



City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

Dorothy J. Eng  
Executive Director

Albert F. Hofeld  
Chair

Angeles L. Eames  
Vice Chair

Margaret Carter  
Darryl L. DePriest  
Fr. Martin E. O'Donovan  
Marlene O. Rankin  
Catherine M. Ryan

Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660

April 24, 1991

**C O N F I D E N T I A L**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: ADVISORY OPINION, Case #91040.A**

Dear [REDACTED]

The Board of Ethics is responding to your recent request for an advisory opinion. We appreciate your bringing the following matter to our attention and your willingness to follow the ethical standards embodied in the Ordinance.

The Board received your telephone request on [REDACTED], and your written request on [REDACTED] asking whether your potential employment with a real estate management company, upon leaving City employment, would violate the Governmental Ethics Ordinance. Based upon the facts that you presented, the Board determines that your employment in this position would not violate any provision of the Ordinance including the post-employment provisions.

**FACTS:** You stated that you are currently the [REDACTED] for the [REDACTED] Division of the Department of Housing ("DOH"). You have been approached by a real estate management company for potential employment. This company is submitting a response to the City's Request for Qualification ("RFQ") for the management of [REDACTED]. This response is being submitted to the Department of General Services, which is the department charged with the care of the [REDACTED]. According to [REDACTED], the RFQ will be used to evaluate the qualifications of the various companies that are interested in bidding on the management contract. The RFQ specifically asks that each company responding disclose the names and qualifications of the persons who will be employed in the management of the [REDACTED].

Those companies that the Department deems qualified will then be able to respond to the City's request for proposal ("RFP") for management of the [REDACTED]. In your letter to the Board of



Case No. 91040.A

April 23, 1991

Page 2

Ethics you stated that if you acquire the position with the management company, your duties would include "on-site supervision, coordination, and management of the various functions necessary to operate the facility," the [REDACTED]. You also stated that you did not help and have no intention of helping the company with the bid; in fact, you stated that you do not have any expertise that could be of assistance to the company in the bidding process.

You further explained that in your current position with the City, you work with development companies, often not-for-profit companies, to assist them with multi-unit dwelling rehabilitation projects. You assist the company from the beginning of the project through completion, often working with the architect, the general contractor, the lending institution, the City, etc. As a City employee you have nothing to do with managing buildings and have never had anything to do with any contracts related to the [REDACTED].

**LAW AND ANALYSIS:** As a City employee you are prohibited from representing others before a City agency. The relevant provision of the Governmental Ethics Ordinance is Section 2-156-090(a), Representation of Other Persons. It states:

**No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.**

Although your name is to be listed as a potential employee for the management company in its response to the Request for Qualification as required by the City, such listing is not in violation of this provision as it does not fall within the intended meaning of what constitutes representation of others. Conduct which would constitute representation of others includes but is not limited to: personal appearances before a City agency on behalf of this company, telephone contact with City officials and employees, or submitting written requests or proposals on behalf of this company while employed by the City.

Case No. 91040.A  
April 23, 1991  
Page 3

Upon leaving your City employment, you are subject to the post-employment provisions of the Ordinance. Section 2-156-100(b) 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. (prior code § 26.2-10(b))**

Section 2-156-010(g) defines "contract management authority:"

**"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.**

According to Section 2-156-100(b), an employee is subject to two restrictions on his or her employment after leaving City service: a one-year prohibition and a permanent prohibition. A former City employee is prohibited, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person participated as a City employee; and (2) the person's participation in this subject matter or area was personal and substantial.

A former City employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract; and (2) the person exercised "contract management authority," as defined above, with respect to this particular transaction while acting as a City employee.

The facts presented indicate that during the time that you have been employed with the City, you have not been involved in the formulation or execution of any part of the RFQ, RFP, bid, or potential contract between the City and this management company. Because during your City employment, you

Case No. 91040.A  
April 23, 1991  
Page 4

did not exercise contract management authority as to this contract, the permanent prohibition does not apply to the position you have been offered.

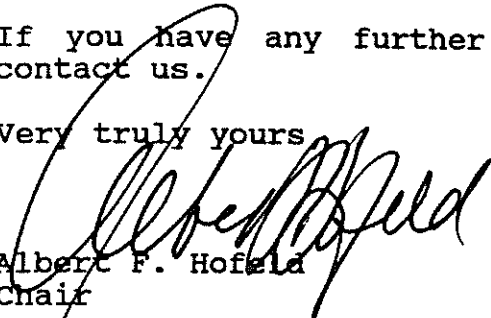
Moreover, you stated that while a City employee, you have not been personally and substantially involved in any matters that will relate to your potential new employment, assisting with the management of the [REDACTED]. You currently work in the DOH, not the Department of General Services or the Department of Purchases, the latter of which is the department that will award the management contract. Therefore, the one-year post-employment restriction does not apply to the [REDACTED] management position in question.

**CONCLUSION AND DETERMINATION:** Based upon the facts presented, the Board determines that your acceptance of this position would not be a violation of the provisions of the Governmental Ethics Ordinance, and that neither the permanent nor the one-year prohibition of the post-employment provisions of the Ordinance applies to that position. However, please be advised that throughout the entire bidding process you must not, while employed with the City, undertake any conduct which would be in violation of Section 2-156-090(a), Representation of Other Persons. Please also note that this opinion relates only to the position you currently seek at the [REDACTED] and may not be applicable to any other position. The Board's determination is based on the facts as stated in this opinion. If they are incorrect or incomplete, please notify us immediately, as any change may alter our decision.

For your convenience we have enclosed our procedural guidelines for your review. We appreciate your efforts to comply with the ethical standards embodied in the Ordinance.

If you have any further questions, please feel free to contact us.

Very truly yours

  
Albert F. Hofeld  
Chair

Enclosure

cc: Kelly Welsh, Corporation Counsel  
jgj/91040.L2

## NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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 the opinion is rendered.