contract, in order to request that the [Agency] timely pay Inc, pursuant to the Prime Contract , so that Inc could pay Associates.

You told staff that, for City public building projects under the Prime Contract, members of the [Agency], Inc and Associates (as well as other sub-contractors) remain at the [Location] (where the [Agency] is located) as part of a regular work routine. This arrangement allows an Inc employee, performing under the Prime Contract pursuant to instruction from the [Agency], to assign one or more Associates employees (performing under the Sub-contract) to an appropriate building site, including a Chicago Public [Facilities] site. You pointed out that the [Agency] ultimately controls [facilities] projects.⁶ In this case, it does so through its Prime Contract with Inc.

⁴Associates is qualified by the City as an MBE/WBE (minority or women-owned business enterprise). Associates filed its [] with the Illinois Secretary of State on [], 20__. It is an active [] company in Illinois. Besides serving as Associate's ultimate decision-maker, you are involved in all aspects of its operations, including developing its business, promoting its minority and female interests, serving as a technical resource based upon your transportation and infrastructure background, and interpreting and monitoring building and zoning codes.

⁵On [], 20__ you delivered to Board staff an itemized list of all of Associate's invoices to Inc during the relevant time period. They total \$x,xxx,xxx.xx. From that, you broke out the invoices related to construction of [facilities] for the Chicago Public [Facilities] system only. You stated that this [facility] work constitutes yy.yy% of that total, or about \$xxx,000.

⁶The Prime Contract, Schedule A, §1.1, states: "The Illinois legislature recognized the challenges faced by local government agencies in the construction marketplace, and passed the [Agency] Act, __ ILCS __/1 *et seq.*, to provide local government with the means to organize their capital programs to benefit more fully from the opportunities, and guard more fully against the risks, inherent in local construction markets." In §14 of the Act it states: "An [Agency] is a municipal corporation and constitutes a body both corporate and politic separate and apart from any other municipal corporation or any other public or governmental agency." The City passed an ordinance, Chapter _-__, "Agency," of the Municipal Code of the City of Chicago, resolving in it that "[i]t is in the best interest of the public that a [agency] be organized to exercise the powers and authority prescribed by 'An Act to authorize the creation of an [Agency] and to define their rights, powers, and duties', enacted by the __th General Assembly of the State of Illinois..." which the City accomplished on [], 19__, and which Act was cited in the IGA; *and see also* footnote 1.

LAW AND ANALYSIS: The applicable provision is § 2-156-110, "Interest in City Business." It states, 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 is authorized by ordinance ... [n]o 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.

The definition of "financial interest" in effect at the time Associates entered its subcontracts with Inc (this definition was changed, effective November 1, 2012) is found in §2-156-010(l). It was defined, in relevant part, as:

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 ...

These provisions prohibit a City employee or elected official from having an ownership interest in any City contract, work or business that yields or entitles the employee or official to more than \$2,500 in a year in income or is worth at least \$5,000. Appointed officials are subject to the same prohibition, unless the contract, work or business is "wholly unrelated" to the appointed official's City duties, that is, wholly unrelated to the work of the City board or commission to which the official is appointed. As the Board has interpreted these provisions, if a City employee or official owns a firm in whole or in part, and that company or firm has contracts or business with the City (or has contracts or work or business paid with funds belonging to or administered by the City, or authorized by City ordinance), the value of the employee's or official's ownership interest in the firm's City contract, work or business is calculated by taking the gross amount of that contract, work or business, and multiplying it by the employee's or official's percentage of ownership interest in the company or firm. Case Nos. 88041A; 88034.A; 04049.A, 97019.A; 90077.A; 12007.A-1; 12007.A-2. If the City person's interest (which must be an ownership interest) in the contract, work or business yields or entitles the employee or official to receive income of more than \$2,500 per year, or has a cost or value of at least \$5,000, then the employee or official has a financial interest in City business and is in violation of the Ordinance. However, as mentioned above, the Ordinance also provides that, if an appointed official (such as a member of the Institution Board) has a financial interest in City contracts, work or business, the official does *not* have a prohibited financial interest in City business *as long as* the official's financial interest in City contracts, work or business is *wholly unrelated* to the appointed official's City duties.

