

**ADVISORY OPINION
CASE NO. 04010.A**

Post Employment

To: [John Jones]

Date: April 7, 2004

You were employed as an Electrical Foreman with the City of Chicago Department of [U] until your retirement from City service on January 31, 2004. Upon your retirement, you started a professional consulting service, [TRO]. [TRO] has been asked by [DR], an [] firm specializing in [] design, to work as a subcontractor on [DR's] [] contract to design and develop construction plans for the project []. Pursuant to this subcontract, TRO would assist [DR] in developing plans for the relocation of the south electrical vault and the design of the [] lighting. You have asked for an advisory opinion on what restrictions the City's Governmental Ethics Ordinance places on your prospective post-City work.

After careful consideration of the facts presented and the relevant law, the Board has concluded that the Ordinance imposes restrictions (as more fully described herein) that limit your post-City activities. Specifically, the Board has determined that you are prohibited, for one year after leaving City employment, from assisting or representing TRO [], its clients, or any other person in any business transaction involving the City relating to [] and [] illumination at [SITE] [].

What follows is a statement of general background facts and of the relevant law, our analysis of those facts under the Ordinance, and our determinations.

FACTS

I. City Employment. You entered City employment as a motor truck driver with the Department of [N] [] in 1974. In 1990, you transferred to the Department of [U] [], where you worked as an electrical mechanic at [SITE] []. In the fall of 1993 you were

promoted to Foreman of Electrical Mechanics.¹ In this position, your major responsibilities, you said, were for temporary and permanent repair of all lighting, signs, and electrical circuits. You supervised a staff of seven electricians, four of whom were assigned to repair and three, to the repair shop.

You explained that you were responsible for the automatic lighting system used by [SITE employees], and for the maintenance and repair of and illumination equipment. In addition, you described a number of other tasks for which you were occasionally responsible. Each is discussed below.

A. Automatic Lighting System. lighting at [SITE] are controlled by an automatic system. This system, which is used to turn on and off/brighten/dim all lights and signs, was designed and installed by [TRO] in 1996.² Generally speaking, you said, minor maintenance and repair to this system was (and is) performed by City employees. For example, you said, City workers replaced circuit boards, fixed modems, and conducted routine diagnostic checks on the system's electrical circuits. When major work or support beyond the Department's abilities has been required, or a software modification or upgrade was needed due to a change in [Federal] standards, [TRO], pursuant to their maintenance/repair contract, undertook the repairs. If assigned by your supervisor to participate in this process, your role was to contact [TRO], request a quote for repair or upgrade (which would be applied against their maintenance contract), and arrange for an [TRO] employee to make the requisite repairs or updates.

B. Illumination. Department of [U] electrical mechanics are also responsible for maintaining and repairing lights, signs, and other electrical equipment [at the SITE]. [SITE], you said, has tens of thousands of light bulbs, hundreds of miles of electrical wiring, two electrical vaults³, and some 900 electrical signs, all of which require constant monitoring, maintenance and repair. You stated that this can range from tasks as simple as replacing light bulbs, to more involved responsibilities such as repairing and installing new circuits, to running complex diagnostic checks on the electrical system. You also said that you worked in the vaults daily to ensure proper operation and monitoring of electrical switch gear and

¹You were one of nine electrical mechanic foremen on 3 shifts. All nine reported daily to the General Foreman of Electricians. All trades and their respective General Foremen reported to the General Superintendent of Skilled Trades who, in turn, reported to the Deputy Commissioner who, you said, "had full authority over the electricians and lighting."

²Since then, [TRO] has had a preventive maintenance/repair contract with the City for this system.

³The primary function of electrical vaults is power distribution to all lighting circuits. [Some facilities] are fed from the South vault. [Others] are fed from the North vault.

[facility] distribution equipment, as well as conducting (or directing others to conduct) daily inspection of the backup diesel generators. This work was (and is) carried out almost exclusively by City employees; occasionally, you said, the Department needs to bring in outside contractors for large projects or specialized work, but this is a fairly rare occurrence.

While the design of the [facility] lights have undergone some changes⁴ during your tenure as electrical mechanic and foreman, you did not, you said, play any role in the design changes. The design work was performed by engineering firms under City contracts; and the actual construction and installation, based on those designs, was also performed by engineering firms pursuant to City contracts. Your only role with respect to design work, you said, was to occasionally attend construction meetings for quality control and progress reports, and to keep abreast of the skills needed to maintain and repair the electrical system.

