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ADVISORY OPINION
Case No. 96015.A - Post-Employment

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]
Date: [REDACTED]

Board of Ethics

Dorothy J. Eng
Executive Director

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Emily Nicklin
Fr. Martin E. O'Donovan
Bro. Michael F. Quirk

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

On March 11, you asked the Board of Ethics for guidance on how the City's Governmental Ethics Ordinance applies to you in your post-City job. You were a [REDACTED] Department O [REDACTED] employee and left City employment effective [REDACTED]. You have accepted a full-time position with [REDACTED] X [REDACTED], and seek a written advisory opinion on whether the City's Governmental Ethics Ordinance prohibits you from assisting it [REDACTED] in three (perhaps six) projects to develop [REDACTED] housing units [REDACTED] for the Chicago Housing Authority ("CHA") on specific locations within the City. This advisory opinion sets forth our analysis of the facts you presented under the relevant provisions of the Ethics Ordinance.

FACTS: Your City Work Generally. You began City employment in [REDACTED] 19- [REDACTED] as an employee [REDACTED] in Dept. O [REDACTED] and became [REDACTED] a different kind of employee [REDACTED] in [REDACTED] 19- [REDACTED]. You acted as a project manager, meeting with developers, evaluating their proposals in accordance with set and publicly announced Dept. O procedures, and helping to prepare documents submitted to various City agencies and departments. In about twenty development projects, you said, you also helped acquire or dispose of City-owned land for developments in designated areas. Procedures for acquiring and disposing of City-owned property are set and publicly announced.

Your Proposed Work for [REDACTED] X [REDACTED]. You have accepted a full-time position as a Development Manager with [REDACTED] X [REDACTED], a real estate development and management firm. In this position, you told staff, you expect to assist [REDACTED] X [REDACTED] in projects to develop housing units [REDACTED], primarily in three specific locations within the City.

[REDACTED] CHA and [REDACTED] X [REDACTED] plan to construct and manage housing units on sites located: (1) [REDACTED] in area A; (2) in area B; [REDACTED] and (3) [REDACTED] in area C.



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You said you have been asked to work on the team that will identify and acquire the parcels needed to complete these projects. You estimate that approximately twenty to twenty-five percent of the needed parcels are City-owned; the rest are privately owned. You said that you will also assist [redacted] X [redacted] in refining the overall design of each development. You estimate that you will spend two-thirds of your time participating on two [redacted] X [redacted] teams: the first will evaluate, present to CHA officials for their approval, and then acquire the privately-owned parcels needed, and the second will formulate the overall design for each project. The remaining third of your time will be spent working on the team that will identify, present to CHA officials for their approval, and then acquire the City-owned parcels needed. You believe your property acquisition work would include meeting with employees and officials from DPD, City Council Committees, and the Community Development Commission ("CDC"). You told staff that the City will likely review [redacted] X [redacted]'s development plans to the extent they require the sale of City-owned property and affect City-owned infrastructure such as streets and sewers, and to ensure that they conform to the land use requirements of any relevant area redevelopment or conservation plans maintained by the City.

You also said that you may be asked to participate in three other possible projects to develop [redacted] housing units in the City, namely [redacted] D [redacted], [redacted] E [redacted] and [redacted] F [redacted]. CHA and [redacted] X [redacted] are looking for locations in the City for additional [redacted] housing units, and may decide to develop them in these three areas. You anticipate that, if CHA and [redacted] X [redacted] move these projects forward, your work would be limited to "substituting" for members of the teams that will design units and surrounding areas and identify and acquire any City-owned parcels needed.

Your participation in these projects during City employment. You said that, while employed by O, you were not assigned to and did not perform work on any CHA development projects. You attended several staff meetings at which the status of CHA projects was discussed as an item on the agenda of matters pending before Agency L [redacted], and about six public L meetings, at which there was some discussion of CHA projects. You said you attended these meetings because of your responsibilities in other projects.

The [redacted] A [redacted] and [redacted] B [redacted] Projects. You said that the [redacted] A [redacted] and [redacted] B [redacted] projects are currently in the initial identification stage-- [redacted] X [redacted] and CHA have issued Requests for Proposals to architects and contractors, and no actual plans for the [redacted] housing units have yet been formed. [redacted] X [redacted] will soon begin to evaluate which properties it will need to acquire. You told staff that O maintains a conservation plan for the [redacted] B [redacted] area; the [redacted] B [redacted] development is located within this conversation area, and thus the project will have to conform to the

EMMS

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conservation plan's land use requirements. You said that you were not assigned to and did not review documents relating to any redevelopment projects in the [REDACTED] area (the geographic area covered by this plan), nor did you work on any aspect of the plan itself. You said that you are only vaguely familiar with the plan's requirements.

