

Advisory Opinion  
Case No. 00024.A  
Post-Employment

To: [John]  
Date: February 28, 2001

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On November 15, 2000, you wrote the Board of Ethics, and asked how the City's Governmental Ethics Ordinance might apply to you, [supervisory staff member ] of the [Bureau ] in the City's [Department 1 ], in a post-City position with [Commission A ]. Subsequently, on [date], you resigned your City position to accept employment with [Commission A].

After careful consideration of the facts presented and the purpose and intent of the Ordinance's post-employment provisions, it is our opinion that although the Ordinance does not prohibit you from working for [Commission A], the Ordinance does prohibit you from assisting or representing [Commission A], or any other person, with respect to certain business transactions or proceedings involving the City, discussed below.

**FACTS:**

You have a bachelor's degree in [a relevant field], a master's degree in [a related field] and a long-standing interest in [general subject x ]. You were employed in the [Bureau ] from [year] to [year], first as a staff member and then, from [month/year] until your resignation in [month/year], as [supervisory staff member]. The [Bureau ] serves as staff for [Commission B ], a body created and governed by the [ ... ] Ordinance, Municipal Code of Chicago, Chapter [ n-n ]. The [Ordinance] delineates [ n ] specific purposes of [Commission B ], each relating to [subject x in Chicago ]. There are [ n ] members on [Commission B]: [ n ] are appointed by the Mayor and approved by the City Council; the [ nth ] is the Commissioner of [Department 1 ]. [Commission B ] has been in existence since [year], although it was previously known as [Commission C].

The [Bureau's ] duties can be categorized as follows: identifying [matters] that might be [decided upon ]; drafting reports related to possible [matters for consideration] to [Commission B]; forwarding [Commission B]'s written recommendations to the City Council; shepherding [proposed decisions] through the City Council approval process; reviewing [applications of type 1] related to [subject x]; making recommendations regarding the [...] applications to [Commission B]; forwarding approved [...] applications to [Department 2 ]; and administering the City's [Program].

The [Bureau's] duties are carried out by a staff of [ n ] people: [n positions] that review [approved applications] and make recommendations related to [specific matters]; [n positions ] that review [matters ] for possible [decisions ]; [n positions ] that work on [ ... ] projects by assisting [qualified persons ] in securing appropriate [assistance ]; and [n positions] (including a program manager) that administer the City's [Program ]. You supervised all [ n ] staff members.

The [Decision ] Process. In [year], before you joined the [Bureau ], a [research project ] was completed by [Bureau] staff. The completed [research], which is available to the public, identifies what the [Bureau] considers to be the [matters potentially under consideration for the Bureau ].

In general, the [decision ] process begins in one of two ways. The first is as follows. Throughout the year, various community groups, organizations and people, including elected officials, contact the [Bureau] and suggest that [Commission B] consider a particular [matter or special matter]<sup>1</sup> for [a decision]. [Bureau] staff check to see if the suggested [matter] is identified in the [research project]. If so, the [matter] is added to a list of [matters] to be presented by staff, on a fixed schedule, to [Commission B], for its consideration.<sup>2</sup> [Commission B] then reviews<sup>3</sup> each [matter] and decides which, if any, should be added to [Commission B]'s work plan for the coming year. If a [matter] is added to the work plan, [Bureau] staff then thoroughly researches the [matter] and prepares a written report to [Commission B]. The report includes an assessment of whether the [matter ] meets any of the [ n ] criteria for [a decision ] set forth in the

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<sup>1</sup> A [special matter], you explained, is [specially defined]. Other than being a [broader issue], the main difference between a [special matter] and a [regular matter] is that [Commission B] reviews all [ ... ] applications [included under the special matter].

<sup>2</sup> If the [matter] is not [in the research project], staff writes to the person who has recommended the [matter] and informs her of the steps she must take if she wishes [Commission B] to consider the [matter], i.e., to complete and submit to the [Bureau] a form (prepared by the [Commission B]) relating to the [matter]. Once a year those forms are submitted to [Commission B], without any recommendation from [Bureau] staff. The person who has recommended the [matter] is then given an opportunity to appear before [Commission B] and advocate for [a decision].

<sup>3</sup> [Commission B] reviews are performed on a regular basis, pursuant to public notice, and are open to the public.

