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*[Handwritten signature]*

Advisory Opinion  
Case No. 93032.A Employment of Relatives

[REDACTED]

Date: [REDACTED]

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You serve the City as the [REDACTED] for the Department (X) [REDACTED]. You have requested an advisory opinion from the Board of Ethics about an offer of employment that your wife, [REDACTED] received from Co. A [REDACTED] Co. A [REDACTED], a construction firm, has a contract with the City to manage the design and implementation of renovations at [REDACTED]. You have asked whether the Governmental Ethics Ordinance prohibits the employment of your wife by Co. A [REDACTED].

Because the Board finds that you exercised contract management authority over the City's contract with Co. A [REDACTED], your wife's acceptance of the offer of employment would raise several problems for you under the Ordinance. These are:

- 1) You may be placed in a position of either having to exercise your contract management authority over any modification to the existing contract or any new contract with Co. A [REDACTED], and thus violating section 2-156-130 (b) of the Ordinance, or of not being able to fulfill your obligations [REDACTED] as the City's [REDACTED]; and
- 2) Under section 2-156-130 (c) of the Ordinance, the Board would be compelled to accept your wife's employment as evidence that the Ordinance was violated.

Our analysis follows.

**FACTS:** The [REDACTED] is a contract that Co. A [REDACTED], in a joint venture with Co. B [REDACTED], has with the Department (Y) [REDACTED]. This large project entails the management of design, architecture, and construction at [REDACTED]. Based on past work done by both Co. A [REDACTED] and Co. B [REDACTED] for the Department (Y) [REDACTED], the Department (Y) [REDACTED] considered these firms to be uniquely qualified to handle this project. For this



reason, the Department treated the contract as a "single source contract": the Department requested the contract with [Co. A] and [Co. B], and no other companies bid on the contract. The contract was negotiated by representatives from both the City's Departments of [Y] and [X], as well as the two private companies involved. Mr. [M], your Assistant [redacted], represented your Department in these negotiations. In his position as the City's [redacted], he works under your direct supervision.

Mr. [M] heads a section of the Department [X] that works only on Department [Y] contracts. In this instance, he was the Department [X]'s sole representative in the negotiation of the contract for the [redacted] project. Mr. [M] explained that the Sole Source Review Board must approve the use of a single source contract, and said that he informed you that the [redacted] contract was going before the Review Board. He stated that he subsequently kept you advised of the progress of the negotiations, and that this entailed discussion of the fact that the contract was being negotiated and why it was a single source contract. He also said that, although he did report to you concerning the negotiations, you were not advised of the specific details involved in the negotiation of the contract.

In a letter to our office, you stated that you did not participate in the decision to enter into any contracts with [Co. A], and were not involved in any management decisions, compliance determinations, or substantive reviews of the contracts that [Co. A] has with the City. You also stated that you have at no time been involved with or spoken to anyone at [Co. A] about your wife's employment by them.

Mr. [M] also confirmed that you had no direct involvement in the negotiation of the [redacted] contract, and that there was no mention of your wife [redacted], or of her future employment, at any point in the negotiation of the contract. He explained that the Commissioner of the Department [Y], [redacted], directly oversees the [redacted] project and that you have no role in supervising or implementing the project. Mr. [M] said that it is very unlikely that there would be any changes in the contract, but if there were, they, like the contract, would be negotiated by him and the Department [Y]. Any contractual changes would require both Commissioner [redacted]'s authorization and your signature.

In your position, you are required to sign this City contract. [redacted]. Your signature, along with those of the Mayor and other officials, is required [redacted]. You stated that you sign [redacted].

contracts at the recommendation of the [REDACTED] negotiating the contract. You would withhold your signature only if specifications that were negotiated were not accurately included in the contract, or if new information materially affecting the contract were to arise after that contract's negotiation. You said that you rarely withhold your signature. The contract between Co. A [REDACTED], Co. B, and the City was entered into on [REDACTED].

In [REDACTED] of [REDACTED], your wife, [REDACTED], received an offer of employment as a [REDACTED] Administrator for [REDACTED] Co. A [REDACTED]. She said that, as far as she knows, she would be working only on the [REDACTED] City contract [REDACTED] project [REDACTED]. Her main duties would involve preparing narrative status reports, attending and summarizing the minutes of meetings related to the [REDACTED] project, and various other editorial and writing tasks. Ms. [REDACTED] said that she has considerable writing, editing, and administrative experience and that she believes that it is because of this experience that Mr. H [REDACTED] of Co. A [REDACTED] became interested in hiring her. The two met months ago at a social event and, when he discovered her editorial and writing background, Mr. H [REDACTED] said that he might have a job for her in the future and asked for her resume. Ms. [REDACTED] stated that Mr. H [REDACTED] did not mention the [REDACTED] project at that time, nor did he indicate what her job might entail. She said she knew [REDACTED] Co. A [REDACTED] was involved with City contracts and that they had other projects besides the [REDACTED].

