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**CONFIDENTIAL**

April 27, 2007

The Honorable [REDACTED]  
Alderman, [REDACTED] Ward  
121 N. LaSalle St.  
Chicago, IL 60602

Re: Case No. 07018.Q

Dear Alderman [REDACTED]

You are Alderman of the [REDACTED] Ward. On April 19, you asked whether the City's Governmental Ethics Ordinance prohibits or restricts: 1) you from serving as a paid Board member for a not-for-profit museum [REDACTED] to be located in your ward; 2) alternatively, you from serving as an unpaid museum Board member, receiving reimbursement for travel and other expenses incurred as a Board member; 3) your [REDACTED] from serving either as a paid Board member or paid employee of the museum; or 4) you and your [REDACTED] from forming a business that would then invest in a café/retail store that might: a) apply for and obtain a liquor license, and/or: b) lease space on the ground floor (possibly the second floor as well) of a building from a person who purchased the building from a developer that received City financial assistance to develop affordable housing in the building (the housing occupying the top floors of the building). This letter summarizes the advice Board staff gave you in person on April 19.

**1. Service as a Board member.** Nothing in the Ordinance prohibits you, as an elected City official, from serving as a paid (or unpaid) Board member of a not-for-profit museum located in your ward. However, there are certain restrictions you would be subject to, and certain considerations we advise you to weigh before accepting such a position.

First, as a Board member (whether paid or unpaid), you would owe a fiduciary duty to the museum. And, of course, as an alderman, you owe a broad fiduciary duty to the City, under § 2-156-020. (See Case No. 03027.A.) If the interests of the City were to conflict with those of the museum in any particular matter in which you were involved, you would be required to resolve that conflict in the City's favor. You might also subject yourself to criticism that the museum receives favored treatment by virtue of your service on its Board, so we advise you to weigh that in considering whether to serve as a Board member.

Second, were you to become a paid Board member, you would have an economic interest in the museum different from that of all other alderman and the general public. §§ 2-156-030(a); -080(a). Consistent with prior Board cases, we advise you that you would be prohibited from making, taking part in or attempting to use your City position to influence any City decisions or actions involving the museum, whether those decisions or matters were pending before the City Council (or any Council committee) or another City department (such as Buildings, Zoning, Transportation, Mayor's Office, etc.). Moreover, were the museum to have any matter pending before the City Council or any Council committee, you would be



required, under § 2-156-080(b)(1), to publicly disclose the nature and extent of your interest on the records of Council proceedings, notify our agency in writing within 3 days of becoming aware of the pendency of the matter, and abstain from voting on that matter. Further, Board staff advises you that, were you to become a museum Board member (whether paid or unpaid), so as not to detract from the integrity of your official votes and actions: 1) when acting as a museum Board member, you consider recusing yourself from any museum matters that involve the City, whether in or outside of Board meetings, and avoid giving any advice or assistance to the museum or its Board regarding such matters; and 2) as described more fully below, you recuse yourself from voting on or attempting to influence any City actions or decisions involving the museum, whether those matters would be pending in the City Council (or any Council committee) or any other City department, disclose those matters to the Board of Ethics and on the City Council record of proceedings, and abstain from voting on those matters (this would be required were to become a paid Board museum member).

Third, if your compensation from the museum for your Board services were \$2,500 or more in any calendar year, you would, under § 2-156-080(b), have a "business relationship" with the museum. You would then be required, under § 2-156-080(a) and (b), if the museum has any matter pending before a City Council committee on which you sit or before the full Council, to notify the Board of Ethics in writing within 3 days of becoming aware of the matter's pendency, and then disclose publicly the nature and extent of your interest in the matter on the record of Council proceedings and abstain from voting on the matter in accordance with § 2-156-080(b)(1). See Case No. 98007.Q. Moreover, under § 2-156-030(b), neither you, nor any person acting at your direction, could contact (either orally or in writing) any other City official or employee with respect to any matter involving the museum, and you would be prohibited from participating in any discussion in any City Council committee hearing or Council meeting or vote on any matter involving the museum. Further, under § 2-156-111(b), no elected City official or department or agency head could "retain or hire as a ... City contractor any person with whom" you would have a business relationship. As staff advised you, it is unclear whether the museum would be considered a "City contractor" for purposes of this section by virtue of the grant monies it receives or might receive from the City's Department of Cultural Affairs, and therefore whether the museum's City grant would be jeopardized. However, staff counsels you that, were you to accept such compensation from the museum, this issue would need to be formally addressed by the full Board of Ethics.

