



MEH

May 1, 1990

CONFIDENTIAL

[REDACTED]

City of Chicago
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Board of Ethics
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Margaret Carter
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Catherine M. Ryan

Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

RE: [REDACTED]
Case No. 90023.A

Dear [REDACTED]

As the [REDACTED] of the [REDACTED] you recently requested an advisory opinion from the Board of Ethics in order to determine how the Governmental Ethics Ordinance will apply to members and employees of the [REDACTED] and its [REDACTED] Advisory Councils. Your letter expressed a special interest in whether the Ordinance will apply to members of the Advisory Councils, since "this question will have a direct bearing on the criteria for Advisory Council member appointments." The following discusses this specific question as well as other considerations that follow as a result of the [REDACTED] and the creation of Advisory Councils.

THE ORDINANCE: [REDACTED] the City Council passed an ordinance [REDACTED]

This ordinance also established [REDACTED] Advisory Councils ("Councils") [REDACTED]. The following is a summary of the structure, powers and duties of the [REDACTED] Councils (See attached ordinance for details, Municipal Code Chapter [REDACTED])

[REDACTED]

I. Structure and Membership:

A. The [REDACTED] consists of:

1. the chairpersons [REDACTED] of the Councils appointed by the mayor,



- B. Each Council consist of [REDACTED] members appointed by the mayor, with the approval of the City Council, who serve for terms established by ordinance.
- C. The mayor will designate one member of each council to serve as its chairperson. These chairpersons are members ex officio of the [REDACTED]
- D. The mayor will also appoint a director for each Advisory Council [REDACTED] This position is compensated as provided by the annual appropriation ordinance. [REDACTED]

II. Powers and Duties:

The powers and duties of the Council are to:

- A. Assist the [REDACTED] in designing educational and enforcement programs;
- B. Act as liaisons between the City government and [REDACTED] organizations;
- C. Identify [REDACTED] and design programs to eliminate them;
- D. Assist the [REDACTED] by recommending policies and programs, reviewing existing programs, conducting legislative research and reporting to the Commission its findings with regard to the specific needs of [REDACTED]

ISSUES:

- I. Does the Governmental Ethics Ordinance apply to:
 - A. Members of the [REDACTED] including the compensated chairperson?
 - B. Staff of the [REDACTED]?
 - C. Members of the Councils?
 - D. Directors and secretaries of the Councils?

- II. Is the political activity defined in section 26.2-1(s) and prohibited in section 26-30 of the Municipal Code proscribed for:
- A. Members of the [REDACTED], including the compensated chairperson?
 - B. Staff of the [REDACTED]
 - C. Members of the Councils?
 - D. Directors and secretaries of the Councils?

DISCUSSION:

I. Application of the Governmental Ethics Ordinance to the [REDACTED] and the Councils

The Ethics Ordinance applies to officials and employees of the City of Chicago. "Official" means "any person holding any elected office of the City or any appointed, non-employee member of any City agency." (Sec. 26.2-1[q]) "Agency" means "...any commission, board, or other division of the government of the City." (Sec. 26.2-1[b]) "Employee" means "an individual employed by the City of Chicago, whether part time or full time, but excludes elected officials and City contractors." (Sec. 26.2-1[j])

A. Members of the Commission

The [REDACTED] is a City agency. It is a [REDACTED] established by ordinance and supported through the annual appropriation ordinance. Its powers and duties are defined by ordinance. Its non-employee members are appointed by the mayor, approved by the City Council, and serve for a term established by ordinance; they are appointed officials for purposes of applying the Ethics Ordinance. The chairperson, although a member of the [REDACTED] is compensated; he will occupy a position provided for in the [REDACTED] budget and is a City employee. (See attached outline of the Code of Conduct.)

The members of the [REDACTED] other than the compensated chairperson are subject to the Ethics Ordinance as it applies to appointed officials. The chairperson is subject to the Ethics Ordinance as it applies to City employees. (See attached outline of the Code of Conduct.)

Members of the [REDACTED] unlike members of the [REDACTED] are required to file Statements of Financial Interests no later than the time when their names are submitted to the City Council for consideration and annually thereafter. The reason is that the [REDACTED] unlike the [REDACTED] is not solely advisory in nature and, therefore, not eligible for the exemption from the filing requirement provided in sec. 26.2-15(a)(iii) of the Ethics Ordinance. A "solely advisory" agency, according to the Ordinance, has no authority a) to make binding decisions, b) to enter into contracts, or c) to make expenditures other than expenditures necessarily incurred for research in connection with its advisory function.¹

The [REDACTED] cannot be considered a "solely advisory" agency. Its powers and duties involve wide-ranging investigative, remedial and enforcement powers that make it more than merely advisory in nature and require that it make binding decisions with respect to the investigation and disposition of [REDACTED] complaints.

