

**ADVISORY OPINION
CASE NO. 00027.A
Outside Employment**

To: [John]
Date: January 17, 2001

You are [] employed by the City's [Department 1] and serve on the staff of the [Program]. You wish to establish a privately held, not-for-profit consulting firm that would assist other not-for profit organizations in fund-raising activities. In a letter of December 10, 2000, you requested an advisory opinion from the Board on whether the outside employment you envision would comply with the City's Governmental Ethics Ordinance. After careful consideration of the facts presented, the Board finds that while the Ethics Ordinance does not prohibit you from establishing your firm in the form you have described, the Ordinance does severely limit your conduct, not only in the operation of your private business, but in the exercise of your responsibilities as a City employee. Therefore, given the possible appearance of impropriety that could result under certain circumstances, the Board recommends that you adhere to certain other limitations. The Board's determinations and recommendations in this matter are discussed below.

FACTS:

Your City Employment: You began working in the [Program] office approximately two and a half years ago. You started as a graduate student intern in 1998 and became a full-time employee in June of 1999. When you began working for the [Program] Office, it was part of the City's [Department 2]. It has since become part of the City's [Department 1], although the [Department 2] still funds some of the [Program]'s administrative costs. The work of the [Program] office is governed by a committee called the [Council]. The members of the [Council] serve without pay and are appointed officials of the City. See Case No. 95053.CNS. The chairman of the [Council] is appointed by the Mayor.

The federal [related Program] distributes grant monies, such as [Grants], and makes tax incentives available to qualified businesses, in order to carry out its mission []

The City's [Program] receives both federal and state funding, and distributes the funds in the form of grants to organizations and individuals that successfully apply for these grants through the City's [Program] office.

There are several stages in the process through which the City [Program] distributes grant monies. In the first stage, the [Program] office publishes requests for proposals to which potential grantees may respond by submitting applications. You stated that, in your job, at this first stage of the grant process, you occasionally have the opportunity to write specifications for, or give advice regarding, the requests for proposals, although generally the ideas for requests for proposals originate with the [Council]. You also field calls from potential grantees, answer questions they might have about the application process, and occasionally refer them, where appropriate, to other organizations that might better serve their needs.

The next stage of the grant process, you said, was an "objective review process" by which applicants are chosen to receive grants. Although you and your colleagues do an initial review of applications for completeness, you do not otherwise participate in the process of deciding which applicants get funding. Rather, the [Council] is responsible for such decisions. To ensure objectivity, outside consultants are retained by the City to review the applications for content, assign scores to the applications, and submit the scores to the [Council], which then makes recommendations to City Council regarding which applicants should receive funding. The [Council]'s recommendations to City Council are transmitted via a memorandum from the Mayor's Office of Intergovernmental Affairs. The transmittal memos, which outline the grant proposals, are prepared by [Program] staff, including yourself. If the City Council approves a grant proposal, an enabling ordinance is enacted, clearing the way for funds to be distributed to the grantee.

Once the enabling ordinance is published, it is your office's responsibility to create grant agreements with the applicants who are to receive funding. You stated that most of your responsibilities occur at this point in the grant process. You guide grantees through the stages of making and fulfilling their grant agreements.¹ You also negotiate the terms of the agreements with the grantees, e.g., the number of clients to be served within the first fiscal year of receiving the grant, and so forth.

Your Proposed Outside Employment: You and a partner wish to establish a privately held, not-for-profit consulting firm that would assist other not-for-profit organizations in fund-raising activities and provide them with management consulting. You stated that your firm would provide service in three areas: grant-writing, unrestricted campaigns, and management consulting. (Unrestricted campaigns solicit donations that are given with no "strings" or conditions attached.) You and your partner, along with at least two others, would sit on the firm's board of directors. Ownership of the firm, as well as control over the transfer of its assets, would be shared among the board members. You and your partner would also be compensated employees of the firm, in your capacity as its sole executive officers. You stated that your firm has no intention of seeking or entering into contracts or grants with any City department. Regarding your firm's prospective clientele, you said that your firm does not intend to accept as clients persons whom you know to be recipients of, or applicants for, [Program] funds.

