

EMUJ



City of Chicago
Richard M. Daley, Mayor

CONFIDENTIAL

December 29, 1993

[REDACTED]

Board of Ethics

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

Re: 93047.Q
Representation of a Fellow Employee

Dear [REDACTED]:

You work as the [REDACTED] with the Department of [REDACTED], and will become a Level II Officer as of January 1, 1994. On December 16, 1993, you phoned our office after conferring with your supervisor. You asked whether the City's Governmental Ethics Ordinance prohibits or limits you from assisting a friend of yours, who also works in the Department of [REDACTED], in contesting or appealing a reclassification he has received in his employee performance rating. On December 28, 1993, you advised our office that you have decided not to assist your friend in his appeal in any way. But you did request whatever general guidance we could provide you for future situations. While we hope you find our conclusions helpful, please understand that any changes in material facts in possible future situations may alter our conclusions, and that our analysis and conclusions are necessarily limited to the facts stated in this letter.

Your friend's reclassification resulted from an audit of his work, which showed that the level of work he is performing is actually Grade [REDACTED], rather than Grade [REDACTED], his current classification. Under the City's Personnel Rules, that reclassification would result in a 15% pay cut if and when it becomes effective. Your position with the Department of [REDACTED] has involved you in, among other things, reviewing statements prepared by employees contesting or appealing reclassification, though your friend's situation is the first time this type of reclassification has arisen in your Department. You regularly review statements and documents with respect to reclassification resulting from disciplinary action. You believe that, as of January 1, 1994, in your new position level you would likely be called upon to review documents and participate in procedures relating to reclassifications such as your friend's.



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After we reviewed the circumstances as you described them, we concluded that the Ordinance would not specifically have prohibited you from advising or assisting your friend in preparing his appeal or any connected statements. It would, however, have imposed restrictions severely limiting both the advice and assistance you could have given him, and certainly would have prohibited you from receiving anything of value in return for any advice or assistance you might have rendered.

This letter analyzes the relevant provisions of the Ordinance and explains the restrictions to which you would have been subject if you had chosen to advise or assist your friend. We remind you, however, that we can review and advise you only with respect to the City's Ethics Ordinance. There may well be other City Rules or Policies that would have limited you.

Specifically, three sections of the Ethics Ordinance would have limited your proposed activity. First, § 2-156-050 of the Governmental Ethics Ordinance, entitled "Solicitation or Receipt of Money for Advice or Assistance," states:

No official or employee, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee, or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

This section prohibits a City employee or official from accepting anything of value in return for advice or assistance on matters concerning the City's operation or business. Under it, then, you could not have accepted anything for advising or assisting your friend.

Second, § 2-156-090 of the Governmental Ethics Ordinance, entitled "Representation of Other Persons," states, in relevant part:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing

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without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

The purpose of this section is to prohibit City workers from using their City positions, or the "inside expertise" they have derived from their positions, to influence or affect any governmental decisions or actions, unless this representation is one of their official City responsibilities. The Board has construed the terms "representation" and "represent" to mean acting as a spokesperson for another person or seeking to communicate and promote the interests of one party to another. Representation includes actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and signing or submitting statements or other documents to City agencies, employees or officials on behalf of others. Case no. 91072.A.

This provision of the Ethics Ordinance would have prohibited you from "representing" your friend (who is not the "City"), in the broad sense described above, before any City Department, and from signing your name to any documents he might submit. Because you have developed a certain expertise in matters similar to those about which your friend has asked for your assistance, and believe that, after January 1, 1994, you will probably become involved in the same types of matters in your new position level, you would have needed to exercise extreme caution before and while taking any action that may have resulted in even the appearance to others that you were representing him in this matter.

Third, § 2-156-070, "Use or Disclosure of Confidential Information," would have prohibited you from using or revealing confidential information acquired through your position as [REDACTED] with the Department of [REDACTED] to benefit your friend. (The Ordinance defines "confidential information" as information that may not be obtained under the Illinois Freedom of Information Act, as amended.) This would have become critically important in light of the fact that you believe that you will likely be asked to become involved in the very type of reclassification your friend will be appealing. Assisting your friend in such circumstances would have been practically quite difficult, as it would likely have put you in the position of having to divulge and/or use knowledge you will have gained only

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because of your City position, and almost certainly would have created the appearance that this is the case--even if the information is not truly "confidential."

Finally, as our conclusions are necessarily limited to an application of the Ethics Ordinance, we urge you to discuss your plans with senior Department of [REDACTED] personnel to determine whether any assistance you wish to give in this instance--or any other--would violate any other Rules or Policies of the City.

Our conclusions in this matter are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter, and limited to them. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in these facts may alter our conclusions.

We appreciate your calling us about this matter, and your willingness to abide by the standards of the Governmental Ethics Ordinance (a copy of which we enclose for your reference). Please don't hesitate to call me if you have any other questions or need future guidance.

Yours Very Truly,



Steven I. Berlin
Deputy Director

approved:



Dorothy J. Eng
Executive Director

enclosures

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