

**CONFIDENTIAL**

**ADVISORY OPINION**

**CASE NO. 02011.A**

**Conflict of Interest**

To: [John]

Date: June 12, 2002

---

In a letter dated March 14, 2002, you asked the Board of Ethics for an advisory opinion on what restrictions, if any, the Governmental Ethics Ordinance places on you with respect to your concurrent service as a member of [City Commission CC ] and as Executive Director of [Corporation Alpha ]. [Alpha] is a private, non-profit housing development corporation created by [Sister Agency SIS ] in [ date ]. You requested the Board's opinion specifically in regard to [SIS] matters that may come before the [CC]. In addition to addressing those matters, this opinion addresses [Alpha] matters that may come before the [CC], as well as [SIS] and/or [Alpha] matters that may come before other City departments or agencies.

After careful consideration of the information you submitted and the relevant law, the Board has concluded that the Governmental Ethics Ordinance does impose certain restrictions (as more fully described herein) that significantly limit your activities, both as a member of the [CC] and as Executive Director of [ Alpha ]. We set forth below the relevant facts, our detailed analysis of those facts under the Ordinance, and our determinations.

**FACTS:**

**A. The [CC]**

On [ date ], you were appointed by the Mayor to serve as a member of the [ City Commission CC ]. The [CC] is a 15-member commission, created under [ ] the City's Municipal Code, that reviews redevelopment projects in designated redevelopment areas<sup>1</sup>

---

<sup>1</sup>A "redevelopment area" is a "... slum, blighted, deteriorated or deteriorating area in the aggregate of not less than two acres located within the territorial limits of the city where buildings, improvements or vacant lots are detrimental to the public safety, health, morals, welfare or economic stability . . ." Chicago Municipal Code, [ ].

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 2

and tax increment financing (“TIF”)<sup>2</sup> districts. All members of the [CC] serve without compensation. The powers and duties of the [CC], include, among other things, designating redevelopment areas and approving redevelopment plans<sup>3</sup>. Redevelopment area designations and [CC] approved redevelopment plans are subject to City Council approval. In addition, the [CC] may recommend to the City Council that the City acquire real property; clear acquired areas; renovate, rehabilitate, or relocate acquired buildings; resell, mortgage, lease or otherwise transfer or convey any interest in real property; enter into cooperative agreements; make loans and grants; borrow money; issue bonds; adopt taxes; exercise eminent domain; and designate redevelopment areas as TIF districts. Chicago Municipal Code, [ ].

The [CC] meets once a month. Its meetings are held in the City Council chambers and are open to the public. The [CC] reviews approximately 10 to 15 matters per meeting. Most of these matters involve requests to designate areas as TIF districts or as redevelopment areas or requests for authorization to use City funds to help subsidize specific redevelopment projects of private developers. You indicated that, although developers or other interested parties may attend [CC] meetings, matters before the [CC] are usually presented by staff members from the City’s [ Department 1 ] or [ Department 2 ]. These two departments are typically the ones responsible for negotiating the terms of redevelopment agreements and providing financing for redevelopment projects. In the presentations, the staff members from the respective departments make their recommendations to the [CC] for the [CC’s] approval or rejection. You said that decisions by the [CC] are advisory in nature. Matters that are approved by the [CC] are subsequently presented to the City Council for its approval or rejection.

**B. [Alpha]**

Since August 1996, you have been employed as the full-time Executive Director of the [ Corporation Alpha ], for which you are compensated by [Alpha]. [Alpha] is a private, non-profit, development corporation. Although it was incorporated by the [ SIS ] in [ date ] pursuant to the [ SIS’ ] authority under the United States Housing Act

---

<sup>2</sup>The [Department 1’s] web site describes TIF as “a City of Chicago program that allows the City to provide financial incentives to stimulate private investment in a designated TIF district in order to remove the blighting conditions that have made it difficult to attract new development in a particular area. The TIF program can be used to support new development or the rehabilitation of existing buildings in industrial, commercial, residential or mixed-use development proposals. Funding for TIF eligible activities is derived from the increase in incremental tax revenues generated by new construction or rehabilitation projects within the boundaries of the TIF district.”

