

**Advisory Opinion**  
**[Anne Smith]**  
**Case No. 02044.A, Post-employment**  
**January 15, 2003**

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You were a [ ] in the Contracts Unit of the City's [U Department] from [ ] 1995 through [ ] 2003. On [ ] 2002, you requested an advisory opinion addressing how the City's Governmental Ethics Ordinance applies to your post-City employment with [LLC ]. As discussed in this opinion, the Board has determined that the Ordinance's post-employment restrictions will not limit your ability to perform your duties with [LLC] as you have described them. However, as also discussed in this opinion, the Board advises you to contact it for further guidance if you are asked to work on projects relating to either [U Department's] [R] or [P] programs, as the Ordinance may well prohibit you from working on contracts or agencies associated with them. Our detailed analysis of your situation follows.

**FACTS: Your Previous Positions in City Service.** You have a Masters degree in [ ] from [T ] University. You began your City service in October [ ] as an [ ] Administrator II, a post you held through January [ ]. In this position, you served as the project officer for the [A ] Program, operated within [U Department's ] Division. You said that you provided "programmatic assistance" to approximately eighteen community-based organizations ("delegate agencies") under contract with [U Department] to receive grant funding from [U Department] in return for providing health and social services to mothers and children. "Programmatic assistance," you explained, includes making site visits to facilities of delegate agencies to assess compliance with their contracts, serving as their liaison to [U Department] , and providing them with "technical assistance," e.g. improving methods to collect data like numbers and types of clients served, tracking outcomes, monitoring expenses, and general organizational development. You were also responsible for reviewing requests for proposals ("RFPs") submitted by organizations to receive Community Development Block Grants ("CDBG's") from [U Department] to provide these services, and made recommendations thereon to your superiors within [U Department] , though final selection of these delegate agencies was made by City Council. You said that you were not involved in preparing contracts for these organizations once they were selected. Also, you explained, other [U Department] staff were responsible for the "fiscal monitoring" of these agencies, that is, for ensuring that the CDBG funds granted by the City were properly expended and accounted for, and for reviewing monthly cash flow reports and operating expenses, including salaries, travel, and education.

In January [ ], you moved laterally to [U Department's] Division of [PPP] , but maintained your title. This Division comprises two separate program sections: [V] and [E] . You served as [title] within the [V] section. In this new position, you said, you were responsible for providing programmatic assistance to and fiscal monitoring for approximately 15 delegate agencies. Each was under contract with [U Department] to fulfill a particular aspect of the overall program mission: to distribute information and materials relating to [ ]. Unlike [U Department's ] delegate agency contracts in the [A] , these contracts were not funded with CDBG grants, but rather through an RFP process involving funds provided through the [Federal Agency Q] , (which process was managed by [U Department] as discussed below). You said that the [V] section had approximately 50 contracts with delegate agencies at this time. In this section, your duties were to provide both programmatic assistance and fiscal monitoring for these agencies—i.e. to conduct site visits, assist the agencies in collecting data, provide them with technical assistance, and ensure that grant funds they received were properly expended and accounted for. You said you did not review responses submitted by these agencies to RFPs, nor prepare their contracts.

Your Most Recent Position. In September 2000, you were promoted to your last post, Administrator III, and became [U Department's] [V ] Program Contract Specialist. In this position, you continued to provide programmatic assistance and fiscal monitoring to approximately 20 delegate agencies, on about 35 separate programs, all of which involve [V] . Additionally, you assumed specific responsibilities with respect to several special projects (all of which have expired): [Y] , [O] 2000 , and the [F] program. These three programs together involved eight professional services and nine delegate agency contracts. For the [F] projects, you served as the negotiator, programmatic and fiscal monitor, reviewing the services the agencies provided; for the [Y] program, you served solely as the contract negotiator; for [O] , you served as negotiator and fiscal monitor, approving the invoices these agencies submitted and ensuring they were paid. Other [U Department] employees provided the programmatic monitoring component for these last two projects. Your last effective date of City employment was January .

Your Involvement with [LLC] . Of the approximately 35 programs for which you provided programmatic assistance in the [V] section, there are three in which the section has contracted with [LLC] to serve as the fiscal monitor or “fiduciary agent” (namely, the [CC] program , the [RR] program, , and the [HS] , which operates a [ ] program at the [ ] (and also receives funding from the Illinois Department of U to operate this program)). [LLC] , located in Chicago, is a non-profit foundation that acts as the administrative or fiduciary agent for hundreds of federal, state and locally funded programs conducted through [U Department] [CC]

and other institutions. Under these three contracts, [LLC] is responsible for ensuring that funds allocated to the recipients are spent in accordance with the terms of their grants, that programs are staffed adequately, and that quarterly fiscal information is provided to [U Department]. You said that you reviewed the program reports, and, once annually, visited [LLC's] facility to review fiscal records it maintains (e.g., payment vouchers, program employee records and tax forms) then visited the actual program sites to conduct your "programmatic" review before compiling your own performance reports. You also met on several occasions with [LLC] personnel to discuss issues regarding [LLC's] budget, and the timing of program expenditures. All [U Department] delegate agencies, you explained, receive an annual site visit, which becomes part of their performance record. In 2000, you performed the annual assessment of [LLC's] performance on these three contracts, using a [U Department] site visit "tool" that you and the other contract specialists helped prepare for use with respect to all [U Department's] delegate agencies. You described the assessment as "objective": it required the assessor to complete information available from documentation maintained at [LLC], such as numbers of invoices processed, timeliness of payments and completion of reports. This, you said, went into an RFP issued by [U Department] in July 2000 for [V] programs for 2001-2003. [LLC] responded to this RFP, and was awarded contracts to operate the three prevention programs listed above. You helped to draft this RFP and managed the contracts once awarded, but did not participate in reviewing RFP responses or in selecting the agencies to be awarded contracts. [LLC] also has other [U Department] contracts, including, you believe, those for programs involving . However, your work with [LLC] was limited to programmatic assistance on these three [V] programs.

[P] and [E] Sections. Within [U Department] programs for [V] and programs [for E] are managed by the Division of [PPP]. This division has two separate sections: [V] and [E]. Each has its own independent grant-making process and planning board (which determines the types of services to be supported, based on community needs); each is staffed by different [U Department] employees, who monitor the performance of their own delegate agencies, and whose salaries are paid through different federal grants (your salary, for example, was paid through a [Federal Agency Q] grant, as is that of all but one [U Department] employee in the [PPP]); each receives funding from different federal sources; and each section's grants, you explained, are subject to unique federal regulations.

i. [V]. Most funding the City receives for [V] programs comes through [Federal Agency Q]<sup>1</sup>, which allocates monies to [U Department], which then disburses this money to community groups through an RFP process in accordance with recommendations as to

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<sup>1</sup>Of the approximately \$12 million in [V] funding that [U Department] receives annually, approximately \$8 million is from [Federal Agency Q]. The remainder is split about evenly between the Illinois Department of [U] and the City's corporate budget.

community needs made by the [V] Planning Group . Th[is] is a group of volunteers from agencies concerned with [V] . As the rubric implies, you said, funding for [V] programs is directed primarily to smaller, community-based organizations to distribute prevention information and materials to targeted populations. You explained that very few (about 4 out of approximately 100) projects of the delegate agencies that receive [V] grants from [U Department] receive more than \$100,000 annually. [U Department] employees are responsible for monitoring the agencies receiving grants for these programs. You said that you are not a member of [the group] (though you attended their public meetings regularly), and, though you assisted in developing the prevention program RFPs (a function of the Contract Unit), you were not involved in the process through which responses were reviewed and grants for [V] were made.

