



EMW

July 20, 1994

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

City of Chicago  
Richard M. Daley, Mayor

Ms.  
Department of

Board of Ethics

Chicago Il

*out emp  
fiduciary duty*

Dorothy J. Eng  
Executive Director

RE: Case No. 94020.Q

Catherine M. Ryan  
Chair

Angeles L. Eames  
Vice Chair

Dear Ms.

Darryl L. DePriest  
Steve Lawrence  
Emily Nicklin  
Fr. Martin E. O'Donovan  
Janice E. Rodgers

On \_\_\_\_\_, on behalf of the Department, you sought advice from this Board about whether the City's Governmental Ethics Ordinance permits Mr. "S", an Investigator with the "U" (unit) of the Department, to work part-time with "O" (other employer) as a private investigator while he remains an Investigator for the City.

Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660  
(312) 744-2793 (FAX)  
(312) 744-5996 (TDD)

With your permission, we contacted Mr. S who provided the information needed in order to respond to your request. From the facts as they have been presented by Mr. S, staff believes that the Ethics Ordinance does not prevent him from working in this outside position while remaining employed by the City as an Investigator. However, it does restrict his activities in those positions.

FACTS: Mr. S stated that he is an Investigator in the U of the Department of "D". In his City position, Mr. S said, he determines whether businesses are subject to a licensing tax, helps establish the tax liability of businesses, and undertakes enforcement actions if businesses do not cooperate. Mr. S said he remains assigned to a case from the initial referral through the collection of the tax revenue.

In his position as a private investigator with O, located in (suburb) Illinois, Mr. S will serve as a "field investigator," conducting field surveillance for husbands or wives who hire O to gather information on their spouses. It is also possible, he said, that he will conduct



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surveillance on persons claiming workman's compensation. He estimates that he will work eight to ten hours a month on nights and on weekends in his outside employment.

Mr. S believes it would be highly unlikely that in the course of his outside position, he would be called upon to investigate or act on behalf of any one with whom he would have dealings as a City employee. According to Mr. S, he has the ability to decline an assignment of a case in both his City position and his outside employment. While, he said, no formal removal process exists in the U, he explained that he simply has to inform his supervisor that a potential conflict exists in order to be removed from the case, which he has done in at least one prior instance. He also said that he has been told that it is very unlikely that he will be called to testify in any proceeding. Further, he said, he has no reason to expect that in his City job he would ever be called upon to investigate or make any decisions about his outside employer.

The two sections of the Ordinance of the most relevance to Mr. S's situation, § 2-156-030, "Improper Influence," and § 2-156-090, "Conflict of Interest," prohibit City employees from participating in, or in any way attempting to use their positions to influence a governmental decision or action in which they have an "economic interest." An "economic interest" means, in relevant part, any interest valued or capable of valuation in monetary terms. By virtue of his employment, Mr. S has an economic interest in his employer, O. Thus Mr. S is prohibited from making or attempting to influence any City decisions or actions about or especially affecting his outside employer.

A second section of the Ordinance that may affect his activities is § 2-156-090, "Representation of Other Persons," which, among other restrictions, prohibits Mr. S from appearing on behalf of another in a judicial or quasi-judicial proceeding in which that party's interest is adverse to the City.

Other provisions may affect his activities. Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits Mr. S from accepting payment in exchange for giving advice or assistance on matters that involve the operation of City business. Section 2-156-060, "City-Owned Property," prohibits him from using any City property or resources in his second position or for any personal benefit. The Ordinance also prohibits Mr. S from using or revealing confidential information that he acquired through his City employment. (§ 2-156-070, "Use or Disclosure of Confidential Information.")

Finally, as a City employee, Mr. S owes his primary loyalty to the City. (§ 2-156-020, "Fiduciary Duty.") The Fiduciary Duty section

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establishes an obligation for City employees to use their City positions responsibly and in the best interest of the public, and to exercise professional judgment free from conflicting duties to outside entities.

Therefore, in order to assure compliance with the Ordinance, Mr. S should avoid, in his outside employment, carrying out investigations of or on behalf of anyone with whom he has any dealings or about whom he makes decisions in his City position, as well as avoid carrying out investigations of City employees. In the event that he cannot avoid such circumstances, he should seek further advice from the Board. If he cannot avoid such circumstances, he may be placed in a situation where he may need to resign one of his employment positions. The Ordinance also prohibits him from making or attempting to influence any City decisions about his outside employer.

In order that Mr. S be properly advised, we are forwarding him a copy of this letter with the City's Governmental Ethics Ordinance so he may review with care the provisions that have been cited above. Our advice in this letter is based on the application of the City's Governmental Ordinance to the facts stated in the letter. If the facts presented are incorrect or incomplete, please notify the Board, as a change in the facts may alter our conclusion. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

If, after reading the Ordinance, you or Mr. S have any questions about the law or its application to a specific situation, please do not hesitate to contact us for further guidance.

Sincerely,

*Ellen M. W. Sewell*  
Ellen M. W. Sewell  
Legal Counsel

approved by:

*Dorothy J. Eng*  
Dorothy J. Eng  
Executive Director

enclosures

cc: