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EMWS

ADVISORY OPINION
Case No. 97062.A, Post-Employment

To: [REDACTED]
Date: January 14, 1998

On December 17, 1997 you asked the Board of Ethics for an advisory opinion on how the City's Governmental Ethics Ordinance applies to your post-City employment. You left your position as [REDACTED] (administrator) in the City's Department A [REDACTED], effective January 9, 1998, and are now the [REDACTED] (Administrator) [REDACTED] at the [REDACTED] (Illinois Company) [REDACTED]. Based on the facts presented in this opinion, it is our opinion that, while the post-employment provisions of the Ordinance apply to you with respect to the duties and responsibilities you performed during your City employment on [REDACTED] (concern) [REDACTED] in the City and related financing, they do not prohibit you from undertaking the particular post-employment activities with IL Co. that you described to us.

FACTS: Your Background and City Employment. Before joining the City in 1991, you were an investment banker and also worked for U.S. City [REDACTED], in both positions specializing in the underwriting and financing of [REDACTED] (concern) [REDACTED]. In April 1991, you became [REDACTED] (Manager) [REDACTED] in the City's Dept. A [REDACTED]. You managed a unit that administered the awarding of federal [REDACTED] Tax Credits to developers of [REDACTED] (concern) [REDACTED] (of certain types) [REDACTED]. This included reviewing federal regulations, putting into place departmental administrative procedures, conducting financial analyses of tax credit requests, and making recommendations regarding tax credit allocation to the department's internal Loan Committee. After developments were completed, your unit reviewed final cost figures for compliance with the regulations of the public agencies involved, such as the Internal Revenue Service and the Illinois Dept. X [REDACTED].

In June 1992, you became the department's [REDACTED] (administrator), for Program Development, where you managed the division that created [REDACTED] (concern) [REDACTED] programs and policies, performed financial analyses of specific proposals and worked out technical financing mechanisms to finance [REDACTED] (concern) [REDACTED] in the City. Your division's work included identifying funding sources, including federal grant programs, private banks, City Corporate funds, and federal and state tax and bond programs. This required knowledge of



the federal [redacted] tax credit programs, Community Development Block Grant funds and state [redacted] revenue bonds, and application of these programs to specific demographic factors. Your division then drafted program guidelines consistent with restrictions of the funding source (such as on eligibility of participants based on income level, construction requirements, and how long properties had to be open to low-income residents). All new programs your division created required approval by City Council. Other divisions within the Dept. A [redacted] managed the programs, except that your unit retained oversight of demonstration programs, certain programs through which non-profit developers received seed money for developing [CONCRETA] [redacted], and programs through which non-profit organizations created [redacted] job training programs, such as in construction and property management.

All the programs on which you worked during your City employment, you said, related to the development or financing of [CONCRETA] [redacted], specifically, financing of [redacted], subsidies for [redacted], rehabilitating vacant buildings for [redacted], and [redacted].

Your New Employer and Position. Your new employer, the IL Co. [redacted], is a non-profit organization that makes direct loans to non-profit social service agencies throughout Illinois. Its loans are for development and construction of physical facilities. The Co.'s [redacted] clients include charter schools, childcare centers, community health care providers, and residential special care facilities. [redacted] seeks and then lends funds from private foundations, banks, and federal and state governmental sources. To your knowledge, [redacted] lends City money to certain social service agencies, although such monies constitute less than 10% of the [redacted] available lending resources. And, you said, City departments such the Department of Human Services administer loans for operating funds to some of the same social service agencies that receive loans from [redacted] for facilities development and management. But [redacted] is not and has no intentions of becoming involved in lending for either the development, construction or management of [CONCRETA] [redacted], or for job training. The Co. [redacted] also consults with social service agencies on their fiscal operations, and on developing and managing new service facilities.

To your knowledge, [redacted] has only one current contract with the City Dept. A [redacted]; it is to evaluate the Not-for-Profit Facilities Rehabilitation program. Under this program, the department provides federal Community Development Block Grant funds to not-for-profit organizations for improvements to their facilities. Pursuant to this contract, [redacted] reviews grants and advises the department with respect to federal funding guidelines. You said that during your City service, you had no connection with

the design or administration of this program, or with **the Co's** contract to evaluate its operation.

You will become **the Co's** Director of [redacted]. You expect to assist **the Co.** in locating new loan resources, including governmental programs, insurance companies, private foundations and other businesses, and then help put together and administer loan packages made by **the Co.** You believe this might involve working with the City's **Dept. B**, as **the Co.** might extend loans to social service clients as part of a package together with funds granted by the **Dept. B**, or perhaps other City departments. You stressed that your work will be in the area of facilities development financing for social service agencies, not in the financing of or programs related to the development of **[concern]**.

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

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.

We first note that these restrictions do not limit where or for whom you, a former employee, may work, but rather, they limit what you may do for your new employer.

Section 100(b) prohibits you, as a former City employee, for one year after the date you left City employment, from assisting or representing any person in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during City employment. "Representation" covers a broad range of activities in which one person acts as the spokesperson for another, including making appearances before City agencies on behalf of non-City parties, contacting City officials by phone or letter on behalf of others, and signing petitions and proposals submitted to City agencies for review. This section's prohibition against "assisting or representing" a person in any business transaction involving the City encompasses helping a person to seek as well as perform a contract. See Case Nos. 89119.A, p. 8; 92035.A, p. 6.

Section 100(b) also permanently prohibits you from "assisting or representing" a person with respect to a contract if, during City employment, you exercised "contract management authority" with respect to that contract. "Contract management authority" is defined in §2-156-010(g) as "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."

One-Year Prohibition. Your work as a City employee related to the subject matter of development of [concern] ██████████ in the City, and the creation and administration of financing programs for [concern] ██████████. You said that you do not expect your post-City position with the Co. ██████████ to entail business transactions involving the development or financing of [concern] ██████████, but rather, to be solely in the area of financing for facilities development. As long as that is the case, the one-year prohibition does not restrict the post-employment activities you have described with the Co. ██████████, as they involve what the Board concludes to be a different subject matter: namely, facilities development financing for social service agencies. If within one year of leaving City service, however, you are asked to participate in any business transaction concerning [concern] ██████████ programs in the City or related financing mechanisms, we advise you to return to us at that time for guidance, as the one-year prohibition may prohibit you from involvement with those transactions.

Permanent Prohibition. Based on the facts presented in this opinion, the Board concludes that you did not exercise contract management authority on any City contracts associated with the [Co.]. However, your description of your City work indicates that you may have exercised such authority with respect to other contracts on which you do not anticipate being asked to work. Thus, the Board advises you that, while the permanent prohibition does not apply to the work you anticipate performing for the Co. ██████████, you should seek further advice from the Board if you are asked to work on any contracts resulting from specific [concern] ██████████ development projects or transactions that were considered by or involve the City Dept. A ██████████, as this permanent prohibition may apply to those contracts.

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

Our determinations in this case are based on application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please

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notify the Board immediately, as any change may alter our determinations. Other laws or rules also may apply to this situation.

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

A handwritten signature in cursive script, reading "Darryl DePriest".

Darryl DePriest, Chair

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