ii. [E] Funding. You explained that funding for [E] programs comes from funding sources different from those that fund [V] programs. The two major funding sources for [E] programs are [Federal program S] and the [Federal group B] . All funding for [E] is administered through the federal [AA] Administration , which is analogous to [Federal Agency q] in this respect. The purpose of [Federal program S] , and of the programs funded through it, is to address needs of persons by funding local and state programs providing care and support services, training, and technical assistance to improve service delivery. [Federal program S] provides a funding mechanism for [cities] . To be eligible, a [city] must have a population of at least 500,000 and at least 2,000 during the previous 5 years. Chicago is one of 51 EMAs receiving [Federal program S] grants. Grants are made in conjunction with the recommendations of the [E] Planning Council for Chicago, which is structured and functions analogously to the [V] Council ([both] make funding recommendations based on community needs, and [are] staffed by volunteer members from [local] organizations).<sup>2</sup> You said that you attended only one meeting of the [E] Planning Council, approximately two years ago, but your purpose in attending was for your own information, namely to know which agencies were involved in [E] . You did not attend as part of your [U Department] responsibilities, and were not asked or required to attend by your department. To your knowledge, [U Department] receives approximately \$20 million annually from these two sources (nearly all of it through [Federal Program S] ), then disburses this money to 60 delegate agencies operating about 120 programs to provide services in 16 separate service categories. Each agency has a separate contract with [U Department]. Of this \$20 million, \$4 million is allocated annually to [LLC] , which contracts with [U Department] to monitor [E] for persons under four programs. [U Department] personnel perform

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<sup>2</sup>Services that can be funded through [Federal Program S] grants are: services, [ ] ; [ ] , and [ ] .

programmatic and fiscal monitoring services for this contract—[LLC] cannot monitor itself. You said that you had no involvement in this contract's execution or performance during your City employment, and will not, as a [LLC] employee. Rather, you will be responsible for supervising the fiscal monitoring function for agencies receiving the other \$16 million. In fact, you said, in your City career, you were not involved in any aspect of grant-making or monitoring of delegate agencies for [E] programs—all your work was in programmatic and fiscal monitoring of [V] programs.

The [LLC] Third-Party Administrator Contract. In October , the City issued an RFP for a fiscal administrator for [Department U's] contracts with agencies to provide [E] services. [LLC] was one of five respondents. The Department of [D] managed the bidding and award process in order to preserve maximum objectivity, given that [U Department] personnel were likely to be familiar with the respondents. You said that you were not involved in drafting this RFP or reviewing any of the responses submitted, were not consulted regarding the respondents' abilities, and were not involved in contract negotiations with [LLC] . In fact, you said, the only contact you had with Department of [D] personnel about the RFP was your attendance, along with the other employees in your Unit, as audience members, not as participants, at a bidders' conference sponsored by [Department D] , but held at [U Department]. At that conference, the outlines of the RFP were discussed. You attended, you stated, not because you were asked or required to as part of your City responsibilities, but rather, on your own, in order to become familiar with the agencies involved in [E] . Only after the contract was awarded to [LLC] did you find out, from [Mr. H], , [U Department's] Assistant Commissioner for [PPP] , that [LLC] received the award.

The contract, still being negotiated, will obligate [LLC] to perform fiscal monitoring services for all of the City's sub-recipients of [Federal Program S] funds, except itself. This represents, you believe, about 59 agencies, ranging from institutions like to small community-based organizations. [U Department] will continue to serve as programmatic monitor for all [E] contracts. [LLC] will serve as a "pass-through point" for federal funds, i.e., it will reimburse delegate agencies (or "sub-recipients") within 30 days after they have expended [Federal Program S] funds allocated to them, then invoice the City monthly for these funds. [LLC] will deduct its administrative fee of 15%. This process will benefit the City as [LLC] can, given its favorable cash-flow situation, reimburse delegate agencies more promptly than the City. As noted above, [LLC] will continue to receive \$4 million in funds to operate the four [E] programs at , and [U Department] staff will continue to serve as the fiscal and programmatic administrator for this program.

