

EMMS



Advisory Opinion
Case No. 95013.E
Statements of Financial Interest

City of Chicago
Richard M. Daley, Mayor

To:

Board of Ethics

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Date: May 18, 1995

Re: Chicago-Gary Regional Airport Authority

On April 19, you wrote to ask whether the directors appointed to serve on the governing board of the newly created Chicago-Gary Regional Airport Authority must file Statements of Financial Interests with the Board of Ethics. The Board has concluded that the Governmental Ethics Ordinance does not require them to file. Our determination and the reasoning supporting it are set forth in this Advisory Opinion.

LAW: Section 2-156-150(a) of the Governmental Ethics Ordinance requires each appointed official to file a Statement of Financial Interests,

except a member of an agency that is solely advisory in nature and has no authority to make binding decisions, to enter into contracts or to make expenditures necessarily incurred for research in connection with its advisory function;...

An appointed official is "any appointed, non-employee member of any City agency." § 2-156-010(q).

FACTS: The Chicago-Gary Airport Authority was created by a Compact of the two named cities adopted April 15 by the Chicago City Council (Journal of the City Council of Chicago, 4/15/95, pp. 67230-79) and by the Gary Common Council. (See Compact Between the City of Chicago and the City of Gary Relating to the Establishment of the Chicago-Gary Regional Airport Authority ("Compact"), Article 45, § 5.) The Authority has the power under the Compact to plan, develop and operate a new regional airport. The Compact recites the laws pursuant to which the Authority was established, including laws of the United



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States, Illinois and Indiana. The Interstate Airport Authorities Act, 70 ILCS 10/0.01 et seq., and an equivalent Indiana law expressly permit governmental units in more than one state to combine to create an airport authority.

The appointed officials who are the subject of this case are the twelve directors on the Authority's governing Board of Directors. Five directors are appointed by the Chicago City Council, five by the Gary Common Council, and one each by the Governor of Illinois and of Indiana. Official action requires a majority of directors from each state to agree. (Compact, Article 15.)

The Compact creates the Chicago-Gary Regional Airport Authority as "an interstate body politic and corporate;" it states, "The Authority shall not be an agent of any Signatory." (Compact, Article 10, § 10-1.) It also states, "Rules, regulations and ordinances of any Governmental entity shall not apply to the Authority or its operations or property." (Compact, Article 30, § 30-1.) The Compact provides that the "Board shall adopt regulations governing ethics and conflicts of interest with regard to its officers, employees and directors appointed by each Signatory." (Compact, Article 15, § 15-35.) It provides that the Illinois Governmental Ethics Act applies to the directors appointed by the Governor of Illinois, and Indiana law to directors appointed by the Indiana governor. (Id.)

ANALYSIS: The Compact, adopted by Chicago's City Council, expressly states that the Authority is not an agent of the signatories, and, more important, that the rules, regulations and ordinances of any governmental entity do not apply to the Authority. The Chicago City Council has authority to amend an existing law, and thus the power to determine, by law, that an existing law does not apply to certain circumstances. This provision in the Compact is decisive: as a result of this provision, the Governmental Ethics Ordinance filing requirement does not apply to the members of the governing board of the Chicago-Gary Regional Airport Authority.

In addition, there is an independent reason to draw the same conclusion: the Authority is not a City agency. The Compact makes clear that the Chicago-Gary Regional Airport Authority is not intended to be an agency of either of the two cities that created it -- the Compact states it is an "interstate body politic and corporate." In the past, the Board has found that an entity created as a body politic and corporate is not a City agency for purposes of the filing requirement. (See, e.g., Case no. 90013.A (Metropolitan Exposition Authority, Chicago Public Building Commission, Regional Transportation Authority,

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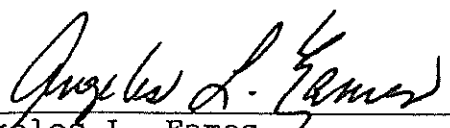
and others).) Although in those instances the body was created by state law, while here the entity was created by the two cities, the same conclusion is demanded.

Equally important, the Chicago-Gary Regional Airport Authority is a creation of two cities (within two states): this fact we believe precludes its being an agency of either one of the cities. There is no basis, for example, for one City to assume jurisdiction over a director appointed by another City's Council, without an agreement permitting it. A February 1992 Memorandum to the Board drew the same conclusion about the Metropolitan Economic Development Alliance, created by Chicago's Mayor and made up of representatives from different governments; the Board found that members were not required to file.

DETERMINATION: The Board determines that the members of the Chicago-Gary Regional Airport Authority Board of Directors are not required by the City of Chicago's Governmental Ethics Ordinance to file Statements of Financial Interests with this office because the City of Chicago City Council, in the Compact, expressly provided that the rules, regulations and ordinances of any governmental entity do not apply to the Authority, and because the Chicago-Gary Regional Airport Authority is not a City agency.

Our determination in this case is based on the application of the 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.

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.



Angeles L. Eames
Vice Chair