

ADVISORY OPINION
CASE NO. 99022.A
Post-Employment

To: []

Date: June 16, 1999

You requested an advisory opinion from the Board of Ethics on how the Governmental Ethics Ordinance applies to your proposed post-City employment as an operations manager for [the Company], a City contractor. It is the Board's determination that the post-employment you described is not prohibited by the Ethics Ordinance. We set forth below the Board's analysis of the situation you presented under the relevant provisions of the Ordinance.

FACTS: You served as Director of the [Division], a division within the Bureau of [] in the Department of [], from [date] until [date], when you retired from City service. As Director, you were responsible for managing the daily operations of the [Division], including overseeing 80 employees and a fleet of service trucks. Prior to that position, you also worked for the City as an electrical mechanic for the [Division] from [date] to [date].

You told our staff you are interested in post-City employment with [the Company], which has a contract with [your Department] to perform [] services throughout the City, including [in your Division]. You would be hired to manage the daily operations of the company in performing that City work. This would include overseeing [equipment] repair and maintenance, supervising the schedule of service calls, handling any problems that arise with equipment and, when necessary, making contact with the [field supervisors] of [your Department]. You also referred us to [John], owner of [the Company], who confirmed this job description.

You described [the Company] as the largest [] used by the City; you estimated that [the Company's] contract covers at least half of the City lots requiring such services, though you did not know precisely how many City wards it includes. Documentation provided by [John] indicates the City is scheduled to pay [the Company] approximately \$900,000 this year for the entire contract. You estimated that [the Company's] services to [your division] accounted for roughly \$50,000 to \$70,000 per year (about 6-7% of the contract).

You said that, as Director of [the Division], your involvement with the services [the Company] provided [to your Division] under its City contract was as

follows. You did not personally supervise or inspect [the Company's] work, but you received weekly reports from your engineering staff who did perform these tasks. On the basis of those reports, you approved and signed work sheets on a weekly basis verifying that that portion of [the Company's] City services had been rendered satisfactorily. These forms showed only the number and names of [Company] employees who provided that week's services, and the specific hours each individual worked, you said; they did not include any payment amounts. You forwarded these forms to the deputy commissioner of the Bureau of [], who also signed his approval on the forms. You said you believed these forms then were forwarded for final approval to the Finance Office of the Department of [], and were eventually attached to payment vouchers authorizing the Comptroller's Office to compensate [the Company] for the services rendered. You explained that this same process was followed in all of the City wards for which [the Company] performed work. The [field supervisor] of the Department of [] in every ward covered by [the Company's] City contract signed work sheets verifying that [the Company] had completed the work in his or her ward, and then forwarded those forms to the deputy commissioner of the Bureau. You stated that you had no other involvement with [the Company] or [its] present or previous City contracts during your City tenure: you did not participate in the Request for Proposals for the contracts, in setting the terms of the contracts, in negotiating the contracts, or in vendor selection.

You said you were not aware of the expiration date of the contract [the Company] had with the City during your service as Director of the [] Division, and you referred us to [John] for that information. [John] told us that his company, whose sole business is the City [] contract, has provided the same service to the City for over 20 years. He said the current and previous contracts with the City are a "depending upon request" type of contract under which the company provides whatever [] services are necessary in the areas covered by the agreement. These contracts are usually two-year agreements with a one-year extension, he said. The term of the company's most recent contract with the City was from 1995 to 1997, and it was extended for a year, which ended on October 31, 1998. Shortly thereafter, the City sent him a contract modification agreement to extend the contract through October 31, 1999, at which time he expects a new contract will be issued. [John] explained that both the extension and the modification agreement are renewals of the existing contract; the specifications of the contract remain the same in all particulars. He sent us a copy of the modification agreement, which clearly states that the agreement is "to extend the existing contract" until October 31, 1999 "or until a new contract is awarded whichever comes first." The form also states that "except as herein modified all terms and conditions in said contract as heretofore approved remain unchanged and in full force and effect." [John] stated that this contract, in force since 1995, is the same one on which you would be asked to perform, if you were to accept the position [the Company] has proposed.

