

Advisory Opinion
Case No. 04011.A, Post-employment

To: [Albert Jones]

Date: May XX, 200X

You formerly worked as a Civil Engineer V in the Bureau of [R] in the City's Department of [N]. You resigned from City service on March 1, 200X. Prior to your resignation, on February 22, 200X, you requested an advisory opinion from the Board of Ethics on how the Governmental Ethics Ordinance impacts your post-City employment activities. Specifically, you asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work (for example, as a resident engineer or an assistant project manager) on Bureau of [R] design or construction projects; on [N] design or construction projects that do not involve the Bureau of [R]; and/or on City design or construction projects that do not involve [N]. You also asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work as a "documentation engineer" in the [E] section of [N]'s Bureau of [D], processing monthly pay estimates for [N] design or construction projects, and "closing out" such projects.

After careful consideration of the facts you presented and the relevant law, the Board has determined that both the one-year and permanent prohibitions contained in Section 2-156-100 of the Ordinance impose significant restrictions (set forth in detail below) on your post-City employment activities.

FACTS: You are an Illinois-licensed, civil engineer. You received a bachelor of science degree in civil engineering in 19XX and a master of science degree in transportation engineering in 199X. You began City employment in May 198X as a Civil Engineer I in the City's Department of [B]. [U]ntil your retirement, you worked exclusively for the Bureau of [R]. [R] is responsible for managing the design and construction of City arterial, residential and industrial streets, including new street construction, street rehabilitation and resurfacing, installation of landscaped medians and viaduct clearance improvements. It is also responsible for the design and installation of certain regulatory signage on City arterial streets.

Resident Engineer. From May 198X until May 200X, you served as resident engineer on 17 consecutive street construction projects. These projects were of various types, including construction of residential and industrial streets; resurfacing of residential and arterial streets; rehabilitation of major arterial streets; viaduct clearance improvements and installation of landscaped medians. As resident engineer, you had no involvement in the selection of a design consultant or construction contractor for these projects. Your duties consisted of daily, on-site

supervision of the contractors' construction activities to ensure compliance with contract specifications, plans and drawings (prepared by an outside consultant), as well as responding to unforeseen design or construction issues that arose as the contractors' work progressed. In addition, you were responsible for documenting the contractors' work in a daily log book and preparing monthly pay-estimates, based on those recorded entries (which were then forwarded to [N]'s Bureau of [D] for processing of contractor payments). All 17 of the street construction projects on which you served as resident engineer have been completed.

Assistant [C] Project Manager. From May 2001 until November 2002, you served as the Assistant Project Manager on the Bureau of [R]'s [C] Program. Essentially, this 20 million dollar Bureau program entails lowering the roadway underneath City viaducts (or, occasionally, increasing the height of the viaduct structure itself) in order to allow truck traffic to pass through the viaducts. During this period, the Project Manager assigned to you primary responsibility for 2 particular [C] project sites:

100 North [Main] Road; and
2000 South [Central] Ave.

As to these 2 projects, your duties consisted of reviewing design drawings for conformance with state, City and AASHTO¹ guidelines for geometric and pavement design; coordinating with the City's Department of [A] for approval of necessary sewer and water main work; coordinating with the City's Department of [G] for inclusion of electrical installations and/or landscaping installations in the design plans; coordinating with City and extra-City funding sources for funding approval; and coordinating with affected railroads to ensure that proposed designs would not adversely impact the stability of viaduct foundations.

In addition to having primary responsibility for these 2 [C] projects, you also assisted the Project Manager, as directed, on design or construction matters related to other [C] projects. For example, you reviewed design plans at various milestone stages; assisted the resident engineers in the resolution of unforeseen design or construction issues; and oversaw the filing of design or construction-related correspondence. You also had occasion to participate, under the supervision of the Project Manager, in the evaluation of proposals submitted by three design consultants for the award of the design contract for another project site, 2200 [Queen] Street.

At the time you left the post of Assistant [C] Project Manager in November 200X, the design work on the two (2) projects for which you had primary responsibility had been 50% completed.

