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June 15, 1989

[REDACTED]

City of Chicago  
Richard M. Daley, Mayor

CONFIDENTIAL

CASE NUMBER 89104.A

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Dear [REDACTED]

This letter is in response to your request for an advisory opinion concerning the Ethics Ordinance and its potential application to the circumstances you describe in your letter to us dated . . .

In your letter of May 8, you describe two situations which you believe might raise the appearance of impropriety and you ask us to review these under the Ethics Ordinance. We will first summarize our understanding of the situations and subsequently discuss how the Ethics Ordinance might apply to these.

The situations you are concerned about both stem from the fact that you are anticipating resigning your City job and are considering an offer to become an equal partner in a firm which provides development consulting services and design and construction services. You are negotiating with this firm to co-manage and market the land development consulting services. This firm which you anticipate joining has bid for the construction of two development projects each of which has a continuing relationship with the Department of Economic Development (DED).

The first situation involves construction of a commercial development under the supervision of a restaurant . . . In 1986, the Department of Economic Development sold land to this restaurant chain with the understanding that this developer would complete construction of a proposed project by December of 1989. At the time, the restaurant purchased the land from the DED you had no dealings with this developer. However, you have subsequently become responsible for supervising the staff who must enforce the terms of this contract. The only terms involved in this case are the requirements that the developer begin



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construction by a certain date and complete the project by a certain date. The DED has no responsibility for overseeing the actual construction of the project or enforcing the building code requirements. It approves a land sale based on a developer's proposal or basic floor plan. It is then up to the developer to execute these plans. In the present situation involving the *restaurant* development project, the developer has received and is reviewing several bids from construction firms. One of these bids is from the firm that you anticipate joining as a partner subsequent to leaving the City.

You have emphasized two points about this situation. First, the choice of a construction firm, whether it is your prospective firm or some other, is made exclusively by the developer.

The DED has no role either in soliciting bids or selecting a contractor. Second, you state that the developer, does not know of your plans to join one of the bidding firms and that you do not intend to discuss these plans with the developer.

The second situation you describe involves a different developer but is similar in some way to the first. In *a month of 1988*, a developer, , received a grant from the DED to reduce the cost of land acquisition. In administering this grant, your office reviewed the developer's general plans including the amount of money the construction would cost and the anticipated revenues from the commercial enterprises housed by the development. In accepting the grant, the developer agreed to comply with requirements of the City's "First Source" program and Minority Business Enterprise (MBE) policy. The construction firm that you plan to join has also bid on the construction of this developer's project. You have stated that your office has no role in soliciting, evaluating or selecting contract bids, and that the developer knows nothing of your plans to join one of the bidding firms.

There are some additional circumstances which make this second situation different from the first. The developer, has been working closely with the Local Neighborhood Association in order to assure compliance with the First Source grant standards. The chairman of the Local Neighborhood Association, contacted you as a reference for the construction firm, and you informed *him or her* that the firm had a good reputation for completing its projects and you might be joining this firm and therefore had a potential economic interest in the firm. As a result of this discussion it is possible that *the Chairman of LNA* has informed *the developer* of your future plans as a partner in one of the construction firms it is evaluating.

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With respect to each of these situations you have stated that you have not and would not attempt to influence the developer's selection of a contractor, but are concerned that it may look improper for you to join a firm that is bidding for a contract, with a developer who has a continuing relationship with the DED.

In assessing these situations under the Ordinance, there are three sections which may be relevant. The first section, section 26.2-5, contains restrictions on City employees and is therefore relevant to your present activities as *an employee of the* DED. The two remaining sections, sections 26.2.10(b) and 26.2-7, contain restrictions on former City employees and are potentially relevant to your plans as a private partner.

Section 26.2-5 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...

According to this section of the Ordinance it is impermissible for City employees to accept promises of future employment or any other thing of value in return for advice or assistance on matters concerning the operation or business of the City. From the information you have given us, there is no indication that you have violated this section. You have stated in your letter and by phone that you have made efforts to avoid disclosing to developers, information concerning your possible ties with one of the construction firms bidding on their development projects. And, there is no evidence in the circumstances you describe to suggest that your opportunity for future employment has been extended in exchange for your advice or assistance on a matter related to City operations.

However, although we can see no evidence that you have violated the Ethics Ordinance, we agree with your initial assessment that these situations may be perceived as involving some impropriety. And, we believe the second situation may raise a greater suspicion of this than the first, since *the developer*, who admittedly knew of your prospective employment plans, is a consultant to the developer who is soliciting bids from your prospective firm. Consequently, from our point of view, you are right to be aware of the fact that questions concerning your role in selecting a construction firm may arise should your prospective firm get the bid. These situations may give an

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appearance of impropriety. Nevertheless, based on the information you have provided, we see no evidence that you have used your prospective firm or that your position with that firm is being negotiated on the basis of your position with the City and how this might enable you to exercise such influence.

Sections 26.2-10(b) and 26.2-7 of the Ordinance contain restrictions on former City employees which you should be aware of when you take up private employment.

Section 26.2-10(b) 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 the 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 of the Ordinance does not prohibit you from entering a partnership involved in land development and construction but it does limit the type of work you may do. The first is a year prohibition. A former City employee or official is prohibited for one year after leaving the City from assisting or representing any person in any business transaction involving the City if the transaction involves a subject matter or area of City business in which the person participated personally and substantially as a City employee. In your case, this restriction might preclude you, for one year, from assisting any private party in a transaction involving the City if that transaction has to do with the development of City property, or any other general subject matter in which you participated personally and substantially while serving as *an employee of the DED*.

The second restriction contained in the above section is a permanent one. It permanently prohibits former officials and employees from assisting or representing someone in a business transaction involving the city if the transaction is a contract and the person exercised "contract management authority" with respect to this particular contract while acting as a City employee or official. This restriction might permanently preclude you from assisting or representing your construction firm with a contract involving the City if you were previously

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involved in administering, negotiating, or monitoring this contract while employed by the City. This permanent prohibition might extend to work on the development projects at issue in your letter to us. We advise that you not in any way assist your prospective firm in the performance of work involving these projects since in both cases the work would be related to the fulfillment of a contract with the City that you helped to administer and monitor as *an employee of the DED.*

If you have questions concerning the permissibility of working on a specific project under the post-employment provisions contained in section 26.2-10(b) cited above, you may request an advisory opinion concerning this matter.

In addition to these restrictions on work related transactions with the City, the Ethics Ordinance contains a restriction on the use or disclosure of confidential information by former employees and officials.

Section 26.2-7 states:

No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. (emphasis added)

Under this section, it would be a violation of the Ordinance for you to use or disclose information concerning the City which might give your prospective partnership an unwarranted advantage in securing city contracts, grants, or loans. For your reference, we have included a copy of the Illinois Freedom of Information Act which establishes what information is considered confidential.

We appreciate your inquiry and we hope that we have sufficiently addressed your present question concerning the appearance of your post-employment circumstances. If you have further questions on this or some other matter please do not hesitate to call our office.

Sincerely,

