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CONFIDENTIAL

December 6, 2010

Commissioner [REDACTED]  
Chicago Department [REDACTED]  
[REDACTED]  
Chicago II [REDACTED]

Re: Case No. 10062.CNS

Dear Commissioner [REDACTED]

Thank you for your letter dated November 30, 2010, which we have given the case number 10062.CNS. On behalf of myself and Richard Superfine, my Legal Counsel, I want to thank [REDACTED] a Deputy Commissioner in your department, the City's Department of [REDACTED] for speaking with Richard on December 1 and 2, 2010 on this matter. Your letter asks for guidance on whether the Governmental Ethics Ordinance or other laws or policies apply to the following facts. We have carefully discussed your request. Your letter states that you recently discovered that, on certain [REDACTED] vendor contracts (they happen to be for construction projects), several of the [REDACTED] employees who supervise these contracts have been using items (vehicles, cell phones) or services (parking spaces) provided them by the vendor. The vendor then bills [REDACTED] for that usage in regular contract billings. [REDACTED] advised Richard that the contract(s) at issue in this situation contain a provision obligating the City to pay the vendor for certain costs incurred by the vendors' employees in performance of the contract. In addition, she stated that your department had discussed the matter with [REDACTED] the Law Department. An internal investigation conducted by [REDACTED] at your direction, showed that, as you said, this activity has "been an established practice in place for years." On December 2, [REDACTED] advised Richard that, to her knowledge, the subject employees were not asked if they personally used any of these items or services, nor did she have knowledge whether the employees in fact did use them personally. Also she said that, to her knowledge, the subject employees were not asked if there were some personal agreement between them and the vendors providing for the vendors to give monies or other things of value to those employees, nor did she have knowledge that in fact any such agreements existed. Your letter said that you have issued a department memorandum suspending this activity, pending review by our agency. You also instructed the specific employees engaged in this "practice" to cease participating in it.

*used from for personal use*



Commissioner [REDACTED]

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We do not believe that the facts in your letter demonstrate that [REDACTED] employees or these vendors have committed any acts or omissions implicating provisions in the Governmental Ethics Ordinance. Nevertheless, we agree with your concern. We believe this is fundamentally an issue of contract interpretation and administration.

We advise you that, to alleviate your concern about this "practice," you again communicate with the Law Department- [REDACTED]

[REDACTED] The purpose would be, essentially, for [REDACTED] to contact the vendors (or their attorneys) to explore renegotiating each contract to address what may well be a miscommunication between the parties as to how these expenses should be handled. By way of example only, you may wish to discuss with him:

1. Attempting to negotiate (or amend or clarify) the provision that permits the "practice," so that both parties understand which expenses the City will reimburse the vendor for; or whether the vendors' intention was to provide items or services to City employees *gratis*.<sup>1</sup>
2. Negotiate a provision specifically prohibiting the practice; or
3. Negotiate a provision that provides for pre-approval from both parties before they engage in the "practice" with respect to a specific item or service provided by the vendor to a department employee.

We believe that, once this misunderstanding is cleared up in writing, the problem activity will no longer occur. In addition, we feel that when the activity ceases or is controlled (by agreement between vendors and the City) your concern also will be alleviated.

Our guidance applies only the City's Governmental Ethics Ordinance, and no other laws or authority, including but not limited to relevant Illinois Procurement laws, and solely to the facts in your letter. If the facts are not accurate in the letter or as here recited, please advise us, as that could change our guidance.

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<sup>1</sup>In Case No. 10046.CNS, the Board addressed the issue of whether and how our Ordinance covers a term in a City contract providing that the vendor shall provide enumerated items or services to City employees, without City payment. The Board determined that such a contract term does not automatically remove this type of activity from the Board's purview under our Ordinance's "gift rule," see §2-156-040; instead, the contract term must be analyzed in order to determine whether there was a "business purpose" underlying this type of contract term appearing in a City contract. If the business purpose test were met, then no gift would exist under our Ordinance; if the test were not met, then the usual gift analysis would need to be performed to determine if there might be a gift violation pursuant to our Ordinance.

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My office and I very much appreciate your conscientiousness, and are confident that this matter will be resolved satisfactorily.

Very truly yours,

*Steven I. Berlin*  
*by [Signature]*

Steven I. Berlin

Executive Director

cc: [REDACTED] Managing Deputy Commissioner