

ADVISORY OPINION
CASE NO. 98060.A
Post-employment

To: []

Date: February 10, 1999

On November 18, 1998, you requested an advisory opinion on how the Governmental Ethics Ordinance applies to you in your post-City employment. Before retiring from City service on June 30, 1998, you were [Engineer] in [Department 1], responsible for the design of [structures]. On November 3, you began working as a project manager for an engineering consulting firm, [Alpha, Inc.], which provides [structure] design services to [Department 1]. In a conversation with the City's Law Department prior to retiring, you received general advice about the Ethics Ordinance's post-employment restrictions. Based on this advice, you said, you worked on two of [Alpha]'s projects for [Department 1], projects that began after you left City employment. You anticipate working on [Alpha]'s future projects to design [structures] for the department. In requesting an advisory opinion, you asked if the post-employment restrictions of the Ethics Ordinance would have prohibited you from working as a consultant for [Alpha] on these two projects, and whether you are prohibited from working on [Alpha]'s future projects with [Dept. 1].

Based on the facts you have presented, the Board has concluded that the Ordinance's post-employment restrictions would not have prohibited you from working for [Alpha] on either of the two projects, and that they will not prohibit you from working on [Alpha]'s new [structure] design projects with the City, provided you did not supervise [preliminary studies] or [structure] design at these project sites. A statement of the facts you presented, the relevant provisions of the Ethics Ordinance, and the Board's analysis and determinations follow.

FACTS: You had been an employee of the City of Chicago for 30 years. Before working in [Department 1], you were [Chief Engineer] in [Department 2]. In this position you were in charge of reviewing and approving plans, and issuing permits, for [] construction. When [Department 2] was divided into separate departments in 1992, you became [Engineer] in [Department 1], the position you retired from on June 30, 1998. As [Engineer], you were the head of the department's [Bureau X], which consists of approximately seven engineers and four technicians. You were in charge of [structure] design and supervised private consultants in the design of [structure] projects. You worked almost exclusively on new [structure] projects, as opposed to working on existing

[structures], which was handled by other divisions in the department. We provide a brief description of the design phase of a typical new [structure] project and your responsibilities in it. We then describe your work for [Alpha] on [structure] design projects.

The design phase of a typical new [structure] project. New [structure] projects are commonly undertaken in response to complaints about []. After the department receives complaints about a given location and conducts an initial evaluation of the existing [structures] in the area, [Bureau X] undertakes a ["preliminary study"] to determine the basic requirements for building a [structure] at that location. The completed [preliminary study] gives a profile of a potential [structure] project at the site, including basic technical information such as where the [structure] should be located, the [orientation in] which it should be built, and the [size of the structure]. The completed study for a given location then goes onto a candidate list. The [Commissioner of Department 1] chooses which projects from this list the department will undertake.

Once the decision to build a [structure] at a given site is made, the Commissioner selects a private design consultant to complete the design of the [structure]. [Department 1] has two-year retainer contracts with some 22 design consultants on whom the Commissioner can call to provide design services for specific [structure] projects. Consultants acquire these retainer contracts through an RFQ ("request for qualifications") process. Design consultants make detailed plans for the project and inform the City of any potential construction problems. The consultant prepares three sets of "contract documents": drawings of the [structure]; specifications for construction, including materials to be used and descriptions of potential construction problems; and construction cost estimates. [Department 1's Bureau X] guides and supervises the private design consultant as it creates these documents. The design phase for a typical new [structure] project lasts between three and four months; design for the largest projects can take up to a year to complete. Either [Department 1] itself or a private construction contractor will use the contract documents the design consultant provides to guide the construction of the new [structure].

Your responsibilities in new [structure] projects. As [Engineer], you supervised [Bureau X] engineers who created the [preliminary studies] for potential new [structure] projects. You were ultimately responsible for the completed [preliminary studies]. In addition, you supervised the private design consultants working on [structure] projects. For example, you reviewed terms on consultants' work orders for specific projects to ensure that they accurately reflected the consultants' duties. The terms of the work orders would ultimately be approved by [your supervisor] in [Department 1] and First Deputy Commissioner. You also reviewed design consultants' work to insure that they were making progress on their projects, and, if they were, recommended that they be paid. This recommendation would then be approved by [your supervisor], the First Deputy Commissioner, and the Commissioner before the consultant would be paid.

You said you did not participate in the RFQ process through which design consultants acquired retainer contracts with [Department 1]. You also said that [the Commissioner] decides which design consultant on retainer will work on a given project, and that you did not ever select a consultant, including your new employer, [Alpha], for a given project.