C. Other responsibilities. In addition to your duties with respect to the automatic lighting system and [facility] lighting, you performed other tasks on an as-needed basis. For example, you coordinated closures for repairs with the [U.S. Government agency] ; assisted the warehouse facility with lighting material inventories; and responded to complaints on lighting. You also attended construction meetings on capital improvement projects that impacted [Site's] electrical system. You did not, however, participate in the design or actual construction stages of these projects; instead, your only role was maintenance and repair.

II. Post-City Employment. Upon your retirement from City service, you founded [DR] , a consulting firm specializing in [facility] lighting, of which you are the only employee. [DR] provides reliability analysis of circuits, electrical design and consulting, material and equipment recommendations, electrical maintenance, and other services related to [facility] lighting maintenance and design. You stated that, while employed by the City, you performed some of these tasks, specifically, reliability analysis of circuits, material and equipment recommendations, and electrical maintenance and repair. However, as noted above, you did not perform electrical design work while employed by the City. Nevertheless, [DR] is able to offer design and consulting services, you stated, as a result of your knowledge of lighting, gained during your 14 years as an electrical mechanic and foreman of mechanics at [SITE].⁵ You stated that you would like to enter into an agreement with [TRO] to assist them with the design of illumination for [facility B] , as part of the [D] Program, described below.

⁴These design changes include reconfiguration of regulations.

lights and signs to comply with [federal]

⁵You are not an electrical or professional engineer.

[D] Program . As part of the [SITE] [D] Program⁶ , all [facilities] will be reconfigured, and several new [ones] will be added.⁷ In 200X, [when Phase One of the Program was funded, it was agreed that Phase One would include \$2.9 billion of improvements, including three [facilities] projects: the new construction of [facility A] ; the extension of [facility B]; and the extension of [facility C] . [HIJ] was selected as the Program [Manager] for Phase One .⁸ [HIJ] is responsible for program management, project management, design management, construction management oversight, cost control and comprehensive program controls, as well as coordinating with the engineering and design teams already in place. [HIJ] will oversee the work of the Master Civil Engineering team as well as the Lead Engineering Design teams and Task Order teams. You said that you did not participate in any aspect of the [Program] during your City tenure.

In 2003, [TRO] was awarded the lead design task order to design and develop construction plans for the [facility A] project.⁹ [DR] has been approached by [TRO] to enter into a subcontract with that firm to provide design and consulting services for lighting for the project. Specifically, these services would consist of assisting [TRO] with plans for the relocation of the south electrical vault and the design of the lighting. You explained that, unlike other [D] projects--which will be entirely new developments at new locations--the [Facility B project involves extending an existing [facility] and rehabbing the existing infrastructure while maintaining lighting at all times. Therefore, the lighting and the south electrical vault transition must be designed in a manner whereby all lighting must remain operational during the project. You stated that, as a result of your 14 years with the Department of [U] , you have a comprehensive

⁶The [D] Program aims to improve the efficiency of [Site], especially during poor weather conditions. It is also projected that the future will be able to accommodate approximately operations and million . The [D] also calls for construction of a new [building] with additional [capacity] . The [new building] will be connected to Funding for the [D] comes from a variety of sources, including charges, bonds, and federal funds.

7

The [D] plan will reconfigure [Site] into a parallel layout.

⁸[HIJ] consists of six firms: [OS] will serve as the lead firm.

⁹You said that this is the only contract which [TRO] has on the [D] project; the firm continues to have a maintenance/repair contract with the Department of [U] for the automatic lighting system.

knowledge of the existing electrical infrastructure at [SITE], as well as a knowledge of industry standards and [federal] procedures. You said that you believe it is because of this knowledge that [TRO] is interested in hiring [DR], even though, as noted above, you did not participate in any electrical design work while employed by the City. Further, during your City tenure, your responsibilities with respect to existing [Facility E] (which will be extended to become [facility B]) were limited to repair and maintenance of the illumination equipment. You said that the [TRO] contract is for the design and development of construction plans for the extension of the [facility]. [TRO] will not be involved in the actual construction of the project. As an [TRO] subcontractor, you would be responsible for designing the lighting, including creating a design that ensures that the lighting remains operational during construction, and developing plans for the relocation of the south electrical vault. Your subcontract would not include installation, maintenance or repair of any of the lights or the electrical vault.

