

CONFIDENTIAL

**ADVISORY OPINION
CASE NO. 01028.A
OUTSIDE EMPLOYMENT**

To: [Mary]
[Senior Officer]
[Department]

Date: August 15, 2001

In a letter dated June 21, 2001, you requested an advisory opinion on how the Governmental Ethics Ordinance would apply to your potential outside employment with a law firm owned by your husband. You are an attorney and a [Senior Officer] in the [Department

]. You asked if the Ordinance would prohibit you from (1) becoming a partner in your husband's firm, and (2) having your name listed as a partner on the firm's business cards and letterhead. You also asked whether, assuming that you were a partner, the Ethics Ordinance would prohibit the firm from (3) representing clients who are defending lawsuits initiated by the City in a forum outside of [the Department] or (4) representing clients who initiate lawsuits against the City in a forum outside of [the Department]. You asked the Board to consider situations (3) and (4) under circumstances where you participated in the representation as well under circumstances where you did not participate in the representation.

After careful consideration of the facts you presented and the relevant law, the Board concludes that the Ethics Ordinance does not prohibit you from becoming a partner in your husband's law firm or from having your name listed on the firm's business cards and letterhead. However, you are prohibited from representing clients of the firm before any City agency or having any economic interest in the firm's representation of clients before a City agency. You are also prohibited from having an economic interest in the representation of any person in a forum where the City is a party, and the client's interests are adverse to the City. We set forth below the relevant facts as you have presented them, our analysis of the matter under the Ordinance, and our determination.

FACTS: You are an attorney and a [Senior Officer] in the [Department]. You stated that in your City job, you are one of five [Senior Officers] who supervise department []. You explained that your job consists of overseeing City clerical staff, acting as a liaison to other city departments and overseeing the attorneys who are contracted by the City to sit as [officers]. Your duties

include educating City departments with regard to procedures for filing cases, scheduling [], and training the [officers] in [] law and procedure.

You said that the firm that you wish to work for has been in existence for one year, does not employ any attorneys other than your husband, and deals mainly with business incorporation and business insurance issues. You added that there had only been two instances in the past year where the firm had cases that could have involved litigation: a client had been sued over employment matters and a client had been represented in a personal injury claim.

LAW AND APPLICATION: The provision of the Governmental Ethics Ordinance that is most directly relevant to your proposal is § 2-156-090 “Representation of Other Persons,” which states:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency’s action or non-action is of a nonministerial nature...

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person’s interest is adverse to that of the City.

While the representation provisions do not prohibit you from becoming a partner in your husband’s law firm or having your name listed as a partner on the firm’s business cards and letterhead, they do impose restrictions on your conduct as a member of the firm. First, the Ordinance places limits on the activities you may personally undertake. As a City employee, you are prohibited from representing any person other than the City in any proceeding or transaction before any City agency where that agency’s action is of a non-ministerial nature. Representation encompasses “any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another.” (Case No. 90035.A , discussing representation by an elected official who practices law outside his City position.) You have stated that as a partner in the firm, you would be called upon to represent client’s interests in matters pertaining to business incorporation and business insurance. You also stated that the firm has previously represented clients in personal injury or employment cases, and that the possibility exists that as a partner/member of the firm you would be involved in these types of cases. These activities clearly constitute representation as defined by the Board. Therefore, under Sec. 2-156-090(a) of the Ordinance, you would be prohibited from undertaking any of these activities on behalf of a client before any City agency.

In addition to the restrictions placed on your conduct, the Ordinance also places restrictions on any economic interest you may have in representation. In § 2-156-010 (i) of the Ordinance, “economic interest’ is defined as any interest valued or capable of valuation in monetary terms. In past cases

the Board has determined that partners in law firms have an economic interest in the representation of any clients represented by that firm. (*See* Case No. 89091.A, which attributes an economic interest in legal representation undertaken by the firm to an appointed official who is a partner in that firm.) Any compensation that you receive as a result of the activities outlined above—whether counseling a client on incorporation issues or defending her in a personal injury case, regardless of whether such activity is performed either by yourself or by another member of the firm—would constitute an economic interest in representation. Sec. 2-156-090(a) prohibits an employee from having an economic interest in the representation of any person before any City agency. Sec. 2-156-090(b) prohibits an employee from an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person’s interest is adverse to that of the City. Therefore, if your law firm seeks to represent clients in a forum where the City is a party, and the client’s interests are adverse to the City, you are prohibited from having an economic interest—i.e., deriving any financial benefit—from such representation, even if you do not personally participate in the representation. As a partner in a firm which consists of only one attorney other than yourself, the Board believes that it would be difficult, if not impossible, to implement and maintain a compensation structure that would ensure that your compensation is unrelated to the firm’s representation of such persons.¹

