

Mell

March 13, 1991

C O N F I D E N T I A L

[REDACTED]

ADVISORY OPINION

Re: [REDACTED]
Case No. 91036.A

Dear [REDACTED],

You asked for an advisory opinion from the Board of Ethics regarding Mr. A [REDACTED], who has retired from his position as head of activity Z [REDACTED] for the X Department. Mr. A [REDACTED] now has been asked to enter into a contract with the Department of Y, related to activity Z. [REDACTED]

Given that both positions involve activity Z [REDACTED], you asked if he would be in violation of the Governmental Ethics Ordinance (Chapter 2-156 of the Municipal Code of Chicago) if he entered into this contract. Based on the facts as they have been presented, the Board determines that this particular situation involves no violation of the Ordinance. This letter presents the facts of the case and the Board's analysis of those facts according to the post-employment provisions of the Ordinance.

FACTS: While with the Department of X, [REDACTED], Mr. A [REDACTED] was responsible for supervising those engaged in activity Z [REDACTED], but he rarely did activity Z himself. Mr. B. [REDACTED]

[REDACTED] for the X Department told us that five to six years ago, the X Department did work on a similar project but that the extent of Mr. A's involvement would have been monitoring payouts on some parts of the project. He also said that the duties Mr. A performed for the City did not involve any special expertise in relation to activity Z for the project. [REDACTED]

You explained to us that Mr. A formed a

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March 13, 1991
Page 2

consulting firm. [REDACTED]
Your department is now seeking to enter into a contract with the firm to provide assistance in the development of a [REDACTED] program. The program already exists, but the department is seeking Mr. A's assistance to accomplish the program goals. The Department of Y [REDACTED] receives proposals from GROUPS seeking City assistance for activity Z. [REDACTED]. You said that development of the program is greatly needed and is a priority of the department. The proposed contract with the Department of Y [REDACTED] calls for Mr. A's consulting firm to do the following work:

- (1) Inspect and evaluate the [REDACTED] with regard to the [REDACTED], make recommendations to the department on what needs to be done, and write reports on [REDACTED] needs.
- (2) Evaluate the [REDACTED] requests for funds from the City.
- (3) Provide technical assistance to the department regarding the process of obtaining grants, reviewing funding applications, determining required improvements, etc., and train Dept. Y [REDACTED] staff to take over the duties of the consultant.
- (4) Provide technical assistance to agencies that receive activity Z grants. [REDACTED]
- (5) Develop guidelines for an activity Z manual for departmental and [REDACTED] agency use, relating to [REDACTED] that receive activity Z grants. These guidelines would provide information on obtaining [REDACTED], [REDACTED], and other general requirements for activity Z grants and activity Z.

THE ETHICS ORDINANCE: Section 2-156-100(b) of the Ethics 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

[REDACTED]
March 13, 1991

Page 3

exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Section 2-156-010(g) defines "contract management authority:"

"Contract management authority" means 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.

According to these sections, a former City employee is subject to two restrictions on employment after leaving City service, a one-year prohibition and a permanent prohibition. A former City employee is prohibited, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee; and (2) the person's participation in this subject matter or area was personal and substantial. A former City employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract; and (2) the person exercised "contract management authority," as defined above, with respect to this particular contract while acting as a City employee.

The permanent prohibition has no application here since the position in question does not concern a contract with which Mr. A [REDACTED] had any involvement during his City employment.

ANALYSIS: Although both of the positions in question involve the same kind of activity--in this case, activity 2 [REDACTED]--this does not automatically constitute a violation of the Ethics Ordinance. Rather, the post-employment provisions come into play only upon the condition that the official or employee participated personally and substantially in the subject matter of the transaction in question during his City employment.

According to Mr. B's [REDACTED] statements, Mr. A's [REDACTED] City responsibilities had to do with supervision of EMPLOYEES in the X Department. In that position, he had no duties or responsibilities relating to loans or grants. In addition, his involvement in the RELATED project undertaken

March 13, 1991
Page 4

by the department several years ago was limited to monitoring payouts. Based on the facts presented, Mr. A's activities as head of activity Z Department do not constitute personal and substantial involvement in the subject matter of the work he will perform for the Department of Y. In relation to the particular tasks listed above:

(1) Regarding the inspection of [redacted] and the recommendations to the Department of Y, it is apparent that Mr. A did not have personal or substantial involvement in these areas during his employment with the X Department.

(2) The above is also true for evaluating the [redacted] requests for funds.

(3) The same is true for providing technical assistance to the Department of Y.

(4) In regard to the activity of providing technical assistance to [redacted] agencies, it is apparent from the responsibilities Mr. A had in his City position that he did not have personal or substantial involvement in activity Z grants or loans. Furthermore, skills in [redacted], as well as knowledge of [redacted] requirements, are not dependent on Mr. A's City position but are common to the activity Z trade.

(5) Likewise, the guidelines he will be developing for the activity Z manual are part of his trade. His knowledge in this area is not contingent on his City position.

Based on this analysis of the particular tasks Mr. A would be performing for the Department of Y, it is apparent that he had no personal or substantial involvement in these areas during his City employment.

IN CONCLUSION, based on these particular facts as they have been presented, the Board determines that the proposed contract between the Department of Y and Mr. A's consulting firm is not in violation of the post-employment requirements of the Governmental Ethics Ordinance.

We appreciate your bringing this matter to the Board's attention. Our determination in this case is based upon the facts as presented here. If they are incorrect or incomplete, please notify us immediately, as any change in

March 13, 1991
Page 5

the facts may alter our decision. We enclose a sheet which sets forth the Board's procedural rules after it renders a decision. If you have any further questions regarding this matter or some related issue, please do not hesitate to contact us.

Sincerely,



Albert Hofeld
Chair

encl

cc: Kelly Welsh
Corporation Counsel
[REDACTED]

jgj/91036.L

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this 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 that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.