**LAW:** The Ordinance contains provisions that affect the employment of a City employee's relative by persons or entities doing business with the City. The provisions of the Ordinance most relevant to your situation are sections 2-156-130 (b) and (c), which state in relevant part:

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a city official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

The Ordinance defines "contract management authority" in section 2-156-010(g) 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.

The term "relative," as defined in section 2-156-010(w), includes a spouse.

Thus, under section 2-156-130(b), City officials and employees are prohibited from exercising contract management authority over contracts with persons who employ their relatives. Section 2-156-130(c) prohibits officials and employees from using their position with the City to help relatives gain employment or contracts with persons over whom these officials and employees exercise contract management authority. More importantly for your situation, this provision compels the Board to accept the fact of the employment of a relative during or within six months of the period of the L.C.A. contract as evidence that the Ordinance has been violated.

**ANALYSIS:** In addressing your situation, the Board first considered whether you had contract management authority over the City's contract with C.A.. The Ordinance directs the Board, in making this determination, to consider whether you had direct supervisory responsibility for the formulation, negotiation, or evaluation of the [REDACTED] contract, and to find that you had the requisite management authority if you did.

The facts presented to the Board show that, although you did not formulate terms or suggest particular strategies for the contract or business deal underlying it, you exercised your professional and official judgment in reviewing it, and in deciding whether to sign or reject it. In addition, although you did not personally negotiate the contract, you have direct supervisory responsibility over Mr. M [REDACTED], your Assistant [REDACTED]. He represented the Department [REDACTED] in the contract negotiations, and together with a representative from the Department [REDACTED], negotiated the contract. In his position as your Assistant, he reported to you, and informed you of the progress of the contract negotiations.

As defined in the Ordinance, the term "contract management authority" means either personal involvement in the contract, or direct supervisory responsibility for the formulation of the

contract. The Board therefore concludes, from the totality of the circumstances, that, although you did not personally negotiate or prepare the contract's terms, you had direct supervisory responsibility for the contract's formulation, and therefore exercised contract management authority over the City's [REDACTED] contract.

Assuming that [REDACTED] your position [REDACTED] continues to require you, [REDACTED], to sign (these) City contracts [REDACTED], and assuming that City contracts continue to be processed and approved by your department as they are now, then you would have to exercise contract management authority were there any modifications to the existing contract or any new contracts with Co. A [REDACTED]. But section 2-156-130 (b) of the Ordinance provides that you may not exercise your contract management authority over a contract with any person who employs any relative of yours. Thus, [REDACTED] Co. A's employment of your wife may put you in a position of either having to exercise your contract management authority in violation of the Ordinance, or of not being able to fulfill your official responsibilities [REDACTED].

Additionally, because you exercised contract management authority over the contract with Co. A [REDACTED], if [REDACTED] Co. A [REDACTED] were to hire your wife during or within six months of the period of its contract with the City, the Board would be directed by section 2-156-130 (c) of the Ordinance to consider this as evidence that a violation of the Ordinance has occurred. You did state that at no time did you speak to Co. A [REDACTED] about any offer of employment to your wife. Mr. M [REDACTED] also confirmed that there was no mention of the employment of your wife during the process of negotiating or preparing the contract. However, were your wife to accept the position, the Board would be compelled by the Ordinance to treat her employment as evidence of a violation of section 2-156-130 (c). As the Ordinance directs, the Board would then need to conduct a full, fact-finding investigation to consider and determine the statutory significance of your wife's employment together with your and Mr. [REDACTED] M's statements.

**CONCLUSION:** From all of the facts presented, the Board has determined that you exercised contract management authority over the City's contract with Co. A [REDACTED]. Therefore, were your wife to accept employment with Co. A [REDACTED] at this time, you may be placed in a position of either having to exercise your contract management authority in violation of section 2-156-130 (b) of the Ordinance, or of not being able to fulfill your obligations [REDACTED] as the City's [REDACTED]. Moreover, the Board would be compelled by

section 2-156-130 (c) of the Ordinance to consider her employment as evidence that a violation of the Ordinance has occurred. A full, fact-finding investigation by the Board would then be necessary to weigh all the evidence presented.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. 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.

**RELIANCE:** This 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.

Catherine M. Ryan  
Catherine M. Ryan  
Chair