<sup>3</sup>A “redevelopment plan” is “. . . the comprehensive program for the clearing or rehabilitation and the physical development of a redevelopment area. . . .” Chicago Municipal Code, [ ].

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 3

of 1937 (Housing Act), and organized under the General Non-Profit Corporation Act of the State of Illinois, you stated that the [SIS] and [ Alpha ] are separate legal entities. [ Alpha ] has its own charter and by-laws, board of directors (consisting of a total of 9 members) and officers. [Alpha's] by-laws state that, among other things, members of the board of directors are elected by the initial or incumbent members; no more than 2 [SIS] employees can be elected to the Board; and officers of [Alpha] are elected by, and are accountable to, the [Alpha] board of directors. These officers receive their salaries and other compensation from [ Alpha ]. You indicated that [Alpha] has 3 main functions: 1) to act as an "instrumentality" of the [SIS] for purposes of issuing 11(b) bonds in connection with Section 8-assisted housing projects; 2) to act as a private developer in redeveloping properties for low-income families; and 3) to provide planning, financial, development and management services to the [SIS] pursuant to a direct services contract with the [SIS]. Each of these functions is discussed in more detail below.

1. "Instrumentality" of the [SIS]

The materials you provided indicate that, for purposes of the Housing Act, [ Alpha ] is recognized by the [ Department 3 ("D3 ") ] as [SIS'] "instrumentality."<sup>4</sup> This designation allowed [ Alpha ] to issue, under Section 11(b) of Housing Act, bonds ("11(b) bonds") in connection with Section 8-assisted housing projects. Under the Housing Act, [ Alpha's ] issuance of 11(b) bonds was subject to [D3] approval. Due to subsequent changes in federal law, however, the [SIS] and [Alpha] may no longer issue 11(b) bonds without Congress' approval. Although the "instrumentality" relationship between [Alpha] and the [SIS] still exists, you stated that it has little significance, given the curtailment of the authority to issue 11(b) bonds.<sup>5</sup>

You indicated that, because of [Alpha's] "instrumentality" designation, under federal law and regulation, the [SIS] must have some oversight authority over [Alpha]. The [SIS'] oversight authority is set forth in [Alpha's] by-laws.<sup>6</sup> You stated that, except for approving certain

---

<sup>4</sup>Under federal regulations issued pursuant to the Housing Act, the term "instrumentality" means "a not-for profit private or public organization that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to a parent entity [Public Housing Authority] required by this subpart." 24 CFR 811.102.

<sup>5</sup>You stated that [Alpha] last issued 11(b) bonds in 1982; that these bonds were later refinanced in 1992 at a lower interest rate; and that, as a result of the refinancing, [Alpha] receives—and will continue to receive until 2003--approximately \$2 million per year in income.

<sup>6</sup>The materials you provided indicate that the [SIS'] oversight authority was not instituted for purposes of creating legal controls *per se*, but to establish means of accountability of the [ Alpha ] to the [SIS] when [ Alpha ] issues tax-exempt bonds. Under [ Alpha's ] by-laws, [SIS'] oversight authority

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 4

amendments to [ Alpha's] by-laws, in the 6 years you have been [ Alpha's] Executive Director, the [SIS] has exercised its oversight authority via the 2 members of [Alpha's] Board who are [SIS] employees. By having 2 members on [Alpha's] Board who are [SIS] employees, the [SIS] is kept apprised of [Alpha's] activities.

