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ADVISORY OPINION
CASE NO. 98017.A
FINANCIAL INTEREST IN CITY BUSINESS

To: [REDACTED]

Date: [REDACTED]

On [REDACTED], Dept. A [REDACTED], in connection with its own investigation of [REDACTED] Mr. X [REDACTED], a City employee, requested a Board advisory opinion on whether, under the facts that Office has presented, Mr. X [REDACTED] is in violation of the Governmental Ethics Ordinance. Based on a review of the facts presented by [REDACTED] Dept. A [REDACTED], as well as financial information provided to Board staff by the City Department of Finance, the Board, without further independent investigation, determines that Mr. X [REDACTED] does have a prohibited financial interest in City business.

STATEMENT OF FACTS: Mr. X [REDACTED] is employed by the [REDACTED] Department as a [REDACTED]. He has worked for the City since [REDACTED], also serving with the Department of [REDACTED] and the Department of [REDACTED]. He is married to Ms. X [REDACTED].

Representatives from [REDACTED] Dept. A [REDACTED] forwarded to the Board a variety of documents pertaining to the ownership, management and operation of three companies: [REDACTED] Co. 1 [REDACTED], [REDACTED] Co. 2 [REDACTED] and [REDACTED] Co. 3 [REDACTED].

Among the documents tendered by [REDACTED] Dept. A [REDACTED] are articles of incorporation for all three companies; corporate resolutions and minutes of corporate meetings for the latter two; bank resolutions and corporate checks pertaining to [REDACTED] Co. 1 [REDACTED]; correspondence between [REDACTED] Co. 1 [REDACTED] and governmental agencies; as well as records of interviews of [REDACTED] Mr. X [REDACTED] and [REDACTED] Ms. X [REDACTED] by [REDACTED] Dept. A [REDACTED].

Documents filed with the Illinois Secretary of State establish the following corporate history. 1. [REDACTED] Co. 3 [REDACTED] was incorporated on [REDACTED] 1985, with [REDACTED] Mr. X [REDACTED] named as president and secretary; [REDACTED] Ms. X [REDACTED] as sole shareholder; and both Mr. [REDACTED] X [REDACTED] and Ms. [REDACTED] X [REDACTED] as directors. On [REDACTED] 1988, [REDACTED] Mr. X [REDACTED] resigned as secretary and president of [REDACTED] Co. 3 [REDACTED]; on the same date Mr. [REDACTED] X [REDACTED] and Ms. [REDACTED] X [REDACTED], in their capacity as directors, elected Ms. [REDACTED] X [REDACTED] to fill both the offices Mr. [REDACTED] X [REDACTED] had vacated. In [REDACTED] 1988, [REDACTED] Mr. X [REDACTED] resigned his post as director, leaving [REDACTED] Ms. X [REDACTED] as sole director and shareholder of [REDACTED] Co. 3 [REDACTED]. In the same month, Ms. [REDACTED] X [REDACTED] amended



the corporate name to Co. 2. On 1993, Co. 1 was incorporated, with Ms. X named as the sole incorporator and officer / director.

Included among the materials forwarded by Dept. A are three documents in which Mr. X has been identified, or has identified himself, as the General Manager of Co. 1. The documents, discussed more fully below, are an 1993 letter to the Co. 1, a 1993 Letter of Agreement between Co. 1 and the Museum of Science and Industry and a 1994 letter to the City of Chicago.

Also forwarded by Dept. A are a Corporate Authorization Resolution submitted by Co. 1 to the Bank, dated 1992 and signed by both Ms. X and Mr. X, as well as copies of corporate checks signed by Mr. X and dated from 1996 through 1996. Details of the resolution and the checks are discussed below.

When interviewed by investigators from Dept. A, Mr. X stated that he has no ownership interest or financial interest in Co. 1; that he has no ownership interest in any property that the company owns or leases; that Ms. X is the president of the corporation and has owned Co. 1 since its inception; that he can sign checks for Co. 1 on its Bank account; that the company has contracts with the City of Chicago; that he was the sole owner of Co. 2; that he sold his interest eight to ten years ago; that Ms. X received his interest; and that Co. 2 has been out of existence for two to three years.

