



CONFIDENTIAL

March 28, 1990

City of Chicago
Richard M. Daley, Mayor

[REDACTED]

Board of Ethics
J. B. DeWilde
Executive Director
Albert F. Hofeld
Chair

Re: Post-Employment Activities
Case No. 90012.A

Angeles L. Eames
Vice Chair

Dear [REDACTED]

Margaret Carter
Russell Hardin
Marlene O. Rankin
Catherine M. Ryan

The Board of Ethics has reviewed your request for an advisory opinion regarding the following situation: In your letter of February 6, 1990, you stated that you had been a contract administrator for A CITY DEPARTMENT from May 1, 1985 until your resignation on February 15, 1990. Subsequent inquiries by the Board of Ethics revealed that you had only stopped working full-time on February 15, 1990, and would continue to work part-time for THIS DEPARTMENT until the end of March 1990.

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You now plan to return to the private sector and become a partner in a heating and air conditioning business. In this capacity you will be interested in bidding on City contracts in the future. You wanted to know if this was permissible and what restrictions, if any, would apply.

You stated that as a contract administrator you were involved in the evaluation of bids and the recommendation of contracts, but did not have any authority to sign final contracts. As of February 6, 1990 you were currently responsible for the following commodities: (1) electrical and batteries, (2) paint and paint supplies, (3) heavy equipment and machinery and (4) lighting. In your letter and subsequent telephone conversations with the Board staff, you stated that although you had administered contracts dealing with heating and air conditioning during your tenure with the City, you had been transferred out of heating and air conditioning at least one and a half years ago.

[REDACTED] Your supervisor confirmed that the commodity class heating and air conditioning was transferred from you to ANOTHER EMPLOYEE on June 8, 1988. According to YOU DEPARTMENT'S commodity assignment list, revised in March 1989, heating and air conditioning was by then assigned primarily to SOMEONE ELSE.

After your transfer out of heating and air conditioning, you remained in the same [REDACTED] unit within this DEPARTMENT as before, taking primary responsibility for different commodities. However, according to your supervisor, although another member of the unit was assigned primary responsibility for heating and air conditioning, your duties with this DEPARTMENT still involved the administration of heating and air conditioning contracts. Under a "buddy system" employed by your unit, you became the "understudy" for heating and air conditioning. As the understudy, you were expected to be familiar with the heating and air conditioning contract administrator's work, cubicle, filing system, and so forth. Any time he was sick, on vacation, or absent for some other reason, your responsibility would be to take over his work automatically.

Finally, you stated that some of the heating and air conditioning contracts with which you had been involved, particularly those dealing with maintenance, were re-bid annually.

ETHICS ORDINANCE POST-EMPLOYMENT RESTRICTIONS: The Ethics Ordinance (Chapter 26.2 of the Municipal Code of Chicago) imposes significant restrictions on the post-employment activities of City officials and employees. Section 26.2-10(b) of the Ordinance 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.

This provision contains two restrictions:

(A) **The One-Year Prohibition:** A former City employee or official is prohibited for one year after leaving the City from assisting or representing any person (including himself or a business) in any business transaction involving the City if both the following conditions are met:

(1) the transaction involves a subject matter or area of City business in which the person participated as a City employee or official; and

(2) the person's participation in this subject matter or area of City business was personal and substantial.

(B) The Permanent Prohibition: A former employee or official is prohibited permanently from assisting or representing someone (including himself or a business) in a business transaction with the City if that transaction involves a contract over which the former official or employee exercised "contract management authority" while still with the City. The Ordinance defines "contract management authority" 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" (Section 26.2-1(g)).

Note that Section 26.2-10(b) applies regardless of whether the former employee's involvement in the subject matter of the transaction or contract took place during full or part-time City employment. Therefore, the post-employment regulations will apply not only to activities you engaged in before February 15, 1990 (when you went from full to part-time status), but also to activities you engage in between that date and the date of complete termination of your City employment.

OTHER APPLICABLE PROVISIONS OF THE ETHICS ORDINANCE: In addition, as long as you are employed by the City in any capacity you are subject to all the other provisions of the Ethics Ordinance. This includes Sections 26.2-5, 26.2-7, 26.2-9(a) and 26.2-11, which prohibit all City employees, full and part-time, from (1) bidding on or obtaining any City contract and (2) from assisting or having any interest in another person or business who is doing so. Section 26.2-11 (Interest In City Business) states:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

Section 26.2-9(a) (Representation) states:

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

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which the agency's action or non-action is of a non-ministerial nature.

Section 26.2-7 (Use or disclosure of confidential information) 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.

Section 26.2-5 (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.

APPLICATION OF SECTION 26.2-10(b) (POST-EMPLOYMENT): On the basis of the facts contained in this letter, it appears that your involvement in the City's heating and air conditioning business was personal and substantial. Among other duties, you evaluated bids and made recommendations regarding contract awards, while you were charged with primary responsibility for heating and air conditioning. Subsequent to this, as the heating and air conditioning understudy in a small work unit, it was your responsibility to remain very familiar with heating and air conditioning and to take over administration of those contracts in the absence of the contract administrator holding the primary assignment. Therefore, you are subject to Section 26.2-10(b)'s one year prohibition with regard to this area of City business. The waiting period begins on the day you end all contact with heating and air conditioning contracts, directly or via the buddy system, and cease working in the same unit that handles heating and air conditioning. This will occur when you finally leave

your City employment, which you state will be on March 31, 1990. Therefore, you are prohibited from representing or assisting any person (including yourself) or any business in transactions with the City which involve heating and air conditioning until March 31, 1991, if no contract over which you exercised contract management responsibility is involved. In cases where a contract is involved over which you exercised contract management authority, this prohibition will be permanent.

In this connection, although you did not sign the contracts under your responsibility, Section 26.2-1(g) defines "contract management authority" to include other activities in which you were involved, specifically bid evaluation. Your recommendation of contract awards would also constitute contract management authority. Section 26.2-10(b) will permanently bar you from engaging in any business transaction with the City involving any of the contracts over which you exercised contract management authority.

With respect to the heating and air conditioning maintenance contracts which are annually re-bid, *YOUR DEPARTMENT* indicated that when they are re-bid, they also have new specifications and go through a new evaluation process. Accordingly, the re-bids will be considered new contracts for purposes of the Ethics Ordinance, and you and your business may bid on them once the one year waiting period is over.

Reconsideration: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

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

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If you have any questions, please contact the staff of the Board of Ethics at 744-9660.

Sincerely,


Albert Hofeld
Chairman

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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BWS: 90012.L4