2. Private Developer

As a private developer, [Alpha] buys real property in the open market from private individuals, redevelops these properties and rents them out to predominantly low-income families. You said that [Alpha], itself, neither buys public housing properties nor redevelops property for public housing. Since 1996, [Alpha] has acquired and rehabilitated approximately 200 residential units located throughout the Chicagoland area, including Rogers Park, Uptown, Ravenswood, Albany Park, Beverly, Morgan Park and Washington Park. These units are in various multi-unit buildings, single family houses, townhouses and condominiums. The rent that [Alpha] charges for these units ranges from \$550 to \$1,450 per month. You indicated that once these properties are redeveloped and become habitable, [ Alpha ] offers the [SIS] between 20% and 25% of the units for [SIS] Section 8 tenants. You stated that in the 6 years you have served as Executive Director, [Alpha] has never sought financing from the City for its redevelopment projects. Instead, you said that, in order to finance these redevelopment projects, [Alpha] applied for and received loans from various banks, including Advance Bank, Bank of America, Bank Financial, Shore Bank and Cole Taylor Bank. [ Alpha ] has charged and received developer's fees for redeveloping properties. These fees are taken into account and incorporated in the loan transactions with the banks. These developer's fees are a source of revenue for [Alpha].

3. Direct Services Contract with the [SIS]

On April 24, 2000, [Alpha] executed a contract with the [SIS] to provide "planning, financial, development and management services to the [SIS]" relating to the redevelopment of public housing developments and the creation of new housing opportunities for low income households. The contract became effective, retroactively, to January 1, 2000 and remains in force to date. The signatories to the contract are [Alpha] and the [SIS]. You signed the contract on behalf of [Alpha] in your capacity as its Executive Director. Under the contract, [ Alpha ] is an "independent contractor to the [SIS] and not . . . an employee, agent or partner of the [SIS]." The scope of work that [Alpha] has agreed to perform under the contract includes, among other things "participat[ing]

---

includes, among other things: 1) approving [ Alpha's ] charter, by-laws and amendments thereto; 2) approving each project, program and expenditure of [ Alpha ]; 3) approving each issuance of debt by [ Alpha ]; 4) performing an annual review of [ Alpha's ] performance; 5) having access to the books and records of [Alpha] at any time; and 6) that, upon dissolution of [Alpha], title to all real or personal property owned by [Alpha] reverts to the [SIS].

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 5

in negotiations with the [City] to complete redevelopment of [various areas]”; “review[ing] and/or prepar[ing] redevelopment plans”; reviewing and completing “developments financed by the [City] or any other public entity that involve an allocation of public housing units under a 40–year lease”; “review[ing] development proposals submitted to the [SIS]”; and “procur[ing] public and private financing to complete rehabilitation of [SIS] properties.”

You stated that [ Alpha ] is currently working on 3 matters for the [SIS] pursuant to this contract. The first matter involves a development project in [Location L] by developer [DEV]. [Alpha] is providing “gap financing” to assist the [SIS] in securing 16 of the 98 units that are being developed under this project. As a gap financier, [Alpha] has provided [DEV] with a \$384,000 loan payable over 40 years at an interest rate of 4.5%. [Alpha] has committed to provide an additional \$500,000 in loans in connection with this development project.

The second matter involves the [SIS]’s [ X Program ]. Under this program, the [SIS] is involved in a public housing redevelopment project called the [ Project P ]. [Alpha] is responsible for hiring the general contractor, supervising the construction, coordinating closings and coordinating financing for the buyers. [Alpha], itself, is providing funding for the project. Once the units are sold, [ Alpha ] will be repaid. It will also receive a developer’s fee, as well as fees for services provided to the [SIS], as set forth in the direct services contract.

Finally, [Alpha] is working with the [SIS] to determine how a program called the Donation Tax Credit Program created by State legislators last year might be utilized by the [SIS]. The program allows developers to sell real property to non-profit corporations at a lower-than-market-value price. The difference in price may then be claimed as a tax credit by the developer.

4. Expected Revenues for Fiscal Year 2002

You stated that [Alpha]’s revenues for Fiscal Year 2002 are expected to come from the following sources in the following approximate amounts: \$2 million from the 1992 refinancing of 11(b) bonds; \$1.3-1.5 million in rental income; \$750,000 in developer’s fees; and \$250,000 from the [SIS] services contract. You also stated that, except for payments made under the services contract, the [SIS] provides no funding to [Alpha].