When interviewed by investigators from Dept. A twice in 1997, Ms. X stated that she has been married to Mr. X since 1987; that prior to her marriage she was employed by Co. 2, that she became president of Co. 2 in 1988; that Co. 1 came into existence in 1992; that she is the owner and president of Co. 1; and that Mr. X has authority to sign checks, but not contracts, on behalf of the company.

Board staff inquiry on Co. 1 to the City's Department of Finance disclosed that, pursuant to contracts with the City, Co. 1 has been paid the following sums by the City: over \$5,000 in 1995; over \$5,000 in 1996; over \$5,000 in 1997 and over \$5,000 to date in 1998.

Staff review of Board of Ethics records also disclosed that Mr. X had previously been the subject of Board advisory opinion 88041.A. On 1988, Dept. H requested an opinion from the Board as to whether a lease between the City and Co. 3—of which Ms. X was sole shareholder and Mr. X was a director, president and secretary—would give Mr. X a

prohibited financial interest in City business. The Board determined that "(t)he City cannot enter into a lease whenever an elected official or City employee seeks such a lease in his name or in the name of another if the reasonable commercial value of the lease is over \$5000." (emphasis added) The Board issued its opinion to the Acting Commissioner of Dept. H on [redacted] 1988.

Board records indicate that in [redacted] 1988, Board staff by letter notified legal counsel for [redacted] Co. 3 [redacted] -- by then operating as Co. 2 [redacted] -- that [redacted] Department H [redacted] would not offer a City lease to Co. 2 [redacted] unless/until the Board was satisfied "that Mr. X [redacted] has no ownership or management interest in the company."

In [redacted] 1988, counsel for Co. 2 [redacted] submitted a letter and corporate documents to the Board as evidence that Mr. X [redacted] had divested himself of all ownership and management interest in Co. 2 [redacted]. A paragraph of that [redacted] letter reads as follows:

Thus, to summarize: All property [redacted] subject to the terms of the proposed lease with the City of Chicago are owned by Co. 2 [redacted], an Illinois corporation. The sole shareholder of this corporation is and has always been Ms. X [redacted]. Mr. X [redacted] is neither an officer, director nor an employee of Co. 2 [redacted] and the only authorized signatory on the accounts of Co. 2 [redacted] is Ms. X [redacted].

LAW: The City of Chicago Governmental Ethics Ordinance provision at issue is Section 2-156-110, "Interest in City Business," which states in relevant part:

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. . . .

"Financial interest" is defined in Section 2-156-010(1) of the Ordinance, which states in relevant part:

Financial interest means (i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10 percent of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any interest of the spouse of an official or employee which interest is related to the spouse's independent occupation, profession, or employment. . . .

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QUESTION PRESENTED: Does [Co. 1] fall under the "spouse's independent occupation" exception to the definition of financial interest?

BRIEF ANSWER: The Board concludes that [Co. 1] is not the independent occupation, profession, or employment of Mr. [X]'s spouse because he has participated in the management and operation of the company, and he has exercised legal and financial control over the company. Since [Co. 1] is not the independent occupation of Ms. [X], the Board concludes, on the facts presented, that Mr. [X] has a prohibited financial interest in City business in violation of Section 2-156-110 of the Governmental Ethics Ordinance. Our analysis of the facts that lead to this conclusion are set forth below.

ANALYSIS AND CONCLUSIONS: In Case No. 91052.A, the Board set forth the requirements for a business to fall under the spouse's independent occupation exception. For the exception to apply, the Board ruled that the following requirements must be met.

- 1) The City employee may not participate in the management or operation of the spouse's project.
- 2) The City employee may not exercise any legal or financial control over the spouse's project or related business.
- 3) The City employee may not have an ownership interest in the spouse's project.

Based on the evidence contained in [Dept. A]'s file, Mr. [X] has participated in both the management and operation of [Co. 1] and he has exercised legal and financial control over the business. Mr. [X] may or may not have an ownership interest in [Co. 1], but since he fails to meet the other two requirements, the Board need not reach that issue.

A. Mr. [X] has participated in the management and operation of [Co. 1]

[Dept. A]'s file contains three documents that indicate that Mr. [X] has been identified, or has identified himself, as the General Manager of [Co. 1]. In addition to the inference that can be drawn from his use of the title, the nature of these letters demonstrates that he has played a role in the management and operation of the company.