Your Duties at [LLC]. On January , , you began employment as [LLC's Project Coordinator/[U Department] Fiscal Agency. The information you provided staff, including a written job description, indicates that you report to the Director of Grants Administration and Associate Administrator, and directly supervise an Audit Director, Auditor, Billing and Voucher Director and Billing Assistant. You

will oversee the process by which funds are expended by the 59 or so delegate agencies providing [V] services. Your responsibilities include developing an expense tracking and monitoring system, a uniform billing form, and generating regular reports of agency expenditures and [LLC's] reimbursements for both [LLC] management and the City's Department of [O] (and possibly [U Department]), meeting regularly with and training delegate agency staff in new billing procedures and cost and revenue tracking, and providing other fiscal assistance as required.

You believe that between 5 and 10 of the delegate agencies within the ambit of [LLC's] new contract were also on your "caseload" as recipients of [V] funding. These include Center, Center, Center/ House, the Research and Education Foundation of the Staff, Community and Community Network. However, you said, you will not be involved in fiscal or programmatic monitoring of any [U Department] programs involving [V] grants, whether for these agencies, or for any of [LLC's] own prevention programs. Moreover, you stated, the personnel at delegate agencies with whom you expect to interact with respect to [E] programs will likely not be the same persons you interacted with while monitoring [V] programs for [U Department], as there is little overlap between smaller agencies that operate both [E] and [V] programs, and the larger institutions have distinct staffs that handle each different program. Moreover, you said, your supervisors at [LLC] will not be the same individuals with whom you interacted while working on [V] programs. Finally, you told staff that you do not expect to be involved in additional grants concerning monitoring of [V] agencies for which [LLC] itself may decide to apply.

**LAW AND ANALYSIS: I. Post-employment.** Section 2-156-100(b), "Post-Employment restrictions," states, in relevant part:

**No former ... employee shall, for a period of one year after the termination of the ... employee's ... 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.**

This section imposes both a one year and a permanent prohibition on former City employees' activities. We will analyze your situation under each.

A. One Year Prohibition. Under the first clause of § 2-156-100(b) you are, as a former City employee,

prohibited for one year after leaving City service from assisting or representing<sup>3</sup> any person (including [LLC]), in any business transactions involving the City if you participated personally and substantially in the subject matters of those transactions as a City employee. Accordingly, we first assess the “business transaction involving the City” on which you have been asked to assist [LLC] , then its “subject matter,” and finally, whether you were “participated personally and substantially” in that subject matter.

1. “Subject Matter” of the Business Transaction. [LLC’s] contract with [U Department] requires it to serve as the fiscal administrator of contracts and funds allocated under the federal [Program S] to delegate agencies for [E] services. Clearly, this contract is a business transaction involving the City—the issue for the Board is to delineate the transaction’s “subject matter.” [LLC’s] responsibilities under this contract, and therefore your job duties there, will be to serve as fiscal monitor of grants and programs for [E] , not [V] . The Board notes that [E] and [V] programs are handled by staff in different divisions within [U Department], whose salaries are paid through different grants, which involve different federal funding sources, different federal regulations, and different delegate agencies (although some agencies are under contract to operate both care and prevention programs). We also note that [U Department] will retain the “programmatic monitoring” function (i.e. ensuring that services are in fact rendered and performance goals are achieved), for the [E] agencies and programs (as well as, of course, your former function at [U Department], namely fiscal and programmatic monitoring of [V] programs). Based on these facts, we conclude that the subject matter of [LLC’s] November contract is the fiscal administration and monitoring of contracts, agencies and programs for [E] under [Federal Program S] .