**C. Matters Before the [CC]**

You said that, in your 6 years as Executive Director of [Alpha], no [Alpha] matter has gone before the [CC]. All [Alpha] redevelopment projects, thus far, have been real estate transactions with private parties that do not require [CC] approval. Furthermore, in your 6 years as Executive Director, there has been no matter that [Alpha] has worked on under its direct services contract with

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 6

the [SIS] that has gone before the [CC]. You also indicated that, to your understanding, approximately 6 to 10 [SIS] matters may come before the [CC] each year.

When asked by Board staff if you envision any [ Alpha ] matters coming before the [CC] in the future, you described 2 possible scenarios. The first scenario involves real property owned by [Alpha]. The property is located near [Location L]. You indicated that the City may wish to purchase this property from [Alpha] as part of the redevelopment of the [ Area A ]. You described the sale process generally as follows: first, an agreement is negotiated between the seller and the City, typically, the [ Department 1 ]; if an agreement can be reached, it is then presented by the Department to the [CC] for review and approval; if the [CC] approves the sale, the matter is forwarded to City Council; if the [CC] does not approve, the matter may be referred back to the Department for further negotiation. Accordingly, if [Alpha] sells the property to the City, the sale will require negotiating the terms of the purchase agreement with the [ Department 1 ] and will require [CC] approval. You said that you envision this sale materializing within the next year.

The second scenario involves future redevelopment projects that may involve [Alpha] seeking TIF funding. You said that [Alpha's] receipt of \$2 million per year from the 1992 refinancing of the 11(b) bonds will end in 2003. Because [Alpha] will no longer have this income, [ Alpha ] will have to consider alternate financing sources. Such assistance might come in the form of TIF money from the City. If [Alpha] requests TIF money from the City, such a request would require [CC] review and approval. However, you said that because [ Alpha ] currently has sufficient assets to either fund its redevelopment projects or use such assets as collateral when applying for loans, you do not foresee [Alpha] requesting TIF money in the near future.

When asked by Board staff if you envision any [SIS] matters coming before the [CC] in the future, you described one scenario that involved the [SIS] seeking TIF money. You said that because there is a great deal of public housing development, you expect that the [SIS] alone, or in partnership with another developer, may seek TIF money from the City. If TIF money is requested, then the matter would require [CC] approval.

**APPLICABLE LAW AND ANALYSIS:** The provisions of the Governmental Ethics Ordinance that are most relevant to your situation are Sections 2-156-030 (Improper Influence), 2-156-050 (Solicitation or Receipt of Money for Advice or Assistance), 2-156-080 (Conflicts of Interest; Appearance of Impropriety), and 2-156-090 (Representation of Other Persons).

**A. Section 2-156-030 (Improper Influence) and Section 2-156-080 (Conflicts of Interest)**

Section 2-156-030 provides, in relevant part, as follows:

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 7

**(a) No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally. . . .**

Similarly, Section 2-156-080 provides, in relevant part, as follows:

**(a) No official or employee shall make or participate in the making of any government decision with respect to any matter in which he has any economic interest distinguishable from that of the general public. . . .**

The term “official,” as defined in Section 2-156-010(q) of the Ordinance, includes “. . . **any appointed, non-employee member of any City agency.**” The term “economic interest” is defined in Section 2-156-010(i) as “**any interest valued or capable of valuation in monetary terms . . .**”

As an appointed, non-employee member of the [CC], you are an “official” of the City, as that term is defined in the Ordinance. Therefore, you are subject to the provisions of Sections 2-156-030(a) and 2-156-080(a). These sections prohibit City officials and employees from making, participating in or in any way attempting to use their City position to influence a City governmental decision or action in a matter in which they have an economic interest that is distinguishable from that of the general public. In prior interpretations of these sections, the Board has concluded that, “if [a City] employee . . . receives an economic interest by virtue of his or her outside employment, and that economic interest is affected by his or her governmental decision, then a conflict of interest arises.” (Case No. 91059.A, p.3.) To avoid this conflict, a City employee is prohibited from making, participating in or in any way attempting to use his/her City position to influence a City governmental decision or action in a matter involving his/her outside employment. (See Case Nos. 98062.A; 94009.A; 92044.A; 92023.I) The Board addresses below the issue of whether you have an “economic interest” in either [Alpha] or the [SIS].