The first 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 Associates, through your [majority]% ownership in it) in Associates' [its] Sub-contract with Inc, through Inc's Prime Contract with the [Agency]. Answering this question in turn requires us to address two subquestions: 1) did you, as Associates' [majority]% owner, have a financial interest in *contracts, work or business of the City,*⁷ (*and paid with funds belonging to or administered by the City, or authorized by ordinance*)?; and, if so, 2) was that financial interest "wholly unrelated" to your City duties on the [Agency] Board? If the answer to these questions is "yes" and "no," respectively, then you are in violation of the Ordinance.

⁷We have previously recognized that the [Agency] is not a City agency. Case No. 90013.A.

1. Have You Had a Financial Interest in City Business?

A. Have You Had an Ownership Interest in Work or Business of the City? As the Board noted in several recent advisory opinions (Case Nos. 12007.A-1 and 12007.A-2), we note here that a City employee or official may violate §2-156-110 even if the firm in which he or she has an ownership interest is not a *direct* City contractor, but a City subcontractor. In delineating the types of City work, contract or business to which the prohibition attaches, the language of §2-156-110 requires two elements: (i) it uses the term “*financial interest in*” a “contract, work or business of the City”; (ii) the “consideration [paid by the City] of the contract, work, business” must be “paid with funds belonging to or administered by the City, or [in the alternative] is authorized by ordinance.” (emphasis supplied). In other words, as the Board has recognized, this section does not require that there be privity of contract between the City and the firm owned by the City employee or official. Rather, what is required is either that the contract, work or business be (a) “City contract, work or business,” and (b) that it be paid with funds belonging to or administered by the City, or authorized by City ordinance. In other words, the fact that the [Agency] is not itself a City agency is not dispositive.

In this case, the [Agency], in its capacity as a signatory of an intergovernmental agreement with the City (which agreement was itself adopted by City Council ordinance), was, by entering into the Prime Contract with Inc, performing its obligations under that intergovernmental agreement, and carrying out the direction of the City with the approval of the [Institution] Commissioner⁸, and is spending City funds appropriated precisely for this purpose by City Council ordinance. Inc then entered into the Sub-contract with Associates. Thus, we conclude, the Sub-contract, being expressly subject to the Prime Contract, which makes the [Agency] a party itself, is, in effect, a City subcontract.

Further, given that: (i) Inc acts at the direction of the Agency under the Prime Contract; (ii) Inc is acting under the direction and supervision of the Agency with respect to [facilities] construction; (iii) the [Agency] is a partner of the City for construction projects for City facilities as designated by contract approved by Ordinance; (iv) the [Agency] is using City money to fund such projects, authorized by City Council Ordinance; (v) the [Agency] is directed by the City for such projects; (vi) the [Agency] obtains “active participation” from the Chicago Public [Facilities] (a City department); and (vii) per both the Prime and the Sub-contracts, Inc subjects its subcontractors to the [Agency], you (through Associates) appear to have a potential financial interest in City business. Associates “steps into the shoes” of Inc in performing the Agency’s City work: through the intergovernmental agreement, the City directs the Agency’s [facilities] work, the [Agency] directs Inc’s [facilities] work, and Inc directs Associates’ [facilities] work. Thus, the Board concludes, Associates is, legally, a subcontractor under the Prime Contract.⁹

It would seem, then, that, if your ownership interest in Associates, when multiplied by the amounts of Associates’ Sub-contract with the [Agency], would produce a figure that represents \$2,500 or more in income per year, or that is worth \$5,000 or more, there would be a violation of the Ordinance (if the Sub-contract is not wholly unrelated to the work of the Institution Board, on which you sit).

However, the Board has, over the years, treated cases involving subcontracts with companies owned by City employees and officials in various ways, depending on whether the identity of the subcontractor was

⁸See reference to IGA ordinance in fn. 1.

⁹ “[S]ubcontract. A contract made by a party to another contract for carrying out the other contract, or a part of it.” Black’s Law Dictionary (“BLACK’S”), 349 (8th ed. 2004), Thomson: St. Paul.

disclosed to the City in advance, or the City and subcontractor had rights with respect to interacting with each other directly.