An [1993] letter to the [redacted], addressing the re-documentation of the [redacted] property owned by [Co. 1], was written by Mr. [X] in response to an official letter from the [redacted], whose regulations require the yearly renewal of

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[REDACTED]

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a [REDACTED] license subject to penalty under federal law. In his response, Mr. [X] directs the [REDACTED] to contact him with any questions and provides a phone number where he can be reached seven days a week.

In a [REDACTED] Letter of Agreement between [Co. 1] and the Museum of Science and Industry, which Mr. [X] signed on [REDACTED] 1993, he is identified by the Museum of Science and Industry as the "General Manager" of [Co. 1].

Finally, in a [REDACTED] 1994 letter to the City of Chicago, Ms. [X] identified Mr. [X] as the General Manager of [Co. 1]. She wrote:

As General Manager, Mr. [X] uses his [REDACTED] experience on job sites [REDACTED] [Co. 1] is working at by inspecting operations of [Co. 1] crews. He also works with the [REDACTED] and Federal Communications Commission to ensure all [REDACTED] are kept current according to all Federal regulations.

B. Mr. [X] has exercised both legal and financial control over [Co. 1].

Included among the documents obtained by Dept. A [REDACTED] and submitted to the Board is a copy of the Corporate Authorization Resolution from the [REDACTED] Bank [REDACTED] for [Co. 1], dated [REDACTED] 1992. This document, signed by both Mr. [X] and Ms. [X], grants the following powers to Mr. [X]:

- 1) Open any deposit or checking account in the name of the corporation.
- 2) Endorse checks and orders for the payment of money and withdraw funds on deposit with the [REDACTED] Bank.
- 3) Borrow money on behalf and in the name of this corporation, sign, execute and deliver promissory notes or other evidences of indebtedness.
- 4) Endorse, assign, transfer, mortgage, or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property as security for sums borrowed.

[REDACTED]

5) To unconditionally guarantee payment of all bills received, negotiated, or discounted.

6) To enter into a written lease for the purpose of renting and maintaining a safe deposit box at [REDACTED] Bank.

Mr. [X] signed this document twice, the second time on a line which stated "Attest by One Other Officer."

Not only was Mr. [X] authorized to exercise these financial and legal powers on behalf of [REDACTED] Co. 1, he did in fact exercise some of the powers enumerated in the document. Between [REDACTED] 1996 and [REDACTED] 1996, Mr. [X] signed twenty corporate checks to trucking companies, fuel companies and other firms. The amounts of the checks range from \$[REDACTED] to \$[REDACTED] and total \$[REDACTED].

The letters examined in section A above also demonstrate legal control over the business. Mr. [X] had the authority to undertake actions pertaining to the federal regulation of [REDACTED] Co. 1, as evidenced by his letter to the [REDACTED] and by Ms. [X]'s reference to his work with the [REDACTED] and the FCC to ensure that [REDACTED] Co. 1 [REDACTED] complied with federal regulations.

In sum, the Board concludes that Mr. [X] has participated in the management and operation of [REDACTED] Co. 1 and that he has exercised both legal and financial control over the company. The Board concludes that [REDACTED] Co. 1 is not the independent occupation of [REDACTED] Mr. [X]'s spouse, Ms. [X]. Accordingly, Ms. [X]'s 100% ownership interest in [REDACTED] Co. 1 is, for purposes of the Ordinance, attributable to Mr. [X]. Because [REDACTED] Co. 1 has--and from [REDACTED] through [REDACTED] had--City contracts whose cost or value far exceeded \$5,000, Mr. [X] has a financial interest in City business, and has had such an interest since 1995.

DETERMINATIONS: The Board determines that Mr. [X] has-- and from 1995 through 1997 had-- a financial interest, as defined in Section 2-156-010 (l) (ii), in the name of another person, to wit, [REDACTED] Co. 1, in City business in violation of Section 2-156-110 of the Governmental Ethics Ordinance.

Our determinations are 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.

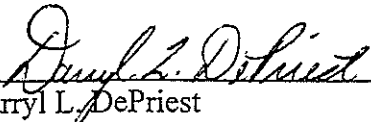
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RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.



Darryl L. DePriest
Chair