Both you and [John] expressed concern that you comply with the post-employment restrictions of the Ethics Ordinance. [John] said he would like you to start working on [date], one year after your retirement from City service, but is waiting on the Board's advisory opinion before proceeding with the offer.

LAW AND ANALYSIS: POST-EMPLOYMENT. The relevant provision of the Ethics Ordinance is Section 2-156-100(b) under the title of "Post-Employment Restrictions," which 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.

According to this provision, a former City official or employee is subject to two restrictions on employment after leaving City service: a one-year and a permanent prohibition. A former City official or employee is prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if while a City employee he or she participated personally and substantially in the subject matter of that transaction. [John] said your proposed post-employment would not begin until [date]; because that would be one year after you retired from City service, the one-year provision of the Ordinance's post-employment restrictions is not germane to this case.

However, the permanent prohibition remains pertinent here. This provision permanently prohibits you, as a former City employee, from assisting or representing any person (such as [the Company]) in a contract if, while a City employee, you exercised "contract management authority" with respect to that contract. The term "**contract management authority**" is defined in the Ordinance 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))

Assuming that the contract extension under which you would be hired by [the Company] is the same contract as the one in force during your City service, the issue in this case is whether your City involvement in [the Company's] contract constitutes contract management authority for the purposes of the post-employment provisions of the Ordinance. Specifically, the question is: when you signed documents verifying the satisfactory completion of a portion of a larger City contract, without any other involvement in the contract, were you exercising contract management authority over that contract for the purposes of the permanent post-employment prohibition?

The wording of the definition of contract management authority is quite broad: it includes not only the various responsibilities involved in the formulation of a City contract, but "supervision of

performance” as well. The Board has considered both of these aspects of the definition to be relevant in the context of post-employment cases. However, in every case where a former employee was found to have exercised contract management authority at least in part on the basis of supervision of performance, that individual had exercised significant decision-making authority over the contract or transaction in question (e.g., Case Nos. 96036.A, 95038.A, 94011.A). The issue confronting the Board in your case is: if the only activity you performed in relation to [the Company’s] contract was to sign documents verifying to your superior that services were rendered on one portion of the contract—documents that were used by your department in authorizing payments to [the Company]—does that alone constitute contract management authority as intended by the post-employment provision?

While there has not been a Board case with the same fact situation as yours, we are guided by an advisory opinion involving similar circumstances. Case No. 97056.A addresses the issue of a former employee’s limited participation in a larger contract during her City service. That case involved a former deputy commissioner who, in her City job, was responsible for developing and managing real estate policies and procedures for her department. Her City job involved performing activities relating to City Use Agreements, which define the terms of the relationship between the City and a group of service providers at a particular location. All of the service providers operating at one facility sign a single agreement, which typically has about a 30-year term. In her post-City employment, this individual wanted to assist the service providers in connection with those same City agreements. During her City tenure, she had not been involved in the negotiation or drafting of any of the agreements, but she had managed the process by which those agreements were amended when the space allocated to one of the contractors needed to be changed: she hired consultants to do the measurements and create the amendment exhibits, and directed the preparation of paperwork recommending the amendments to City Council. The Board determined that her involvement did not constitute contract management authority over the Use Agreements because she did not participate in drafting or negotiating them, and her involvement in amending the agreements “did not affect the general terms of the Agreements” (A.O., p. 4). She had authority over the Use Agreements, the Board said, only as they “came to bear on the matters within [her] official responsibility, i.e., the management of [City] real estate” (A.O., p. 4).