Your work for [Alpha], Inc. After retiring from City service, you sought employment with several engineering and design consultants and received a number of job offers. [Alpha]'s offer was the most attractive for a variety of reasons, including flexibility of hours, location, and the type of work the company does. You began working for [Alpha] as a project manager on November 3, 1998. You currently work approximately three days per week.

[Alpha], Inc. is headquartered in [another state] and has offices throughout the country, including two in the Chicago area. It specializes in consulting on [a field other than your specialty], but it also consults on other infrastructure development projects, including [structures]. [Alpha] provides consulting services to a variety of government and private agencies, including the Illinois [Department A], the Chicago [Department 3], the Chicago [Department 1], railroad companies, and private developers. It is owned by [a larger engineering company].

[Alpha] has been a consultant to [Department 1] for several years. As of September 1998, it received a new two-year retainer contract to provide [structure] design services to the department. [Alpha] was selected as the design consultant for two new [structure] projects: [Project No. 1] and [Project No. 2]. The [Commissioner] decided to build new [structures] at these sites after you retired; he also chose [Alpha] as the consultant for these projects after you retired. To your knowledge, [Alpha] is not currently working on any other projects for [Department 1]. However, you expect that [the department] will call on [Alpha] to provide design services for future new [structure] projects.

You worked as a consultant for [Alpha] on both [Project No. 1] and [Project No. 2]. You also said that you hope to work on [Alpha]'s [structure] design projects for [Department 1] in the future, in addition to working on [Alpha]'s projects with other government and private clients. We provide a brief description of your work for [Alpha] on the two [structure] projects, both of which you said were initiated after you retired from the City, and your potential work for [Alpha] on future [Department 1] projects.

[Project No. 1]. The design of this [structure] (to be located on []) was essentially completed before you began working for [Alpha]. As a project manager for [Alpha], you reviewed several drawings prepared by [Alpha] engineers for this project. [Alpha] prepared only drawings for this [project], and not other contract documents, because the [structure] at this site is to be built by a [Department 1] construction crew rather than a private construction contractor.

[Project No. 2]. This [structure] will be located at []. [Department 1] will also construct this [structure] itself, so [Alpha] is only required to prepare drawings. For this

project, as a project manager for [Alpha], you examined the site and created drawings of the [structure]. The drawings have been reviewed by [Department 1], and [Alpha] is now incorporating the department's comments and finalizing the drawings.

Future [Structure] Projects. Your future work for [Alpha] on [Department 1] projects would be similar to what you already did on the two [structure] projects, and similar to the work done by other [structure] design consultants you supervised as [Engineer] for [Department 1]. It would include preparing drawings of new [structures], specifications for construction, and construction cost estimates.

Your involvement in these projects while employed by the City. You said you did not participate in the City's decision to build new [structures] at the [Project 1] or [Project 2] sites. You also said that you did not participate, as a City employee, in designing [structures] or in supervising [structure] designers, either private or City-employed, on either of these two [structure] project sites, as both were new projects since you left City employment. You said the future [structure] projects you would work on for [Alpha] would be new [structure] projects at sites with which you had no involvement while you were employed by the City.

LAW: Section 2-156-100(b) of the Ethics Ordinance, "Post-Employment Restrictions," states in relevant part:

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.

To "assist" and "represent" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (See Case No. 92035.A.) The Ordinance defines "contract management authority" as:

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. (§2-156-010(g).)

Section 2-156-100(b) of the Ordinance imposes both a one-year and a permanent prohibition on former City employees' post-employment activities. The one-year prohibition applies to business transactions involving the City in whose subject matter a former employee participated personally

and substantially while employed by the City; the permanent prohibition applies to contracts over which a former employee exercised contract management authority. We will analyze in turn how both the permanent and the one-year prohibitions apply to your work for [Alpha].

ANALYSIS: The permanent prohibition: Section 2-156-100(b) of the Ethics Ordinance permanently prohibits you from assisting or representing [Alpha], or any other person, in a contract involving the City if you exercised contract management authority with respect to that contract. Because [Alpha]'s current contract with [Department 1] began in September 1998, several months after you left your City job, and you said you did not participate in the RFQ process through which [Alpha] acquired this contract, the Board finds on the basis of the facts you presented that you did not exercise contract management authority with respect to [Alpha]'s current contract with the department. Further, you said, in your City job you did not participate in selecting which of the consultants under contract would work on a particular project, and you had nothing to do with the terms of work on the two [structure] projects discussed here. The Board therefore concludes that the Ordinance's permanent prohibition does not permanently prohibit you from assisting or representing [Alpha] in its current contract with [Department 1] or on projects carried out under that contract.

