



L.M.U.

Advisory Opinion
Case No. 94006.A, Post-Employment

[REDACTED]
May 11, 1994

City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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On March 16, 1994, you left your position [REDACTED] with
Office B [REDACTED]

On March 21, you began full
time as [REDACTED]

[REDACTED] you have requested that
the Board of Ethics provide you with guidance with
respect to whether and to what extent your duties
with [REDACTED] might be restricted by the post-employment
provisions of the Governmental Ethics Ordinance.

[REDACTED] is a Chicago-based financial and management
consulting firm providing corporate and government
agencies with capital finance advisory services,
information systems development, and management
consulting services. Before joining [REDACTED] you worked
for the City for six years.

[REDACTED]

[REDACTED] Office A
It is your work with the [REDACTED] Office A
that requires analysis under the post-
employment provisions of the Ordinance.

Below we describe your positions with each City
department, your expected duties for [REDACTED] and our
analysis and conclusions.

Office B
FACTS: With the [REDACTED] Office B
you worked
on [REDACTED] In
this capacity, you were involved in arranging
financing for [REDACTED]
through special revenue bond issues. You were also
involved in awarding two major City contracts
associated with the Project [REDACTED]

[REDACTED] However, you state
that financing for [REDACTED]
[REDACTED] is complete. Moreover, you anticipate that
[REDACTED] will not be involved in either of these
contracts, as both are, you believe, outside the
scope of [REDACTED] business practice. Therefore you do
not anticipate being asked to assist [REDACTED] in any
matter related to work you performed while with the

[REDACTED] Office B



Office A

Rather, it is your work with [REDACTED] that requires analysis under the post-employment section of the Ordinance: specifically your use of the "central service costs allocation plan" developed for the Department of Finance [REDACTED] your new employer, is pursuing a contract to provide consulting services to [REDACTED] in updating that plan.

Office B

Before joining [REDACTED] you worked for several years in Office A [REDACTED]. In this capacity, you managed the City's [REDACTED], which estimates [REDACTED] and publishes [REDACTED]. To estimate City revenue, you were required to use figures generated by the [REDACTED] cost allocation plan.

You describe "cost allocation" as a branch of cost accounting. The City's cost allocation plan allows for systematic breakdown of the costs of operating particular City services, facilities, or programs ("central service costs") between each concerned administrative ("staff") and non-administrative ("line") department. The plan is used to estimate the percentage of central service costs that should be attributed or "allocated" to various City departments.

A significant part of the City's cost allocation plan involves production of the [REDACTED] [REDACTED] revises this study three times a year; it is designed to yield a cost rate multiplier for each department in relation to specific projects, programs, or facilities, such as the airports. These multipliers allow analysts in the Budget Office and Department of Finance to estimate the "indirect" costs of operating particular projects or facilities.

State and federal governments will reimburse the City for certain indirect costs chargeable to various City Departments from the operation of various facilities and programs for which it receives federal grant monies. However, before the City can become eligible to receive such federal or state reimbursement for indirect costs, it is required to use the services of an independent outside company, [REDACTED] to generate indirect cost multipliers.

[REDACTED] is one of the leading private consulting firms in this area of municipal finance. [REDACTED] has been under contract with the City Comptroller's Office since the mid-1980s to derive both the indirect cost multipliers and the allocation plan. The City's contract with [REDACTED] is long-term; representatives from [REDACTED]

_____ and _____ meet periodically to arrange necessary modifications and improvements.

You stated that while you were with the _____ Office A _____, you were not involved in awarding or renewing this contract with _____. Rather, your role was limited to using data from the _____. Specifically, you were responsible for calculating indirect costs associated with operating Chicago's airports, including salaries, benefits, and insurance for personnel from all City departments connected with them; and for estimating general overhead costs. You described yourself as a "user" of the cost allocation plan, namely, of the data supplied by the _____ over a period of several years. You stated that you were not involved in generating that data or in designing the plan or study that did so.

Additionally, in an April 4 letter to the Board, you stated that your only other involvement with the _____ cost allocation plan occurred during the City's dispute _____. You assisted in resolving this dispute by requesting and utilizing data from the cost allocation plan. Your involvement with the plan was, therefore, similar to your earlier use of the plan with the _____; that is, you were a "user" of the plan. Since this dispute was resolved two years ago, you have not been involved with the _____.

You stated that there is a "strong possibility" that _____ will hire _____ as a subcontractor to assist in the annual update of the City's central service costs allocation plan. You believe that _____ work would involve collection of data to be used in updating the plan, including contacting various City personnel involved with it. You have asked the Board to determine whether the post-employment provisions of the Ordinance would limit your activities in the event you are asked to assist _____ in this work.

