

EMWS



April 27, 1995

CONFIDENTIAL

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Re: Case No. 95009.Q

Dear :

As you know, our office received several inquires relating to an offer made by **Company B** to City employees for reduced rates on systems. After reviewing the facts and circumstances of the offer, staff concludes that although it is not in itself a violation of the Governmental Ethics Ordinance, because of appearances and the likelihood that a violation will result, **B** should withdraw its offer when contacted by City employees responding to it. Our conclusion and recommendation is based on Subsections (b) and (c) of 2-156-040 of the Governmental Ethics Ordinance and is consistent with current Board policy. The facts and the analysis that form the basis of our conclusion are set forth below.

FACTS: In a letter you signed, dated March 17, 1995, **B** offered a discounted rate for City employees wishing to purchase systems. The offer was for a discount of \$50.00 on installation (for a total of \$ rather than \$) and for \$2.00 per month off the fee (\$ rather than \$ monthly).

Approximately 30 letters of offer went out to certain departments; each was addressed personally to a particular individual. When contacted by Board staff, an agent of your company stated that **B** mailed letters of offer to contacts in departments it deals with and to some deputy commissioners that one of its employees, a former police officer, knows. She confirmed that **B** provides services for the City.

The letter of offer declared that **B** made the offer "[i]n an effort to show our



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appreciation to the City of Chicago." In fact, included among addressees of the letter are employees in departments with which ^B has contracts. According to our records, ^B has contracts with the following departments: Revenue, General Services, Consumer Services, Sewers, and Health.

Although ^B mailed letters of offer to particular individuals in particular departments, including departments with which ^B does business, the offer appears to be open to a broader population. Enclosed with each letter was a flier advertising the offer for "all City employees." Letter recipients were asked to post the enclosed flier in order "to help everyone in your department take advantage of this special offer." An agent of your company confirmed that the offer is open to all City employees.

You stated in a telephone conversation that the same offer has been made to other groups of employees; you said that ^B only gears the offer toward companies with which it does business. In a letter to this office, dated March 31, you said that "[t]he sales memos are directed at providing a group of corporate employees a special corporate rate." Others who have been offered this discount include employees of Alberto Culver, Helene Curtis, Illinois Currency Exchange Commission, Gottlieb Memorial Hospital, and Chicago Historical Society. You said you viewed this offer as a "marketing tool." You noted in your March 31st letter that "our marketing costs and costs associated with delivering these types of services are greatly decreased when we can offer them as a group."

LAW AND ANALYSIS: The Governmental Ethics Ordinance establishes ethical standards to assist persons in City government in avoiding conflicts of interest, impropriety, and the appearance of such. These standards, as stated in the provisions concerning offers made to City employees, are to assure that (1) no person who is interested in City business gives gifts to (or otherwise improperly influences) City personnel who can affect that business, and (2) no City employee or official uses public office for private economic benefit. In particular, Subsections (b) and (c) of Section 2-156-040 of the Ethics Ordinance, entitled "Offering, Receiving and Soliciting Gifts or Favors," state:

(b) No person shall give or offer to give to any official, employee, or City contractor, or the spouse or minor child of either of them, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future

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employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a non-monetary gift having a value of less than \$50 does not involve such an understanding.

(c) No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50) provided, however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

We shall first consider the meaning of Subsection (b) in detail and then turn to Subsection (c).

In relevant summary, Subsection (b) prohibits any person from giving gifts or benefits of any kind on the basis of a mutual understanding--explicit or implicit--that such benefits will influence official actions of the employee or official. Likewise, employees and officials are prohibited from accepting them.

Whereas gifts and favors are restricted under the Ordinance, sales promotions are acceptable. A "gift" is defined by the Ordinance as "anything of value given without consideration or expectation of return" (Section 2-156-010 (m)). The Board has determined that the criteria of a "sales promotion" are the following: (1) the offer is extended to the public or a market of similarly situated persons, and (2) the purpose of the offer is to create a sale and/or to expand business, not to affect City decisions (Case no. 93015.A).

We cannot conclude that the offer is a "sales promotion," as defined, for the following reasons. First, this offer is not available to the public generally. Second, this offer is not made to a market, that is, to potential purchasers selected by market criteria, but only to those who are employed by companies with which ^B does business. That is not a "market" under Board precedent. Two examples of an acceptable "market of similarly

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situated persons" are (1) all persons living or working within a particular geographic area (Case no. 94015.Q) and (2) all companies having more than a certain number of employees (Case no. 95012.Q). If a company makes an offer only to individuals identified by the company's existing business dealings, then the offer is more likely to be perceived as a gift and not a sales promotion. The intent of the Ordinance provision on gifts is that no offer for personal benefit should be linked to City business: either as a gift resulting from City business or a solicitation for future City business. Thus, because the offer is neither available to the general public nor to an appropriate market of similarly situated people, the offer does not appear to meet the first criterion of a sales promotion. Third, the fact that the letter of offer expressly states that the discount is offered "in an effort to show our appreciation to the City of Chicago" and that it was sent only to known employees in certain City departments indicates that the offer was made, at least in part, in return for City business, and thus to affect City business, rather than solely to create individual sales or expand business. This supports a conclusion that the offer is not solely a sales promotion.

The Board of Ethics has consistently advised all employees and officials not to accept gifts of \$50 or more offered by any person with an actual or potential interest in City business with the recipient's department. When an employee or official makes a decision about City business concerning a company that has made an offer to employees, that decision should be free from even the appearance of impropriety concerning a mutual understanding. See, for example, Case no. 91046.A. Language such as, "in an effort to show our appreciation to the City of Chicago," at the very least helps create such an appearance.

In the discussion so far, staff has recognized the following two difficulties with the offer: (1) the facts and circumstances do not clearly support the conclusion that the offer is a sales promotion, and (2) it creates an appearance of mutual understanding if employees who accept the offer make decisions involving

If the offer is not a sales promotion, but a gift, the provisions of Subsection (c) also come into play. Subsection (c) prohibits any person who has an economic interest in City business from giving any gift (other than an occasional one of nominal value) to an employee or official that is in a position to substantially affect that City business. Likewise, City employees and officials are prohibited from accepting such gifts.

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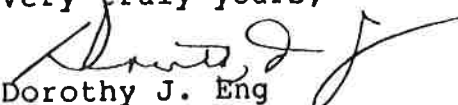
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Because **B** has City contracts, it has an economic interest in City business. The people who can substantially affect **B's** City business are certainly those who **B** deals with--the ones to whom the offer was personally addressed. In addition, the Board recognizes that the ability to substantially affect City business may extend beyond those with direct decision-making authority (Case no. 88046.A).

Under the provisions of Subsection (c), this **B's** offer would be permissible only for City employees and officials who are not in a position to substantially affect **B's** business with the City. However, the facts of the case are such that the people who received notice of this offer are employees of departments that **B** does business with or "deals with," and who are therefore likely to be in a position to substantially affect **B's** City business.

Based on the foregoing, we recommend that **B** withdraw its current offer if contacted by employees responding to it. The attached letter has been forwarded to the departments that inquired about the appropriateness of the offer. We appreciate your concern and co-operation in this matter. If you have any questions regarding this or any other issue, please do not hesitate to contact us.

Very truly yours,


Dorothy J. Eng
Executive Director

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cc: Susan Sher, Corporation Counsel