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ADVISORY OPINION  
Case No. 93018.A, Post-Employment

Date: June 9, 1993

City of Chicago  
Richard M. Daley, Mayor

Board of Ethics

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You requested an advisory opinion on whether the post-employment provisions of the Governmental Ethics Ordinance (§ 2-156-100) prohibit you from serving as a consulting [redacted] to the City of Chicago. You served as [redacted] of the [redacted] City [redacted] from 1967 until your retirement on [redacted] 1992. You were asked by the City to serve as a consulting [redacted] to [redacted] Your former department [redacted] to assist in [redacted] [redacted] and in [redacted]. You would bring knowledge and expertise relating to matters for which you had responsibility during your long City tenure. The proposed consulting contract between you and the City would obligate you to "at all times act in the best interests of the City of Chicago, consistent with the trust and confidence" that the City would place in you.

In conjunction with your request, the Board also received a letter and legal memorandum from the City's Corporation Counsel. The legal memorandum presented the City's view on the central question of whether such consulting arrangements are encompassed by the terms of section 2-156-100(b) of the Ethics Ordinance, the provision relevant to your situation.

After careful consideration of both the purpose and the language of the post-employment provisions, the Board of Ethics finds that the Ordinance does not prohibit the City from retaining you as a consultant under the conditions that are described as present here. The Board further finds that the Ordinance does not prohibit consulting agreements between the City and former employees when the same conditions are present, as set forth below.

LAW: Section 2-156-100 of the Governmental Ethics Ordinance, entitled "Post-employment Restrictions," states in relevant part:

- (b) No former official or employee shall, for a period of one year after the termination of the official's or



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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.

**ISSUE:** The issue presented for review is whether consulting agreements between the City and its former employees for services that such employees had responsibility for during their City tenure are prohibited by the Ethics Ordinance.

**DETERMINATION:** The Ethics Ordinance does not prohibit consulting agreements between the City and its former employees when the following conditions are present: (1) the City seeks the services of the former employee and stands to benefit by hiring the former employee as a consultant, and (2) the former employee does not represent the interests of any other entity in connection with his or her consulting responsibilities to the City. Because these conditions are present in your situation, the Ordinance does not prohibit the proposed consulting contract between you and the City.

**ANALYSIS:** The Board believes that the purpose of post-employment provisions is not undermined by permitting this kind of consulting arrangement. It also believes that the plain language of the Ordinance serves the purpose of post-employment provisions in general and permits this kind of consulting contract between the City and a former employee.

Purpose. The primary purpose of post-employment provisions is to prevent former employees from using "inside knowledge" to benefit third parties, thus impairing the integrity of government services and creating the appearance of impropriety. This purpose is not served by foreclosing the City from retaining former employees under the conditions cited above: under these conditions, any "inside knowledge" is used only to benefit the City, and no other party would have the benefit of the former employee's knowledge. Further, the former employee is not exposed to dual loyalties; the former employee is serving only the City and owes loyalty only to it. The City's interests are foremost. The major harm contemplated by post-employment provisions is thus avoided.

The position of other jurisdictions supports this interpretation of the purpose of post-employment provisions. Research conducted by the Board indicates that most ethics codes that address this issue directly in their post-employment provisions would allow a consulting contract of the sort contemplated between you and the City. Most of these codes expressly allow former employees to be retained by their former agency under certain conditions.

Language. The plain language of the City's post-employment provision is consistent with and serves the primary purpose of post-employment provisions, as discussed above. Therefore, it permits the kind of consulting contract in question. The telling terms are the words "assist or represent any person ...." Section 2-156-100, subsection (b), states that a former employee or official, for one year after leaving the City, may not "assist or represent any person in any business transaction involving the City..." if the official or employee participated "personally and substantially" as a City employee in the "subject matter of the transaction;" with respect to a contract over which the former employee exercised contract management authority, the prohibition is permanent.

If the Ordinance is intended to prevent a former employee from personally agreeing to work for the City, at the City's request, the terms "assist or represent any person" are superfluous. If the Ordinance is intended to prevent this conduct, it would say simply that "no former official or employee shall, for a period of one year... engage in a transaction involving the City...." The words "assist or represent any person" appear to anticipate the presence of a third party in the transaction, before a former employee's conduct would violate subsection (b) of the post-employment provisions. Further, if the intent were to prevent the City from directly using the knowledge of its former employees for its own benefit, the adjective "business" before "transaction" would serve no purpose; the word "transaction" alone would say what is needed.

Case Law. Some earlier cases found that former employees could not enter into contracts directly with the City to perform work for which they had been responsible as City employees. See case nos. 87107.A and 88056.A. These cases, without presenting a rationale, interpreted the phrase "assist or represent any person" to include the employees' contracting on their own behalf. The opinions in those cases do not deal directly with the questions whether the purpose of the Ordinance is carried out by prohibiting post-employment work for the City in this kind of situation, where the City is

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benefitted by the agreement and there is no third party to whom the former employee owes loyalty; and whether the language of the Ordinance reflects an intent to prohibit such post-employment work.

Beginning with a case in 1989, the Board has carved out areas in which a former employee could contract with her or his former department for work the employee had done while an employee. In that case the Board created an exception to the rule of the earlier cases to find that the post-employment provision did not prohibit a former employee from contracting with her former department for a limited period to complete a job, where the City's interests were clearly served by the arrangement and the former employee directly assisted the City, not another entity (case no. 89021.A). More recently, the Board has found that the Ordinance did not prohibit the City from hiring former employees to do work they had been performing as employees, where the work relied on professional or trade skills (case nos. 91098.A, 93006.Q and 92036.A). The interpretation adopted here follows the direction of recent cases.

**CONCLUSION:** The Board concludes that the Governmental Ethics Ordinance does not prohibit consulting agreements between the City and its former employees for services that such employees had responsibility for during their City tenure, when certain conditions are met. Those conditions are that (1) the City seeks the services of the former employee and stands to benefit by hiring the former employee as a consultant, and (2) the former employee does not represent the interests of any other entity in connection with his or her consulting responsibilities to the City.

All of these conditions apply to the proposed consulting agreement between you and the City. Moreover, the proposed contract itself obligates you to act at all times in the best interests of the City, so the City's interests are further protected. The Board finds that the post-employment provisions in these circumstances do not prohibit the City from retaining you as a consulting [REDACTED] to your former department [REDACTED].

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation. We note that a City department

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may adopt restrictions that are more stringent than those 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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

*Catherine M. Ryan*  
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Catherine M. Ryan  
Chair

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