

**ADVISORY OPINION
CASE NO. 99044.A
POST-EMPLOYMENT**

To: [Sam Brown]

Date: November 18, 1999

By telephone on October 12, 1999 and in a letter dated October 18, 1999 you requested a written opinion from the Board on how the post-employment provisions of the City's Governmental Ethics Ordinance apply to your situation. You recently left your City employment as a [Title 1] in the [G] Division of the Department of [V], where you supervised development projects in the [T District]. You have accepted a position as an associate attorney in the real estate division of the Chicago law firm [Y & H], beginning November 15.

The Board has concluded that the Governmental Ethics Ordinance does subject you to specific permanent and one-year restrictions. The Board's advice is set forth in this opinion, along with the facts of the case, and the Board's analysis.

The Board notes that the Ordinance does not limit for whom you, a former employee, may work, but rather limits what you may do for your new employer, [Y & H]; further, the restrictions that apply to you personally, do not apply to [Y & H] generally.

Facts: The facts that follow are taken from conversations with you and conversations with your former supervisor, [Sue B.]. You worked for the City for approximately one and a half years, from April 1, 1998 to October 29, 1999 [as a Title 1] In the [G] Division of the Department of [V]. One of the Division's primary functions is to manage and oversee public and private investment within each of seven Districts into which the City is organized. You worked to carry out this function in the [T District].

You will begin working for the law firm of [Y & H] on November 15, 1999. You will be an associate attorney in the real estate division of the firm. You anticipate, among other tasks you will perform for the firm, representing clients before the [M] Commission, the [N] Board and the [W] Commission, all of which are parts of City government. You said that, to your knowledge, the firm will not ask you to deal with any contracts or proceedings that concern sites in the [T District]. Furthermore, you said that you do not expect to be representing clients with whom you had direct and significant contact in the course of your City employment.

You explained that, as a [Title 1] in the Division, your duties were limited to the geographic area of the [T District] where you served as project manager. The [T District] is bounded by [I] Street on the west, [O] Avenue on the north, [P Street] on the east, and [X] Street on the south. It is within the [Z] District, one of the seven districts. Your immediate supervisor, Deputy Commissioner [Sue B.], was the District Coordinator of the entire [Z] District.

You told staff that your duties as the [Title 1] for the [T District] were mostly administrative. Your primary duty was to coordinate intra-departmental affairs pertaining to [T District]. If, for example, the department was engaged in [a transaction there], such that some members of the department were dealing with the [N Board]; other members, in the [F] Unit, were helping the developer put together the application for [F] funds; and still other members were involved in the sale of City-owned property; then you were responsible for knowing what kind of progress was being made in each area of activity, and coordinating any efforts that might require communication between each group. You said that part of your administrative duties involved doing field research on the status of certain property, and composing staff reports and memos that would go to the [M] Commission, the [A] Department and other members of your department who would then brief aldermen on the progress in their wards.

Ms. [B] explained that the [T District] includes several [F] districts. An [F] district is an area of land that is eligible for certain incentives, including subsidies and/or various City-conducted improvements. These incentives are intended to foster greater economic activity. You said that the general redevelopment plan for such districts is designed by [F] consultants, and that the redevelopment plans for the [F] districts in the [T District] were in place before you came to work for the City. Your responsibilities did not include amending or re-drafting these plans. According to Ms. [B], you, along with your co-worker and subordinate, were responsible for supervising various steps in carrying out projects pursuant to these plans. You coordinated the acquisition of property and plans for the improvement of that property; researched the experience and qualifications of potential developers; and monitored individual developments and improvements funded with [F] funds.

While your primary responsibility was with the administration of the projects and deals that required departmental participation, you said that secondarily, to the extent possible, you also tried to stay abreast of any other real estate development in the [T District]. Therefore, your administrative duties required you to handle a great variety of situations and keep track of many different people and projects in the [T District]. If, for example, private developers wanted to build, quite independently of any department initiative, you might have talked to them about various guidelines. Ms. [B] added that your additional administrative tasks in the [T District] included remaining up-to-date with Chicago Park District plans, making recommendations on the granting of liquor licenses, following up on permits, encouraging property owners to improve their property, and

ensuring that violations of building codes were cited. In carrying out these responsibilities, it was necessary to keep track of the various sales and transfers of properties between landowners in the area and to keep track of the different proposals for these properties. All of these administrative duties required you to maintain contact with local property owners and developers who worked in the area.

Two major projects you participated in were the development of the site at [J] and [U], which is a proposed , and development of the site at [TR] and [OG], which is a proposed . You monitored the developers' progress and schedules, acted as a liaison between the developers and the department, and tried to ensure that the developers understood and intended to conform to City design guidelines, job production requirements, and other standards.