¹In fact, while at the [Program], you have written a manual that assists grantees in navigating the grant process.

Finally, you stated that you have discussed your proposed outside employment with the Director of the [Department 1], and that he has conditionally approved it, subject to the opinion of the Board of Ethics.

LAW, ANALYSIS AND CONCLUSIONS: While the Governmental Ethics Ordinance does not *per se* prohibit City employees from having outside employment or business ventures, it does impose certain restrictions on the conduct of such employees. Several sections of the Ordinance containing these restrictions are relevant to your situation. An analysis of each follows.

Sections 2-156-030 and -080. Section 2-156-030 of the Ordinance, entitled "Improper Influence," states in relevant part:

(a) No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally;

and Section 2-156-080, "Conflicts of Interest," states in relevant part:

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public.

Section 2-156-010(i) defines "economic interest" as "any interest valued or capable of valuation in monetary terms"

These sections prohibit City employees from making, participating in or in any way attempting to use their City positions to influence, a governmental decision or action in a matter in which they have an economic interest, as defined, that is distinguishable from that of the public. Interpreting these sections, the Board has concluded that "if [a City] employee ... receives an economic interest by virtue of his or her outside employment, and that economic interest is affected by virtue of his or her government decision, then a conflict of interest arises." Case No. 91059.A, p.3.

By virtue of your ownership interest in the firm, as well as your employment with it, you would have, within the meaning of the Ordinance, an economic interest in the firm that is distinguishable from that of the general public. See Cases 98062.A; 94009.A; 92044.A; 92023.I, wherein the Board found that City employees had an economic interest in their outside employment. In certain past cases involving City employees who had outside employment with persons who had or sought business with their City departments, the Board determined that conflicts of interest would or did arise. See Cases 98062.A; 94009.A; 92044.A; 92023.I; 91059.A. In these cases the outside employment itself was or would be related to, or enhanced by, decisions these employees made or would make in their City jobs. Following the reasoning of these cases, it is the Board's opinion that you would be prohibited from participating in, making or in any way attempting to use your City

position to influence, any City decision or action that would affect or relate to your not-for-profit consulting firm.

Based on the facts presented, it appears that in your current City job you participate or have the opportunity to participate in decisions or actions of the [Program] at several stages in the grant-giving process. You may affect the form of requests for proposals, you field telephone inquiries from potential grantees, and you review grant applications received by the [Program] office for completeness. At times you help write transmittal memos summarizing grant proposals that are forwarded to City Council. You may also affect the form of grant agreements by negotiating with grantees after the City has approved their requests for funds. Under Sections 2-156-030 (Improper Influence) and 2-156-080 (Conflicts of Interest), you would be prohibited from taking any such actions, or making any such decisions, if those actions or decisions would affect or relate to the firm. For example, in your City position you would be prohibited from fielding telephone inquiries regarding [Program] grant applications made by clients of your firm, or reviewing or in any way attempting to affect [Program] grant applications submitted to the City by clients of your firm.

You said that your firm does not intend to accept as clients persons whom you know to be recipients of, or applicants for, [Program] funds. Nevertheless, the Board is concerned about the appearance of impropriety that is certain to result if there exists some relation, even other than a direct grantee-grantor relation, between a client of your firm and the [Program]. An example of such a relation might be that a board member of an organization that retains your firm is also the executive director of a second organization that receives or has applied for a grant administered by the [Program]. Although an action or decision by you in your City job, relating to the second organization's [Program] grant, might not, depending on the circumstances, be prohibited under the Ordinance, the Board recommends, given the appearance of impropriety that would result, that your firm refrain from entering into a consulting agreement with any organization which itself has had, or whose directors, principals, or officers have had, any relationship with the [Program] since you began working with the [Program] in 1998.

