

CONFIDENTIAL

**ADVISORY OPINION
CASE NO. 02024.A
FINANCIAL INTEREST IN CITY BUSINESS**

To: [Mary]

Date: January 15, 2003

You are currently an employee of the City's [Department 1]. In a letter dated July 31, 2002, you asked the Board of Ethics for an advisory opinion on whether a non-profit corporation that you propose to establish, of which you will be the sole member, would be prohibited under the Governmental Ethics Ordinance from receiving funding from the [X] District [Program A]. After careful consideration of the facts presented and the relevant law, the Board has concluded that any grant funds provided to you by the [X] District [Program A] would constitute "work or business" of the City. Therefore, under the Ordinance, neither you, nor the non-profit corporation that you propose to establish, may receive funds of \$5,000 or more from the [X] District [Program A]. We set forth below the relevant facts, our detailed analysis of those facts under the Ordinance, and our determination.

FACTS:

A. City Employment

Since July 1, 1998, you have worked as [Director] for the [Bureau], a division of the City's [Department]. You said that your responsibilities involve assessing the needs and benefits eligibility of [persons] in the community, making [persons] aware of available community programs and resources, and providing them with other needed assistance. On occasion, you also refer [persons] to the City's Department of [] ([DP2]). Other than making such referrals to [DP2], or assisting in community events that may involve [DP2], you have no other dealings with [DP2] in your City position.

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B. The [Organization] and [Program A]

You said that, apart from your City job, you also serve as a paid consultant to the [Organization (O)], where you conduct a youth employment training program that you created. The [O], according to [John], is a § 501(c)(3) charitable organization that is part of the []. The [O] operates a community youth resource center that houses approximately 35 programs for young people, including drug and gang prevention, mentoring, tutoring, and youth development training.

A major component of the [O]'s youth development training program is [Program A], a program that was created by the Mayor approximately 8 years ago. [Program A] coordinates youth and family programs by working with neighborhood organizations, schools, parks and other City programs to ensure that a full range of youth development opportunities are available in each community. [Program A] helps young people locate programs and services that meet their needs and interests. There are a total of 24 [Program A] centers located in the City—approximately one in each of the City's 25 police districts. Each [Program A] is funded and managed by [DP2]. According to [Mike], [DP2]'s coordinator for [Program A], each [Program A] also may apply to other sources for additional funding.

The [O] houses the [X] District [Program A]. With respect to funding for the [X] District [Program A], [John], who is also Director of the [X] District [Program A], stated that the [X] District [Program A]'s funding comes entirely from the City. Each year, the [O] submits a response to a Request for Proposals issued by [DP2] regarding the [X] District [Program A]'s operations. In December 2001, the [O] was awarded its contract with [DP2] to operate the [X] District [Program A] for Fiscal Year 2002. The signatories to the contract were [DP2] and the []. Under the contract, the [X] District [Program A] was given an operating budget of approximately \$160,000. This amount covers: 1) salaries of [Program A] personnel (3 full-time employees (including [John]) and 1 part-time employee); 2) fringe benefits for the full-time employees; 3) \$25,000 "seed money"(money used to fund programs provided by various community organizations); 4) operating and technical costs; 5) materials and supplies; and 6) other items. This money is put into a [Program A] account and is used solely for [Program A] purposes. No other funds from any other sources are put into this account. [John] stated that, to pay its bills, the [X] District [Program A] submits vouchers to [DP2] every month for its review and approval. Vouchers that are approved by [DP2] are processed for payment by the City to the [X] District [Program A]. The [X] District [Program A] also submits monthly reports to [DP2] regarding its various programs, including costs related to those programs.

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Currently, your consulting services to the [O], and the other costs of your employment training program, are being paid exclusively from funds provided to the [O] by the [Foundation]. Because funding from the [Foundation] may not be renewed, however, you are currently exploring alternate funding sources.

C. Proposal to [Program A]

In anticipation of the [Foundation] funding terminating, you have submitted a written draft proposal to [John] seeking funding from the [X] District [Program A]. You submitted the draft proposal in your individual name. However, prior to the receipt of any funding from the [X] District [Program A], you propose to establish yourself as a non-profit corporation of which you will be the sole member.