Fourth, whether a paid or unpaid Board member, you would be prohibited, under § 2-156-090(a), from "representing," or having an economic interest in representing, any person (such as the museum) in any non-ministerial formal or informal transaction before a City agency, but you are not prohibited from appearing, without compensation, before any City agency on behalf of constituents in the course of your duties as a City elected official. Were you to become a Board member (whether paid or unpaid), then your roles as Board member and as alderman would be confused, and you could expose yourself to a charge that you are "representing" the museum before a City agency not as an alderman, but as a Board member. Consistent with prior cases, staff advises you to consider that you may be more effective in providing service to the museum as an alderman, not as a Board member. See Case No. 06037.Q

Fifth, whether a paid or unpaid Board member, you would be prohibited, under § 2-156-050, from accepting money or other thing of value from the museum in return for advice or assistance on matters concerning City business. Sixth and seventh, you would be prohibited, under § 2-156-070, from using or disclosing any confidential information gained through your City position, and, under § 2-156-060, from using any City-owned property in your Board service.

Given these restrictions, Board staff cannot recommend that you become a paid Board member of the museum, although the Ordinance does not prohibit you from doing so. Were you to become an unpaid museum Board member, Board staff advises you, so as not to detract from the integrity of your official votes and actions, to consider recusing yourself from any museum matters that involve the City, whether in or outside of Board meetings, and avoid giving any advice or assistance to the museum or its Board regarding such matters, and recuse yourself from voting on or attempting to influence any City actions or decisions involving the museum, disclose your interest in any matter pending before the City Council or any Council committee to the Board of Ethics and on the City Council record of proceedings, and abstain from voting on the matter. You might also subject yourself to criticism that the museum receives favored treatment by virtue of your service, so staff advises you to weigh that in considering whether to serve as an unpaid Board member.

**2. Service as an unpaid Board member; reimbursement of expenses.** You also asked whether, were you to become an unpaid museum Board member, the Ordinance would prohibit you from accepting reimbursement from the museum for business travel expenses. Nothing in the Ordinance would prohibit this. It is unclear to Board staff whether you would have an "economic interest" (defined in relevant part as "any interest valued or capable of valuation in monetary terms" in §2-156-010(i)) by virtue of being entitled to receive reimbursement for travel expenses, say, during the period after which you have paid the expenses but await reimbursement. However, staff does not believe this question must be resolved, and advises you to treat that situation as though you *would* have an economic interest in the museum—meaning recusing yourself from voting on or attempting to influence in any way the outcome of any City actions or decisions involving the museum, whether those decisions or matters would be pending before the City Council (or any Council committee) or before any other City department (such as Buildings, Zoning, Transportation, Mayor's Office, etc.), and to notify the Board of Ethics in writing within 3 days of becoming aware of the pendency of any matter involving the museum before the City Council or any of its committees, and then disclose publicly the nature and extent of your interest in the matter on the record of Council proceedings and abstain from voting on the matter.

**3. Your <sup>spouse's</sup> service as a paid museum Board member or employee.** Nothing in the Ordinance would prohibit you <sup>spouse</sup> from accepting a paid position as either Board member or employee of the museum. However, as explained below: 1) Board staff cannot recommend that your wife become a paid museum Board member; 2) if she does become a paid museum employee, Board staff advises that you recuse yourself from voting on or participating in any City decisions or actions involving the museum; and 3) if your <sup>your spouse</sup> becomes a paid museum employee, Board staff advises that <sup>your spouse's</sup> exercise no discretion concerning or have any input with respect to the museum's relationship with the City. <sup>your spouse's</sup>

First, were <sup>your spouse</sup> to become a paid museum Board member or employee, <sup>your spouse's</sup> position would, under prior Board cases, be considered <sup>your spouse's</sup> "independent occupation, business or profession"—provided you do not participate in the operation or management of the museum. See Case No. 91052.A. In that situation, you would not have an economic interest in the museum and would not be subject to the restrictions of §§ 2-156-030(a) and -080(a), and would not be prohibited from taking part in, voting on, or influencing City actions or decisions involving the museum. However, so as not to detract from the integrity of your official votes and actions, Board staff advises you to treat that situation as though you *would* have an economic interest in the museum by virtue of her Board service or employment with it—meaning recusing yourself from voting on or attempting to influence the outcome of any City actions or decisions involving the museum, whether those actions or decisions are pending before the City Council (or any Council committee) or another City department, notifying the Board of Ethics in writing within 3 days of becoming

aware of the pendency of any matter involving the museum before the City Council or any of its committees, disclosing publicly the nature and extent of your interest in the matter on the record of Council proceedings, and abstaining from voting on that matter.