LAW AND ANALYSIS: The relevant provision of the Governmental Ethics Ordinance is subsection 2-156-100(b), “Post-Employment Restrictions.” It states:

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.

Under this provision, then, you are subject to two distinct restrictions on your activities after leaving City service. First, *for one year* after leaving City employment, you are prohibited from assisting or representing any person other than the City in any business transaction involving the City or any of its agencies, if you participated personally and substantially in the subject matter of that transaction during City employment. The one-year prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. (See Case No. 94011.A, p. 7.) Second, you are *permanently* prohibited from assisting or representing any person other than the City on a contract if, as a City employee, you exercised “contract management authority” with respect to that contract. We address both restrictions below.

I. One-Year Prohibition. Under the first clause of Sec. 2-156-100 (b), you are prohibited, for one year after you leave City employment, from assisting [TRO], or any other person, in any business transaction involving the City if you participated personally and substantially in the subject matter of the transaction while employed by the City. In order to analyze how this prohibition applies, if at all, to your case, we must first ascertain the “business transaction involving

the City” with which you would be involved if you entered into a subcontract with [TRO]; then, the “subject matter” of that transaction; and, finally, whether you “participated personally and substantially” in that subject matter while employed by the City.

As noted above, [TRO] has entered into a contract with the City to design and develop construction plans for the [facility B] project. Pursuant to that contract, [DR] has been asked to enter into a subcontract with [TRO] to provide design and consulting services for illumination for [facility B]. Specifically, these services would consist of assisting [TRO] with plans for the relocation of the south electrical vault and the design of the lighting. Clearly, both the contract between the City and [TRO], and the prospective subcontract between [DR] and [TRO] are “business transactions involving the City”; the subject matter of the subcontract, the Board finds, is [facility] illumination.

During your City service, you did not participate in the design of any [facilities] at [site]; nor, according to you, did you participate in any aspect of the [D] program. As foreman of electrical mechanics, however, you were responsible for supervising the electrical mechanics who were responsible for maintaining and repairing lights, signs, and other electrical equipment on the [Site]. You worked daily in the electrical vaults to ensure proper operation and monitoring of electrical switch gear and distribution equipment. You also conducted (or directed others to conduct) daily inspections of the backup diesel generators. The Board concludes that your work constituted personal and substantial participation in the maintenance, repair and operation of [facility] illumination equipment at [Site]. The Board determines, therefore, that you are prohibited, for one year from the date you left City service, from assisting or representing any person, other than the City, with any City business or transaction involving the maintenance, repair and operation of [facility] illumination equipment at [Site]. Because the subcontract between [DR] and [TRO] involves the subject matter of [facility] illumination, the Board determines that you are prohibited, for one year, from assisting [TRO] on the [facility B] project.

II. Permanent Prohibition. Under the second clause of Sec. 2-156-100 (b), you are, as a former City employee, permanently prohibited from assisting or representing any person other than the City on a City contract, if you exercised contract management over that contract while employed by the City. Section 2-156-010(g) of the Ordinance 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.

With respect to the contract between [TRO] and the City for the [facility B] project, the facts, as you have presented them, demonstrate that you played no role in the formulation or execution of this contract. The Board concludes, therefore, that you did not exercise contract

management authority over that contract, and determines that you are not permanently prohibited from assisting [TRO] with that contract

We remind you that the permanent prohibition may restrict your activities with respect to other contracts not discussed in this opinion, and advise you to contact us for further advice should you be asked to work on these.

DETERMINATIONS: Based on the facts presented, the Board determines the following:

1) One Year Prohibition. You are prohibited, for one year after leaving City employment, from assisting or representing [TRO], its clients, or any other person in any business transaction involving the City relating to [facility] illumination at [Site].

2) Permanent Prohibition. You are permanently prohibited from assisting or representing any person in any contract involving the City if you exercised contract management authority over that contract while in City service. As you did not exercise contract management authority over the contract between the City and [TRO] for the [facility B] project, you are not permanently prohibited from assisting or representing [TRO] with that contract.

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. 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.

Darryl L. DePriest
Chair