2003 Arterial Street Regulatory Sign Project: From November 200X until June 200X, you served as the Project Manager for the Bureau's 200X Arterial Street Regulatory Sign Project. This 1.2 million dollar project entailed designing and installing new regulatory signage (for example, "No Parking," "Stop," and speed limit signs) on City arterial streets. At the time you assumed the

¹AASHTO is the American Association of State Highway and Transportation Officials.

position of Project Manager, the design consultant, [F] Corporation, had completed 60% of the design work. Under your supervision, the remaining design work was completed. You also supervised the City-wide installation of the signage by another City contractor, [U] Inc.²

[C] Project Manager. In July 200X, you were reassigned to the Bureau's [C] Program, this time as Project Manager. You held this position until your retirement from City service on March 1, 200X. During your tenure as Project Manager, you had ultimate responsibility for 10 [C] projects: the two projects, noted above, for which you had primary responsibility during your prior service as the Assistant [C] Project Manager, and the following eight:

- [L] Street ;
- [E] Avenue;
- [P] Street ;
- [O] Avenue;
- [1ST] Street ;
- [2ND] Avenue;
- [3RD] Street; and
- [4TH] Street.

At the time you assumed responsibility for these 10 projects, 8 were at various stages of design; the other two were in the process of being "bid out" for construction. As [C] Project Manager, your duties/responsibilities consisted of the following: identifying candidate sites for inclusion in the [C] Program; securing funding from City as well as extra-City funding sources³; ranking design consultants for programmed projects from a pool of pre-approved consultants in order to assist the Chief [R] Engineer in making a final selection; meeting with the selected design consultant at the project site to explain the scope of work; negotiating with the consultant the number of man- hours required to complete various design tasks; obtaining approval of the Assistant Chief [R] Engineer for the agreed number of man-hours; drafting a letter, for signature by the [N] Commissioner, to the City's Chief Procurement Officer (CPO), recommending the selected design consultant and the negotiated fee for award and approval; coordinating the design work with various City and other governmental agencies, private utilities and railroads; completing certain contract documents relating to design plans and specifications for submittal to the City's Law Department and other involved parties.

As to [C] projects "bid out" for construction, your duties/responsibilities as [C] Project Manager also included the following: completing certain paperwork to enable the City's Department of Procurement Services to advertise the bid; assessing the past performance and present ability of bid

²To you understanding, as of February 28, 200X, [State] had approved 1.2 million in funding to the Bureau to install regulatory signs on City arterial streets resurfaced by the Bureau in 200X (also with [State] funding).

³Examples of such funding sources are the Federal [State, and County Governments] as well as the City's Office of [I] Department of [MN] .

respondents; chairing a pre-construction meeting with the construction contractor, the resident engineering crew and relevant governmental agencies and private entities; monitoring and supervising the construction process through the field personnel until completed; monitoring the construction budget to meet contingencies; and ensuring that field personnel submit all documents necessary to “close-out” the project.

At the time you resigned from City service on March 1, 200X, the 10 [C] projects for which you had ultimate authority were at various stages of completion.⁴

Post-City Employment. You have asked the Board to address several questions in relation to your post-City employment. Specifically, you have asked whether, following your retirement from City service, you, as an employee of some third-party entity, may work (for example, as a resident engineer or an assistant project manager) on Bureau of [R] design or construction projects; on [N] design or construction projects that do not involve the Bureau of R] ; and/or on City design or construction projects that do not involve [N] . You have also asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work as a “documentation engineer” in the [E] section of [N] ’s Bureau of [D] , processing monthly pay estimates for CDOT design or construction projects, and “closing out” such projects.

