



BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

[DATE]

[NAME]

[Address]

Re: Case No. 21011.Q / Service on Non-profit Boards

Dear -----:

On [date], [name] contacted the Board's Executive Director, Steve Berlin, via email, to ask whether you could join [non-profit organization] as a board member, and, if so, what restrictions would apply. [Name] indicated that the [non-profit] is comprised of [composition of non-profit] in the Ward and that your board service would be non-compensated. Steve asked that I reply to your inquiry.

While the Governmental Ethics Ordinance ["Ordinance"] does not prohibit you from serving on the board of this non-profit, we have long advised aldermen to refrain from joining boards of non-profits in their Ward. Below, we explain the restrictions. By declining this position, you would not have "one of your hands tied behind your back" with respect to representing the organization before the City Council and other City agencies or commissions in the way you would were you to accept a board membership with it.

The applicable restrictions under the Ordinance are:

1. Fiduciary Duty. Under §2-156-020, entitled "Fiduciary Duty," you owe a fiduciary duty to the City at all times in the performance of your public duties. The way our Board has construed this duty, all your actions and decisions—and votes, should you become a voting member of an organization's board—must be, in your judgment, in the best interests of the City. If, unlikely as it may be, there is some action that the board is considering, that, in your best judgment, would be contrary to the City's best interests, our Board's advice over the years to aldermen and others wishing to serve on outside non-profit boards is to recuse from that vote, or vote against it. Moreover, under this provision, and to avoid even the appearance of impropriety, and to act consistently with the spirit of the aspirational code of conduct in the Ordinance, §2-156-005(5)¹, we advise you to recuse yourself *entirely* from any matters, no matter how routine, that the [non-profit] and its leadership

¹ This provision is aspirational, and "shall guide the conduct of every official and employee of the City." It provides that, as a City official you shall "act impartially in the performance of [your] duties, so that no private organization or individual is given preferential treatment."

may have before you as the Alderman or before the entire City Council, and, as explained below, would be prohibited from communicating the organization's interests to your staff, City Council colleagues, or other City employees of officials.

2. Representation. Under §2-156-090(a), you may not “represent” a third party, such as the [non-profit], in any formal or informal transaction before any City department, agency, employee, or official (or be paid for such representation). This means, for example, that you may not act as a spokesperson for, or contact (by phone, in person, email, text, etc.) any other City officials or employees on behalf of the [non-profit] with respect to any dealings, matters, permits, purchases, licenses, grants, partnerships, etc. that it may have or wish to seek with the City. This prohibition is Citywide, and includes all City departments and agencies, not just your ward office. It would include the entire panoply of City governmental actions, including purchases of adjacent lots, zoning matters, sidewalk matters, street closures, tax incentives, redevelopment agreements, etc. Someone else from the [non-profit] would need to make such contact and represent the organization in these endeavors— not you.

More importantly, note also, as we have advised some of your aldermanic colleagues in the past, you may wish to consider that, by declining service on this board, you would be able to do *more* for the organization in your capacity as Alderman, whereas, if were you to accept the Board member offer, you effectively would not be able to act as its alderman. *See* Case Nos. 97021.Q; 06027.Q; 15047.Q; 151688.Q.² The reason is that the “Representation” provision does not prohibit a City 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.” The problem is that, once you become a board member, you are acting as a board member in any such representations, not as the organization's Alderman, and your actions would be perceived that way. We note that this provision would not prohibit your aldermanic staff from representing the [non-profit] in transactions before the City of Chicago or its departments or agencies, just you, were you to accept a board membership on it, but we advise you to consider that, by accepting this board membership, you would be in effect required to delegate aldermanic functions affecting the organization to one of your staff members, and could not communicate with your staffers about how to act. Note though, that this restriction would not apply to transactions or dealings with the City's “sister agencies,” like the Chicago Park District or Chicago Public Schools, or to dealings with non-City governmental entities, such as Cook County government, but it does apply to all City departments, agencies board and commissions. *See* Case Nos. 97021.Q; 06027.Q; 15047.Q; 151688.Q.

3. Unauthorized Use of City Property. Under §2-156-060, entitled “City-owned property,” you may not engage in or use any City property in the course of your work with, or to benefit, the organization. This includes the use of your City office, telephone, email address, business cards, or City-owned smart phones, computers, etc. Prior Board of Ethics case law addresses whether you could use your City title in connection with fundraising or other activities for the [non-profit]. *See* Case No. 96032.A. In light of your position as an elected City official, we advise you that you may allow the [non-profit] to use your name (of course) as a member of the board and may even have it prefaced by the term of address “The Honorable,” but, out of an abundance of caution, we advise that it **not** use your official title on any publications, letterhead, websites, or other materials in connection with or by the non-profit.

4. Confidential Information. Under §2-156-070, entitled “Use or disclosure of confidential information” you may not use or divulge any confidential or non-public information in your volunteer service or to benefit the [non-profit].

² You can read all these prior Board opinions, redacted to conform with the Ordinance's confidentiality requirements, at this link: https://www.chicago.gov/city/en/depts/ethics/supp_info/ao-_elecoff.html

5. With respect to **fundraising** on the [non-profit's] behalf, you are prohibited, under §2-156-142(h), from soliciting any gift or contribution on behalf of a third party (such as the [non-profit]), if: (i) you know that the prospective donor is seeking administrative or legislative action from the City, and (ii) you are in a position to directly affect the outcome of that action. This would preclude you from "doing the ask" on behalf of the [non-profit] from, for example, real estate developers with ongoing projects in your ward, or from businesses that regularly have permitting or zoning issues in which your office becomes involved. However, merely having your name listed on letterhead (even with the honorific form of address "The Honorable" preceding it) does not constitute solicitation from a particular person in the way intended by the Ordinance, but we nonetheless advise that, in order to avoid even the appearance of impropriety, you review the [non-profit's] mailing lists for its own fundraising solicitations prior to any mailing that would be on letterhead with your name on it, to ensure that it does not go to any business or person that you know has matters pending before City Council or the Ward.

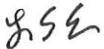
6. Should you accept this board membership, you will be required to disclose it on your annual Statement of Financial Interests.

As stated above, these conclusions and advice do not necessarily dispose of all the issues relevant to your inquiry, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in the letter. If those facts are inaccurate, please notify me, as a change in facts may change the conclusions and advice.

Please contact me with any questions or follow-up requests for guidance.

As always, your conscientiousness is appreciated.

Sincerely,



Lisa Eilers
Deputy Director

Approved:



Steve Berlin
Executive Director