The [REDACTED] Project. You told staff that the [REDACTED] project is in the approval stage--CHA and [REDACTED] are formulating preliminary designs for the development, and the City has already agreed to sell ninety-nine parcels to [REDACTED] for the development. You anticipate that [REDACTED] will purchase more City-owned and privately-owned land. You said that, while with [REDACTED], you were not assigned to and did not review any documents in connection either with the development's design and acquisition requirements, or with the sale of the parcels to [REDACTED]. As with the [REDACTED] and [REDACTED] projects, you have general knowledge of the [REDACTED] development's status, which you gained through informal conversations with other [REDACTED] staff, by attending [REDACTED] staff meetings, and by attending a public meeting of the [REDACTED] at which [REDACTED] officials discussed the sale of the parcels to [REDACTED]. You said that you were present at this [REDACTED] meeting because of your responsibilities on another project.

Additionally, you said, [REDACTED] maintains the [REDACTED] redevelopment plan for the area around the [REDACTED] development sites, although only about 20% of the parcels that will be needed to complete the development actually fall within the area covered by this plan. You said that, while with [REDACTED], you worked on development projects within the area covered by this plan, but none involved any of the parcels needed for the [REDACTED] project, and all were located east of [REDACTED] Avenue, the eastern boundary of the [REDACTED] development. You also said you were involved in drafting two amendments to that plan: the first was to conform the plan to current actual land use; the second dealt with conforming the plan to the City's acquisition of parcels located away from the area of the [REDACTED] development project.

The Additional Projects: [REDACTED], [REDACTED], and [REDACTED]. You said that, while you were employed by [REDACTED], you not only were not assigned to and did not work on the three potential housing [REDACTED] projects in the [REDACTED], [REDACTED], and [REDACTED] areas, but were not assigned to and did not work on other [REDACTED] redevelopment projects in these areas. You also said that you knew of these potential developments through informal conversations with other [REDACTED] employees.

LAW AND ANALYSIS: Post-Employment Restrictions. The provision of the Ethics Ordinance most relevant to this situation is Section 2-156-100(b), entitled "Post-Employment Restrictions." It states:

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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.

This section imposes both a one-year and a permanent prohibition on certain activities of former City employees, such as you, after they leave City employment. It prohibits you, for one year following the effective date of your termination of City employment, from assisting or representing [REDACTED] or any other person in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment. "Assisting" or "representing" a person in business transactions involving the City encompasses helping a person to seek a contract as well as perform a contract. See Case Nos. 89119.A, 93035.A.

It also permanently prohibits you, as a former City employee, from assisting or representing a person in a particular contract if, while a City employee, you exercised "contract management authority" with respect to that contract. "Contract management authority," defined in §2-156-010(g), "means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance."¹

Permanent Prohibition. The facts presented do not warrant application of the permanent prohibitions to your proposed work for [REDACTED] X [REDACTED]. However, your description of your City employment indicates that you may have exercised contract management authority with respect to contracts that you do not anticipate being asked to work on, and may have participated personally and substantially in proceedings before, for example, the [REDACTED] or [REDACTED], that you have not been asked to work on. Thus, if you are asked to work on any projects not addressed in this opinion, we advise you to

¹ Section 2-156-100(a) also permanently prohibits you, as a former City employee, from assisting or representing any person, including [REDACTED] X [REDACTED], in any judicial or administrative proceeding involving the City or any City agency, if you participated personally and substantially in the proceeding during your City employment.

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seek guidance from the Board at that time, because you may be permanently prohibited from assisting or representing any person in contracts or proceedings associated with those projects.

One-Year Prohibition. In determining whether the Ordinance's one-year prohibition applies to your proposed work for [REDACTED] X [REDACTED] on these six CHA development projects, we have identified the business transaction(s) involving the City in which you would be assisting and representing [REDACTED] X [REDACTED]. Then, we have identified the subject matter(s) of those transactions, and, finally, decided whether you "participated personally and substantially" in the subject matter(s) of those transaction(s) during your City employment.

The business transactions involving the City. [REDACTED] X [REDACTED] has asked you to assist it in its CHA [REDACTED] housing work, namely, acquiring parcels and refining the overall design of each of these six [REDACTED] development projects. The City will be involved in this work by, for example, selling [REDACTED] X [REDACTED] some of the needed parcels and by reviewing both design plans for some of the units and proposed modifications to existing infrastructure such as streets and curbs.