In addition, you said that you participated in condemnation proceedings that involved parcels of land in the [T District]. You mentioned in particular the condemnation of the [SA property] and the condemnation of the building at [EDU address]. In these proceedings, the department sought [M] approval to obtain acquisition authority from the City Council, under eminent domain, for certain parcels of land in the [T District] that had existing buildings on them. You gathered facts and evidence that particular parcels of land had not and were not being developed in a manner that was consistent with the [F] plan for the area. You prepared written reports, based on your investigations, that were used in testimony before the [M], and on at least some occasions, made personal appearances before the [M]. If acquisition authority was granted, the City then gave notice to the property owner, initiated the condemnation proceedings and issued RFPs (Request for Proposals) for subsequent development. You explained that you did not participate in any of these later steps, the first two of which were carried out by the [A] Department. However, the [A] Department did rely on the evidence you gathered in its handling of the litigation. Your supervisor added that your co-worker participated in the writing of these RFPs. You said that your appearances -- approximately five -- to make presentations in condemnation proceedings before the [M] were the only appearances you made before any City Commission.

Law: Post-Employment Restrictions, Section 2-156-100. The provision of the Ethics Ordinance that deals with Post-Employment Restrictions is divided into two sections, (a) and (b):

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its

agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(b) 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 Board has held that "assisting" and "representing" a person include, but are not limited to, activities such as rendering legal advice, appearing before any City commission, board, department, or agency, negotiating contracts, or preparing or submitting documents on behalf of that person. Case No. 89144.A. "Assisting" and "representing" encompass helping a person seek a contract, as well as perform a contract.

Analysis and Conclusions: Subsection (a): Permanent Prohibition.

Section 2-156-100(a) permanently prohibits you, a former City employee, from assisting or representing any person other than the City (including [Y & H] and its clients) in any proceeding involving the City or any of its agencies, if you participated personally and substantially in the proceeding during your City service.

Applying this prohibition to your case, the Board concludes that the condemnation proceedings before the [M] for which you prepared reports or appeared clearly qualify as "administrative proceedings involving the City" for the purposes of Section 100(a). Any follow-up hearings or actions on the condemnation of the relevant properties would also qualify as the same proceeding as the initial hearing. Based on the facts as you presented them, these were the only proceedings in which you participated that would qualify as "administrative or judicial proceedings involving the City" for the purposes of Section 100(a). You were the lead person in gathering the field research and preparing the report on which the cases for condemnation were made, and you appeared before the [M] on approximately five occasions. Therefore, in the course of your City employment, you participated "personally and substantially" in these condemnation proceedings.

Given these conclusions, the Board determines that you are permanently prohibited from assisting or representing [Y & H], its clients, or any other person in any of the condemnation proceedings, including follow-up hearings or actions, for which you prepared reports or made a personal appearance before the [M].

Subsection (b): One-year prohibition.

This section imposes both a one-year and a permanent prohibition on certain activities of City employees after they leave City employment. Under Section (b) you, as a former City employee, are prohibited, for one year following the date you left City employment, i.e., until October 30, 2000, from assisting or representing [Y & H] 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.

In order to apply this prohibition to your case, the Board must ascertain the subject matter of the transactions in which you personally and substantially participated as a City employee. As the [Title 1] for the [T District] in the [G] Division of the Department of [L], and as the highest ranking employee concerned solely with the [T District], you supervised various steps in carrying out redevelopment projects pursuant to the [F] plans for the [T District]. Your administrative duties included supervising and monitoring the progress of individual developments and improvements as well as coordinating all the acquisitions and City improvements called for by the plans. The successful performance of these duties required you to research, keep track of and maintain contact with [F]-related estate transactions. Furthermore, since your duties extended beyond the [F] districts within the [T District] to all [projects] in the [T District], you were required, to the extent possible, to stay informed about all projects and transactions relating to real estate development in the [T District]. Based on these facts, the Board concludes that the subject matter in which you were personally and substantially involved as [Title 1] was real estate development in the [T District].

Therefore, the Board determines that you are prohibited, for one year after you left the Department of [L], from assisting or representing [Y & H], its clients, or any other person in any business transaction involving the City if it entails real estate development in the [T District]. This prohibition includes any project, proposal, development, deal or other transaction involving the City or any of its agencies, which include but are not limited to the [M] Commission, the [N] Board and the [W] Commission, if the project, proposal, development, deal or other transaction concerns real estate located in the [T District].

Subsection (b): Permanent Prohibition. The second provision of Section 2-156-100 (b) permanently prohibits a former official from assisting or representing any person in any contract involving the City if the official exercised "contract management authority" over that contract. You have said that you do not intend to work on matters involving the [T District] for [Y & H] or its clients, and therefore do not intend to assist or represent clients in any business transactions involving contracts for development in the [T District]. However, from the facts presented, it appears that you may have exercised contract management authority over some contracts relating to development in the [T District].

Therefore, we advise you to contact the Board for further advice, if at the end of the one-year prohibition, you do intend or are asked to assist or represent clients or any other person in any transactions that relate to development in the [T District].

With regard to both the permanent and one-year prohibitions, the Board notes that your future employer, [Y & H], may assist and represent persons whom you are personally prohibited from assisting or representing, so long as you do not assist the firm or its members in those matters. Case Nos. 94001.A, 91041.A and 89091.A.

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.

Our determination does not necessarily dispose 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 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 your situation. We note that a City department or Commission 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.

Darryl L. DePriest
Chair