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M E M O R A N D U M

*Approved
by the
Board*

To: Board Members

From: [REDACTED]
Research Analyst

Re: Case Number 88019.A
[REDACTED] (Post-Employment)

Date: May 10, 1988

The purpose of this memorandum is to request that the Board ratify a tentative opinion previously rendered by the Chairman. The case at issue involved time constraints which precluded the possibility of rendering a formal opinion based on a consideration by the full Board at its monthly meeting. Consequently, the Chairman, in consultation with the Vice-Chairman and research staff, reached a tentative opinion and conveyed this to the petitioner by phone. This memo will present the facts of the case and the tentative opinion reached.

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FACTS: On January 21, 1988, [REDACTED] contacted the staff to request an advisory opinion concerning a post-employment matter. [REDACTED] is an attorney with the law firm of [REDACTED] and a former researcher for a City Council Committee. He left his City job approximately 10 months prior to the date of this request.

As a private attorney, [REDACTED] has been asked to represent a non-profit agency [REDACTED] in a request for block grant funds. His representation would involve drafting a brief ordinance submitted by Alderman [REDACTED] to City Council, recommending the reprogramming of funds to the [REDACTED] non-profit agency in the amount of 109,250.00. [REDACTED] would be performing these services on a pro-bono basis.



In his former job as a researcher for the [redacted] Committee, [redacted] drafted a similar ordinance involving the distribution of funds to the non-profit agency. This ordinance was drafted in 1986 and recommended allocating \$79,000 to the non-profit agency.

[redacted] sought an opinion from the Board to determine whether the post-employment restrictions of the Ordinance would allow him to represent this party which he had previously assisted on a similar matter while employed by the City. [redacted] new proposal on behalf of the non-profit agency was scheduled to go before the City Council within two days of his request for an advisory opinion. This case therefore required immediate attention.

Because a thorough and formal consideration of this post-employment matter was impossible on such short notice, the Chairman and Vice Chairman were consulted and it was agreed that:

- 1) it was not advisable for [redacted] to represent this party before City Council; and
- 2) it would be permissible in this instance for [redacted] to turn this case over to another person in his law firm.

[redacted] was informed of this by phone and stated that he would either find a colleague to do the work or request a deferment of the proposal before City Council until he was able to find another attorney to handle it.

The Chairman's tentative opinion was based on a analysis of Section 26.2-10(b) of the Ethics Ordinance which states that:

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.

The Chairman, Vice Chair and staff believed that [redacted] proposed representation of the non-profit agency might constitute a violation of this section since it would involve his assistance

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on a business transaction with the City (a proposed ordinance), concerning a subject matter (CDBG funds for the non-profit agency) in which he was personally and substantially involved while working for the City.

This case raises two principal issues with respect to the post-employment provisions of the Ordinance. The first concerns the interpretation of the term "subject matter of the transaction". The second issue concerns the question of whether it is permissible for a colleague of a former City employee to represent cases before the City which cannot legitimately be represented by the former City employee.

With respect to the first of these issues, the staff has argued that the phrase "subject matter of the transaction" does not refer exclusively to the content of a particular proposal or contract, but instead refers more broadly to the general area of City business which the contract or transaction concerns. According to this view, a former employee participated personally and substantially in the subject matter of a transaction if he or she participated in decisions concerning an area of City business which is addressed in the transaction in question.

On this interpretation, [REDACTED] clearly participated personally and substantially in the subject matter of the transaction in question since that transaction is a proposal for block grant funds and as a City legal researcher, [REDACTED] drafted proposals for the distribution of block grant funds one of which involved a request on behalf of the non-profit agency his present client.

The second issue raised by this case concerns the representation of persons before the City by colleagues or business associates of former employees. The staff believes that this issue should be decided on a case by case basis. The post-employment provisions of the Ordinance are silent on this issue. They prohibit the representation or assistance of former City employees under certain circumstances. They do not prohibit maintaining an economic interest in such representation and therefore, they would not restrict other members of a former employee's firm from representing persons before the City on grounds that the former employee maintained an economic interest in such representation. As a result, these provisions do not automatically preclude the possibility that a former employee prohibited under the Ordinance from representing certain parties before the City, could allow a business associate to represent his client. However, in such cases it is possible to interpret a former employee's referral as a form of assistance proscribed by the Ordinance. There is also the potential for a former employee to convey inside information about the City to a business associate in a way that would provide the client an unfair advantage in its dealings with the City.

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In the present case the Chairman, in consultation with the research staff and the Vice-Chairman, reached the tentative position that [REDACTED] own representation of the *non-profit agency* would be impermissible under the Ordinance, but that it would be allowable in this case for [REDACTED] to find a colleague to represent his client. The reasons for this allowance are twofold. First, as mentioned above the post-employment restrictions do not explicitly apply to a former employee's colleagues or business associates. Secondly, the case at hand involves a non-profit organization represented on a strictly pro-bono basis. There was, therefore no immediate economic incentive for [REDACTED] to reveal inside information or violate the City's trust to benefit a private client. Moreover, to completely disallow [REDACTED] firm to represent the *non-profit agency* as an aspect of its pro bono program would have the undesirable effect of discouraging the charitable services of local law firms, and this in turn would prove a detriment to the City in general.

In light of these considerations, the staff affirms the tentative opinion reached in this case and recommends the formal approval of it by the Board.

JH/jh/[REDACTED]