1. Economic Interest in [Alpha]

Since August 1996, you have served as the full-time Executive Director of [Alpha], for which you are compensated by [Alpha]. Following Board precedent, by virtue of your paid employment, you have an economic interest in [Alpha]. (See Case No. 98062.A, wherein the Board determined that a City employee had an economic interest in her outside employer by virtue of her outside, non-City paid employment. See also Case Nos. 94009.A; 92044.A; 92023.I.) Under Sections 2-156-030 and 2-156-080, therefore, because you have an economic interest in [Alpha], you are prohibited from making, participating in or trying to use your City position to influence any City governmental decision or action that involves [ Alpha ] or that may enhance your employment with [ Alpha ]. This prohibition includes, but is not limited to, any [CC] decision or action on 1) any [Alpha]

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 8

redevelopment project; and 2) any project or transaction in which [Alpha] has provided or will provide services, including any type of financing, e.g., the “gap financing” provided to developer [DEV] for the [ Location L ] development project or the funding provided for the [ P ] project.

2. No Economic Interest in the [SIS]

You are employed by [ Alpha ]. However, as discussed above, [ Alpha ] was incorporated by the [SIS] in [ date ] pursuant to the [SIS'] authority under the United States Housing Act of 1937 and is an “instrumentality” of the [SIS]. The Board must, therefore, address the issue of whether you, as Executive Director of [Alpha], have an economic interest in the [SIS]. In order to resolve this issue, the Board reviews the relationship between the [SIS] and [Alpha].

You have stated that although [ Alpha ] was incorporated by the [SIS], [ Alpha ] and the [SIS] are separate legal entities. You explained that while [Alpha] continues to have the “instrumentality” designation under the Housing Act, this designation exists for the limited purpose of issuing 11(b) bonds in connection with Section 8-assisted housing projects.<sup>7</sup> You explained that [Alpha] has its own charter and by-laws, which provide that members of the [Alpha's] Board of Directors be elected by the initial or incumbent members, not by the [SIS]. Under the [Alpha's] regulations, no more than 2 [SIS] employees can be elected to [Alpha's] 9-member Board. Officers of the [Alpha] are elected solely by, and are accountable solely to, the [Alpha] Board. Finally, you stated that these officers receive their salaries and any other compensation from [Alpha].

[ Alpha's ] other interaction with the [SIS] comes in the area of affordable housing development. As a private developer, [ Alpha ] is involved in redeveloping properties for low-income housing. It is involved in all aspects of development projects—buying real property, rehabilitating housing units and renting units to tenants. Once these properties are redeveloped and become habitable, [ Alpha ] offers the [SIS] between 20% and 25% of the units for [SIS] Section 8 tenants. The [Alpha] also has a contract with the [SIS] to provide “planning, financial, development and management services to the [SIS]” relating to the redevelopment of public housing developments and the creation of new housing opportunities for low income households. The contract became effective, retroactively, to January 1, 2000 and remains in force to date. Under the contract, [ Alpha ] is identified as an “independent contractor to the [SIS] and not . . . an employee, agent or partner of the [SIS].”

Based on the facts you provided concerning the relationship between the [SIS] and [Alpha], the Board concludes you do not have an “economic interest” in the [SIS], within the meaning of the

---

<sup>7</sup> Due to changes in federal law, the [SIS] and [Alpha] may no longer issue 11(b) bonds without Congress' approval.



**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 9

Ordinance. Therefore, the Board determines that you are not prohibited, under Sections 2-156-030 and 2-156-080 of the Ordinance, from making or participating in [CC] decisions or actions that involve the [SIS], so long as the matter does not also involve [Alpha].