Pay estimates, you explained, are based on quantities submitted by the particular project’s resident engineer. Processing pay estimates entails checking the resident engineer’s calculations for accuracy and auditing the supporting documentation to ensure that it is complete and complies with [N] and, if applicable, other funding agencies’ (for example, [State’s] protocol and procedures.⁵ “Closing out” a project, you stated, entails i) reviewing sketches and calculations of work performed, as reported on the inspectors’ daily reports, and verifying that calculations are consistent with established values

⁴ The specific status of each of the ten projects is noted below:

- [L] Street (30% design);
- [E] Avenue (start of design work “on hold”);
- [P] Street (design work just commenced as per revised scope);
- [O] Avenue (design work 100% complete; advertised for construction bids);
- [1st] Street (design work just commenced);
- [2nd] Avenue (design work 95% complete);
- [3rd] Street (design work 100% complete);
- [4th] Street. (design work 100% complete);
- 100 North [Main] Road (construction work just commenced by the contractor); and
- 2000 South [Central] Ave (construction work just commenced by the contractor).

⁵ Examples of necessary supporting documentation are the resident engineer’s weekly reports, the contractor’s weekly pay rolls, and EEOC work force analysis reports.

and procedures⁶; ii) establishing a “final pay quantity” for each item based on the “quantity book” submitted by the project’s resident engineer; iii) preparing a final “contractor pay voucher” for approval by the project’s resident engineer and the head of the particular [N] bureau with jurisdiction over the project; iv) ensuring that, prior to final payment, all necessary project documentation is on file with [N] ⁷; and v) ensuring that all necessary documentation for post-contract modifications has been properly processed and approved.⁸

LAW: The relevant provision of the Governmental Ethics Ordinance is subsection 2-156-100(b) of the section entitled “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, a former employee is subject to two, distinct restrictions on employment after leaving City service. First, *for one year* after leaving City employment, a former employee is prohibited from assisting or representing any person, other than the City, in any business transaction involving the City or any of its agencies, if he or she participated personally and substantially in the subject matter of that transaction during City employment. Second, a former City employee is *permanently* prohibited from assisting or representing any person, other than the City, on a contract if, as a City employee, he or she exercised “contract management authority” with respect to that contract.

Section 2-156-010(g) of the Ordinance defines the term “contract management authority” as follows:

"Contract management authority" 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.

⁶Examples of relevant values and procedures, you stated, are those contained in [N]’s Resident Engineer Manual and [State’s] Construction Manual.

⁷ Examples of such documentation include the project’s diary, quantity and field books; materials certifications and testing reports; and sub-contractor’s waivers.

⁸You noted that, to your understanding, your job duties would not involve direct interaction with City contractors. Instead, as a documentation engineer, you would interact with project resident engineers and project managers regarding project documentation. Any dispute between field personnel and the project’s contractor(s) regarding quantities would be resolved, you stated, within the particular [N] bureau with jurisdiction over the project.

One-Year Prohibition. First, we address the one-year prohibition contained in the first clause of subsection 2-156-100(b). In your request to the Board for an advisory opinion, you did not identify a specific business transaction involving the City that you wish the Board to address in its analysis. Instead, you have asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work (for example, as a resident engineer or an assistant project manager) on Bureau of [R] design or construction projects; on [N] design or construction projects that do not involve the Bureau of [R] ; and/or on City design or construction projects that do not involve [N] . You have also asked whether, following your resignation from City service, you, as an employee of some third-party entity, may work as a “documentation engineer” in the [E] section of [N] ’s Bureau of [D] , processing monthly pay estimates for [N] design or construction projects, and “closing out” such projects.

In order to determine how the one-year prohibition applies to you in your post-City employment, we must look at the work you performed, and the duties and responsibilities you had, while a City employee. You began City employment in 198X as a civil engineer in what was formerly the City’s Department of . In or around January 199X, the Department was reorganized as [N] . Following that reorganization, until your retirement on March 1, 200X, you worked exclusively for [N] ’s Bureau of [R] . The Bureau of [R] is responsible for managing the design and construction of City arterial, residential and industrial streets, including new street construction, street rehabilitation and resurfacing and viaduct clearance improvements. It is also responsible for the design and installation of landscaped medians and regulatory signage on City streets.

