



City of Chicago  
Richard M. Daley, Mayor

[REDACTED] August 23, 1996

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

**ADVISORY OPINION  
CASE NO. 90040.A**

[REDACTED]

**Board of Ethics**

J. B. DeWilde  
Executive Director

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Chair

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Margaret Carter  
Russell Hardin  
Marlene O. Rankin  
Catherine M. Ryan

Since the beginning of [REDACTED] the Board of Ethics has received several requests from individuals seeking advisory opinions as to the propriety of their continued participation in the

[REDACTED] PROGRAM A [REDACTED] and the [REDACTED] PROGRAM B [REDACTED]. On [REDACTED]

the Board received a request from INDIVIDUAL X [REDACTED]. Until [REDACTED] the Board of Ethics was neither familiar with these programs nor had it reviewed these programs in light of the Governmental Ethics Ordinance. Once brought to the Board's attention, an investigation was initiated and extensive research was conducted in each of these cases.

These requests raised two distinct issues: (1) Whether City employees can receive property from the City through PROGRAM A [REDACTED]; and (2) Whether City employees can receive loans from programs administered or funded by the City, including funds from PROGRAM B [REDACTED]

On [REDACTED] the Board concluded that, as a general matter, the Governmental Ethics Ordinance prohibits City employees from participating in [REDACTED] PROGRAM A [REDACTED]. However, based on the totality of the circumstances in this particular case, it is the Board's opinion that equity and justice require it to conclude that INDIVIDUAL X should be allowed to continue to participate in the Program. With regard to the issue of related loan programs, the Board concluded that INDIVIDUAL X may not receive loans for \$5,000 or more from loan programs administered by the City, including PROGRAM B [REDACTED] loans, so long as she is a City employee.

The Board of Ethics is the agency charged with the responsibility of faithfully interpreting the Governmental Ethics Ordinance. It renders advisory opinions which are consistent with the language, purpose and goals of the Ordinance.

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



90040.A

Page 2

When appropriate, the Board makes recommendations for further action. Recommendations reflecting the Board's opinion in this case shall be forwarded to DEPARTMENT B.

In coming to its decisions, the Board made a thorough review of PROGRAM A and PROGRAM B and conducted extensive research of the facts surrounding INDIVIDUAL X's particular situation. Our review of the PROGRAM A indicates it was designed to provide homes to low and moderate income families that reside in the City of Chicago.

The Board's review of INDIVIDUAL X's circumstances revealed the following:

INDIVIDUAL X was employed by the City of Chicago DEPARTMENT E. She learned about PROGRAM A from an announcement in the Sun Times and submitted her application and \$25.00 application fee to PROGRAM A administrators in DEPARTMENT D. On that application she stated she was employed by the City of Chicago. DEPARTMENT D then confirmed INDIVIDUAL X's City employment by requesting and receiving verification of employment from her supervisor. INDIVIDUAL X's eligibility in PROGRAM A was not questioned at this time.

INDIVIDUAL X's name was randomly chosen and she was then given the opportunity to fulfill the necessary eligibility requirements under the Program. INDIVIDUAL X's eligibility was confirmed by DEPARTMENT D through extensive credit and income histories and home-site visits. The process continued with her selection of a home. City Inspectors inspected the site and drew up a work order specifying the rehabilitation required to make the property livable. Because INDIVIDUAL X's eligibility became doubtful due to her status as a City employee, the renovations were never put up for bid.

Additionally, INDIVIDUAL X completed at least two applications for loans through DEPARTMENT D. One application was for LOAN PROGRAM J the

90040.A

August 23, 1990

Page 3

other was for a DEPARTMENT D loan (\$4,000). INDIVIDUAL X was required to produce extensive documentation of her financial history dating back to 1987.

As part of the process, INDIVIDUAL X was required to pay approximately \$125.00 for an appraisal of the property she was to be awarded. After fulfilling all eligibility requirements of the Program, INDIVIDUAL X entered into PROGRAM A Purchase Agreement with the City. A quit claim deed from the City was recorded granting her conditional title to the property awarded under PROGRAM A.

INDIVIDUAL X was notified by the DEPART. D that she could not receive the loan mentioned above. She asked DEPT. D to rewrite the loans so that no City money would be needed. Shortly thereafter, DEPT. D began bi-monthly home visits for the purpose of reviewing and monitoring her budget. INDIVIDUAL X was told by DEPARTMENT D in April of 1990 that because of her City employment she probably could not participate in PROGRAM A.

ISSUE I: Whether City employees can receive property from the City through PROGRAM A.

The Board has concluded that City employees are prohibited by the Governmental Ethics Ordinance from receiving property through the PROGRAM A. The Board, in coming to this determination, looked to Section 26.2-11 of the Ordinance. This section contains two provisions which prohibit City employees from receiving property under PROGRAM A. The first provision that the Board reviewed prohibits an employee from having a financial interest in a contract of the City when the consideration of the contract is paid with funds which belong to or are administered by the City or when the consideration of the contract is authorized by ordinance. The exact language of Section 26.2-11 is 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, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. 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, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

One definition of financial interest in the Ethics Ordinance is: "any interest with a cost or present value of \$5,000.00 or more." Section 26.2-1(1)(ii). Our research indicates that the property which one would receive under PROGRAM A AGREEMENT will have a value of more than \$5,000.00.