In Case Nos. 97019.A and 04049.A, the Board addressed the circumstances under which City employees would have a prohibited financial interest in a City contract if a firm they owned partly or fully were to become a *subcontractor* on a City contract. In those cases, the firms were City-certified M/WBEs. As such, under applicable City procurement rules, the firms' names were required to be listed on the prime contractors' bid proposals, so the City could exercise discretion and evaluate them. Considering that fact, the Board determined in those cases 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 companies' City subcontract(s)). Thus, the Board reasoned, where a subcontractor is listed on the prime contractor's bid proposal (whether as an MBE/WBE or 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 is not paid by the City directly. Finally, the Board concluded, these City employees would have a financial interest in City work, business or contracts if their ownership interests yielded the requisite amount of income or contract share.

Here, Associates' Sub-contract actually was negotiated directly with Inc, but neither Inc's nor Associates' name was mentioned to the full City Council. In other words, under the reasoning of these two Board cases, you, through your ownership in Associates, might *not* have a financial interest in City contracts, work or business through the Inc Sub-contract, even if your ownership interest in those Sub-contracts yielded income of or entitled you to receive \$2,500 or more per year, or the cost or value of your interest in the work Associates performed under the Sub-contract was \$5,000 or more. Case Nos. 90077.A; 04049.A.

But there is more in each case particularly applicable to your facts.

In a footnote in its opinion in Case No. 04049.A, the Board cites to "another factor," which the Board had discussed at length in Case No. 97019.A: namely, contractual rights and obligations. In both of these cases, the subcontractor had rights it could enforce through the general contractor against the City if the general contractor did not properly use and pay the subcontractor, which subcontractor it had presented to the City in the bid. In addition, and perhaps more applicable here, in Case No. 04049.A, the Board found that the City had rights *it* could enforce against a subcontractor. See Case No. 04049 page 5 fn. 3. The presence of these contract rights constituted one of the reasons that the Board determined that these City employees had a prohibited financial interest in City contracts. These contractual rights are present even in some situations in which the City does not approve a bid naming the subcontractor.

Here, Associates is doing work on City [facilities], arising from contracts, of course, though Associates has no contract directly with the City and is not paid by it. Though Associates is in the position of a subcontractor and a MWBE-certified business, Inc did not procure its [Agency] contract through competitive bidding, and, to your knowledge, Associates' name was not presented to the [Agency] (the City's partner in the intergovernmental agreement). On the other hand – and this is critical – the [Agency] can exercise various contractual rights against Associates directly under the Prime Contract, as the [Agency] expressly is, under the Prime Contract, a third-party beneficiary of a subcontractor's acts or omissions. Moreover, as a subcontractor, Associates has, as a contractual matter, stepped into the shoes of the prime contractor, with all the benefits and liabilities pertaining to that legal status. Thus, it is the "additional factor" analysis in Case Nos. 97019.A and 04049.A that the Board applies here. This reasoning leads us to conclude that Associates, acting as the *subcontractor* that is required to perform under its Sub-contract, is actually performing work or business of the City (through the [Agency], as the City's agent, using funds belonging to the City and

authorized through City ordinance), and, accordingly, that Associates' performance is the legal equivalent of a performance of City work at the behest of the City under §2-156-110 of the Ordinance.

Moreover, our reasoning is supported by a 2008 case we decided, involving an appointed official who served on the City's Community Development Commission (CDC). The CDC reviews redevelopment plans in designated redevelopment areas.¹⁰ In Case No. 08030.A, a member of the CDC (an appointed official, like you) asked whether the firm he owned fully could obtain a City subcontract in one of these projects. The Board determined that obtaining such a subcontract would have caused him to have a prohibited financial interest in City business (assuming the monetary amounts met the threshold established in the Ordinance). The Board's reasoning was based upon the contractual obligations analysis cited above.¹¹ Notably, the firm owned by the appointed official in that case would not have had as direct a contractual relationship with the City in doing work of the City as Associates has *via* the intergovernmental agreement between the City and the [Agency].

