

[2003]

CONFIDENTIAL

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[]
Department of []
[]
Chicago, IL 6060[]

*outside employment
Money for advice
who is unrelated*

**Re: Case No. 03036.Q;
Outside Employment**

Dear Ms. []:

You are the City's [], and an attorney licensed to practice law in Illinois. On [], 2003, you contacted Board staff and requested advice on how the City's Governmental Ethics Ordinance would apply to outside employment you are considering with [Company]. [Company] was awarded a contract to design and conduct training sessions for employees of the [Agency] on [topics]. The [Company] is a [] independent of the City; it is responsible for [throughout Cook County]. You were advised orally by Board staff that, while the Ordinance does not *per se* prohibit you from engaging in this outside employment, it does impose restrictions on your activities, both in your City position and in your outside employment. You were also advised that the City's Personnel Rules delineate certain criteria for and restrictions on outside employment, and require you to first discuss your proposed outside employment with your department head and request his permission to engage in the work with [Company]. You contacted us again in late July after you met with your department head, and requested that our agency summarize our previous advice in writing; that summary follows.

[Company], you said, was recently awarded a contract by [Agency] to design and conduct a series of workshops for all of the [Agency's]s approximately 2,000 employees on [topics] , including training in [Your area]. [Company] has retained you as one of its sub-consultants (you believe that there are about 17 such sub-consultants on this contract). You believe that [Company's] contract with the [Agency] will obligate it to begin training in September and complete it by the end of the year. Under the proposed written sub-contract between you and [Company] (the contract has not yet been finalized), you would assist [Company] in developing the training materials and classes on [topic] , might facilitate some of the actual class sessions, and probably would train the facilitators who would conduct much of the training, as well as provide various follow-up services after the initial training phase is completed. Those services might include working on a newsletter for [Agency] employees or providing phone advice to [Agency] employees on matters relating to [topic] . You said that the [Agency] has its own policy

covering [topic], and that you have had no role in drafting and have no authority to interpret that policy. Further, you told Board staff, you intend to fulfill your obligations to [Company] either on furlough days, vacation time or off-hours.

In your City position, you head the City's [] Office, a division of the City's Department of []. The Office investigates charges by City employees who claim that [] on the job, provides mediation referrals and confidential guidance where appropriate, and designs and conducts training programs on [topic] and procedures under the City's [topic] Policy.

As with all City employees desiring to engage in outside employment, the City's Governmental Ethics Ordinance would impose numerous restrictions on your conduct, both in your City position, and while performing your outside employment. First, § 2-156-060, "City-owned Property," prohibits you from using City property or resources in your outside employment, and prohibits you from performing outside employment duties (including providing phone advice to [Agency] employees, e.g.) on City time. Second, § 2-156-020, "Fiduciary Duty," obligates you, as a City employee, to give undivided loyalty to the City in the discharge of your public responsibilities, and to use your City position and City responsibly and in the best interests of the public. It likewise obligates you to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities or clients, and prohibits you from using City time, resources, or title to obtain a personal benefit or promote a private interest. Third, § 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or disclosing any confidential information you have obtained through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. Fourth, § 2-156-090(a), "Representation of Other Persons," prohibits you from representing or acting as a spokesperson for 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 non-ministerial in nature. Two other provisions, §§ 2-156-030(a), "Improper Influence," and -080(a), "Conflicts of Interest; Appearance of Impropriety" prohibit you from participating in or trying to use your City position to influence a governmental decision or action in which you have an economic interest. The Board has recognized that a City employee who has paid employment with another entity has an economic interest in that entity by virtue of that employment. (See, e.g., Cases Nos. 98062.A, 94009.A, and 92044.A.) You would be, therefore, prohibited from making, participating in, or attempting to influence any government decision affecting [Company] or any City contracts it may have or be seeking. In Case No. 98062.A, the Board determined that the type of governmental decisions that a City employee cannot participate in or seek to influence are those "that are related to or may enhance his or her outside employment." Therefore, as [Company's] client in this regard is the [Agency] itself, we caution you to avoid the appearance of impropriety by refraining from making or attempting to influence any City governmental decision affects the [Agency].

Finally, § 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you from accepting payment from [Company] (or Agency) in return for rendering advice or assistance on the operation or business of the City. The provision states, in pertinent part:

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 a part of his or her non-City employment, occupation or profession.

We address this section in some detail because your City duties would be similar to your proposed outside employment. The Board has applied this provision in situations where City employees, in their outside employment, benefitted by using knowledge that was not publicly available and was not "wholly unrelated" to their City duties and responsibilities. You explained that [Company] intends to contract with you to assist it in designing (and possibly conducting) training programs for [Agency] employees on [topic] generally, and that, while the format and some of the content of these classes might be similar to the classes your division conducts for City personnel, you would not be using any materials that are proprietary to the City, nor would you be assisting either [Company or Agency] or its employees in complying with City policies or procedures. The general topic [], you said, involves the interrelationship of state, federal and common law standards, and the employer's own policy. Based on your description, it appears to staff that, while there are similarities between your City work and your proposed responsibilities as a sub-consultant to [Company], you would be performing services for [Company] for which you are qualified based on your experience in [] training and law generally. The expertise that would enable you to serve as a program content developer and facilitator for [Company] is not uniquely or specifically related to either cases handled by your unit, or to compliance with or interpretation of any City-specific standards or policies regarding [topic]. Board staff concludes, therefore, based on these facts and on prior Board advisory opinions, that the your work with [Company], as described, would not constitute the receipt of money for advice or assistance on matters concerning the operation or business of the City, in the sense prohibited by § 2-156-050. We caution you, however, that this provision does prohibit you from accepting compensation from [Company, the Agency], or any persons other than the City for advising or assisting them with respect to the City's policies on [topic] or any matter pending in your Office.

Board staff's advice and conclusions do not dispose of all issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If these facts are incorrect or incomplete, please notify us immediately, as any change may alter our conclusions or advice. As you were advised previously by Board staff, other laws or rules apply to your proposed outside employment, including the City's Personnel Rule XX, Section 3. This rule delineates the criteria for and restrictions on outside employment, and requires City employees desiring to perform outside employment to first file a written request with their department head for permission, and provides that the department head may either approve or disapprove the request. We also remind you that, as provided in §2-156-450, the Ordinance does not limit the power of other City agencies to adopt and enforce rules of conduct or take appropriate administrative actions that are more restrictive than those imposed by the Ordinance itself.

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We appreciate your inquiry and sensitivity to the standards embodied in the Ordinance. If you have any further questions, please contact us.

Very truly yours,

Steven I. Berlin
Deputy Director

approved:

Dorothy J. Eng
Executive Director