The term "consideration" of a contract is defined as the benefit which one gives up in exchange for some other benefit. The City's consideration of the contract in this case is the PROGRAM A property, and the contract in question is the PROGRAM A AGREEMENT. Moreover, the transfer of the property to the PROGRAM A PARTICIPANT is made pursuant to City Council ordinance. Consequently, the Board was compelled to conclude that any employee who enters into PROGRAM A AGREEMENT with the City would have a financial interest in a contract, the consideration of which is authorized by ordinance. This conduct is clearly prohibited by the Ethics Ordinance.

Additionally, on this same issue, the Board looked to the provision of Section 26.2-11 which prohibits an employee from having a financial interest in the purchase of property which belongs to the City. Our research shows PROGRAM A involves a purchase of City property because the PROGRAM A PARTICIPANT receives property by quit claim deed from the City in exchange for \$1 and the promise to fulfill obligations stipulated in the PROGRAM A AGREEMENT. An exception to this part of the provision exists for property sold by the City pursuant to a process of competitive bidding. However, since PROGRAM A does not involve competitive bidding at any point of the process, this exception does not apply. The Board's analysis of this provision required it to conclude that an employee would have a financial interest in the purchase of property which belongs to the City if they entered into PROGRAM A AGREEMENT with the City. Accordingly, it is the opinion of the Board that Section 26.2-11 of the Ordinance prohibits City employees from receiving property through PROGRAM A.

Our investigation reveals that INDIVIDUAL X entered into the PROGRAM A AGREEMENT. Under Section 26.2-41, penalties may be imposed on employees for a violation of the Ethics Ordinance. Based on the opinion stated above, the

[REDACTED]  
August 23, 1990

Page 5

question with which the Board was necessarily confronted was whether the INDIVIDUAL X should be allowed to continue to participate in PROGRAM A. [REDACTED]

This case presented a very unique and difficult situation to the Board. The uniqueness of the case in the first instance centers on the fact that considerable luck is required before one can PARTICIPATE IN PROGRAM A. [REDACTED]. Under this Program, INDIVIDUAL X'S name had to be randomly chosen. [REDACTED]

This "luck of the draw" requirement distinguishes the PROGRAM A [REDACTED] from all other programs previously analyzed under Section 26.2-11 of the Ethics Ordinance. This unique feature, viewed in light of the totality of INDIVIDUAL X'S [REDACTED] circumstances, gave the Board much to consider in coming to its decision.

In reviewing the facts, it became obvious to this Board that throughout her participation in the Program, INDIVIDUAL X acted in good faith and in reliance on the affirmative actions of others to her detriment. She did not conceal the fact that she was a City employee. The initial application [REDACTED] clearly states her employer as the City of Chicago. Subsequent documents which she was required to produce also verify this fact. Yet, until recently, INDIVIDUAL X was allowed to participate in the Program.

Moreover, [REDACTED] both INDIVIDUAL X [REDACTED] and the City have expended substantial sums of time, effort and money. The Board concluded that it would be a great loss to everyone concerned, should INDIVIDUAL X not be permitted to continue in the Program. Among other things, a contract [REDACTED] has been signed, title to the property transferred by quit claim deed from the City, extensive credit checks run, inspections and appraisals completed, and financial counseling and home-visits undertaken. Under these circumstances, for the Board to negate what has already been done would be unconscionable. Therefore, in coming to our decision on this matter, we considered not just the letter of the Ordinance but the principles of equity, good conscience and justice.

For the foregoing reasons the Board cannot in this case make the recommendation that INDIVIDUAL X be prohibited from further participation in the Program. We have concluded that to do so would be highly inequitable and unjust.

ISSUE II: Whether City employees can receive loans from programs administered or funded by the City, [REDACTED]

90040.A

August 23, 1990  
Page 6

The Board also reviewed Section 26.2-11 to determine whether City employees are eligible to participate in PROGRAM J loan programs. As previously discussed, no City employee may have a financial interest in any contract when the price or consideration of the contract is paid with funds administered by the City. It is our understanding, based upon our review of the PROGRAM J DEPT. D that <sup>another</sup> <sub>agency</sub> provides loan funds which the DEPT. D administers. In past decisions of the Board, it has been determined that the Ethics Ordinance prohibits City employees from receiving loans of \$5,000 or more from programs administered by DEPT. D.

In that case, the Board of Ethics determined that the loans fell within Section 26.2-11 of the Ordinance because: (1) loan agreements are contracts; and (2) the loans in question were administered by the City. For these reasons, it is the Board's opinion in this case that City employees are prohibited from receiving loans of \$5,000 or more from loan programs administered by the City. This opinion allows City employees to receive loan funds of less than \$5,000 through loan programs administered by the City. Loans for \$5,000 or more would constitute a violation of the Ordinance.

#### CONCLUSION:

The Board's determination and recommendations to DEPT. D based upon the totality of circumstances in this case are as follows: (1) that INDIVIDUAL X be allowed to continue her participation in PROGRAM A so long as she can meet the conditions of the Program; (2) that INDIVIDUAL X may not receive funds of \$5,000 or more from loan programs administered by the City, so long as she is employed by the City.

#### RELIANCE:

An advisory opinion issued for one case is not a sufficient basis for inferring legal permissibility or impermissibility of conduct in other cases, even though cases may be similar in some respects. This advisory opinion is based on the specific set of circumstances described above. It should be relied upon for legal guidance only by the following persons: (1) persons involved in specific transaction or activity with respect to which an advisory opinion is rendered, or (2) persons involved in a specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which an advisory opinion is rendered.

90040.A

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August 23, 1990  
Page 7

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Kelly Welsh, Corporation Counsel  
Department of Law

90040.L2