While with _____ Office A _____, you were also involved in awarding _____ a sole source review contract _____. You explained, however, that this was an entirely separate transaction, with no relationship to the cost allocation plan. The _____ was designed for the purpose of adjusting City service fees, such as building inspection fees, to more accurately reflect costs. You believe this contract is now expired and, as far as you are aware, the software is available to the _____ but no longer used by it. In any event, you stated that _____ has nothing to do with this area, and you do not expect to be asked to assist _____ with any related contract.

LAW AND ANALYSIS: Section 2-156-100 of the Ethics Ordinance, "Post-Employment Restrictions," provides:

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or 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 official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Section 100(b) of the Ordinance prohibits you, for one year after leaving City service, from assisting or representing any person in a business transaction involving the City if you "participated personally and substantially in the subject matter of the transaction" while with the City. In addition, if you exercised contract management authority with respect to a contract, the Ordinance permanently prohibits you from assisting or representing any person with respect to that contract.

Your work with the [Office B] and the [redacted] fee schedule contract

As an initial matter, the Board finds that only your prior work with the [redacted] Office A in connection with the [redacted] cost allocation plan requires application of § 2-156-100. You anticipate that any work [redacted] might perform for either [redacted] or the City would not involve either of the various [redacted] projects on which you worked while with the [redacted] Office B [redacted], or [redacted] consulting work with respect to scheduling City service or inspection fees.

Thus, the Board concludes, based on your description of anticipated duties with [redacted] that your prior work on these matters does not appear to warrant application of the prohibitions in the post-employment provisions. However, the Board advises you to inform it immediately if your duties for [redacted] should change in a way that might involve the [redacted] or any other [redacted] contracts with the City.

Your work with the [REDACTED] cost allocation plan

Permanent Prohibition. The Board finds that the facts you described do not appear to warrant application of this prohibition of § 2-156-100(b). Your use of data generated by the [REDACTED] cost allocation plan did not involve you in exercising "contract management authority" over [REDACTED] City contract.

One-year Prohibition. To decide whether you are prohibited for one year from assisting [REDACTED] in connection with work on updating the [REDACTED] plan, we must address whether the assistance you would render to [REDACTED] in the [REDACTED] City transaction, as you have described that assistance, would involve a "subject matter" in which you were "personally and substantially involved" while with the [REDACTED] Office A [REDACTED].

You stated that any consulting work you or [REDACTED] might perform in connection with the [REDACTED] plan would involve updating and improving its capabilities. The subject matter of this work appears to be formulation and updating of the [REDACTED] plan itself--not the ultimate uses for data that the plan generates. You believe this work would involve contacting current users of the plan in various City departments in order to collect data.

You said that, in contrast, your involvement with the [REDACTED] plan while you were with the Office A [REDACTED] extended only to using the plan, not formulating it. You took data generated by [REDACTED] over several years-- [REDACTED]--and calculated what costs related to operation of [REDACTED] were allocable to various City departments. You stated that you had nothing to do with making any decisions about the formulation, programming, or operation of the plan (which has been handled through the Department of Finance), and nothing to do with the process of generating actual cost ratios or designing the configurations of data that determined these cost ratios. In this respect, your situation resembles that in Case No. 92038.A. There, a City employee supervised other City employees who verified contract information about various companies, including the employee's future employer, by calling up data on computer. The Board concluded that this work did not personally and substantially involve the employee in the subject matter of any transaction on which the employee's potential employer might ask the employee to work.

The Board finds that, as you have described your position with the Office A [REDACTED] you were not personally and substantially involved with the formulation or updating of the [REDACTED] cost allocation plan. Rather, you appear to have been involved in revenue analysis, i.e.

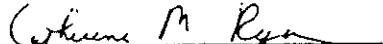
Office A

the work you did for the [REDACTED] generally, the end uses to which data generated by the plan were put. Your overall responsibilities for analyzing [REDACTED] including determining the indirect costs allocable to their operation and assisting the City in resolving a dispute related to [REDACTED] fund costs, required you, among other things, to use the figures and ratios generated by [REDACTED]. But this involvement was incidental, even though you gained some knowledge of the plan's operation by having used its results. Your purpose was to use the results the [REDACTED] plan generated, i.e. to draw conclusions from those results. The "art" of employing appropriate assumptions in order to allocate indirect costs of various projects or facilities between departments had already been executed by developers of the [REDACTED] plan by the time you performed your responsibilities.

CONCLUSION: The Board finds, from the facts you have presented, that while you were employed by the City, you were not personally and substantially involved in the subject matter of [REDACTED] proposed work with [REDACTED]. You are not, then, prohibited from assisting or representing [REDACTED] in this transaction "involving the City" as you have described it.

The Board reminds you of your continuing obligation, under §2-156-070 of the Ordinance, not to use or disclose to any party confidential information you have gained through your City employment.

RELIANCE: This opinion may be relied on by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.


Catherine M. Ryan
Chair

cc: Susan Sher, Department of Law
[REDACTED]