Second, staff addresses the issue of whether you would have a "business relationship" with the museum by virtue of your <sup>spouse's</sup> paid Board membership or paid employment with it. If you would, then, as discussed above, under § 2-156-111(b), the museum could not, in effect, be a "City contractor." As staff advised you in person on April 19, it is unclear whether the museum would be considered a "City contractor" for purposes of this section by virtue of the grant monies it receives or might receive from the City's Department of Cultural Affairs, and therefore whether the museum's City grant would be jeopardized under this section were you to have a business relationship with it. Section 2-156-080(b)(2)(iii) provides that "contractual or other private business dealing of an alderman or his or her spouse" [i.e., in effect, a business relationship] "shall not include any employment relationship of an alderman's spouse or domestic partner with an entity when such spouse or domestic partner has no discretion concerning or input relating to the relationship between that entity and the City." It is staff's conclusion that, were your ~~spouse~~ to become a Board member of the museum, this exception would not apply, because ~~spouse~~ would not have "an employment relationship" with the museum, and you would therefore have a "business relationship" with the museum. For this reason, Board staff cannot recommend that your ~~spouse~~ become a paid museum-Board member. If, on the other hand, your ~~spouse~~ were to become a paid museum employee, this exception <sup>your spouse</sup> would apply, and you would not have a "business relationship" with the museum—provided ~~spouse~~ and the museum ensure that ~~spouse~~ exercises no discretion concerning or has any input relating to the museum's relationship with the City. In such a situation, the Ordinance would not require you (as provided in § 2-156-030(b)) to refrain from contacting other City employees or officials with respect to, or to recuse yourself from deliberating or voting on matters involving the museum. However, Board staff advises you that, if your ~~spouse~~ becomes a paid museum employee, in order to lessen any suggestion or appearance of impropriety, you consider refraining from contacting other City employees or officials regarding such matters and, where appropriate, publicly recuse yourself from deliberating or voting on them.

**4. Investing in a café/retail store.** You explained that you and your <sup>spouse</sup> may form an entity that would invest with another business entity which would own and operate a café/retail establishment, though neither you nor your wife intend to become involved in the daily operations of the business. Further, this café/retail establishment may wish to apply for and obtain a liquor license, and/or lease space on the ground floor (possibly the second floor as well) of a building from a person who purchased the building from a developer that received City financial assistance to develop affordable housing in the building (the housing occupying the top floors of the building). As you were advised in person on April 19, nothing in the Governmental Ethics Ordinance prohibits you and your wife from making such an investment. However, certain restrictions in both the Ordinance and other City and state laws apply.

First, staff believes that you would likely have, by virtue of any investment of \$5,000 or more in the café (either directly, or through your investment company's investment in the entity that actually owns and operates the café), a financial interest in the entity that owns the café. This means that, were the café to apply for City financial assistance, if your ownership percentage in it (through your investment company), multiplied by the total amount of the City financial assistance, yields an amount of \$5,000 or more, you could have a prohibited financial interest in City business under § 2-156-110 of the Ordinance. You said that the café would not be applying for any City assistance. As long as that remains true, this provision would not apply. But should the café apply for any City financial assistance, or wish to purchase or lease real estate from the City, staff advises you to contact our office for further guidance.



Second, you would have an economic (and possibly a financial interest) in the café distinguishable from that of the general public and all aldermen, by virtue of your indirect ownership therein. Therefore, under §§ 2-156-030 (a) and -080 (a), you would be prohibited from taking part in, voting on, or attempting to influence any City actions or decisions regarding the café (whether pertaining to licensing, zoning matters, sidewalk permits, etc.). Also, under § 2-156-080(b)(1), were the café to have any matters pending before the City Council or any of its committees, you would be required, under § 2-156-080(b)(1), to publicly disclose the nature and extent of your interest on the records of Council proceedings, and to notify our agency in writing with 3 days of becoming aware of the pendency of the matter, and abstain from voting on the matter. Last, you would be required to disclose your financial interest in the café in response to several questions in your Statement of Financial Interests filed with the City Clerk's office, and may also be required to disclose information about that interest on your Statement of Economic Interests, filed with the Cook County Clerk's office.

