

ADVISORY OPINION

CONFIDENTIAL

March 1x, 20xx

Mr. [Jim Smith]  
[123] S. [Left] St.  
Chicago, IL 606[xx]

**RE: Case No. 10009.A**

Dear Mr. [Smith]:

You were a [mid-level manager] for the City of Chicago [Department you worked for (“DYWF”)]. You left City employment effective January 31, 20xx, and will soon work as a Project Manager for the [New Company] (“NC”), which has asked you to assist it in projects at the [Affiliate Agency] (“AA”), based in Chicago, Illinois. On January 29, 20xx, you asked for an advisory opinion addressing whether the City’s Governmental Ethics Ordinance restricts your work as a project manager, on behalf of [NC], for the installation of [equipment] for the Chicago [Sister Agency 1] (“CSA1”) and Chicago [Sister Agency 2] (“CSA2”).

As explained in this opinion, the Board has determined that the Ordinance’s post-employment provisions do not restrict you in work that [NC] has asked you to perform for it, namely, to be a project manager [performing certain functions] for [CSA1] and [CSA2]. The Board’s analysis follows.

**FACTS:** You began City employment as a[n] [employee] for the [DYWF] in [Month, 19xx]. In [Month, 20xx], you became a [mid-level manager] for the City’s [DYWF], after having served as acting [mid-level manager] for six years. You left City employment effective January 31, 20xx. You explained to staff that, as a [employee], you installed [equipment] on City-owned [property]. As a [mid-level manager], you [performed certain functions] on the installation of [equipment] performed by between 65 and 68 [DYWF] employees. You said that you were not involved with any [equipment] installation (on or off of City-owned property), did not participate in the negotiations with the vendors [(of the equipment)] for the installations which you performed (and subsequently were the [mid-level manager] over), and did not have any involvement in contract negotiations between the City and the [equipment providers].

Compatibility issues. You explained that Mayor Daley has a long-term goal of having all of the sister agencies’ [equipment] linked to the City’s [DYWF] and [Other City Department’s] (“OCD”) network. You said that while you were a City employee, your department heads attended meetings about integrating cameras owned by the [CSA1] and the [CSA2] and the City’s [DYWF] and [OCD] network, but you were not involved in those meetings. You said that you were informed of the [CSA1] and [CSA2] [equipment] installation projects because their [equipment] needed to be compatible with the City’s [DYWF] and [OCD] network, but you were not personally involved with any installation other than the [equipment] that went on City [property]. The City gave [CSA1] and [CSA2]

written specs regarding the [DYWF] and [OCD] system to insure that any [equipment] they install would be compatible with the City's network.

The [NC] would like you to be a project manager, [performing certain functions] for [CSA1] and [CSA2] [equipment] installation projects which those agencies are doing through the [AA]. You would be assigned to work with the [AA], which has hired the [NC] to provide project managers. Your duties would consist of [performing certain functions] for the [CSA1] and [CSA2].

You said that the City does not have any current, active involvement with the [NC] or the [AA]'s installation of [equipment] for sister agencies, or any other entity. The City has already provided written specifications regarding which [equipment] are compatible with its network, and the infrastructure is already in place. There are no meetings contemplated, or even needed, between the City and the [CSA1] and [CSA2] regarding the proposed installation projects on which you would be asked to serve as project manager. At this time, the [equipment] for [CSA1] and [CSA2] which will ultimately be linked to the City's [DYWF] and [OCD]'s network are not installed.

The relationship between the [NC] and the [AA]. You gave me permission to contact, and I subsequently spoke with [John Miller], of the [AA]. He explained that the [NC] provides project managers and project control people to the [AA] for budget, schedule, and quality control on projects they are contracted to perform. The [AA] has a staff of approximately 60 employees, and the [NC] has about 150 employees. Mr. [Miller] said, "the [NC] helps [AA] staff up, and when the need [on a particular project] goes down, the core [AA] staff stays in place."

Mr. [Miller] said that the [AA] is becoming the [equipment] provider for the City and its sister agencies. He explained that the [CSA1] has implemented a 4-year [equipment] program for 40 [locations]. The first step of the program was getting a proposal from the [equipment provider], and the first project in the program is for [equipment] installation in [one location]. The next step is meeting(s) between the [AA] and [CSA1] to craft a four-year program, designating how much money is allotted for [equipment] installation for each [location], and then putting together the final proposal for implementing the program.

The [AA] gives [the equipment provider] the design requirements for compatibility with the City's [DYWF] and [OCD]'s network. Mr. [Miller] said there are "no meetings [involving the City], no coordination [with the City], just a narrative design requirement description on paper." Mr. [Miller] said that the narrative design requirement description already exists, and the [AA] "uses it for all of their [equipment installation] projects."

Mr. [Miller] said that you would be the [NC]'s project manager, contracted through the [AA], managing the installation of the [equipment] for [CSA1]. According to Mr. [Miller], "100% of his [your] time would be on that program." The considerations involved with managing the installation of [equipment] are: [listed here]. Mr. [Miller] said that the [equipment] will link back to [CSA1] headquarters at [address], and from there, link to the [DYWF] and [OCD] network. Mr. [Miller] said "that infrastructure is already in place." You would [perform certain functions] regarding the installation performed by [NC] and [AA] employees.

