



E.M.U.S.

ADVISORY OPINION
CASE NO. 93045.A
REPRESENTATION

To: [REDACTED]

Date: February 14, 1994

You were [REDACTED] appointed to serve a [REDACTED] term on the Advisory Council [REDACTED]. In a letter to the Board [REDACTED] you requested an Advisory Opinion on two issues: first, whether the Representation section of the Ordinance limits or prohibits your activities and service on the [REDACTED] Advisory Council, and second, whether, if your activities do involve representation, your salary constitutes an economic interest in the representation.

In your professional non-City position, you work as a counselor and case manager for Corp "X"

[REDACTED] Your responsibilities include assisting individuals [REDACTED] in filing complaints, as explained more fully below. Some of these complaints are filed against the City.

In this opinion, we present our analysis of the facts you presented. We review, first, your professional duties for Corp. X, and second, your [REDACTED] Advisory Council responsibilities.

FACTS:

[REDACTED]. As a counselor and case manager [REDACTED], you advise people who come to Corp. "X" seeking assistance with their disability. This involves you in such activities as helping them find appropriate medical treatment and interpreting their insurance coverage. You also make presentations to various businesses and institutions who seek information on [REDACTED] the needs of people [REDACTED]. The aspects of your job with particular relevance for the purposes of the Ethics Ordinance, however, concern your responsibilities as a "primary case advocate" for people who come to Corp. X. In this capacity, you assist Corp. X's "clients" with their complaints against private and public institutions and businesses, including the City. Many of these complaints are resolved before any formal complaint is filed with a court or administrative agency. Other complaints are filed in various



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administrative agencies, including the [REDACTED], [REDACTED], a City agency, the Cook County Commission [REDACTED], the Illinois Department [REDACTED], or any union that may be involved. Complaints also may be filed in state or federal court, depending on which statute or regulation is involved.

You conduct the "fact-finding process" on behalf of these individual clients. This includes questioning the clients and making telephone calls in order to prepare a fact memorandum to assist them if they file a complaint before an administrative agency or court. Where appropriate, you make telephone calls to City personnel to gather facts about a particular incident. When making these calls, you identify yourself as a member of the Corp. 'X' staff, seeking facts about a particular incident involving Corp. 'X's' client.

You stated that neither you nor Corp. X ever recommend to clients any particular course of action. Rather, you supply information about the legal and administrative processes of different agencies and courts, and the results previous [REDACTED] clients have experienced with each venue, in order to enable current clients to make an informed decision. In some cases, you refer clients to private attorneys or legal assistance groups. In other cases, your assistance extends to accompanying clients to "fact-finding" hearings before the relevant agency (including [REDACTED]), helping them complete a complaint form while at that agency, and then reviewing that form with them.

Although you may attend these administrative fact-finding hearings, you do not file any appearance, either official or unofficial, on behalf of these clients. Rather, you are there to offer them psychological support. The only speaking you do is to answer questions put to you by the agency's intake personnel or hearing officers relating to the work of Corp. "X" and the relationship you and Corp. "X" have with the client. You do not answer any questions about the facts of the complaint, the law, or [REDACTED] itself. Your role is to assure the clients that the complaints they file before the agency are as complete as possible, and you will remind them in front of the hearing officers when their factual statements are incomplete.

You stated that you do not conduct settlement discussions with anyone except the client, with whom you discuss only possible outcomes. You do not make recommendations about remedies such as back pay, reinstatement, or monetary damages. You said your involvement with City of Chicago personnel in this capacity is

limited to the steps up to and including the fact-finding hearings that take place before a City Agency. You estimate that, of those cases in which you assist persons in judicial or quasi-judicial proceedings, the City appears as an adverse party about 10 percent of the time. You estimate also that you appear before the City Agency approximately 5 to 10 times in a year, and that the number of phone calls you make to City personnel on behalf of [redacted] clients is larger than that, but still not a substantial number.

You receive no compensation for your assistance to clients other than your salary from Corp. X, and Corp. X does not charge any fees to those who seek its assistance.

[redacted]. Appointees to the [redacted] Advisory Council (the "Council") are not compensated. This Board has determined that the [redacted] Advisory Council is an agency that is solely advisory, with no authority to make binding decisions, enter into contracts, or make expenditures. (See Case No. 87102.) A City employee of Dept. Y [redacted]

[redacted] stated that members of the Council serve primarily as community liaisons: they attend meetings with disabled persons city-wide to assess their needs, and then bring that information before Dept. Y in an effort to make the Department more responsive to those needs. Council members serve essentially as Dept. Y's staff, and make recommendations about the direction the Department should be heading with its programs and services.

You also serve on the Council's "A" and "B" Committees. The "A" Committee makes recommendations to Dept. Y relating to issues affecting [redacted] persons in the workplace, such as [redacted]

[redacted]. It also assesses Dept. Y's own vocational training and placement services, and recommends ways they can be more responsive to the needs of their [redacted] "clients." The "B" Committee reviews and comments on legislation and regulations pending at the City, county, and state levels that affect certain persons, and discusses further legislative action.

LAW AND ANALYSIS: Section 2-156-090 of the Governmental Ethics Ordinance, entitled "Representation of Other Persons," states:

- (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 non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

(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.

As an appointed official of the City, you are prohibited by this provision from representing: (a) any person other than the City in any formal or informal proceeding or transaction before any City agency, if the agency's action or non-action is of a non-ministerial nature; and (b) 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 the City's--unless the matter in (a) or (b) is "wholly unrelated" to your City duties and responsibilities.

REPRESENTATION. The main issue before the Board in this case is whether your activities constitute representation of persons before any City agency or any other proceeding where the City is a party and its interests are adverse.