The subject matter of these transactions. The purpose or goal of each transaction in which you will be assisting [REDACTED] X [REDACTED] is to acquire parcels in six specific areas of the City and to generate designs so the parcels can be developed into [REDACTED] housing units in those areas, consistent with the terms of all relevant redevelopment agreements. Following past Board precedent involving comparable facts (See Case no. 96001.A), we conclude that the subject matter of each "business transaction involving the City" on which [REDACTED] X [REDACTED] has asked you to work is the acquisition of parcels in each of these six areas of the City and their development into [REDACTED] housing units for the CHA.

Personal and Substantial Involvement. Based on the facts presented, it is the Board's opinion that, during your City employment, you did not participate personally and substantially in the acquisition of parcels in these areas or in the development of [REDACTED] housing units for the CHA. You stated that you were not assigned to and did not work on any aspect of these (or any other) CHA developments--including project design and identification and purchase of needed parcels. You were also not assigned to and did not review any documents for other [REDACTED] Q [REDACTED] projects located in the specific geographic areas where these developments will be built. Though you managed redevelopment projects located within the area covered by the [REDACTED] redevelopment [REDACTED] Plan (which encompasses a portion of the land involved in the [REDACTED] C [REDACTED] development), you did not work on and were not assigned to any aspect of the [REDACTED] C [REDACTED] project itself. Further, none of your work on these redevelopment projects or on amending the plan itself concerned property to be used in or located near the [REDACTED] C [REDACTED] development. And, while you did

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have general knowledge of these six [REDACTED] X [REDACTED] /CHA projects and their status while employed by [REDACTED] O, we have recognized in past cases that certain City employees whose knowledge of pending projects has come only through informal conversations and staff meetings have not participated personally and substantially in the subject matter of the projects. See Case nos. 96001.A, p. 5; 94022.A, pp. 5-6.

Finally, you did work with [REDACTED] O's procedures for evaluating development proposals and acquiring and disposing of City-owned property. But you performed this work in connection with development projects other than the six in which you will be asked to assist [REDACTED] X [REDACTED]: you did not, during your City employment, work with these or any other [REDACTED] O procedures in connection with any CHA projects, including the six projects for development of [REDACTED] housing units in these six areas.

Thus, although you worked with [REDACTED] O's evaluation and property acquisition/disposition processes in other transactions, and were familiar generally with the CHA/[REDACTED] X [REDACTED] housing developments, the facts presented indicate that you did not participate personally and substantially in the subject matters involved in the transactions in which [REDACTED] X [REDACTED] has asked you to assist and represent it.

However, your description of your City employment indicates that you may have participated personally and substantially in the subject matters of other business transactions and projects that you do not anticipate being asked to work on. Thus, if you are asked to work on any projects or business transactions involving the City that are not addressed in this opinion, we advise you to seek guidance from the Board at that time, because you may have participated personally and substantially in their subject matter, and thus the one-year prohibition may restrict you from assisting or representing any person in them.

Confidential Information. The Board also advises you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from using or disclosing confidential information you have acquired in the course of your City employment.

DETERMINATIONS: On the facts presented, the Board determines that the Ordinance's permanent prohibition does not restrict you from assisting or representing [REDACTED] X [REDACTED], or any person, in the six projects for the development of [REDACTED] housing units for the CHA on which you have been or may be asked to work, namely, A, B, C, D, E, and F. [REDACTED]

Additionally, the Board determines that you have not participated personally and substantially in the subject matters of the business

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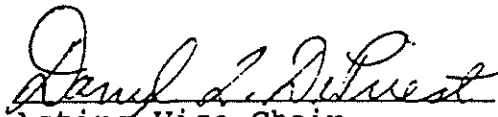
Case No. 96015.A
August 22, 1996
Page 7

transactions involving the City in these six [redacted] housing developments on which you have been asked to assist [redacted] X [redacted]. Therefore, the one-year prohibition of §2-156-100(b) does not restrict or prohibit you from assisting or representing [redacted] X [redacted] or any other person in these business transactions.

Finally, the Board advises you that, if you are asked to assist or represent [redacted] X [redacted] or any other person in proceedings, projects or business transactions involving the City that are not specifically addressed in this opinion, you should seek the Board's guidance, because the Ordinance's one-year and permanent prohibitions may restrict your participation in them.

Our determinations in this case are based upon 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 determinations. 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.


Acting Vice Chair

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