**B. Section 2-156-090 (Representation of Other Persons)**

Section 2-156-090 of the Ordinance provides, in relevant part, as follows:

**(a) 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 nonministerial nature . . .**

**(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.**

**(c) No appointed official may represent any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities.**

1. Representation Before City Agencies

Under Section 2-156-090, you are prohibited from representing 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, unless the matter is wholly unrelated to your duties and responsibilities as a City appointed official. The Board has interpreted the term "representation" to apply to a broad range of activities in which a person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another, including making personal appearances before City agencies on behalf of others. (*See* Case No. 91047.A.)

a. *Representation Before The [CC] Prohibited*

You serve as an appointed official on the [ CC ]. Clearly, matters that come before the commission on which you serve are not "wholly unrelated" to your duties and responsibilities on that commission. Therefore, under Section 2-156-090, you are prohibited from representing [Alpha], the [SIS], or any other person other than the City, before the [CC].

Note, however, that this prohibition goes to representations that you, personally, undertake; that is, other [Alpha] staff, officers or board members are not prohibited,

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 10

by virtue of your service on the [CC], from undertaking representations before that body. (See Case No. 91041.A wherein the Board determined that although an appointed official, who was also an attorney and a partner in a law firm, could not represent a client before the same City commission on which he served, another attorney in the firm was not so prohibited.)

- b. *Representation Before Other City Agencies Prohibited Unless “Wholly Unrelated”*  
As previously stated, under Section 2-156-090, you may not represent any person other than the City before any other City agency or department, unless the matter is wholly unrelated to your City duties and responsibilities as a member of the [CC]. In a prior Board opinion, Case No. 89091.A, an attorney, who served as Chair of the City’s Plan Commission, asked what restrictions the Ethics Ordinance placed on his law firm’s representation of a client (who was seeking an amendment to a special use permit) before the City’s Zoning Board of Appeals. The Board determined that although other members of the firm could represent the client before the Zoning Board of Appeals, the appointed official, himself, was prohibited from doing so, because the matter was not “wholly unrelated” to his duties and responsibilities as Chairman of the Plan Commission. The Board concluded that the matter was not “wholly unrelated,” for purposes of the representation provisions, on the basis of 2 criteria: 1) both the representation and the appointed official’s service involved the same subject matter, zoning; and 2) there was a “general interrelationship on the subject matter” between the Plan Commission and the Zoning Board of Appeals, i.e., zoning matters that went before one agency frequently became the business of the other.

To illustrate how this provision applies to you, we set forth 3 examples. First, you said that [Alpha] owns parcels of land near the [ Location L ], which the City may wish to purchase from [Alpha]. You described the sale process generally as follows: first, an agreement is negotiated between the seller and the City through, typically, the [ Department 1 ]; if an agreement can be reached, it is then presented by the Department to the [CC] for review and approval; if the [CC] approves the sale, the matter is forwarded to City Council; if the [CC] does not approve, the matter may be referred back to the Department for further negotiation. This scenario raises the question of whether the Ordinance prohibits you, as Executive Director of [Alpha], from representing your employer before the [ Department 1 ] (and/or other City departments or agencies) with regard to the sale of this property. In order to answer the question, the Board must first resolve the issue of whether the matter is “wholly unrelated” to your duties and responsibilities as a member of the [CC]. Based on the facts presented, the Board concludes that the matter is not “wholly unrelated.” The facts supporting such a conclusion are even more compelling than those present in

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 11

Case No. 89091.A, wherein a “general interrelationship on subject matter” existed. In this case, the subject matter is identical: the very purchase agreement negotiated between [D1] and [Alpha] would then be presented to the [CC] for review and approval. Therefore, although other [Alpha] staff, officers or board members may represent [Alpha] before [D1] (and/or other City departments or agencies) with regard to the sale of this property, under Section 2-156-090 of the Ordinance, you, personally, are prohibited from doing so.