[Ordinance].<sup>4</sup> Although the staff's report does not explicitly state a recommendation to [Commission B] as to whether the [matter] in question should be [positively decided upon], the staff's assessment of whether the [matter] meets the criteria of the Ordinance does entail a subjective judgment, e.g., whether the [matter] meets a subjective criterion. After reviewing the staff's report, [Commission B] decides whether to seek [a positive decision]. If so, the [concerned person] is notified. If the [concerned person] does not object, [Commission B]'s recommendation that the [matter] be positively decided upon is forwarded to City Council for consideration. If the [concerned person] objects, a public hearing is convened, pursuant to section [n-n-n] of the [Ordinance]. The public hearing is a formal proceeding conducted under rules promulgated by [Commission B]; witnesses testify, evidence is received, and a transcript is prepared. The [Bureau's] role in relation to these hearings is to provide background information on the [matter] and relevant [ ... ] analysis, in order to assist [Commission B] in reaching its decision. Sometimes you personally gathered background information or analyzed data; more often, as [supervisory staff member] of the [Bureau], you directly supervised [other staff ] who performed those tasks.

The second way a [matter] may come to be considered for [a decision ] is through an expedited process unrelated to [Commission B]'s work plan. In these cases, a person or group learns of some action (for example, [an action relating to a particular matter ]) and contacts the [Bureau]. If the [matter] in issue is a [matter identified in the research project], the staff prepares a written report assessing its eligibility for [a positive decision ], even though the [matter] is not on [Commission B]'s work plan. The report is submitted to [Commission B], which then decides whether to seek [a positive decision].

[Applications of Type 1]. The [Bureau] also processes [applications of type 1] (approximately [n] per year) related to [subject x]. The [Bureau] staff reviews each application, assesses whether the proposed [action] would significantly interfere with [a matter's special status ], and makes a recommendation to [Commission B], which in turn decides whether to approve or deny a [n application]. If a [n application] denial is challenged, [Commission B] holds a public hearing to consider the appeal, pursuant to section [n-n-n] of the [Ordinance]. Again, the [Bureau] assists [Commission B] in these public hearings by providing background information on the [matter] and relevant [ ... ] analysis. Sometimes you personally gathered background information or analyzed data; more often you directly supervised the staff who performed those tasks.

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<sup>4</sup> Briefly, the [n] criteria are: [ ...

]. A [matter] must meet at least [n] of the criteria to be recommended for [a decision].

[Applications of Type 2]. [Applications of type 2 ] are also processed by the [Bureau]. Pursuant to Ordinance section [n-n-n], [advantages ] are available to all [qualified persons ]. While there is a process involved, you said the [Bureau]'s role is merely to verify that the [matter] in question is a [matter decided upon by the Bureau].

[Program ]. The [Program ] is a non-[subject x] program administered by the [Bureau]. Its purpose is to increase the [advantages ] of the City through financial and technical assistance. Basically, the program provides [assistance to qualified persons for the Program's purposes]. During an application process administered by the [Bureau], the staff reviews the proposed [actions ] and estimated costs, then determines if the applicant is eligible for [assistance ].

Other Duties. In addition to overseeing the staff's performance of [Bureau] responsibilities outlined above, you had other duties. At times, when the Commissioner of [Department 1 ] was unable to attend a "regular" meeting of [Commission B ], you sat in his stead. On those occasions, you participated with other [Commission B] members in both the discussion and the vote on pending matters. Examples of such matters include whether to recommend that [a matter be decided upon ] and whether to grant a[n application of type 1 ] relating to a [matter ]. In some instances the Commissioner of [Department 1 ] directed you how to vote; at other times he left the vote to your discretion.<sup>5</sup>

You said that you also had occasion to testify before City Council at [application of type 2] hearings related to [subject x]. You said that at these hearings you testified solely to the fact that [the matter has been decided upon by the Bureau]<sup>6</sup>; you did not give opinion testimony or make any recommendation to City Council on the issue of a[n application of type 2].

[Commission A]. You left your City position to accept a full-time staff position, that of [Coordinator], with [Commission A], a statewide not-for-profit membership organization dedicated to [general subject x ].

[Commission A]'s mission, as you have described it, is to [promote matters relating to subject x

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<sup>5</sup> You stated that although you sat in the place of the Commissioner of [Department 1 ] at "regular" meetings of [Commission B], you never sat in his stead at public hearings convened by [Commission B]; nor did you ever testify before [Commission B], either at "regular" meetings of the Commission or public hearings.

<sup>6</sup> You stated that, to the best of your recollection, you never testified before City Council on matters other than [applications of type 2].

]. To your knowledge, [Commission A] receives no funding from the City of Chicago, but it does interact with the City. For example, [Commission A] and/or its staff have testified at City Council hearings related to [subject x-related decisions] and legislation, recommended to [Commission B] that particular [matters] be considered for [decisions], and lobbied the City—specifically, [Commission B], [Department 1 ] and [Department 2]—with regard to particular [applications ]. [Commission A] has had no involvement with the City's [Program].

