



CITY OF CHICAGO

—★—
BOARD OF ETHICS

CONFIDENTIAL

Date

Name

Address

Chicago, IL zip

Re: Case No. 21023.Q / Outside/Secondary Employment

Dear [Name],

You contacted the Executive Director of the Board of Ethics ["Board"] by email on [date] to inquire whether you could take a part-time position [doing a certain type of work with Company ABC] at [Airport Y] and, if so, the restrictions to which you would be subject under the Governmental Ethics Ordinance ["Ordinance"]. In a second email sent later that day, you asked if you could work [in three other possible positions for the Company.]

You told us, and Board staff confirmed via the City's Department of Procurement Services website, that [Company ABC] does not have any contracts with the City of Chicago.

You have worked as a [position] for [City Department Z] for the past [_] years and [your work place has been Airport Y] for the past [_] years. You [described some of the work City Department Z does at Airport Y]. You also told us that [in the past you were qualified to do this type of work], but have never actually engaged in this type of work.

As we have concluded in this opinion, and as we explain, the Ordinance does prohibit you from taking a secondary position [doing the type of work City Department Z does at Airport Y, as well as the City's other airport, Airport X]), but it does not prohibit you from taking a position that is wholly unrelated to your work as a [job title for Department Z]. However, if you decide to pursue permissible secondary employment, you will be subject to certain restrictions. They are discussed below.

Legal Analysis.

As an initial matter, please note that our Board has long recognized that nothing in the Ethics Ordinance prohibits City employees from engaging in outside or secondary employment, although clear restrictions apply. Case Nos. 87026. A; 88078.A; and 01051.Q. Under the Ordinance, the restrictions placed upon you are:

1. Representation of Other Persons.

Under §2-156-090(a), you, as a City employee, are prohibited from “representing” or deriving or receiving any income or compensation from the “representation” of any other person other than the City (such as Company ABC) in any formal or informal transaction before any City agency, where the City’s action is non-ministerial (that is, where the action involves discretion on the City’s part.) The Board has interpreted the term “represent” to include a broad range of activities in which one person acts as a spokesperson for someone other than the City, and seeks to communicate the interests of that party, such as attending or speaking at face-to-face meetings, making phone calls, or signing documents submitted to a City department. This means that you could not communicate, by phone, in person, by email, etc. on behalf of [Company ABC] (or any outside employer) with other City employees or officials. *See* Case Nos. 90035.A and 97061.A.

We advise you that any “representation” you would undertake on [Company ABC’s] behalf before or with any City agency, department, official, or employee, in any City matters, would be perceived not as your actions in your official City capacity, but in your capacity as an employee for [Company ABC]. Thus, as we have with City employees in past cases, we advise you to refrain from engaging in any such communication or representation. *See* Case Nos. 07018.Q; 06037.Q; 93014.Q.

2. Fiduciary Duty.

Under §2-156-020, you owe a fiduciary duty to the City. As our Board and Illinois courts have recognized, this obligates you to discharge your duties as a City employee at all times in the City’s best interests, free from and uninfluenced by the duties you owe others. *See* Case Nos. 96032.A; 01053.A. Your fiduciary duty requires that you to use your City position responsibly and in the best interests of the public, and exercise your professional judgments and carry out your City responsibilities free from conflicting duties to outside entities. It also requires that, should an issue arise in which the City’s interests are adverse to or conflict with those of [Company ABC], or any other outside employer, you must resolve that conflict in the City’s best interests.

3. City-owned Property.

Section 2-156-060 of Ordinance prohibits City officials and employees from using or permitting the use of City-owned or City-leased property for anything other than its authorized purposes. “City-owned property” includes, among other things, City-issued computers, telephones, smart phones, vehicles, offices, letterhead—and your City title itself, the City seal, and your City business cards. They must be used carefully, to avoid misleading people into believing you are acting in your official City capacity in a personal matter or in connection with your outside employment. Accordingly, we advise that you not use your any City equipment, your City title, the City seal, or City letterhead when doing any kind of work for [Company ABC].

4. Money for Advice.

This provision, §2-156-142(f), prohibits you from accepting anything of value, such as compensation, or gifts from anyone other than the City, such as [Company ABC], for giving advice or assistance on matters concerning City business, if the matters are in any way related to your City work. The prohibition includes receiving compensation or anything else of value for giving even “behind the scenes” advice. Specifically, the Board has applied this provision to cases where, conceivably, City employees, in their outside employment, were benefitting by using knowledge that was not publicly available and was not “wholly unrelated” to their City duties and responsibilities. *See, e.g.,* Case No. 91103.A. This means that you cannot advise [the Company] on any matters that involve City Department Z or services it performs at either of Chicago’s airports.

5. Conflicts of Interest; Improper Influence.

Two sections of the Ethics Ordinance require that you recuse yourself from any matters pending before the City that involve your outside employer. Sections 2-156-030(a) and (b), “Improper influence,” and 2-156-080(a) and (b)(1) & (2), “Conflicts of interest, appearance of impropriety,” both prohibit you from making, participating in or in any way attempting to use your City position to influence any City governmental decision or action involving a person or entity (here, Company ABC) from whom or which you have derived any income or compensation during the preceding twelve months, *or from whom or which you reasonably expect to derive any income or compensation in the following twelve months.* See, e.g., Case No. 10005.A.

Further, because you would receive compensation from your secondary employment, in the 12 months following your receipt of your last payment from an outside employer, then, pursuant to §2-156-030(b), which is similar to the other restrictions, you would not be allowed to become involved in any City matters involving [Company ABC] (or any other outside employer), including matters pending before [Department Z], any other City department or City Council. This means you would not be able to inspect or certify [Company ABC’s] facilities and/or employees on behalf of [Department Z] for one full year after receiving your last payment from [the Company].

6. Confidential Information.

In addition, §2-156-070, “Use or Disclosure of Confidential Information,” prohibits you from using or revealing, other than in the performance of your official City duties, or as may be required by law, confidential or non-public information you have acquired through your City employment with [Department Z]. “Confidential information” here means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. Further, and similar to restrictions discussed above under “Fiduciary duty,” §2-156-060, “City-Owned property,” prohibits you from using any City property or resources, including your City business cards or City title, for [Company ABC].

7. Statements of Financial Interests – “FIS.”

As a City employee, you may be required to file annual FIS forms pursuant to §2-156-150(a) of the Ethics Ordinance. If so, you will be required to disclose your outside income from [Company ABC], beginning in the year after you start earning income from these sources.

Determinations.

Pursuant to the above Ethics Ordinance provisions, any work you do for [Company ABC] must be wholly unrelated to any work [Department Z] does at [Airport X or Y]. As {Department Z} is involved in [a particular type of work] at the airports, you cannot do [that type of work] for [the Company]. However, you would be permitted to work for [the Company] in positions that do not involve [Department Z’s] services, oversight, or regulation, such as [a particular type of work carried out by Department Z] provided you comply with the restrictions above.

Reliance.

Our conclusions and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this letter. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter our conclusions or advice. Please note, as well, that this opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Our office appreciates the opportunity to advise you, and your conscientiousness in seeking our advice. If you have further questions about this or any other matter, please contact us.

Sincerely,

Lisa Eilers, Deputy Director

Approved:

Steven I. Berlin, Executive Director