Third, were your business to become entitled to receive \$2,500 or more in a calendar year in compensation from the café, you would have a "business relationship" with the café. You would then be required, under § 2-156-080(b)(2), if the café has any matter before the City Council or a Council committee, to notify the Board of Ethics in writing within 3 days of becoming aware of the matter's pendency, and then disclose publicly the nature and extent of your interest in the matter on the record of Council proceedings and abstain from voting on it, in accordance with §2-156-080(b)(1). Moreover, under § 2-156-030(b), neither you, nor anyone acting at your direction, could, in such a situation, contact (either orally or in writing) any other City official or employee with respect to any matter involving the café, and you would be prohibited from participating in any discussion in any City Council committee hearing or Council meeting or vote on any matter involving the café. Last, under § 2-156-111(b), no elected City official or department or agency head could "retain or hire as a ... City contractor any person with whom" you would have a business relationship. Therefore, were the café to become interested in applying for any City financial assistance, such assistance may be prohibited. Were that situation to obtain, Board staff advises you that this issue would need to be formally addressed by the Board of Ethics.

Fourth, you asked whether any law prohibits an alderman, or a business in which an alderman invests, from applying for or holding a liquor license or selling alcoholic beverages. As Board staff explained to you, the City's Governmental Ethics Ordinance contains no such restrictions. As you requested, Board staff conducted preliminary research into how other municipal and state laws treat this issue. While the Board of Ethics and its staff have no authority to interpret any laws other than the City's Governmental Ethics and Campaign Financing Ordinances, staff's research, including advice sought (without identifying you) and received from a senior attorney in the City's Department of Business Affairs and Licensing, indicates that: 1) under the Illinois Liquor Control Act of 1934<sup>1</sup> and the City's liquor code<sup>2</sup>, Chicago alderman are not eligible to hold liquor licenses, or to have any direct financial interest in an entity that holds a liquor license,

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1. 235 ILCS 5/1-1, et seq. Sec. 6-2 provides in relevant part:

"**Issuance of licenses to certain persons prohibited.** (a) Except as otherwise provided ... no license of any kind issued by the State Commission or any local commission shall be issued to ... (14) Any law enforcing public official, including members of local liquor control commissions, any mayor, alderman, or member of the city council or commission ... and no such official shall have a direct interest in the manufacture, sale, or distribution of alcoholic liquor, except that a license may be granted to such official in relation to premises that are not located within the territory subject to the jurisdiction of that official if the issuance of such license is approved by the State Liquor Control Commission." 235 ILCS 5/6-2(a) (14).

2. Chapter 4-60-010, et seq., Municipal Code of Chicago. § 4-60-030 provides in relevant part: "**License issuance prohibited when.**

No license for the sale of alcoholic liquor shall be issued to ... (q) Any elected public official of local government, or any nonelected law enforcing official or employee of the City of Chicago."

(See also § 4-60-030 (j), (k).)

Case No. 07018.Q

April 27, 2007

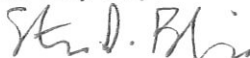
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in Chicago; 2) under state law, a Chicago alderman can own a liquor license outside Chicago; 3) if an alderman is an investor in a business wishing to apply for a liquor license, the alderman would likely have to divest him- or herself of the ownership interest; and 4) the City's liquor code requires full disclosure of ownership in a liquor license application, and if the Department of Business Affairs and Licenses knows an investor is ineligible by law, the application could be denied. In any event, because the Board of Ethics and its staff have no authority to interpret these laws, you are advised to seek independent legal advice regarding the applicability of these laws and of any other state laws, including but not limited to the Public Officer Prohibited Activities Act, (50 ILCS 105/1, et seq.), and the Illinois Municipal Code (65 ILCS 5/3.1 -55 -10, et seq.).

Last, you asked whether the Ordinance would prohibit the café from leasing the ground floor (and possibly the second floor) of a building from a person who purchased the building from a developer who received City assistance to develop affordable housing in the building (the housing occupying the building's upper floors). This letter confirms staff's advice to you that such a lease would not be prohibited under the Governmental Ethics Ordinance, provided the space is leased to the café at a competitive market rate, and the lease payments are not in any way subsidized by the City. As to this issue, Board staff likewise advises you to seek independent legal advice regarding the applicability of any state laws, including but not limited to the Public Officer Prohibited Activities Act, (50 ILCS 105/1, et seq.), and the Illinois Municipal Code (65 ILCS 5/3.1 -55 -10, et seq.).

Board staff's conclusions and advice are based solely on the application of the City's Governmental Ethics Ordinance to the facts summarized in this letter. If these facts are incorrect or incomplete, please notify our office immediately, as any change may alter our conclusions. Please again note that, as explained in this letter, other laws, policies or rules are applicable to this situation, and you are advised to seek independent legal advice as to how these laws affect you. Our office sincerely appreciates the opportunity to advise you, your bringing this matter to our attention, and your concern to abide by the standards embodied in the City's Governmental Ethics Ordinance (a copy of which is enclosed). If you have further questions about this or any other matter, please contact me.

Yours very truly,



Steven I. Berlin,  
Acting Executive Director

enclosure