The Board has construed the terms "representation" and "represent" to mean acting as a spokesperson or advocate for another person, or seeking to communicate and promote the interests of one party to another. Case no. 91072.A. The Board has held that representation includes actions such as making personal appearances before City agencies on behalf of others, making telephone contact with City employees and officials on behalf of others, and signing or submitting proposals, contracts or other documents to City agencies, employees or officials on behalf of others. Case no. 91072.A, p. 6.

In addressing this issue, we first discuss your duties and responsibilities with Corp. "X" clients, and second, your duties and responsibilities with the [REDACTED] Advisory Council.

A Corp. "X" 's Work. With respect to your assistance to Corp. "X" 's clients, there are three separate and relevant aspects of your work: (1) your preparation of fact memoranda, (2) your accompaniment of and assistance to clients in filing their complaints before a City agency and (3) your appearance with clients who file suit against the City in court.

(1) In the course of drafting fact memoranda, you occasionally make telephone calls to City personnel to confirm information you have received from the client. It is our opinion that these fact-gathering telephone contacts do not constitute representation for the purposes of the Ordinance. In making these phone calls, you are not attempting to advance or promote the interests of the client in relation to a particular outcome, but rather, are simply gathering facts to be analyzed and possibly used in a future complaint. In addition, your phone calls at this stage of the process do not constitute representation because no complaint yet has been filed and no decision to file a complaint has been made. Thus, when you make these calls, there is no "formal or informal proceeding or transaction," as specified in Section 2-156-090(a). In addition to these considerations, you also do not identify yourself as a member of the [REDACTED] Advisory Council when you make these calls, but are acting solely in your capacity as a Corp. "X" case manager.

You also draft the fact memoranda that clients may use in filing a complaint ^{with a City Agency}. While the Board has construed "representation" to include submitting written documents to City agencies on behalf of others, it is our opinion that your activity in this respect does not constitute representation. These fact memoranda are not submitted to the City or any court on behalf of Corp. "X" 's clients, but are for internal use only--you submit them only to the clients, who may use them in their decision to file, and then to complete, a formal complaint.

(2) In the second part of the process, you accompany those clients who choose to pursue a complaint before [REDACTED] (a City agency whose "action or non-action" is clearly "non-ministerial"), to fact-finding hearings. As you described your role, you do not act as a spokesperson for clients, but are there to lend them psychological support, to help them fill out the required forms, and to assure that their complaints, as filed, are complete. You may remind clients before the hearing officers when their factual statements are incomplete, and may answer questions from hearing officers relating to Corp. "X" 's work and relationship to the client. You do not identify

yourself as a member of the [REDACTED] Advisory Council in the context of the fact-finding hearings.

It is our opinion that none of your activities at these hearings constitute the kind of "representation" the Ordinance is intended to prohibit. You do not speak to any hearing officer specifically to further your clients' interests, but rather, if necessary, only to explain your and your employer's relationship to the client. Your assistance to the client in the hearing room does not constitute representation because you are not acting as an intermediary on your clients' behalf; rather, you are involved only in providing them with psychological support.

(3) As a case advocate for Corp. X" you also assist persons who file suit against the City in court. However, here as well, your assistance is limited to the preliminary fact-gathering process. You do not testify as a witness on their behalf. You stated that you and your agency provide background advice, and that you are careful not to undertake activities that might be considered practicing law, for example, helping with pleadings, recommending settlement, or contacting parties with whom your agency's clients have grievances once the client has decided to file suit. We believe that providing such background advice does not constitute representation for the purposes of the Ordinance.

B. The [REDACTED] Work. The Board also considered whether your active participation on the [REDACTED] Advisory Council involves you in "representing" before Dept. Y" the interests of the Corp. X" or its individual clients whom you assist.

The Ordinance's prohibition refers to the representation of "persons" in "matters" before any City agency. You do not represent particular "persons" in particular "matters" before Dept. Y" or the Advisory Council. You were appointed to the Council because of your knowledge and sensitivity to the needs of a particular class of persons, [REDACTED]. To perform properly in your appointment to the Council, you could be expected to make recommendations that Dept. Y" take action to correct problems that might indeed be reflected in the particular complaints of Corp. X" clients. However, it is our opinion that, under the Ordinance, this activity does not constitute "representation" of those clients.

ECONOMIC INTEREST. In your letter to the Board, you also asked whether your salary from the Corp. X" constitutes an economic interest in the representation of persons. As explained above, the Board has determined that your activities with respect to

Corp X clients do not constitute "representation" for the purposes of the Ordinance. Since no representation exists, the aspect of Section 2-156-090 that applies to having an "economic interest" in representation does not come into play.

CONFIDENTIAL INFORMATION. We also bring to your attention Section 2-156-070 of the Ordinance, entitled "Use or Disclosure of Confidential Information," which applies to all current and former City officials and employees. This provision states:

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.

This section prohibits you, as an appointed City official, from using or revealing any confidential information you may acquire by reason of your City appointment.

CONCLUSION. It is our opinion that, in your work with the *Corp X* you are not engaged in acting as a spokesperson or advocate on behalf of *Corp X* clients in any of the three aspects of your case management work discussed above. So long as you also do not identify yourself as a member of the [REDACTED] Advisory Council in the context of your work with *Corp X* clients, your duties with the *Corp X* do not constitute "representation" of persons in any proceedings or transactions before or against the City. Further, it is our opinion that your work on the [REDACTED] Advisory Council does not involve "representation" of persons before the City. For these reasons, the Board determines that the Ethics Ordinance does not prohibit you from serving as an appointed member of the [REDACTED] Advisory Council concurrently with your position at *Corp X*.

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

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RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.



Catherine M. Ryan
Chair