In addition to the representation provisions of the Ordinance, you should be be mindful of other Ordinance sections. §2-156-030 (Improper Influence) and §2-156-080 (Conflicts of Interest) prohibit you, as a City employee, from participating in or in any way attempting to use your City position to influence a City governmental decision or action in any matter in which you have an economic interest different from the general public’s. A City employee who is employed or compensated by another person or entity, such as a client or outside law firm, thereby has an economic interest in that person or entity. Thus, under these provisions, you may not participate in or attempt to influence any City decisions affecting any law firm with which you are affiliated and must either recuse yourself from such decisions, or, if unable to do so, must divest yourself of the economic interests.

§ 2-156-020 of the Ordinance (Fiduciary Duty), obliges you to use your City position responsibly and in the best interests of the public, and to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities or clients. The fiduciary duty provision of the Ordinance also prohibits you from using your City position to obtain private benefits for your outside practice or to promote the interests of your or the law firm’s clients. For example, your fiduciary duty under the Ordinance would prohibit you from using your City position to solicit

¹We note that the Board has concluded in the past that the Ethics Ordinance does not prohibit City employees from working for law firms that represent clients before City agencies or in judicial proceedings where the City is an adverse party, as long as (1) they maintain a complete separation of the attorney’s functions from that representation, and (2) their entire compensation for their work with the firm is comprised of fees based on their work for the firm’s other clients, unrelated to representation of clients before any City agency or in any proceeding in which the City’s interests are adverse. (Case No. 93048.A, where the Board determined that an alderman could maintain an “of counsel” relationship with a law firm as long as various safeguards were observed.)

business for the firm or its clients. More specifically, this prevents you from using your City title or mentioning your city position on letterhead or business cards that associate you with your husband's law firm. (*See* Case 88087.A, where the Board determined that while an employee was not prohibited from selling insurance policies to City employees, he was prohibited from referring to his City position or City title in his outside employment because this would constitute a violation of his fiduciary duty.)

We note that you as an attorney, also have a fiduciary duty to your clients. If conflicting obligations to your City work and your work with your law firm were to arise, this section of the Ordinance would oblige you to put your duties to the City ahead of duties to this law firm or its or your own clients. Thus, we caution you that situations in which you deal with the firm's clients in your City job could give rise to the appearance of impropriety. To avoid any appearance of impropriety, we advise that you recuse yourself from any participation in such situations. Further, there may be situations in which the City is not a party to a suit, but has adverse interests to a client of the law firm. While neither the representation provision nor the fiduciary provision prohibit you from representing or having an economic interest in representing a client in such situations, we advise you to consider the possible appearance of impropriety before undertaking any such conduct, and to keep the commissioner of your department informed, so that the commissioner will be in a position to consider the proposed conduct from the point of view of the department.

While these provisions of the Ordinance are the most critical for your proposed outside employment, there are other sections of the Ordinance of which you should be aware. Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you, as a City employee, from accepting payment or anything of value in exchange for giving advice or assistance on the operation or business of the City, but does not prohibit you from receiving compensation for rendering services that are wholly unrelated to your City duties and rendered as part of your non-City occupation. Section 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, without authorization. This section also prohibits you from working on cases for your firm on City time. Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing confidential information you have acquired through your City employment, except in the performance of your official duties and responsibilities. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. Finally, Section 2-156-110, "Interest in City Business," prohibits you, as a City employee, from having a financial interest, in your own name or the name of another, in any contract or business transaction with the City. A "financial interest," in relevant part, is any interest that entitles you to receive more than \$2,500 a year; any interest with a cost or present value of \$5,000 or more. You stated that you do not expect that the firm will be seeking or performing any legal work or business with the City; however, if, in the future, the firm considers this possibility, we advise you to contact the Board for guidance on whether and how section 2-156-110 would restrict you and/or your firm.

DETERMINATION: Based on the facts that you have presented, the Board determines that the Ethics Ordinance does not prohibit you from becoming a partner in your husband's law firm or from having your name listed on the firm's business cards and letterhead. However, you are prohibited from representing clients of the firm before any City agency or having any economic interest in the firm's representation of clients before a City agency. You are also prohibited from having an economic interest in the representation of any person in a forum where the City is a party, and the client's interests are adverse to the City.

Our determination 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 the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. The City's Personnel Rules XVIII, Section 1, no. 43 and XX, Section 3, may impose additional restrictions on employees engaged in outside employment. 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.

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.

[Signature]

Darryl L. DePriest
Chair