While this former employee did not sign forms verifying contractors’ work performance, we believe Case No. 97056.A provides guidance in the present circumstances: she exercised her City authority with respect to only one aspect of these large City contracts, which is analogous to your involvement in [the Company’s] City contract. According to the information you presented, your authority in relation to [Company’s] City contract extended only to verifying that [it] had completed its work [in your Division]; you were not personally responsible for supervising [its] performance at that (or any other) location, or for approving or authorizing the City’s payment to [the Company] for that portion of its work. Furthermore, your site accounted for only 6-7% of [the Company’s] City contract, and your verification was equivalent to that performed by [your Department’s field supervisors] for every ward covered by the contract. (You estimated that [the Company’s] contract covered at least half of the City. If that corresponds to roughly half of the City’s 50 wards, then there would have been

about 25 other employees throughout the City who also were responsible for acknowledging that services were provided by [the Company] on the same contract.) In addition, as in Case No. 97056.A, you had no involvement in drafting or negotiating the City contract at issue, and your participation in that contract did not affect the terms of the contract. You exercised your City authority in relation to the [Company] contract only as necessitated by matters within your official responsibility, the management of [your Division].

The remaining difference between the previous case and your situation is that the other former employee did not sign forms acknowledging services provided by vendors, or forms that would be used in authorizing payments to vendors. On this particular aspect, we are guided by another prior case, which presents significant contrasts to your situation. In an investigation involving the Ordinance's Employment of Relatives provisions (Case No. 95059.I), the Board determined that a City employee, who was a deputy commissioner and head of a department bureau, exercised contract management authority merely by signing (or permitting others to sign his name on) forms authorizing payments to a City contractor (which was owned by, and employed, his relative). Although he had no other involvement with the contract (either in preparing specifications, negotiating terms, evaluating bids, selecting vendors, or personally supervising the work performed), the Board found that, for purposes of Ordinance Section 2-156-130(b), this employee "exercised direct supervisory authority over the execution of [the contractor's] City contract" when he approved the payments to his relative's company.

While there is some similarity between Case No. 95059.I and your situation, there is a decisive difference between them on the issue of what constitutes contract management authority. In the past case, the Board based its determination that the deputy commissioner exercised contract management authority on the fact that he signed documents for the specific purpose of authorizing the City to issue payments to his relative's company for the work performed. These documents were Request for Materials and Services forms issued by the accounting division of his department; they included the cost of the materials and services provided, and a statement, which he signed, that approved the purchase and certified that sufficient funds were available to cover the costs. In contrast, you had no authority to authorize City payments to [the Company]; the purpose of your signature on the work sheets was to verify to your superior that [the Company] had rendered its services satisfactorily at the site you were responsible for managing. These work sheets were not payment forms and included no payment figures; they showed only the vendor's employees who provided services and the specific hours they worked. Authorizations for payments to [the Company] were made by others higher up in your department. An additional difference between the prior case and your situation is that, in that case, the City contract at issue was performed exclusively for the deputy commissioner's own bureau. In your case, the contract at issue was with the entire Department of []; the vendor services provided to your division represented only one site, a small percentage (roughly 6-7%) of a much larger contract that covered many sites throughout the City.

Guided by the differences between your circumstances and those in the Employment of Relatives case (No. 95059.I), and the similarities between your situation and the prior Post-Employment case

(No. 97056.A), we conclude that your activities with respect to [the Company's] contract during your City employment—signing documents verifying services [the Company] provided at [your Division]—do not constitute an exercise of contract management authority, as intended by the permanent post-employment provision, over [the Company's] contract with the Department of []. Rather, you were fulfilling a procedural requirement of your office, that is, that services provided by City vendors be acknowledged by someone in management at [your Division]. Based on this analysis, we conclude that you are not prohibited by this provision from working for [the Company] on its City [] contract.

CONFIDENTIAL INFORMATION. We also bring to your attention Ordinance Section 2-156-070, entitled "Use or Disclosure of Confidential Information," which prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this Section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

DETERMINATION: It is the Board's determination, based on the totality of the circumstances in this case, that the post-employment provisions of the Ethics Ordinance do not prohibit you from engaging in the employment with [the Company] you have proposed. It is our opinion that you did not exercise contract management authority, as intended by the Ordinance's permanent post-employment provision, with respect to [the Company's] City contract while you were a City employee and, therefore, that provision does not prohibit you from working for [the Company] under that contract. The one-year prohibition imposes no restriction in this case because you would not begin working for [the Company] until [date], one year after you left City service.

Our determination in this case 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.

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.

Angeles L. Eames
Vice Chair