

CONFIDENTIAL

January 17, 2007

[NAME]
[DEPARTMENT]
[ADDRESS]
Chicago, Illinois 60611

Re: Case No. 06079.A

Dear [NAME],

On November 21, 2006, you contacted this office and asked for an opinion addressing whether the Governmental Ethics Ordinance (the “Ordinance”) prohibits a City employee from either owning a City of Chicago Taxicab Medallion (“Medallion” or “Medallions”) or leasing the Medallion to another person. After carefully considering the facts presented in this Opinion, it is the Board’s determination that the Ordinance does not prohibit a City employee from purchasing, owning, or renewing a City of Chicago taxicab medallion or from leasing it to or from another person, *provided that* the procedures stated in the Rules and Regulations for Taxicab Medallion License Holders are followed.

FACTS

Purchase of Taxicab Medallion. To date, there are approximately 6,300 active Medallions in the City of Chicago, and approximately 6,900 have been issued overall. In accordance with Section XIX of the Rules and Regulations for Taxicab Medallion License Holders (the “Rules”)¹, entitled “Public Sale of Taxicab Medallions,” Medallions are sold individually by sealed bid, after being advertised for a minimum of 30 days.² In the notice, the Commissioner of the Department of Consumer Affairs (“DCA”) establishes a minimum price for the Medallions to be sold, also known as an “Upset Price.” Each bidder must submit his or her bid on a prescribed form in a sealed 9” by 12” envelope, accompanied by the required \$7,500.00 deposit³. Bids are then opened in the

¹ An internet link to the Rules and Regulations for Taxicab Medallion License Holders can be found at: http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/TaxicabMedallionLicenseHolder_AMENDED-W-RULE-19.pdf

² The Rules do not indicate the manner in which medallion sales are to be advertised; however, a notice of the December 2006 auction of Medallions was sent to all of the taxicab companies, and was advertised on the City of Chicago website for a period of 30 days, as well as in the Chicago Sun-Times, the Chicago Defender, and the Chicago Dispatcher.

³ If a bidder is unsuccessful or unresponsive, his or her deposit will be returned. However, if a successful bidder fails to meet the qualifications for the issuance of a medallion, the deposit shall be forfeited to the City of Chicago Department of Consumer Services. See, Rule 19.05(e) and Rule 19.06

manner indicated in the notice and tie bids are decided by random selection. Successful bidders are then notified by certified mail. Successful bids are not transferable; however, after the successful bidder's application is approved and the Medallion is issued, the Medallion may be transferred, as explained below, subject to limitations. All Medallion owners must complete the course of study mandated by the Department of Consumer Services⁴, and renewals of the Medallion must be applied for on an annual basis.

Lease of Taxicab Medallion. According to Rule 8.01(a) under Section VIII of the Rules and Regulations for Taxicab Medallion License Holders,

“Taxicab lease” means a written contract between the licensed owner of a City of Chicago taxicab medallion (“lessor”) and a City of Chicago licensed public chauffeur (“lessee”) authorizing the use of the medallion and, if applicable, a taxicab vehicle, by that chauffeur for a specific period of time.

While the contract runs exclusively between the lessor and the lessee, the City imposes the requirement that the lessee must be a City of Chicago licensed public chauffeur, determines what information is to be a part of the contract⁵, and sets maximum lease rates. The City also imposes penalties for lessors that exceed the maximum lease rates. Leases are not recorded with DCA; however, they must be made available to DCA upon request.

ANALYSIS

Your question turns upon application of one section of the Ordinance, namely, Section 2-156-110. That section, entitled “Interest in City Business,” states, in pertinent part, that:

“No elected office 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, or is authorized by Ordinance...Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City...”

“Financial interest,” as defined in §2-156-010(l), means, in relevant part, “(ii) any interest with a cost or present value of \$5,000.00 or more.” A City employee is prohibited from having any interest in any contract, work or business of the City if the employee's interest therein is worth \$5,000 or more. Thus, the issue before the Board is whether the purchase of a Medallion from the City, or the lease of a Medallion to or from another person, would give a City employee a

⁴ This class is administered by Harold Washington College. The cost of attending is \$40.00.