The position of [Coordinator ] is a new one. Accordingly, it is difficult for you to state precisely what your duties will be. Essentially, however, as you have described them, your anticipated duties on behalf of [Commission A] can be summarized as follows: 1) testifying in a variety of public or governmental forums—including forums convened by or under the authority of the City of Chicago—on matters relating to [subject x ]; 2) lobbying private and governmental entities, possibly including the City of Chicago, on matters relating to [subject x ]; 3) speaking publicly to community, civic and educational groups on issues relating to [subject x ]; and 4) assisting community, civic and educational groups on issues relating to [subject x ]. You have stated that although [Commission A] administers a number of small loan funds, you will, as [Coordinator], have no involvement with those fund programs.

## LAW AND ANALYSIS:

Post-employment. Section 2-156-100 (Post-Employment Restrictions) states:

**(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.**

**(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

Section 2-156-100 imposes both a one-year and a permanent prohibition on certain activities.

**One-Year Prohibition.**

Subsection 2-156-100(b). The first clause of subsection 2-156-100(b) prohibits you, as a former employee, for one year after leaving City service, from assisting or representing any person in a business transaction involving the City, if you participated personally and substantially in the subject matter of that transaction during your tenure with the City. In order to determine how section 2-156-100(b) would affect your post-City employment, the Board must examine what your anticipated duties with [Commission A] will be, as well as what your duties with the [Bureau] entailed.

As noted earlier, your anticipated duties on behalf of [Commission A] can be summarized as follows: 1) testifying in a variety of public or governmental forums—including forums convened by or under the authority of the City of Chicago—on matters relating to [subject x]; 2) lobbying private and governmental entities, including the City of Chicago, on matters relating to [subject x]; 3) speaking publicly to community, civic and educational groups on issues relating to [subject x]; and 4) assisting community, civic and educational groups on issues relating to [subject x].

As [supervisory staff member] of the [Bureau], you supervised a staff of [n] who perform various tasks related to the work of [Commission B]. These tasks included, but were not limited to, identifying potential [matters for consideration]; assessing whether a particular [matter] meets certain [ ... ] criteria as set forth in the [Ordinance]; and assessing whether proposed [actions] will significantly interfere with the [special status] of a [matter decided upon]. In addition, from time to time, you sat as the Commissioner of [Department 1]'s representative at meetings of [Commission B], and participated in [Commission B] votes on various matters, including whether to [grant an application of type 1] or to recommend to City Council that [a decision] be sought in particular cases.

Based on the facts presented, the Board finds that under subsection 2-156-100(b) of the Ordinance, you are prohibited for one year from the date you left City service—that is until, [month/day], 2002—from assisting or representing [Commission A], or any other person other than the City, in any business transaction involving the City relating to any [matter] whose [status] was considered, or was suggested by [Bureau] staff for consideration, by [Commission B] during your tenure as [supervisory staff member]. The Board further finds that the term “business transaction involving the City,” as used in subsection 2-156-100(b) of the Ordinance, would include, but is not limited to, the process by which the City [makes decisions concerning the status of matters relating to subject x]. Therefore, under subsection 2-156-100(b), you are prohibited until [month/day], 2002 from, for example, testifying or lobbying on behalf of [Commission A], or any other person other than the City, in connection with the [status] of any [matter] whose [status] was considered, or was suggested by [Bureau] staff for consideration, by [Commission B] during your tenure as [supervisory staff member].

**Permanent Prohibitions.**

Sub-Section 2-156-100(b). The second clause of subsection 2-156-100(b) permanently prohibits you, as a former employee, from assisting or representing any person other than the City on a contract over which you exercised contract management authority during your employment with the City. Section 2-156-010(g) defines the term “contract management authority” as “personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.” You have stated that, to the best of your recollection and belief, you never exercised contract management authority over any City contract. If you had exercised such authority over a City contract, however, you would be prohibited for the term of that contract from assisting or representing any person other than the City as to that contract.

Subsection 2-156-100(a). This subsection also imposes a permanent prohibition on certain conduct. Specifically, it permanently prohibits you, as a former employee, from assisting or representing any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if you were counsel of record or participated personally and substantially in the proceeding during your term of employment.

You are not an attorney and, consequently, never had occasion to appear as counsel of record in any judicial or administrative proceeding involving the City. However, during your tenure with the [Bureau], you were involved in three types of administrative proceedings: 1) [application of type 2] hearings before the City Council; 2) “regular” meetings of [Commission B]; and 3) public hearings convened by [Commission B]. In order to determine how section 2-156-100(a) will affect your new employment, the Board must first resolve the question of whether you participated “personally and substantially” in those proceedings, within the meaning of the Ordinance, during your City employment.