Section 2-156-050. Section 2-156-110, "Solicitation or Receipt of Money for Advice or Assistance," states in relevant part:

No official or employee ... shall solicit or accept money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee ... from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

Under this section, you would be prohibited from accepting compensation, or anything of value, in return for advising or assisting clients of your firm on any matter concerning the operation or business of the City, unless such matters are wholly unrelated to your City duties and responsibilities. Obviously, you would be prohibited under this provision from advising or assisting clients on matters related to the [Program]. However, you would also be prohibited from advising or

assisting clients regarding *other* City programs or grants, unless your services were “wholly unrelated,” within the meaning of the Ethics Ordinance, to your City duties. Therefore, the Board recommends that your firm refrain from entering into a consulting agreement relating to *any* City program or grant, without first contacting the Board for more specific guidance based on the particular facts involved.

Section 2-156-110. Section 2-156-110 of the Governmental Ethics Ordinance, entitled "Interest in City Business," 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, 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.

“Financial interest” is defined, in relevant part, at Section 2-156-010(l) of the Ordinance as any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year, or any interest with a cost or present value of \$5,000.00 or more.

You have stated that your firm has no intention of seeking or entering into contracts or grants with any City department. Were that to change, however, your personal interest in such a contract or grant would, consistent with prior Board decisions, be subject to these monetary limitations, by virtue of your ownership interest in the firm. See Case Nos. 90077.A; 98017.A. In addition, we advise you to seek specific guidance from us in the event your firm seeks to, or does, enter into a contract with another person, organization or firm that itself contracts with the City, or receives City funding, as these restrictions may apply, depending on the terms of that other person's City contract or grant. See Case Nos. 97019.A; 93033.A. Furthermore, in such a situation, there may also be disclosure requirements to which you would be subject if you were required to file an annual Statement of Financial Interests with this Board.

Section 2-156-020. Section 2-156-020 of the Ordinance, "Fiduciary Duty," states:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This provision imposes an obligation on City employees to use their City positions responsibly and in the best interest of the public. Within lawful limits, a City employee must give undivided loyalty to the City in the discharge of his or her public duties. In cases of non-City employment, it precludes the use of City time and City resources to obtain a personal benefit or to promote a purely private interest. See Case Nos. 89126.A and 88087.A.

Under this provision, you would be prohibited, for example, from referring callers to your firm or mentioning your firm when, in the course of your City duties, you have the opportunity to answer calls from potential applicants to the [Program]. You would also be prohibited from utilizing your position with the [Program] to gain information unavailable to the general public to promote

the business of your firm. See Case No. 92014.A. For example, in your City position you have access to information regarding which individuals and organizations applied for, but failed to receive, [Program] funds. If that information is unavailable to the public, you would be prohibited from using it to contact such persons to market your firm's services. If such information is available to the public, but only upon filing a Freedom of Information request or following some other established procedure, you would be prohibited under the Ordinance from utilizing such information without first accessing it by the same means required of any other citizen.

Section 2-156-060. Section 2-156-020 of the Ordinance, "City-Owned Property," states:

No official or employee shall engage in or permit the unauthorized use of City-owned property.

The Board has previously held that this provision prohibits the use of City resources for any purpose other than City business. See Case No. 89006.A. Thus, under this section, you would be prohibited from using City resources or supplies to carry out the business of your firm, and from conducting business related to your firm on City time.

Sections 2-156-070 and 2-156-090. Two more sections of the Ordinance are relevant to the issue of your proposed outside employment, namely, Section 2-156-070 "Use or Disclosure of Confidential Information," and 2-156-090 "Representation of Other Persons." The former prohibits you from disclosing confidential information gained in the course of or by reason of your position or employment with the City, except where required by law. Information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended, is considered confidential. The latter provision prohibits you from representing your firm, or any person other than the City, in any formal or informal proceeding or transaction before any City agency, unless the matter is of a routine, ministerial nature.

The Board's opinion 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 us immediately, as any change may alter our opinion. Other laws or rules may also 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 Ethics Ordinance. You stated that you have discussed your proposed outside employment with the Director of the [Department 1], and that he has conditionally approved it, subject to the opinion of the Board of Ethics. The Board recommends that, immediately upon receipt of this advisory opinion, you provide a copy of it to the Director.

We appreciate your inquiry and your concern to abide by the standards embodied in the Ethics Ordinance. If you have any further questions, please do not hesitate to contact us.

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.

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January 17, 2001

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[signature]

Darryl L. DePriest

Chair

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