

CONFIDENTIAL

Advisory Opinion

[Peter H.]

Case No. 06001.A, Post-employment

February 15, 2006

You are a licensed electrician, and a former City employee who resigned from your position as Manager with the [Department of B] on , 2005. On January , 2006 you asked the Board of Ethics for an opinion addressing whether you would be prohibited by the City's Governmental Ethics Ordinance from accepting a position with either [V] Company or [C Company] to install new fiber optic cable and/or surveillance cameras as part of the City's fiber optic cable network. The Board has reviewed the facts that you and two of your former supervisors and one former coworker have presented, as well as relevant law and Board precedent. It is the Board's determination that the Ordinance does not prohibit you from accepting the position as you describe it, though the Board admonishes you that you are prohibited from using or disclosing, other than as may be required by law, any confidential information about the City's network that you gained during the course of or through your City employment. The Board's analysis follows.

FACTS

You are a licensed electrician, and began your City career in 19 as a lamp maintenance repairman with the Bureau of [Y] in the Department of [T] . From that position, you became a Foreman of repairmen in 1988, and then a General Foreman 1996, when your position was shifted to the newly-formed [B] . In 2003, you became the General Manager of [B's] N Division . As both a General Foreman and General Manager, you said, you supervised between 60 and 100 I.B.E.W. electricians—handling project staffing matters, daily work assignments, discipline, and performing on-site work inspections. The N Division is responsible for installing and maintaining fiber optic and copper cable, which provides voice and data connectivity between [for various City departments] . You said that you did not interact with vendors of either [Y] or [B] during your City employment, or have any involvement in contract negotiations or formation of specifications with vendors. You said that you are an experienced electrician, and have spent approximately 10 years installing and maintaining fiber optic cable.

You explained that, in the last few weeks of your City service, you approached a former co-worker, and asked him which companies he had sent resumes to as he was leaving City employment. He mentioned several, and after you sent out about 60 resumes and cover letters, you received an answer from [V] and [C] , both Chicago-based electrical contractors. You now have an offer of employment from [C] , to work as a journeyman electrician to install new

fiber optic cable in the City. [C] is currently a sub-subcontractor to [V] , which is itself

a subcontractor to [M], which has a contract with the [I] Commission of Chicago to expand the City's fiber optic cable network. The [I] in turn, has received a grant from the U.S. Department of Homeland Security to launch a City-wide fiber optic grid, with more than 900 miles of fiber optic cable and hundreds of surveillance cameras and biological, chemical and radiological sensors. The concept is to provide a "virtual shield" to enable the City's first-responder departments to function more effectively in an emergency or terrorist attack. (The project itself has been dubbed "[federal project].") The grid will be deployed using existing fiber optic infrastructure, plus new infrastructure and approximately 380 miles of additional fiber acquired through the RCN cable television company. You said that [V or C] will work, or have you work, only on installing new fiber optic cable infrastructure (and possibly connecting it to surveillance cameras), not on upgrading existing fiber optic cable previously installed.

At your direction, Board staff consulted with [Ms. R.], currently the Deputy Director of [N] division, as well as your former supervisors, [O] the division's immediate former Deputy, and [P, his] predecessor. You, and all of them, confirmed that there are vulnerabilities in the existing network, which the City considers to be confidential. You explained that, while you are aware of or could determine these vulnerabilities, the work you would perform for [V/C] will be to lay and pull fiber optic cable through ducts, on new construction, and will not, and would not be expected to, entail the divulgement of any confidential information about the City's network or its vulnerabilities. Moreover, you explained, and [O and P] confirmed, that standards for laying fiber optic cable (and pulling ducts), including those used by the City, are industry-wide, and that the City has no proprietary method for laying cable or connecting it to surveillance cameras—any journeyman electrician could learn them and be certified in this work without prior knowledge of the City's network itself or of its vulnerabilities. You said that the work you would perform for [V/C] will essentially be the work you performed as a younger journeyman electrician—digging, then pulling fiber optic cable to ducts leads and connecting it. You said that your knowledge of the City's work would be incidental and unrelated to your work with [V/C], and you explained that, in any event, [Y] has already provided [C] with the mapping of the existing fiber optic network.