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

Post Employment: To advise you, we will consider the facts you have presented in accordance

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with § 2-156-100(b) of the Ordinance, entitled “Post-Employment Restrictions.” It states, in relevant part:

**No former...employee shall, for a period of one year after the termination of the employee’s employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the...employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

Under the first clause of §2-156-100(b), you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including the [NC], or its parent, subsidiaries and affiliates) in any business transaction involving the City if you participated personally and substantially in the subject matter of that transaction as a City employee. You will be prohibited from assisting or representing any person in those transactions for one year, i.e., until January 31, 20xx, if they involve the City and you participated personally and substantially in their subject matter. In addition, you would be permanently prohibited from assisting or representing any person in a contract if, during your City employment, you exercised “contract management authority” with respect to that contract.<sup>1</sup>

The issue here is whether the one-year prohibition in §100(b) limits your prospective employment with the [NC] as a project manager, where you would be [performing certain functions] for the [CSA1] and [CSA2]. First, the Board concludes that this is a business transaction involving the City, because the sister agencies were given specs regarding compatible [equipment] and the [equipment] will eventually be linked to the City’s [DYWF] and [OCD] networks.

But the key question here is the next one: whether you participated substantially in the “subject matter” of this transaction during your City service. At first glance, it appears that you did. But, we note, the Board has, over the years, considered several cases in which it focused on the generic or “tradesman nature” of the services that a former employee has been asked to provide to a post-City employer or client in determining whether the one-year prohibition applies, even if the subject matter appears to be the same. The Board has applied this “trade skill” analysis when the services or work that the former employee has been asked to provide primarily involve the “occupational skills” of the employee’s profession, skills the former employee acquired through occupational education and training—not skills specific to the City of Chicago or its standards or particular requirements. See, eg., Case No. 91098.A. (former City employee was not prohibited from performing medical examinations on City employees, even though he performed the same kinds of examinations during his City service, because these tasks involved the “occupational skills of his profession, skills acquired through his occupational education and training,” and thus did not “fall within the intended meaning of the one-year post-employment provisions”). Similarly, in Case No. 06001.A, the Board addressed a post-employment situation in which a licensed electrician had spent much of his City career installing fiber optic cable in

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<sup>1</sup>The permanent prohibition is not at issue in this case, as the facts presented do not indicate that you exercised contract management authority with respect to any City contract involved with respect to the installation of [equipment] for [CSA1] and [CSA2].

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and for the City's network. The Board concluded that, although the facts there would have warranted a determination that the employee had participated personally and substantially in the subject matter of his potential new employer's transaction involving the City, application of the Ordinance's one-year prohibition was not appropriate, given the fact that the employee had little to no discretion or authority while in City service, and the skills were not uniquely or specifically related to his City duties or City-specific standards, and thus would not have been consistent with the intent of the post-employment provisions, which are, as we have previously stated, to prevent departing government employees from improperly trading off of their government experience while representing private interests with business before City agencies. See Case No. 89119.A, p. 7. (See also Case No. 04021.A (former City machinist was not prohibited after leaving City employment from maintaining the same machines he maintained during City employment); and Case No. 01051.A (work to be performed by two engineers for outside company was work for which they were qualified, based on their education and status as structural engineers, and the expertise enabling them to do this work was not uniquely or specifically related to their City duties or to any City-specific engineering standards or regulations)). The intent of the Ordinance's post-employment provisions is to prevent departing government employees from improperly trading off of their government experience while representing private interests with business before City agencies.

Similarly, in this case, a significant part of your City employment involved installing, then subsequently [performing certain functions regarding] the installation of [equipment] which needed to be compatible with the City's network. Here, as in the "trade skill" cases discussed above, the Board concludes that, though the facts provided would warrant the conclusion that you participated personally and substantially in the subject matter of your potential new employer's transaction—[performing certain functions regarding] the installation of [equipment] according to compatibility standards—we focus on the tradesman nature of your work during City employment, the relative lack of discretion or authority exercised by you while in City service and the intent of the post-employment provisions—preventing "revolving door" employment. It is therefore the Board's conclusion that applying the Ordinance's one-year post employment prohibition to restrict you from working as a project manager, installing [equipment] which need[s] to be compatible with the City's network, would not further the purpose and intent of the Ordinance's post-employment provisions.

Confidential Information: The Board also brings to your attention Governmental Ethics Ordinance §2-156-070, entitled "Use of Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

**DETERMINATION:** Based on the Board's analysis of the facts presented in this opinion under the Governmental Ethics Ordinance, the Board determines that the Ordinance's post-employment provisions do not restrict you in work that [NC] has asked you to perform for it, namely, to be a project manager [performing certain functions regarding] the installation of [equipment] for [CSA1] and [CSA2].

Our determination does not necessarily dispose of all the issues relevant to your situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated

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in this opinion. If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other rules or laws may also apply to your situation. We also note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

**RELIANCE:** This opinion may only 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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Bro. Michael F. Quirk, Chair *pro tem*