Second, you said that [Alpha], alone or in partnership with another developer, eventually may seek TIF funding from the City. Such funding typically begins with a proposal from the developer to the City’s [ Department 2 ] or [ Department 1 ], and ultimately requires [CC] review and City Council approval. Again, this scenario raises the question of whether the Ordinance prohibits you from representing your employer before the [ Department 1 ] (and/or other City departments or agencies) in an effort to secure TIF funding for a [ Alpha ] development. In order to answer the question, the Board must again resolve the issue of whether the matter is “wholly unrelated” to your duties and responsibilities as a member of the [CC]. Based on the facts presented, the Board concludes that the matter is not “wholly unrelated.” Again, the subject matter would be identical: any TIF agreement negotiated between [D1] (on behalf of the City) and [Alpha] would require [CC] review and approval. Therefore, although other [Alpha] staff, officers or board members may represent [Alpha] before [D1] (and/or other City departments or agencies) in an effort to secure TIF funding for a [Alpha] redevelopment project, under Section 2-156-090 of the Ordinance, you, personally, are prohibited from doing so.

Finally, you said that the [SIS], alone or in partnership with another developer, may seek TIF money from the City in the future. Such a request typically would involve negotiations with the [ Department 2 ] and/or the [ Department 1 ], and eventually would require [CC] review and approval. This scenario, too, raises the question of whether the Ordinance prohibits you from representing the [SIS]—your employer’s client—before [D1] (and/or other City departments or agencies) in an effort to secure TIF funding on behalf of the [SIS]. Applying the same rationale utilized above, the Board concludes that the matter is not “wholly unrelated” to your duties and responsibilities on the [CC]. Therefore, although other [Alpha] staff, officers or board members may represent the [SIS] before [D1] (and/or other City departments or agencies) in an effort to secure TIF funding, under Section 2-156-090 of the Ordinance, you, personally, are prohibited from doing so.

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 12

Please note that the 3 scenarios discussed in this section of the advisory opinion—representing [Alpha] before other City agencies or departments in the sale of real property or in an attempt to secure TIF funding, and representing the [SIS] before other City agencies or departments in an attempt to secure TIF funding—are intended to serve as illustrations of how Section 2-156-090 applies to you in your dual roles as Executive Director of [Alpha] and as a City appointed official. Should you, in the future, desire specific guidance under this subsection based on other fact patterns, please contact the Board for further advice.

2. Representation In Other Forums

Under Section 2-156-090, you are also prohibited from representing [Alpha], the [SIS] or any other person other than the City, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City, unless the matter is wholly unrelated to your City duties and responsibilities as a member of the [CC]. Because the facts presented do not implicate this subsection, the Board cautions you about this prohibition but does not, at this time, analyze the facts under this subsection. Should you, in the future, desire specific guidance under this subsection, please contact the Board for further advice.

**C. Section 2-156-050 (Receipt of Money for Advice or Assistance)**

In Part B (above) of this opinion, the Board determined that although you, personally, are prohibited under Section 2-156-090 from undertaking certain representations, other [Alpha] staff, officers or board members are not prohibited from doing so, by virtue of your service on the [CC]. Here, in Part C, the Board considers a related question: although you, personally, may not undertake such representations, may you advise or provide assistance on these matters to persons other than the City, for example, your [Alpha] colleagues?

Section 2-156-050 of the Ordinance provides, in relevant part, as follows:

**No official or employee . . . shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee . . . from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.**

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 13

Under Section 2-156-050, then, you are prohibited from receiving anything of value, including money, favors, services or promise of future employment, from any person other than the City in return for giving advice or assistance on matters concerning the operation or business of the City, unless the advice or assistance is wholly unrelated to your City duties and responsibilities as a member of the [CC]. (See Case Nos. 98062.A; 91041.A.) In Case No. 91041.A, the Board addressed the issue of whether an appointed official's law firm could represent a client before the same City commission on which the appointed official served. The Board determined that, although the appointed official's law firm could represent a client before the City commission, under Section 2-156-050 of the Ordinance, the appointed official was prohibited from giving advice or assistance to his client or to any attorneys in his law firm regarding the operation or business of the City commission on which he served.