⁵ The contract must include: 1) the name, address, medallion number and phone number of the Lessor; 2) the name address, and Chicago Chauffeur's License number of the Lessee; 3) the term of the lease; 4) the obligations of the Lessor for maintaining safety of the vehicle; and 5) the amount of money to be paid by the Lessee. Rule 8.02

prohibited financial interest in any contract, work or business of the City. If so, then such purchases are prohibited by the Ordinance; if not, then such purchases are not prohibited by the Ordinance.

Purchase of a Taxicab Medallion. Applicants for a Medallion must pay the City an up-front deposit of \$7,500.00, which is in excess of the \$5,000.00 limit imposed by the relevant clause of §2-156-110 of the Ordinance. However, the Ordinance has an exception for the purchase of City-owned property that allows such a purchase if the property is sold “pursuant to competitive bidding following public notice.” The issue we address now is whether the sale of these Medallions qualifies as public notice followed by competitive bidding.

In Case No. 93034.A, which concerned the possible sale of two City-owned properties to a City employee, we described the attributes of public notice. Specifically, we concluded that public notice existed where: 1) intent to enter into negotiations was given; 2) the intent was published in the Sun-Times once a week for two consecutive weeks, inviting other interested parties to submit proposals; and 3) additional proposals were solicited. In this instance, as in Case No. 93034.A, 1) the City publishes its intent to accept bids for new Taxicab Medallions, and all of the conditions for such bids, via the internet, mass mailings and print ads in the Chicago Sun-Times, the Chicago Defender, and the Chicago Dispatcher; and 2) these notices are published for 30 days. On these facts, the Board concludes that the process by which DCS advertises bids to purchase Medallions constitutes public notice for purposes of §2-156-110 of the Ordinance.

Similarly, in Case No. 93034.A, we defined competitive bidding as, “...a process in which all parties submitting bids are treated equally and are bidding on the same terms and conditions.” The Rules cited in this opinion, on their face, treat all parties equally — all interested parties have an equal opportunity to read the public notice and submit a bid, and all responsive bids are considered according to the same criteria. On these facts, the Board concludes that the process by which DCS receives and evaluates bids to purchase Medallions constitutes competitive bidding for purposes of §2-156-110 of the Ordinance.

Therefore, we conclude that the purchase of a Medallion from the City constitutes the sale of City-owned property pursuant to a process of competitive bidding following public notice, and that City employees and officials who purchase such Medallions through this process do not thereby have a prohibited financial interest in City business.

Lease of a Taxicab Medallion. As described above, a Medallion lease between a lessor and a lessee is a private agreement between the two parties in which the lessee agrees to pay the lessor for the right to operate a taxicab for an agreed time period, at an agreed price. Given these facts, the Board concludes that the lease of a taxicab Medallion under the procedures and subject to the conditions set by DCS and described in this opinion—which is really the sale in the secondary market of all or part of a Medallion holder’s right to operate a taxicab for a specified period of time, at a specified price, a right the purchase of which from the City we have already concluded does not constitute a prohibited financial interest in City business under §2-156-110—is likewise not a prohibited financial interest under §2-156-110. We emphasize, however, that our

conclusion is limited to leases of taxicab Medallions that are sold and then leased pursuant to the procedures described in this opinion, and does not necessarily apply to purchase and lease of other articles, licenses or property sold by the City.

DETERMINATION

Based on the facts as presented in this opinion, specifically the procedures described in Section XIX of the Rules and Regulations for Taxicab Medallion License Holders, and Rule 8.01(a) under Section VIII of the Rules and Regulations for Taxicab Medallion License Holders, the Board determines that the Governmental Ethics Ordinance does not prohibit a City employee from purchasing, owning, or renewing a Medallion, or from leasing it to or from another, *provided that* the procedures stated in the Rules and Regulations for Taxicab Medallion License Holders are followed.

The Board's determinations are not necessarily dispositive of all issues relevant to this situation, but are based solely on the applicable sections of the Governmental Ethics Ordinance to the facts presented in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as this may change our determinations. Other rules and/or laws may also apply to this situation.

RELIANCE

This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

Very truly yours,

Darryl L. DePriest
Chair