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Janice E. Rodgers

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TDD)

ADVISORY OPINION
CASE NO. 94022.A
POST-EMPLOYMENT

To:

Date: August 23, 1994

On July 22, you contacted the Board of Ethics seeking to know whether the post-employment provisions of the City's Governmental Ethics Ordinance prohibit you from assisting your new employer in a joint venture response to a Request for Proposals ("RFP") issued by the Department A

This RFP is for the redevelopment of certain sites in the Area B

The main objective of this RFP is the development of affordable single-family housing.

Our determination is that the one-year provision of the post-employment section of the City's Governmental Ethics Ordinance does not prohibit you from assisting your new employer in a joint venture response to this particular RFP. Our analysis of the facts presented as they relate to the Governmental Ethics Ordinance follows.

FACTS: You were employed by the City of Chicago in Department 1. You began your City work as

department merged with the Department 2 to become Department A a City employee in the X Division

In your work with the City, you were responsible for the redevelopment of commercial/retail projects in designated redevelopment districts within the City's neighborhoods.¹ Your work was limited to

¹ A distinct geographic area may become designated a redevelopment district by the Commission. Designations are either as a "Commercial District" or as a residential district, either as a "Conservation Area" or an "Urban Renewal Area."



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redevelopmet in commercial districts as a whole, or in commercial components of a residential district. You said that you did not undertake any redevelopment projects that were residential in nature. Also, you said that you did not undertake any commercial redevelopment projects in

Area B or in any of its immediately surrounding areas.

It was the task of ("the Commission"), a mayoral-appointed commission, to oversee development activities in all districts, including approving Plans, authorizing RFPs, and approving developers. The Commission met monthly in public meetings to do these things.

City employees in X Division served as staff for this Commission, among their other duties. A particular staff member *in X Division* might assist the Commission in the creation of RFPs or Plans, for example, insofar as the subject of the project was also the subject of her or his expertise. In your case, because your City work involved commercial projects, your involvement with and recommendations to the Commission were related to commercial projects. *X Division* staff routinely attended the Commission's monthly meetings.

The *X Division* met regularly for staff meetings. You said that these meetings took place on most Fridays, and were attended by anyone who was in the office that day. At these meetings, staff reported on their projects, including projects affecting the agenda of the Commission. No voting took place at these meetings.

On . . . , you began your current job as

This organization is a not-for-profit organization devoted to the development of affordable housing. Your organization would like to respond to the RFP for the redevelopment *of certain sites* in *Area B* in a joint venture with an equity limited partner and a for-profit experienced housing developer.

Area B is generally bounded by

The deadline for responses to the RFP is

The *Area B* RFP was issued on You said that ordinarily an RFP is reviewed by a departmental "internal review committee," composed of people from different divisions with expertise related to the

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particular RFP, which makes comments on the responses. The relevant division staff checks figures and makes a recommendation. The Commission makes the final selection of a developer.

You said that criteria for evaluating RFPs are relative to a particular RFP. The nine criteria by which responses to this RFP will be evaluated include: "1. conformance to [a] the requirements set forth in this Request for Proposals and [b] the Plan for Area B"; (2-3, 8) quality, economic feasibility, marketability, and affordability of the product; and (4-7, 9) capability and ability of the developer.

With respect to part (a) of the first criterion, the requirements of this particular RFP include such things as design and construction specifications, and compliance requirements such as affirmative action plan and ethics certificate. You said that you learned about this RFP from an advertisement in the newspaper after you left City employment, and you had heard nothing about it in any capacity in your work with the City.

Concerning (b) of the first criterion, the Plan for Area B contains a history of the area, community goals, the land-use plan, and responsibilities for development

You said that you had no involvement in the creation of the Plan. The Plan was created a few years after Area B was designated a conservation area (below). A mayoral-appointed neighborhood council of fifteen community residents assisted another City employee in your division and a few of her staff in preparing the Plan. The Plan was approved by the Commission at a public meeting and subsequently approved by the City Council. You heard general discussion about the Plan during weekly staff meetings, such as reports on how the community members felt about the Plan, and, because you were among X Division staff, you attended the public meeting during which the Commission approved the Plan; however, you said, this was the extent of your involvement with the Plan. You knew no particulars of the Plan before receiving the RFP specifications, except that it includes a commercial component.

Area B, for which the Plan was created, was designated in 19-- . The City began the community planning process for these communities in month 19-- . You stated that the Area B region (locality) was never considered to be anything but a residential district. You

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recall being recruited with members of other departments by the Department 2, to attend a "brainstorming/planning workshop" with community residents in Month 19--. (At that time you were in the Department 1. You said that your role in this workshop was as a "resource person" for commercial issues. You recall discussing with residents viable commercial components of the area, specifically This workshop was followed by an evening meeting you attended in Month 19-. You said that you had no subsequent involvement in the development of the district, and you engaged in no further discussions about commercial components of the district. As a residential area, Area B Conservation Area initially became the responsibility of City department H. It was moved to Department A when that department was created. Another City employee in your division was hired at that time to manage the residential districts brought over from the Department H, including Area B.