For purposes of illustration, we return to the 3 scenarios discussed in Part B (above) of this opinion: 1) the sale of certain [Alpha] real property to the City; 2) an effort by [Alpha] to secure TIF financing on behalf of itself; and 3) an effort by [Alpha] to secure TIF financing on behalf of its client, the [SIS]. Employing the same logic used in the earlier discussion, the Board concludes, in each instance, that the matter is not "wholly unrelated" to your City duties and responsibilities on the [CC]. Therefore, under Section 2-156-050 of the Ordinance, you also are prohibited from giving advice or assistance on these matters to other staff of [Alpha], its officers or board members, or to [Alpha]'s client, the [SIS].

**D. Section 2-156-070 (Confidential Information) and Section 2-156-020 (Fiduciary Duty)**

Finally, we remind you of two other provisions of the Ordinance of which you should be aware. Section 2-156-070 (Use or Disclosure of Confidential Information) provides:

**No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.**

Under this section, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of their City service.

Also, Section 2-156-020 (Fiduciary Duty) states, in relevant part:

**Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.**

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 14

This section obligates City officials to use their City position responsibly and in the best interest of the City. It requires them to exercise professional judgments free from outside influences or conflicting duties to other entities.

**DETERMINATIONS:** Based on the facts presented, the Board determines as follows:

1. Under Sections 2-156-030 and 2-156-080 of the Ordinance, you are prohibited from making, participating in, or trying to use your City position to influence any City governmental decision or action that involves [Alpha], or that may enhance your employment with [ Alpha ]. This prohibition includes, but is not limited to, any [CC] decision or action on 1) any [ Alpha ] redevelopment project; and 2) any project or transaction in which [Alpha] has provided or will provide services, including any type of financing, e.g., the “gap financing” provided to developer [DEV] for the [Location L] development project or the funding provided for the [ P ] project.
2. Under Sections 2-156-030 and 2-156-080 of the Ordinance, you are *not* prohibited from making or participating in [CC] decisions or actions that involve the [SIS], so long as the matter does not also involve [Alpha].
3. Under Section 2-156-090, you are prohibited from representing [ Alpha ], the [SIS], or any other person other than the City, before the [CC].
4. Under Section 2-156-090, you are prohibited from representing [ Alpha ], the [SIS], or any other person other than the City, before any other City department or agency, unless the matter is wholly unrelated to your City duties and responsibilities as a member of the [CC]. This prohibition includes, but is not limited to, representing [Alpha] before the [ Department 1 ] (and/or other City departments or agencies) in the sale of real property located near [ Location L ] to the City; and representing [Alpha] or the [SIS] before the [ Department 1 ] (and/or other City departments or agencies) in an effort to secure TIF funding.
5. Under Section 2-156-090, you are prohibited from representing [Alpha], the [SIS] or any other person other than the City, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person’s interest is adverse to that of the City, unless the matter is wholly unrelated to your City duties and responsibilities as a member of the [CC].
6. Under Section 2-156-050, you are prohibited from receiving anything of value, including money, favors, services or promise of future employment, from any person other than the City, in return for giving advice or assistance on matters concerning the operation or business of the City, unless the advice or assistance is wholly unrelated to your City duties and responsibilities as a member of the [CC]. This prohibition includes, but is not limited to, advising or assisting [Alpha] on the sale of real property located near [ Location L ] to the City, and advising or assisting [Alpha] or the [SIS] on TIF funding.

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 15

Our determinations are not necessarily dispositive of all issues relevant to this situation, but are 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 determinations. Other laws or rules also may apply to this situation. We recommend that you contact the City's Law Department to determine if any other laws or rules apply in your 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 Ordinance.

**CONFIDENTIAL**

Case No. 02011.A

June 12, 2002

Page 16

**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.

[signature]

---

Darryl L. DePriest  
Chair

I:\Redactions\Redacted Opinions\02011-AOredacted.wpd