

**The Board of Ethics** adopted this following Memorandum as its Advisory Opinion in the matter. The Board's opinion is based on the facts set out in the Memorandum.

As with all Board opinions, the Board's opinion in this case is confidential in accordance with the provisions of the City's Campaign Financing and Governmental Ethics Ordinances—this means that the Board and its staff will not discuss this opinion or its underlying request for it unless it has the requestor's express waiver of this confidentiality.

**Reliance:** The opinion in the following Memorandum may be relied upon by any person involved in the specific transaction or activity with respect to which it is rendered.

## MEMORANDUM

To: Board of Ethics

From: Steve Berlin, Executive Director

Re: Case No. 10047.CNS, Post-Employment

Date: September 2, 2010

[HU, a former City employee] retired from [ ] years of City employment on [date] . He was last an Assistant to the [L], and before that for many years an Assistant [Y] in the Department of [I] . He now works in the sales side at [financial firm F]. He called on August 27 and asked whether the post-employment restrictions require him to wait a year before soliciting the four pension funds<sup>1</sup> on money management instruments. Both of his former managers, [L Department Head] and [I Department Head] (and in turn his predecessors) serve on these Boards; he doesn't know whether they are *ex officio* or are appointed. Any transaction between [F] and these funds, he said, would need to be approved by vote of the respective pension fund board. He said that it is not necessary that the pension board members consult with any City officials or employees regarding these transactions, and these transactions do not require City Council approval. He also said that the Municipal Employees' fund has as beneficiaries many employees of the Chicago Public Schools.

He said that, during his time in the [L] he attended meetings as [L's] assistant and helped [L] prepare for these meetings by going through the checklist of agenda items. He did not advise [L] on voting, and did not act as [L's] proxy when [L] was absent from meetings.

Under §§ 2-156-100(b) of the Ordinance, specifically the one year post-employment prohibition (it's clear that there would be no permanent prohibition were he subject to the post-employment restrictions, because any sale would constitute a new contract, over which he could not have exercised management authority while in City service), the threshold issue here is whether the transactions on which he would try to sell the funds on [F's] behalf are "business transactions involving the City." Note that the Board has already recognized that these four pension plans are created by state law, and thus are "state chartered agencies," not City agencies, and that the Board does not have jurisdiction over the four plans. See Case Nos. 87100.E; 89010.A; 93007.A; and 05040.A.

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1. These are the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, the Municipal Employees' Annuity & Benefit Fund of Chicago, the Firemen's Annuity & Benefit Fund of Chicago, and the Policemen's Annuity & Benefit Fund of Chicago.

The Board has one case that is directly relevant, Case No. 05040.A. It is a lobbying case: a potential lobbyist (a financial sales professional, just like Mr. [HU] ) asked whether soliciting the four pension boards would require him to register as a lobbyist. The lobbyist registration provisions of the Ordinance requires “lobbyists” to register; the definition of lobbyist in turn refers to a person attempting to influence “administrative or legislative action,” and the definitions of those terms, respectively, limit them to actions by an executive department of the City, or any matter to be submitted to City Council. Given the nature of the decisions made by members of the four pension boards, the Board determined that the financial salesperson was not required to register as a lobbyist by attempting to solicit these pension boards because the Treasurer and Comptroller, the two City officers with whom he would be communicating, were not, in the capacity in which he would be contacting them, performing “City action,” and neither of them “are authorized by the State enabling statutes to take any City action as members of the boards of the four pensions.” In short, the Board concluded that “action by Board members of the Four Pension Plans are not subject to the Governmental Ethics Ordinance, nor does activity ... before [them] trigger the City’s lobbyist registration requirements.”

Staff brings this matter to the Board’s attention, however, because the trigger for the post-employment provisions differs from the trigger for lobbyist registration. The relevant trigger in this case is whether the potential financial sales constitute a “business transaction involving the City.” Staff believes they do not, based in part on the Board precedent cited above, and the Board’s construction of the phrase “business transaction involving the City.” In Case No. 92035.A, a post-employment case, the Board expanded on the meaning of this phrase. It said that

the transaction need not be a direct one with the City, if the City’s involvement in the larger transaction is substantial, so that, for example, the transaction in which the former employee is acting is directed toward City action or its parameters are set by the City’s role. Further, under Board precedent, seeking a contract with the City is included within the meaning of “transaction involving the City.”

In that case, the Board determined that a former employee of the [(then) Department of BN] was prohibited for one year from assisting a new client in meetings designed ultimately to put together an RFP response to the City for the redevelopment of [a] building. In contrast to the facts in Case No. 92035.A, however, what would result here would be contracts of some or all of the pension funds, contracts to be decided and let by the funds’ managers themselves, and approved by the funds’ boards. There is no submission to City Council, no approval by any City employees or officials (acting as City employees or officials) required. Staff concludes that these transactions--just as they are not administrative or legislative action, are also not “business transactions involving the City” for purposes of the Ordinance’s post-employment provisions.

Staff requests that, at the September meeting, the Board approve these conclusions and direct it to advise Mr. [HU] accordingly, and redact this Memorandum as the Board’s opinion in the matter.