

February 10, 2003

CONFIDENTIAL

[John]
City of Chicago Department [the Department]

Chicago, IL 60612

**Re: Case No. 03011.Q
Outside Employment**

Dear Mr. [John],

On January 28, 2003, you telephoned the Board of Ethics and asked whether the City's Governmental Ethics Ordinance prohibits you from accepting an offer of outside employment from [the Company], a private company, to teach, in Spanish, classes on the topic of lead removal procedures to prospective lead workers.

You are currently employed by the City's Department [the Department] as a lead inspector. In this position, you are responsible for inspecting property in the City to ensure that property owners comply with municipal laws pertaining to the removal and use of lead paint. Every year, [Department] staff inspect more than 3,500 buildings for the presence of potential lead hazards. These buildings include businesses, private homes, day care centers, and schools. Before the City will undertake an inspection, a complaint must be filed with the [Department]. You explained that most of these complaints are filed by hospitals, clinics, or individual doctors who have identified cases of lead poisoning in children. A small percentage of complaints are filed by other City departments, private citizens, and property owners.

Once a complaint is filed, you, or another [the Department] inspector, conduct an inspection of the premises in question. A report detailing the result of the inspection is sent to the property owner and the tenants. If you or another inspector find a violation, the property owner is given a fixed amount of time (generally 15 to 30 days) to fix the problem by removing the lead. Once the property owner verifies to the City that the lead removal work has been done, [the Department] inspectors return to the property to confirm that the lead has been removed and the violation corrected. If the property owner fails to fix the problem in a timely fashion, the case is referred to the City's Law Department for legal action. You stated that you are often called to testify in these cases on behalf of the City before the Department of Administrative Hearings. Your testimony is used to

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lead removal
wholly unrelated
money for advice*

establish that a violation exists and that the property owner has been directed to correct it and has not done so.

The City does not provide lead removal services or recommend companies that provide these services. Property owners retain private contractors to remove lead; these contractors in turn employ or sub-contract with lead workers. These workers are licensed by the State of Illinois following the successful completion of a written examination. Prior to taking this exam, prospective lead workers are required to attend a State-approved class on the proper procedures for the safe removal of lead. [The Company] is one of the organizations approved by the State to offer such classes, and has asked you to teach such a class in Spanish. This class will take place at the company's facility at [S. Street] on Friday nights. You anticipate teaching a class once every two to three months, depending on demand. You stated you will teach the class on your own time, and that you will not use City resources.

You stated that the main focus of the class will be the industry-wide techniques for the safe removal of lead. While City of Chicago lead standards and regulations will be covered in the class, such information is not confidential, and knowledge of these standards will not provide the workers who take your class with any unfair advantage. State and federal regulations will also be covered. You stated that you do not foresee any situations where you would make City decisions concerning the students who enroll in your class, although you noted that some of them may, at some point, undertake lead removal work in buildings you have inspected or may inspect in the future. Finally, you will not be providing any information to the students concerning the City's Administrative Hearings process; you also noted that it is highly unlikely that any of the students will be involved in a hearing in which you testify, as the parties to such hearings are the City and the owner of the property in question.

The section of the Ordinance most relevant to your situation is 2-156-050 (Solicitation or Receipt of Money for Advice or Assistance):

No official or employee, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

In Case No. 91103.A, the Board applied Sec. 2-156-050 to address a situation similar to yours. In that case, a City lead inspector asked whether the Ordinance prohibited him from teaching a class on lead inspection and abatement procedures to building contractors and their employees, employees of other government agencies, and students in university health programs. The Board determined that the City employee was not prohibited from teaching these classes, as the subject matter described (lead inspection and abatement procedures) did not constitute the "work or business" of the City within the intent of the Ordinance. In coming to its determination, the

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Board noted that the information the students obtained as a result of the employee's classes would not give them an unfair advantage in dealing with the City, and that there was no possibility that the employee would make decisions in his City job that would have a binding effect on the students with respect to City matters.

In your case, staff concludes, consistent with the Board's determination in Case No. 91103.A, that the subject matter of the classes (safe lead removal procedures), is not the work or business of the City, within the intent of the Ordinance. Rather, it is a trade skill common to the industry and which must be learned before the workers are licensed by the State. The class does not prepare the students to pass any City examination, apply for or receive any City license, or appear as a party in a proceeding before the Department of Administrative Hearings. You explained that there is a possibility that property owners who are required to remove lead from their buildings may hire contractors who employ persons who took your class. However, any decisions you make in your City job with respect to these buildings will not have a binding effect on these lead removal workers, as your decisions concern the owners of the property, not the workers they hire to remove the lead.

Therefore, based on the facts you have presented, and on the Board's determination in Case No. 91103.A, staff concludes that the students who take your class would not gain an unfair advantage in dealing with the City, and that you do not make decisions in your City job that would have a binding effect on the students with respect to City matters. Therefore, we conclude that the Ordinance does not prohibit you from teaching the class, as described in this opinion.

We also remind you of other provisions of the Ordinance that are relevant to City employees who perform work outside their City jobs. First, please note that a City employee who is paid to render services to another entity has an economic interest in that entity under the Ordinance. Sections 2-156-030 and 2-156-080, respectively entitled "Improper Influence: and "Conflicts of Interest," prohibit you, as a City employee, from participating in or trying to use your position to influence a governmental decision or action in which you have an economic interest. You are therefore prohibited from making, participating in the making of, or attempting to influence any City decision concerning Public Health and Safety, Inc.

Other sections of the Ordinance prohibit you from: 1) representing an outside person, such as Public Health and Safety, Inc., before any City agency, except in the performance of your official City duties (Sec. 2-156-090); 2) disclosing or using confidential information gained in the course of your City employment (Sec. 2-156-070); and 3) using City-owned property or resources for any private benefit (Sec. 2-156-060). Finally, under Sec. 2-156-020, you owe a fiduciary duty to the City, which requires you, while performing your public duties as a City employee, to give your undivided loyalty to the City and to place the City's interest before any obligation you owe to any outside employer.

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Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but is 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 opinion.

Other laws or rules may apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment. In addition, we remind you 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. 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. The Ordinance may be found on our web site at <http://www.CityofChicago.org/Ethics/>. If you have any further questions, please do not hesitate to contact us.

Very truly yours,

[Signature]
John H. Mathews
Legal Counsel

Approved by:

[Signature]
Dorothy J. Eng
Executive Director

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