The one-year prohibition: Section 2-156-100(b) of the Ethics Ordinance also prohibits you for one year, or until June 30, 1999, from assisting or representing [Alpha], or any other person, in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment. We will analyze how this prohibition applies to the two [structure] projects on which you worked for [Alpha], and to future [structure] projects that you may work on as an [Alpha] employee before June 30, 1999.

As [Engineer] in [Department 1], you supervised specific aspects of the City's [structure] construction program, namely, the creation of [preliminary studies] at potential [structure] construction sites and the design of new [structures] at sites chosen by [the Commissioner]. As part of this work you supervised private design consultants who prepared drawings, construction specifications, and cost estimates for new [structure] projects.

In a recent Board opinion addressing similar circumstances, Case No. 98053.A, a former City employee was responsible for dispatching City engineers and private engineering contractors to perform engineering field studies and cost estimates on possible project sites for a City construction program. He also assigned and oversaw City and private engineers who supervised construction work on sites his department chose for applying this program. He was prohibited for one year after leaving his City job from assisting or representing any person in any project on which he worked under that program as a City employee. Each project entailed a distinct site. The Board concluded that the one-year prohibition did not prohibit him from assisting or representing persons on projects (or sites) under this program in which he did not participate as a City employee. In another recent case, Case No. 98020.A, the Board held that a former City employee who supervised field construction for development projects as part of a City construction program, including work by

private engineering consultants, was prohibited for one year from assisting or representing any person in a business transaction with the City if the transaction involved carrying out that program at any site on which he had worked with that program as a City employee. The prohibition did not apply to the exercise of his general engineering skills as a field construction supervisor.

See also the discussion in Case No. 92032.A. There the Board noted that in an earlier case, Case No. 92022.A, the Board had determined that a former City employee (an engineer) could work on future bridge and street projects, as long as the project was not one he had worked on while employed by the City. In that instance, the Board noted, the subject matter of the transaction referred to the specific project, not to bridge or street projects in general, although there are other situations in which the Board interprets "subject matter of a transaction" more broadly than a specific project. (Case No. 92032.A, p. 6.) A new [structure] project is sufficiently similar to specific bridge and street projects that a similar conclusion would follow in this case.

In your work you exercised professional skills as a [structure] engineer in supervising [structure] design. Each project you supervised falls within the broad topic of [structure] design. However, you explained, the [preliminary studies] and the design work you supervised for each new [structure] project were for specific construction sites and were tailored to the specific requirements of those sites (e.g., [] at the sites; construction conflicts at the sites, such as []).

Based on the facts you presented and on previous Board opinions, the Board concludes that the work you performed as [Engineer] constitutes personal and substantial participation in [structure] design, including [preliminary studies], on the specific projects on which you worked; therefore the Ordinance's one-year prohibition prohibits you from assisting or representing any person, including [Alpha], in a business transaction involving the City that deals with [structure] design in any [structure] project for which you supervised [structure] design (including [preliminary studies]) while with the City. [Alpha]'s consulting efforts on [Project No. 1] and [Project No. 2] are clearly business transactions involving the City, and, based on our understanding of the facts, the subject matter of these transactions is [structure] design at those project sites. However, because you did not supervise, or in any way participate in, [structure] design on either [Project No. 1] or [Project No. 2] while you were with the City, the Board concludes that the Ordinance's one-year prohibition would not have prohibited you from assisting or representing [Alpha] in either of these transactions. In addition, the Board concludes that the one-year prohibition does not prohibit you from assisting or representing [Alpha] in new [structure] projects involving the City, provided you did not supervise [structure] design (including [preliminary studies]) at the project sites.

Confidential Information: The other provision of the Ethics Ordinance relevant to your situation is Section 2-156-070, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or disclosing confidential information you acquired during the course of your City work.

DETERMINATIONS: Based on the facts you presented, the Board determines that the Ordinance's permanent prohibition does not permanently prohibit you from assisting or representing [Alpha] in its current contract with [Department 1] or on projects carried out under that contract. In addition, the Board determines that the Ordinance's one-year prohibition prohibits you from assisting or representing any person, including [Alpha], in a business transaction involving the City that deals with [structure] design in any [structure] project for which you supervised [structure] design (including [preliminary studies]) while with the City. Because you did not supervise [structure] design at either the [Project No. 1] or [Project No. 2] sites, the Board determines that the Ordinance's one-year prohibition would not have prohibited you from assisting or representing [Alpha] in either of these transactions. Finally, the Board determines that the one-year prohibition does not prohibit you from assisting or representing [Alpha] in new [structure] projects involving the City, provided you did not supervise [structure] design (including [preliminary studies]) at the project sites.

Our determination is not necessarily dispositive of all 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 opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations 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 indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Darryl L. DePriest
Chair