Your program, as proposed, is geared to 14-18 year olds and lasts 6 weeks. It includes 8 workshops on finding employment and improving job interview skills, as well as 6 hours of on-the-job training. You estimate the annual budget for your program for the year to be \$10,800: \$6,000 for your salary; \$500 for supplies; \$800 for the participants' transportation costs ; and \$3,500 for stipends (\$100 to \$200 per youth), to be paid upon participants' completion of the program.

[John] stated that the City's [DP2] will have no role or involvement in the decision on your proposal; instead, he and his [Program A] staff will review your proposal and make the determination whether to approve it. If approved, funding for your program would come from the \$25,000 "seed money" that [DP2] allotted to the [X] District [Program A] in its fiscal year 2002 budget. [John] stated that funding would be released to you in one lump sum, if readily available; otherwise, it would be released to you in installments. In either case, the [X] District [Program A] would conduct an initial review of all reports of expenses incurred by your program and then forward the same to [DP2] for review and approval. The [X] District [Program A]'s monthly report to [DP2] would also include an update on the status of your employment training program.

APPLICABLE LAW AND ANALYSIS: The provision of the Governmental Ethics Ordinance that is most relevant to your situation is Section 2-156-110 (Interest in City Business). It provides, in relevant part, as follows:

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 . . . (emphasis added)

"Financial interest" is defined in Section 2-156-010(l) of the Ordinance, which states in relevant part:

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“Financial interest” means . . . (ii) any interest with a cost or present value of \$5,000.00 or more . . .

Under Section 2-156-110, then, an employee may not have an interest with a cost or present value of \$5,000 or more in any contract, work, or business of the City. In this case, the amount of funding you are seeking from the [X] District [Program A] is \$10,800. Clearly, an award to you in that amount would have a “cost or present value of \$5,000 or more” and, as such, constitute a “financial interest.” The issue the Board must resolve is whether grant funds received from the [X] District [Program A] should be viewed as “work or business” of the City.

In Case No. 90076.A, the Board addressed the question of whether City employees and officials could participate in the “Boulevard Program, ” a property-rehabilitation loan program funded, in part, by the City’s Department of Housing. The Program contained two funds, each administered by a non-City, not-for-profit entity. Under the program, the borrower entered into a loan agreement, not with the City, but with the not-for-profit, or with a financial institution. City funds were used to capitalize the not-for-profit’s loan fund, or to “write-down” the interest rate charged to the borrower by the financial institution. In its opinion, the Board concluded that that portion of a loan derived from City funds, as well as the amount of any City funds used to subsidize a loan’s interest rate, constituted “City business” and that, as such, City employees and officials could not have a financial interest in that City business.

In this case, if your proposal were to be approved, you would enter into an agreement, not with the City, but with the [X] District [Program A]. The [Program A] was created approximately 8 years ago by the Mayor to ensure that a full range of youth development opportunities are available in each of the City’s communities. Currently, there are 24 [Program A] centers in the City. Each [Program A] is funded and managed by the City’s [DP2]. Although each [Program A] may also apply to other sources for additional funding, the [X] District [Program A]’s funding comes entirely from the City. Under the current contract with the City’s [DP2], the [X] District [Program A] has an operating budget of approximately \$160,000. This includes \$25,000 in “seed money,” from which your grant proposal, if approved, would be funded. Although the [X] District [Program A] would conduct an initial review of all reports of expenses incurred by your program, the same would then be forwarded to [DP2] for review and approval. Furthermore, the [X] District [Program A]’s monthly report to [DP2] would include an update on the status of your employment training program.

Based on the facts presented, and consistent with the Board’s rationale in Case No. 90076.A, the Board concludes that any grant funds provided to you by the [X] District [Program A] would constitute “work or business” of the City, within the meaning of Section 2-156-110 of the Ordinance. Therefore, as a City employee, you are prohibited from receiving \$5,000 or more in funds from the [X] District [Program A]. This holds true regardless of whether you receive the funds as an individual, or via a non-profit corporation of which you are the sole member. (See Case No. 90077.A, wherein the City employee’s interest in a City contract was measured in terms

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of the dollar value of the City contract, pro rated by his percentage ownership in the corporate entity.)

DETERMINATION: The Board concludes that any grant funds provided to you by the [X] District [Program A] would constitute “work or business” of the City. Therefore, under Section 2-156-110 of the Ordinance, neither you, nor the non-profit corporation that you propose to establish, of which you will be the sole member, may receive funds of \$5,000 or more from the [X] District [Program A].

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the 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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

[signature]

Darryl L. DePriest
Chair