During your City employment, you served as resident engineer on 17 consecutive street construction projects. These projects were of various types, including construction of residential and industrial streets; resurfacing of residential and arterial streets; rehabilitation of major arterial streets; viaduct clearance improvements and installation of landscaped medians. Your duties consisted of daily, on-site supervision of the contractors’ construction activities to ensure compliance with contract specifications, plans and drawings (prepared by an outside consultant), as well as responding to unforeseen design or construction issues that arose as the contractors’ work progressed. In addition, you were responsible for documenting the contractors’ work in a daily log book and preparing monthly pay-estimates, based on those recorded entries.

You also served as the Assistant Project Manager, and later as the Project Manager, of the Bureau of [R] [C] Program, which entails lowering the roadway underneath City viaducts (or, occasionally, increasing the height of the viaduct structure itself) in order to allow truck traffic to pass through the viaducts. During your tenure as Project Manager, you had primary responsibility for 10 [C] projects (listed in footnote 4 at page 3 of this opinion). You also served as Project Manager of the Bureau’s 200X Arterial Street Regulatory Sign Project, which entailed designing and installing new regulatory signage on City arterial streets. At the time you assumed the position of Project Manager, the design consultant had completed 60% of the design work. Under your supervision, the remaining design work, and the City-wide installation of the signage, was completed.

Based on the foregoing, the Board finds that, as a City employee, you were personally and substantially involved in the design and construction of City arterial, residential and industrial streets (including new street construction, street rehabilitation and resurfacing, installation of landscaped medians, and viaduct clearance improvements), and in the design and installation of regulatory signage on City arterial streets. The Board determines, therefore, that under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until February XX, 200X, from assisting or representing any person other than the City, on any business transaction involving the design or construction of City arterial, residential and industrial streets (including new street construction, street rehabilitation and resurfacing, installation of landscaped medians, and viaduct clearance improvements), and in the design or installation of regulatory signage on City arterial streets. This prohibition includes, but is not limited to, processing monthly pay estimates for, or closing out, design or construction contracts associated with such transactions.

Permanent Prohibition. Next, we address the permanent prohibition contained in the second clause of subsection 2-156-100(b).

Because all 17 of the street construction projects on which you served as resident engineer have been completed, analysis under the permanent prohibition of your authority over the design and/or construction contracts associated with those projects is unnecessary. Similarly, because the 200X Arterial Street Regulatory Sign Project, on which you served as Project Manager, has been completed, analysis under the permanent prohibition of your authority over the design and/or construction contracts associated with that project is unnecessary.

As to the 10 [C] projects (listed in footnote 4 at page 3 of this opinion) on which you served as Project Manager, which were at various stages of design or construction at the time you resigned from City service, the Board finds that, in carrying out the duties of [C] Project Manager, detailed at page 3 of this opinion, you exercised contract management authority over those 10 projects. Therefore, the Board determines that you are permanently prohibited from assisting or representing any person other than the City on any of the design and/or construction contracts associated with those 10 [C] projects. This prohibition includes, but is not limited to, processing monthly pay estimates for, or closing out, design or construction contracts associated with those 10 [C] projects.

DETERMINATIONS: In summary, after careful consideration of the facts you presented and the relevant law, the Board has determined that:

- 1) under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until February XX, 200X, from assisting or representing any person other than the City, on any business transaction involving the design or construction of City arterial, residential and industrial streets (including new street construction, street rehabilitation and resurfacing, installation of landscaped medians, and viaduct clearance improvements), and in the design or installation of regulatory signage on City arterial streets. This prohibition includes, but is not limited to, processing monthly pay

estimates for, or closing out, design or construction contracts associated with such transactions; and

- 2) under Section 2-156-100(b) of the Governmental Ethics Ordinance, you are permanently prohibited from assisting or representing any person other than the City on any of the design and/or construction contracts associated with the 10 [C] projects (listed in footnote 4 at page 3 of this opinion) on which you served as Project Manager. This prohibition includes, but is not limited to, processing monthly pay estimates for, or closing out, design or construction contracts associated with those 10 [C] projects.

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 the Board immediately, as any change in the facts 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.

CONFIDENTIAL INFORMATION: We also bring to your attention Section 2-156-070 of the Governmental Ethics Ordinance, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

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.

Darryl L. DePriest
Chair