B. Staff of the [REDACTED]

The staff of the [REDACTED] are appointed by the chairperson and paid through the annual appropriation ordinance. They occupy positions provided for in the [REDACTED] budget and are City employees. They are subject to the Ethics Ordinance as it applies to employees. (See attached outline of the Code of Conduct.)

C. Members of the Councils

The Councils are established by ordinance. [REDACTED] Their powers and duties are defined by ordinance.² [REDACTED] The Councils have executive directors who

¹ In the past, the Board has determined whether an agency meets the criteria of a "solely advisory agency" by examining (1) the enabling act of the agency, (2) the agency's rules and regulations, and (3) the actual operation of the agency. Given the [REDACTED] the Board must rely at this time solely on the enabling ordinance.

² The fact that the Councils appear at this time to be solely advisory does not negate their being City agencies. As a point of comparison, [REDACTED] the [REDACTED] was deemed solely advisory; yet, there was no question that the [REDACTED] was a City agency.

are City employees. Their members are non-employees, appointed by the mayor and approved by the City Council, who serve for a term established by ordinance.

The members of the Councils, like the members of the [REDACTED] (except the [REDACTED] chairperson), fall within the definition of appointed officials. They are subject to the Ethics Ordinance as it applies to appointed officials. (See attached outline of the Code of Conduct.)

Members of the Councils (other than the chairperson of each Council who serves on the [REDACTED]³) should be exempt from filing Statements of Financial Interests because, at this time, relying on the enabling ordinance, it appears that the Councils are solely advisory in nature. Their duties and powers are described as assisting, recommending, researching, and acting as liaisons. [REDACTED] The Councils have not been given the power to enter into contracts or to make binding decisions.

D. Directors of the Councils (and other Council staff)

The directors of the Councils are appointed by the mayor and occupy budgeted positions that are funded by the annual appropriation ordinance. Board staff have been told that each director will also have a secretary who occupies a budgeted position. The directors and the secretaries will be City employees, subject to the Ethics Ordinance as it applies to City employees. (See attached outline of the Code of Conduct.)

II. Application of the Prohibition of Political Activity

Section [REDACTED] of the Municipal Code provides that "...[no] member of the [REDACTED] nor any employee of...the [REDACTED] shall engage in any political activity as defined in Chapter 26.2 of the Municipal Code, as amended."

A. Members of the [REDACTED]

³ Chairpersons of the Councils are required to file Statements of Financial Interest because they are ex officio members of the [REDACTED]

No member of the [REDACTED] including the chairpersons of the Councils who are ex officio members of the [REDACTED], may engage in political activity.

B. Staff of the [REDACTED]

The staff are employees of the [REDACTED] and may not engage in political activity.

C. Members of the Councils

The Councils are established by [REDACTED] of the Municipal Code. They are advisory governmental divisions consisting of appointed officials who render assistance to the [REDACTED] a separate body established by [REDACTED]. Since the Councils are distinct from the [REDACTED] the prohibition of political activity does not apply to the members of the Councils.

D. Directors of the Councils (and Other Council Staff)

The Ordinance provision which creates the Councils also provides that the mayor will appoint a director for each council who will be compensated as provided by the annual appropriation ordinance. [REDACTED] The ordinance does not specify the directors' duties and responsibilities, the person to whom they ultimately report, or the budget from which they receive compensation.

According to conversations with [REDACTED], however, the directors of the Councils and their staff will all be employees of the [REDACTED] and their compensation will come from the [REDACTED] staff budget. Moreover, the directors' activities will be supervised by the Chairperson of [REDACTED] or by his designee, and the directors will report and be responsible to him or his designee.

In light of this information, the Councils' directors and their staff are to be considered employees of the [REDACTED], and (pursuant to section [REDACTED] of the Municipal Code) thereby prohibited from engaging in political activity as it is defined in section 26.2-1(s).

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

Page Eight
90023.A

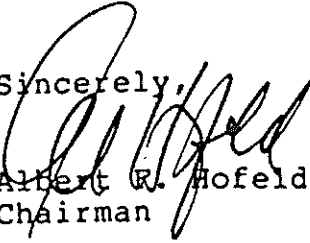
received by the Board of Ethics within fifteen days of the date of this letter.

Moreover, because the Board has based this opinion primarily upon the enabling ordinance of the Commission and its Councils, the opinion is subject to revision if it is determined that the actual activities and practices of these agencies prove to be different from that described in the ordinance. For instance, the Councils' activities could be found in actual practice to transcend the status of a "solely advisory" agency.

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.

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

Sincerely,


Albert R. Hofeld
Chairman


encl.

