



## BOARD OF ETHICS

### CITY OF CHICAGO

#### CONFIDENTIAL ADVISORY OPINION

July 12, 2021

City of Chicago

Chicago IL 606\_\_

**Re: Board Case No. 21022.A**

Dear :

On July 6, 2021, your office emailed our Executive Director a "Request for Finding of Governmental Ethics Ordinance Violation" ("Request"). Then, on July 8, 2021, after consultation with Board staff, [your office] emailed our staff a revised Request and cover email requesting that the Board expedite this matter, and if possible present it at the July 12, 2021 Board meeting.

The subject of the Request is City of Chicago employee E , a in the Department of ("D"). [Your office] requests that the Board issue an advisory opinion addressing whether E violated the City's Governmental Ethics ("Ordinance") based upon the facts presented in the Request. In response, the Board provides this advisory opinion.

#### FACTS

For years, E has owned and served as [officer] of a [special] business now known as [X] ("X"). E is the 70% owner and his spouse is the 30% owner. E (through X) invoiced the City for X's services. Services X has done pursuant to these invoices included [services and sale of goods] . Attached to the Request as Appendix A is an itemization of invoices to and payments by the City's Department of K ("K"). The earliest invoice from E has a date of [date]. The last invoice date is [date]. A non-itemized update from K records reveals that the City made further payments to E between [date] and [date], totaling [\$amount]. The itemization in Appendix A demonstrates that most City payments on those invoices were made from a City account denominated "[provisional account]" and some payments were made from accounts titled "[facilities]" or "[facilities and business]." In 2011, less than \$2,500 was paid by the City to X; in 2012 well over \$2,500 was paid; in 2013 and thereafter through the last invoice date of [date] well over \$1,000 was paid in each of those years.

[In the Request], E explained his [services or sale of goods] work for the City: "[a]n [City person] or secretary or staff member would call and say that they would reach out...if they need [services or goods]...[and] we could [work on] it or if there's a file on file, they have [service work performed]." He further explained that he has a "vendor number with the City." He stated that he, through X, invoices [City person] staff.

#### LAW AND ANALYSIS

There are several relevant sections of the City's Municipal Code applicable to the facts presented:

**Ordinance §2-156-110(a). Interest in city business**

Except with respect to the participation of Eligible Persons in Eligible Programs, 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; provided, however, for purposes of this subsection, any of the following shall not constitute a financial interest in any contract, work or business of the city: (i) compensation for property taken pursuant to the city's eminent domain power; and (ii) any interest of a relative which interest is related to or derived from the relative's independent occupation, business or profession.

**Ordinance §2-156-010 Definitions**

(1) "Financial interest" means an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000.00<sup>1</sup>, provided that such interest shall not include: (1) the authorized compensation paid to an official or employee for any office or employment; or (2) a time or demand deposit in a financial institution; or (3) an endowment or insurance policy or annuity contract purchased from an insurance company; or (4) any ownership through purchase at fair market value or inheritance of the shares of a mutual fund corporation, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; or (5) any ownership through purchase at fair market value or inheritance of not more than one-half of one percent of the outstanding common stock of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended.

**§2-8-050 Aldermanic expense allowance of the Municipal Code of the City of Chicago**

(a) Whenever the city council appropriates sums of money for aldermanic expense allowance, those funds are to be used for ordinary and necessary expenses incurred in connection with the performance of an alderman's official duties and subject to the restrictions contained in this section.

(b) Expenditures may be made from aldermanic expense allowance funds for any of the following purposes:

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(5) Publications and printed materials, including standard reference books, newspaper and periodical subscriptions, research materials and informational publications and brochures that may be useful to an alderman in the performance of his or her official duties;

(6) Stationery and office supplies...

The question is whether E violated §2-156-110(a) in years 2011-2019 by having a prohibited "financial interest" in City business by virtue of owning 70% of X during those years. Under relevant Board jurisprudence, for an employee to have a financial interest in City business, he or she must have an *ownership* interest in one or more City contracts, which the employee might have in direct contracts with the City, as an individual, "in his own name," or through ownership in a person or entity that has one or more City contracts, "in the name of any person" purportedly doing "business of the City."<sup>2</sup>

Here, E had a 70% ownership interest in X. As we have long recognized, the formula to determine a City employee's or official's ownership "interest" in a City contract (or subcontract) is to take the amount of the City contract, or payments from the City in a calendar year, and multiply it by that ownership percentage. If the resulting product exceeds the limit – now \$1,000 per calendar year, but \$2,500 or more for 2011 and 2012 – then the employee is in violation of the Ordinance. We explained this in Case No. 90077.A:

<sup>1</sup> On November 1, 2012 the Ordinance was amended to change the monetary amount from \$2,500 to \$1,000.

<sup>2</sup> See, e.g., Board Case Nos. 90077.A p. 3; 91052.A p. 3; and 93037.A p. 2; 12007.A-1; 12007.A-2.

Companies owned by City employees are also subject to this limitation [the \$2,500 threshold]. In such cases, the interest is measured in terms of the amount of the contract, work, or business pro rated by the percentage of the City employee's ownership in the company. This best represents the value of the contract, work, or business to the employee.

*Id.* p. 3. When we multiply the annual amounts paid to X by [the City], as shown in Appendix A, by E's 70% ownership, the product each year is well over \$2,500 (and also \$1,000) other than in 2011. Therefore, E had a prohibited financial interest in the name of X in the years 2012-2019 inclusive, in violation of the Ordinance.

We note here that §2-156-110(a) provides that, even if a City employee has a "financial interest" in a contract or work or business, that financial interest must be in a "contract, work or business of the city, or in the sale of any article, whenever the expense, price or consideration of [the foregoing list] is paid with funds belonging to or administered by the city..." Here, at various [City] offices' requests, X sold [goods] and services] and these [goods and] services were paid by the City as shown in [City] records, through Aldermanic Expense Allowance funds, authorized by §2-8-050 of the Municipal Code.<sup>3</sup>

**DETERMINATION** Accordingly, the factual record presented to us shows that, at all relevant times (2011-2020): (i) E was a City employee; (ii) was a 70% owner of X ; (iii) X supplied services and related goods to City aldermen; (iv) X invoiced the City for those goods and services; (v) the City paid those invoices almost totally from the "Aldermanic Expense Allowance" account, a City account; and (vi) except for one year, all total yearly payments to X multiplied by E's 70% ownership yielded at least \$2,500 to E personally each of those years.

Thus, we determine that, in calendar years 2012-2019 inclusive, E violated §2-156-110(a) of the Ordinance because he had a "financial interest" in "work or business of the City" "or in the sale of any article" and was paid for that business and those articles from "funds belonging to or administered by the City."

The Board notes here that the City has the authority to maintain an action for an accounting for any pecuniary benefit received by E through X in violation of the Ordinance and to recover damages for violation of the Ordinance. *See* §2-156-485, entitled "Other remedies."

Please also note that this advisory opinion is based entirely on the facts set forth in the Request. Should additional facts be brought to our attention, our conclusions and determinations could change.

## **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.

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William F. Conlon, Chair

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<sup>3</sup> In the Request, your office writes that E said he had contacted our office and spoke with a gentleman who told him that "what [he] had was not a contract so he did not report this on his 'ethics statements'." Our office has no record of E seeking such an informal opinion from us in the [relevant] years 2009-2012. In any event, a City employee may violate §2-156-110(a) even if there is no formal contract in place, but the employee or a person or business entity in which the employee has an ownership interest receives City money for work or business, as here.