2. Personal and Substantial Participation. Our review of your employment responsibilities at [U Department] shows that you had extensive experience functioning as both “programmatic monitor” and/or “fiscal monitor” for dozens of delegate agencies and programs in [U Department’s] [V] and [A] program divisions. These agencies include [LLC] itself, as well as 5 to 10 other organizations operating [E] programs for which [LLC] will serve as fiscal monitor. However, you did not serve as fiscal (or programmatic) monitor for any [E] programs funded through [Federal Program S] , and did not therefore perform monitoring functions for programs funded through it and subject to its regulations. Based on these facts, we conclude that you did not participate personally and substantially in the subject matter of [LLC’s] 2002 contract with [U Department], i.e., the fiscal administration and monitoring of contracts and programs for [E] under [Federal Program S] . Thus, we conclude that the Ordinance’s one year prohibition does not restrict your ability

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<sup>3</sup>Note that this prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. Case No. 94011.A, p. 7. “Assisting” or “representing” a person in business transactions involving the City encompasses helping a person to seek or to perform a contract or project. See Case Nos. 96001.A, 92035.A. “Representation” applies to activities in which someone acts as a spokesperson for another or seeks to communicate and promote the interests of one party to another. It includes signing any proposals, contracts, or other documents. Case 93005.A, p. 7.

to perform your job responsibilities for [LLC] as you have presented them.

However, we caution you that our analysis indicates that you have been personally and substantially involved in other business transactions involving the City, particularly those in which delegate agencies are funded through [Federal agency Q] grants for [V] programs. Because your job responsibilities at [LLC] are tied to its 2002 contract with [U Department], our opinion does not address whether you would be prohibited from assisting [LLC] (or any other person) with respect to business transactions other than [LLC's] 2002 contract. Thus, if you are asked to assist [LLC] (or any other person), on any projects involving [U Department's] [A] or [V] programs, we advise you to contact the Board for specific guidance, as the Ordinance's one year prohibition may well restrict you from working on contracts or agencies associated with them.

B. Permanent Prohibition. Under the second clause of § 2-156-100(b), you are permanently prohibited from assisting or representing any person (including [LLC] ) in any contract involving the City if you exercised "contract management authority" over that contract during your City service. "Contract management authority," defined in § 2-156-010(g),

**means 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 been asked to assist and represent [LLC] in its contract with [U Department], awarded in 2002, to serve as third party fiscal monitor for approximately 59 delegate agencies. From the facts presented in this opinion, we conclude that you did not exercise contract management authority over [LLC's] 2002 contract. Your only involvement with [LLC] was to serve as programmatic monitor for, and assess its performance as fiscal administrator on, three [V] programs. This activity does not qualify as personal involvement in the formulation of [LLC's] 2002 contract, given that: 1) your activity involved [LLC's] [V] programs and related contracts only; 2) you were not consulted and had no involvement in the RFP process for [LLC's] 2002 contract; and 3) your contact with [LLC] with respect to its [V] programs on your "caseload" entailed contracts and program considerations different from those on which you have been asked to assist and represent [LLC] . For these reasons, we determine that you did not exercise contract management authority over the contract between [U Department] and [LLC] , currently under negotiation, under which [LLC] will serve as the fiscal administrator for [U Department's] contracts with approximately 59 delegate agencies providing [E] services under [Federal Program S] .

Again, though, we caution you that we did not address whether you exercised contract management



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authority over any contracts relating to [U Department's A or V programs, because your position with [LLC] does not involve them. If you are asked assist [LLC] or any other person on contracts, grants or agencies relating to either of these [U Department] programs, we again advise you to contact the Board for specific guidance, as you may be subject to the permanent prohibition with respect to contracts operative within those programs.

**II. Confidential Information.** Section 2-156-070, "Use or Disclosure of Confidential Information," also prohibits you, as a former City employee, from using or revealing confidential information acquired through your City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

**DETERMINATIONS:** Based on our analysis under the Ordinance's post-employment provisions of the facts you have presented, the Board determines that neither the Ordinance's one year or permanent post-employment prohibitions restrict your ability to perform your job responsibilities for [LLC] as you have presented them. However, we advise you to contact us for specific guidance if you are asked to work on behalf of [LLC] or any other person on contracts, grants or programs relating to either [U Department's] [A] or [V] programs, as you may be subject to either of the Ordinance's post-employment prohibitions with respect to them. Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental 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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

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Darryl L. DePriest

Chair