1. [Application of Type 2] Hearings before City Council. [Privileges applied for with applications of type 2], which are available under the [Ordinance] to all [qualified persons], are processed by the [Bureau]. As you have described the process, the [Bureau]’s role is purely ministerial: after [Bureau] staff had confirmed that the [matter has been decided upon by the Bureau], you testified to that fact before City Council; you did not give opinion testimony or make any recommendation to City Council on the issue of [an application of type 2]. Given your limited involvement, and the fact that it was of a non-discretionary nature, the Board finds that you did not participate “personally and substantially” in [application of type 2] hearings before City Council during your tenure as [supervisory staff member] of the [Bureau].

2. “Regular” Meetings of [Commission B]. During its “regular” meetings, [Commission B] takes up a variety of matters, ranging from whether to recommend that [a matter be positively decided upon ] to whether to grant [an application of type 1

J. On occasion, when the Commissioner of [Department 1 ] was unable to attend a “regular” meeting of [Commission B ], you sat in his stead. On those occasions, you participated with other [Commission B] members in the discussion of those pending matters. You also participated in the vote on those matters, albeit, at times, at the direction of the Commissioner of [Department 1 ]. More often, however, your [Bureau]’s involvement in the “regular” meetings of [Commission B ] was to provide administrative support to [Commission B] in the form of background information on the [matter] and relevant [ ... ] analysis in order to assist [Commission B] in reaching its decision. Sometimes you personally gathered background information or analyzed data; more often the staff you supervised performed those tasks. Based on the foregoing facts, the Board finds that you participated “personally and substantially” in the “regular” meetings of [Commission B] during your tenure as [supervisory staff member], both by providing or supervising administrative support for [Commission B]’s meetings, and by participating in [Commission B]’s discussion and vote at those meetings.

3. Public Hearings Convened by [Commission B ]. When a [decision ] or [application of type 1] denial is challenged, [Commission B] holds a public hearing. The [Bureau]’s role in relation to these hearings is to provide background information on the [matter] and relevant [ ... ] analysis, in order to assist [Commission B] in reaching its decision. Sometimes you personally gathered background information or analyzed data; more often you supervised the staff who performed those tasks. The Board finds that the administrative support that you, and the staff you directly supervised, provided to [Commission B ] in connection with its public hearings constituted “personal and substantial” participation by you in those hearings.

Based on the facts presented, the Board finds that under subsection 2-156-100(a) of the Ordinance, you are permanently prohibited from assisting or representing [Commission A], or any other person other than the City, in any [Commission B] proceeding—whether a public hearing or “regular” meeting—commenced by [Commission B] during your tenure as [supervisory staff member]. For example, if, during your tenure as [supervisory staff member], [Commission B] began to consider a[n application of type 1] from the [concerned person in the matter ], and then continued the matter for additional evidence, you are permanently prohibited from assisting or representing any person other than the City in *that* continued proceeding before [Commission B].

Furthermore, depending upon the particular facts involved, you might also be permanently prohibited from assisting or representing any person other than the City in “follow-up” proceedings to meetings or hearings of [Commission B ], if those meetings or hearings were commenced during your tenure as [supervisory staff member]. Continuing the example above, if [Commission B] were to deny the [concerned person’s application of type 1] and the [concerned person] were to seek judicial review of [Commission B]’s decision, you might also be prohibited under section 2-156-100(a) of the Ordinance from assisting or representing any person other than the City in that “follow-up” judicial proceeding which, arguably, would be a continuation of the original administrative proceeding before [Commission B ]. See Case No. 94001.A. Therefore,



the Board recommends that you refrain from assisting or representing [Commission A], or any other person other than the City, in “follow-up” proceedings to meetings or hearings of [Commission B] commenced during your tenure as [supervisory staff member ], without first contacting the Board for specific guidance based on the particular facts involved.

**DETERMINATIONS:**

After careful consideration of the facts presented and the relevant sections of the Governmental Ethics Ordinance, the Board determines that:

1. under subsection 2-156-100(b) of the Ordinance, you are prohibited for one year from the date you left City service—that is until, [month/date], 2002—from assisting or representing [Commission A], or any other person other than the City, in any business transaction involving the City relating to any [matter] whose [status ] was considered, or was suggested by [Bureau] staff for consideration, by [Commission B] during your tenure as [supervisory staff member];
2. under subsection 2-156-100(a) of the Ethics Ordinance, you are permanently prohibited from assisting or representing [Commission A], or any other person other than the City, in any [Commission B] proceeding—whether a public hearing or “regular” meeting—commenced by [Commission B] during your tenure as [supervisory staff member].

Further, we advise you that Section 2-156-070 of the Ethics Ordinance, “Use or Disclosure of Confidential Information,” prohibits you from using or disclosing any confidential information gained in the course of your City employment. “Confidential information” is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act.

Our determinations do not necessarily dispose of all issues relevant to this situation, but are 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 opinion. Other laws or rules may also apply to this situation. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

**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]

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Darryl L. DePriest  
Chair