Similarly, in your case, *but for*: (i) Inc acting at the direction of the [Agency]; (ii) Inc being legally subject to the [Agency's] direction with respect to [facilities] construction; (iii) the [Agency] being a partner of the City by Ordinance; (iv) the [Agency] using City money pursuant to Ordinance; (v) the [Agency] being directed by the City; (vi) the [Agency] obtaining "active participation" from the Chicago Public [Facilities] (a City agency); and (vii) *per contract*, Inc subjecting its subcontractors to the [Agency's] direction, there would be no Subcontract. Thus, the reasoning in Case No. 08030.A leads to the conclusion that you (through Associates) have an ownership interest in City business and the work is paid with funds administered by the City and authorized by City Ordinance. In other words, Associates' contracts and activities cause *it* to have an interest in City business because these contracts and activities cause it to meet *both* elements discussed above pursuant to §2-156-110 of the Ordinance: (i) Associates has or does "[a] contract, work or business of the City...; and (ii) that contract, work or business of the City "is paid with funds belonging to or administered by the City, or is authorized by ordinance."

For these reasons, the Board concludes, you (as Associates' majority owner) have an ownership interest in City business. But this would constitute a prohibited financial interest in City business only if: i) you meet the monetary limitations in §§2-156-010(l) and 2-156-110 of the Ordinance; and ii) the contract, work or business is not wholly unrelated to the work of the [Institution] Board.

¹⁰In addition it can approve tax increment financing districts; designate redevelopment areas; approve redevelopment plans subject to City Council approval; recommend to City Council other actions, such as, acquiring property; borrowing money, *etc.* Developers may request of the CDC authorization to use City funds to subsidize a redevelopment project by a private party; the CDC may issue bonds (after an ordinance) that could include covering the costs of a general contractor or subcontractor; the CDC can issue resolutions that money or land be conveyed to a particular developer pursuant to agreements negotiated between developers and City departments (not the CDC). After the CDC approves a redevelopment area and plan and designates a specific developer, the City Council adopts an appropriate ordinance for the redeveloper to begin a bid process for the contractors, though the City is not a party to those contracts. The City monitors the work. A redevelopment project is complex. See Case No. 08030.A pages 1 through 3.

¹¹"The CDC and the redevelopment projects it approves – which come to comprise a myriad of contracts and agreements between the City and private entities, and between private entities and other private entities – are all creations of ordinance and authorized by the CDC and City Council under chapter 2-124 of the Municipal Code. Even though the CDC does not specifically approve a subcontract involving a carpentry firm that contracts with a general contractor that is identified by the designated developer in a CDC-approved development plan, that carpentry firm is, in the Board's judgment, paid 'with funds authorized by Ordinance,' in a project authorized by ordinance...Its authorization is carried out in accordance with its statutory mandate, and then the redevelopment plan, if approved by City Council, is adopted by City Council Ordinance. *But for* these approvals and ordinances, there would be no redevelopment plan, no redevelopment agreement, no TIF funding authorized by the project, and no retention of or payments made to any general or subcontractors, no reason for [the department] to monitor the M/WBE participation of subcontractors, and no reason for [the department] to monitor projects to ensure that they conform to the redevelopment plans. For these reasons, we conclude that the redevelopment agreements and TIF funding arrangements approved by the CDC, and all general and subcontracts issued to complete the projects contemplated by those agreements, constitute work or business of the City paid with funds belonging to or administered by the City, or authorized by Ordinance." Case No. 08030.A page 4. (emphasis supplied).

B. Does Your Ownership Interest Constitute a “Financial Interest?” You have a [majority]% ownership interest in Associates. Associates derived \$xxx,xxx.xx in revenue from its work through the [Agency] on projects for the Chicago Public [Facilities]. The Board has derived this figure by multiplying the percentage of Associates’ [facilities] work for Inc that you provided to Board staff – yy.yy% – by Associates’ total invoices to Inc, namely, \$x,xxx,xxx.xx. Confirming the mathematics consistent with the formula the Board announced in prior opinions, you have had an ownership interest in work or business of the City – *in the name of another*, namely, in the name of Associates – in the amount of \$xxx,xxx.xx. The Board concludes that you thus have had financial interest in City work or business, and still have this, as long as these contracts are in force.

The Board’s last inquiry is whether this City business is “wholly unrelated” to your [Institution] Board duties.

