

01/11/98

ADVISORY OPINION
Case No. 98003.A, Interest in City Business

To: [REDACTED]
Date: March 11, 1998



City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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In a letter dated January 26, 1998, you requested an advisory opinion about whether you, an employee of the City's Dept. X [REDACTED], may petition the City to "vacate" the alley adjacent to your residence at [REDACTED] in Chicago. After reviewing relevant law and after conferring with the Corporation Counsel's Office and the Department of Transportation, the Board has concluded that the Governmental Ethics Ordinance does not prohibit you 1) from petitioning the City to vacate the alley adjacent to your residence pursuant to established City procedures or 2) from ultimately purchasing the alley from the City by way of vacation.

FACTS: The facts upon which our opinion is based come from 1) your letter, a graphic which you submitted and staff conversations with you; 2) a review of written "Procedures for Vacation Ordinance" provided to staff by the Department of Transportation, Division of Maps and Plats; and 3) staff consultation with the Office of the Corporation Counsel, Real Estate and Land Use Division.

You are an employee of [REDACTED] Dept. X [REDACTED]. You, together with another, own a residence at [REDACTED] [REDACTED] in Chicago. You are contemplating petitioning the City to vacate a 16 X 125 foot alley which runs between your residence and one other property located at [REDACTED]. You do not know the monetary value of the proposed vacation.

The City's vacation of an alley is, in essence, the City's release of its interest in that section of the public way. The City's vacations of public ways are governed by a combination of statutory and common law. Under Illinois law, upon vacation of a section of the public way by a municipality, title to the vacated property vests in the owner(s) of the abutting or adjacent property. 65ILCS 5/11-91-2. Title devolves as a matter of law, and the City cannot convey the property to anyone other than the person or entity holding the abutting parcel.



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The procedure by which the City vacates a section of the public way is uniform:¹ the owner of the abutting parcel must initiate the process by 1) making written application to the Department of Transportation, Division of Maps and Plats and 2) contacting the alderman of the ward in which the property is located to request that an Order be introduced in the City Council directing the Commissioner of Transportation to prepare the necessary vacating ordinance. Upon the applicant furnishing evidence of title, along with proof of notification to, and approval by, any other abutting property owners, the Department of Transportation notifies all utilities and other involved agencies (e.g. cable companies) of the proposed vacation for their review and comment. If all agencies approve, a proposed ordinance is drafted by the Department of Transportation and forwarded to the Law Department. The latter reviews the draft ordinance for form and legality and arranges for appraisal of the monetary value of the proposed vacation by one or more (typically, two) appraisers on contract to the City. (The initial cost of the appraisal is borne by the applicant; however, if he/she decides to pursue vacation, the amount of compensation the applicant ultimately pays to the City is reduced by the cost of the appraisal.) The ordinance, together with the Law Department's recommendation as to sale price, is then sent to the City Council's Committee on Transportation and Public Way for its review and recommendation to the full Council. If approved by the City Council, the vacation becomes effective upon payment of the determined compensation to the City and proper filing with the Recorder of Deeds.

Finally, we note that, in the course of your employment in the [REDACTED], you do not have occasion to be involved in, or to influence, any aspect of the vacation process.

LAW: The Section of the Governmental Ethics Ordinance most relevant to your situation is Section 2-156-110. That section prohibits a City employee from having a financial interest in City business. In pertinent part it states:

... 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 is defined in relevant part at 2-156-010(1) as:

(ii) any interest with a cost or present value of \$5000.00 or more; ... provided, however, that financial interest shall not

¹ The steps which an applicant must follow have been reduced to writing by the City and are available to the public from the Department of Maps and Plats.

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include... (d) any economic benefit provided equally to all residents of the City.... (emphasis added)

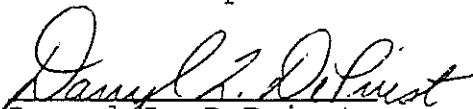
ANALYSIS: The Board does not find it necessary to reach the question of whether the vacation procedures established by the City fulfill the functions of competitive bidding and public notice of Section 2-156-110. Nor does the Board find it necessary to first resolve the question of whether the proposed vacation has a cost or present value of \$5000.00 or more.

Instead, the Board finds review under subsection (d) of the exceptions to the definition of "financial interest" to be dispositive. That is, the right to purchase, upon vacation by the City, that portion of the public way which abuts one's property, albeit an economic benefit, is available to all property owners in the City. Furthermore, the procedures which a property owner must follow to accomplish such a purchase are uniform, have been reduced to writing by the City, and are available to the public. Purchase of the alley, pursuant to established procedures for the vacation of public ways, therefore, would not constitute a "financial interest" under the Ordinance.

DETERMINATIONS: The Board determines that the Governmental Ethics Ordinance does not prohibit you 1) from petitioning the City to vacate the alley adjacent to your residence, pursuant to established City procedures or 2) from ultimately purchasing the alley from the City by way of vacation.

The Board's determinations are based on the application of the City's Governmental Ethics Ordinance to the facts recited in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately as any change may alter our conclusions.

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.


Darryl L. DePriest
Chair