RELEVANT LAW AND ANALYSIS: Section 2-156-100 of the Governmental Ethics Ordinance, entitled "Post-employment Restrictions," states:

(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.

The post-employment section of the Ordinance contains both permanent and one-year prohibitions. The prohibitions limit a former employee's or official's activities in connection with business transactions or judicial or administrative proceedings involving the City.

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1. Permanent Prohibitions. Under the permanent prohibitions, you are permanently prohibited from assisting or representing any person, other than the City, in any proceedings in which you participated personally and substantially while with the City, and in any contracts over which you exercised contract management authority while you were in City service.

You stated that your involvement in proceedings and contracts was exclusively in relation to commercial districts and commercial projects, not with residential districts, such as the Area B Conservation Area. Additionally, you were not involved with any commercial projects within the Area B Conservation Area or its surrounding areas. Hence, it is our opinion that the permanent prohibitions are not at issue for this RFP.

2. One-Year Prohibition. Under the one-year prohibition, you are prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if, while a City employee, you participated personally and substantially in the subject matter of that transaction. Therefore, the Board must determine whether, during your City service, you participated personally and substantially in the subject matter of the business transaction at hand. That transaction is the response to the RFP to redevelop certain sites in Area B Conservation Area for affordable single-family housing.

To make this determination, we must consider first, the subject matter of this transaction, and second, whether you participated personally and substantially in that subject matter while you were a City employee. Therefore, three subject matters were considered: (a) the RFP itself, which could include the Plan to which it refers, (b) Area B and (c) residential development.

With respect to (a), the RFP itself, you stated that you had not heard any discussion about this particular RFP while you were in City employment. With regard to the Plan, to which the RFP refers, you stated that you had heard only general discussion by a City employee during her reports about the creation of the Plan during staff meetings in Area B. You also were present with other staff persons at the public meeting during which the Commission approved the Plan, as you were routinely present at the Commission's meetings. However, you stated that you knew nothing about the particular content of the Plan except that it included a commercial component. Because the RFP is for redevelopment of affordable housing--not for a project relating

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to the commercial component of the Plan--we do not construe your general knowledge about the Plan as personal and substantial participation in either the RFP or the Plan.

Concerning (b), you stated that during your City employment, you had essentially no involvement with Area B, including the certain sites to be redeveloped in that district. Specifically, you had no supervisory authority over Area B because it is a residential district rather than a commercial district. You also stated that you did not undertake or work on any redevelopment projects in Area B, nor in its surrounding areas. You were involved with Area B locality by virtue of being "recruited" to be present as a "resource person" for commercial issues at a "brainstorming/planning workshop" and a meeting with community residents during the development of Area B as a designated Conservation Area. You stated, however, that these "brainstorming" sessions were about possible redevelopment of potential commercial components. The RFP is for redevelopment of affordable housing in Area B not for a commercial redevelopment project relating to any of the areas discussed at these workshops. We do not construe your involvement with the area, which was limited to discussion of potential commercial redevelopment projects during the planning stages of the creation of Area B as personal and substantial participation in Area B.

Finally, concerning (c), you stated that you did not take part in any residential development projects whatsoever. The RFP is for development of certain sites for affordable housing--i.e. residential development. Thus the Board concludes that you did not participate personally and substantially in residential development.

We have concluded from these facts that you did not participate personally and substantially in these three subject matters of the transaction at issue. Therefore, from the facts presented, we conclude that you did not participate personally and substantially in the subject matter of the RFP for redevelopment in Area B's locality.

The other section of the Ordinance applicable to your situation as a former City employee is Section 2-156-070, entitled "Use or Disclosure of Confidential Information." We remind you of your continuing obligations under this provision, which prohibits former as well as current officials and employees

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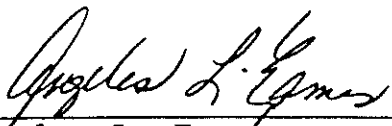
from revealing confidential information they may have acquired during the course of their City job.

DETERMINATION: The Board concludes, based on the facts as presented in this opinion, that you did not participate personally and substantially in the subject matter of the Request for Proposals for the redevelopment of certain sites in Area B.

Thus the one-year provision of the post-employment section of the City's Governmental Ethics Ordinance does not prohibit you from assisting your new employer in a joint venture response to this RFP.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation.

RELIANCE: This opinion may be relied upon 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.



Angeles L. Eames
Vice Chair

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