LAW, ANALYSIS AND CONCLUSIONS

Post-Employment Restrictions. Section 2-156-100(b) of the City's Governmental Ethics Ordinance, entitled "Post-Employment Restrictions," 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.

As you are now a former City employee, this section prohibits you, for one year after leaving your City service, from assisting or representing any person (including [V] or [C]) in a business transaction involving the City if, during your City service, you participated personally and substantially in the subject matter of that transaction. In addition, you are permanently prohibited

from assisting or representing any person in a contract if, during your City employment, you exercised “contract management authority” with respect to that contract.¹

The issue here is whether the one-year prohibition in §100(b) prohibits or limits your prospective employment with [V/C] as an electrician, installing fiber optic cable pursuant to [federal project]. Clearly, this work would be in connection with a business transaction involving the City, namely, the expansion of the City’s network; [B] will play an integral part in managing this expansion. Likewise, a significant portion of your City career was spent in working on that network—laying fiber optic cable. However, while the Board believes that the facts presented would warrant the conclusion that you have participated personally and substantially in the subject matter of [V/C’s] transaction, the Board also believes that application of the Ordinance’s one-year prohibition to your prospective employment is not warranted in your case. In past opinions involving application of the one-year prohibition, the Board has, in determining that application of the prohibition was not warranted, considered the tradesman nature of the work performed by a City employee both during City employment and after it, the relative lack of discretion or authority exercised by the employee while in City service and in the proposed post-City position, and the intent of the post-employment provisions themselves. See Case Nos. 04021.A (former City machinist was not prohibited after leaving City employment from maintaining the same machines he maintained during City employment); 01051.A (work to be performed by two engineers for outside company was work for which they were qualified, based on their education and status as structural engineers, and the expertise enabling them to do this work was not uniquely or specifically related to their City duties or to any City-specific engineering standards or regulations); and 91098.A (former City employee was not prohibited from providing medical examinations on City employees, even though he performed the same examinations during his City service, because these tasks involved the “occupational skills of his profession, skills acquired through his occupational education and training,” thus performing them did not “fall within the intended meaning of the one-year post-employment provisions”). Similarly, in this case, the Board has considered the tradesman nature of your work during City employment—installing fiber optic cable according to industry-wide standards—in conjunction with the nature of the work you would perform for [V/C], which is largely the same, except that you would work on new installations rather than upgrading existing infrastructure. It is our conclusion that prohibiting you from working as an electrician, installing fiber optic cable for the City’s network, would not further the purpose and intent of the Ordinance’s post-employment provisions.

Confidential Information. However, the Board cautions you that its examination of the record in this case shows that a serious and obviously legitimate concern of [B] and the City is, and has been, securing and maintaining the confidentiality of certain information, most importantly that related to the location and nature of the City’s network’s vulnerabilities. While you are possessed of some of that information, and may, by virtue of your City experience, be able to readily determine more of it, the Board advises you that § 2-156-070 clearly and unequivocally prohibits you, as a former City employee from using or disclosing, other than as may be required by law, any confidential information gained in the course of or by reason of your City employment. Your work with [V/C], as you have described it, does not appear to require the use of any confidential

1. The permanent prohibition is not at issue in this case, as the facts presented do not indicate that you exercised contract management authority with respect to any City contract involved with respect to [federal project], [I], [M] or [V/C].

information, and the Board's conclusion that application of the Ordinance's one-year post-employment prohibition to your work is not warranted is, in part, based on that aspect of your work. Therefore, we caution you that, if your work for [V/C] or any other person with respect to the City's network changes, our conclusion may change as well. And, in any event, we admonish you that your use or disclosure of confidential information, unless specifically authorized by law, subjects your future employer and possibly you yourself to legal consequences, including but not limited to cancellation of contracts or other penalties.

DETERMINATION

The Board determines that the Ordinance does not prohibit you from accepting a position with either [V] or [C] to install new fiber optic cable and/or surveillance cameras as part of the City's fiber optic cable network, as you describe it, though the Board advises you that you are prohibited from using or disclosing, other than as may be required by law, any confidential information about the City's network that you gained during the course of or through your City employment.

The Board's determination does not necessarily dispose of all the 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 letter. Other City rules or policies may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter the determination.

RELIANCE

This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

Darryl L. DePriest,
Chair