2. Is Your Financial Interest Wholly Unrelated to Your Service on the [Institution] Board? The [Institution] Board has certain statutory mandates, which are reflected in its Bylaws.¹² Among other things you said you do, as a [Institution] Board member, is to attend meetings about [facilities]; hear occasional presentations from [Agency] representatives at a[n] [Institution] Board meeting if the [Agency] plans to build a [facility]; vote on land acquisition for [facilities] to be built by the [Agency]; the [Agency] or [X] might report to the [Institution] Board at a meeting about the poor performance of a contractor in the construction of a [facility] building; as a member of a [Institution] Board committee you might decide to take the matter of land acquisition to the [Institution] Board; the [Institution] Commissioner may speak to both committees on which you have served about land acquisition, and ask for approval to acquire land so that the [Agency] can construct a new [facility], and that matter will be brought to the full [Institution] Board.

Thus, the Board concludes that the Sub-contract is not “wholly unrelated” to the work of the [Institution] Board. See Case No. 08030.A (appointed official who owned a company that would be a subcontractor on redevelopment that would come before his commission would have a prohibited financial interest because the subcontract would not have been wholly unrelated to the official’s City commission’s work); and Case No. 04015.CNS (appointed official who partly owned a firm that consulted on guidelines applying to projects that would come before his City commission had a prohibited financial interest in City work because the consulting contract was not wholly unrelated to the official’s commission’s work).

For all of these reasons, then, we conclude that you do have a financial interest in work and business of the City, in violation of §2-156-110 the Ordinance, by virtue of your ownership interest in Associates’ Sub-contract with Inc (effective [Date], 20__ to the present), through Inc’s Prime Contract with the [Agency], acting as the City’s agent in building [facilities] for the Chicago Public [Facilities] system using funds authorized by City Ordinance.

DETERMINATION: For the foregoing reasons, the Board determines that you have a financial interest in work or business of the City, in violation of §2-156-110 of the Ordinance, by virtue of your ownership interest in Associates’ Sub-contract with Inc from [Date], 20__ to the present.

The Board’s determination does not dispose of all the issues relevant to this 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 us immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply.

¹²See fn. 2.

RECOMMENDATION: As noted above, this case is governed by the Governmental Ethics Ordinance that was in effect prior to November 1, 2012.¹³ Under that version of the Ordinance, the relevant remedies that the City could pursue, and the sanctions it could impose, were:

§2-156-410. "Sanctions." Any official who... violates any provision of this chapter, shall be subject to removal from office; and

§2-156-440. "Other Remedies." Nothing in this chapter shall preclude the City from maintaining an action for an accounting for any pecuniary benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter."

We note that the amount of money Associates has received for services provided to the [Agency] on Chicago Public [Facilities] system [facility] projects is approximately \$xxx,xxx.xx. Further, we note our disappointment that no City officials or employees until just recently brought to our attention the fact that there might be an issue if a member of the City's [Institution] Board owns a company involved in the construction of City [facilities]. In light of the facts cited in this opinion, the Board has seriously considered its options for recommending appropriate sanctions, and recommends that: 1) you be removed from the City's [Institution] Board for violating the Ordinance; and 2) the Mayor's Office and the Law Department together consider the appropriateness of the City's other option, namely maintaining an action for an accounting and for pecuniary benefits you received through Associates' subcontracts on City [facility] construction projects.

We note, positively, that the Board of Ethics is developing training for all appointed City officials, and that constitutes an important step toward in the future avoiding problems like these.

The Board also recommends that the [Agency] itself (whose members are appointed by [an official], who serves [on it]) designate appropriate officials or employees to attend training conducted by the Board of Ethics so that when it administers any intergovernmental agreements with the City of Chicago to construct facilities for City departments or agencies, it administers them consistently with the City's Governmental Ethics Ordinance.

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.

Stephen W. Beard, Chair

cc: Lisa Schrader, Chief Operating Officer
Office of the Mayor

¹³ Governmental Ethics Ordinance Article VIII §4 eff. Nov. 1, 2012 ("Any violation of Chapter 1-156 or Chapter 2-164 of the Municipal Code of Chicago that occurs or that has occurred before the effective date of this ordinance shall be subject to the fines in effect at the time of such violation.")