

**CONFIDENTIAL**

**ADVISORY OPINION  
Case No. 12005 A  
POST-EMPLOYMENT**

TO: [John Doe]  
[street address]  
Chicago Illinois 606[xx]

DATE: March 20, 2012

---

You are a [management level employee] at [City department] [CD] with an intended retirement date of [month & day], 2012. On January 26, 2012, you asked the Board of Ethics for a written opinion addressing whether the Governmental Ethics Ordinance ["Ordinance"] will restrict your post-City employment activities.

**FACTS: Your City Job.** You have served in your current position since [month] 2010. Prior to that time, you served as the [management level employee] of [City work section] at [City facility] from 2008 until 2010. From 2000 until 2008, you were the [management level employee] of [City work section] at [City facility].

You told Board staff that in your current position you manage the daily operations for the {City work project] as well as the [City work section] for [2 City facilities]. In this capacity, you indicated that you manage and direct City staff consisting of [various City job positions]. Further, you told us that you manage the [City project] budgets and their key staff for the following contracts:[contracts]

You also said that you manage various budgets and work on [City] projects with the [contractors serving the City facility]. You informed us that the [specific City] program includes projects such as [City work projects]. With respect to the [specific City] program, you indicated that you manage and direct City staff consisting of [City job positions]. Additionally, you manage the [specific City] program budget and the contractors' key staff.

You indicated that while working as the [current management level position], you managed the daily operations of the [City work section] consisting of approximately [xxx] city employees. You told us that these employees work in [xx] different trades groups, including [various City work positions]. Further, you managed budgets including approximately [xx] contracts and oversaw the work of the [City work position].

From 2000 until 2008, you were the [management level employee] for the CD. In that position, you managed the [xx] [City work positions] that are responsible for [specific City work] at [City facility]. While in this job, you oversaw [specific job responsibilities].

You have asked us to issue a written opinion addressing three potential future employment

opportunities. First, you have indicated that you are considering a position as [potential position #1] of [Company #1]. Additionally, you are considering future employment with [Company #2] in one of two possible positions:[potential position #2] or [potential position #3].

[Potential position #1]. The [City Department] recently awarded [Company #1] a contract, effective [date] through [date], to [perform work] at [the City facility where you work].<sup>1</sup> [Company #1] has [performed this work] since [date], soon after its inception in [date]. [Discussion of ownership of company and its 3 principals].

In an email to us dated [month & day], 2012, you indicated that [2 of the principals of Company #1] are either “sub-consultants” or “JV Partners” [joint venture partners] on other contracts over which you exercise contract management authority, namely, [XX] and [XX]. Both of the foregoing contracts relate to [XX] at the City [facility where you work]..

The [subject matter of Company #1's contract with the City] falls under the purview of the [specific work] Section of [CD]. You have told us that you have had no involvement with any aspect of [the subject matter of this contract] at any time while a City employee. Further, you said you have never been involved in any aspect of the award, negotiation or formulation of [Company #1's] contract with the City. Moreover, you advised us that you do not supervise the contract nor do any City work in the contract's performance.

You explained that the [potential position #1] of [Company #1], the position you are considering, has ultimate oversight for [contractually covered work] at [City facility where you work]. [The contractually covered work includes X, X and X]. There are approximately [xx] [Company #1] employees who report to the [potential position #1]. These employees are responsible for [X, X and X].

[Potential positions #2 and #3]. With respect to the two potential positions at [Company #2], you indicated that [potential position #1] would involve [XX]. You further told us that this job would involve [XX].

You advised us that the second potential position at [Company #2], working in its [X] Group, would involve [XX]

---

1. You told us, and Board staff verified, via the City's website, that [Company #1's] only contract with the City covers [contractually provided for work] at [City facility]. The contract has a start date of [month, day & year] and an end date of [month, day & year].

You said that you have never overseen any of [Company #2's] work at [City facility at which you work]. That work consists primarily of installing and maintaining its equipment.<sup>2</sup> Further, you told us that you were not involved in any aspect of the award, negotiation or formulation of [parent company of Company #2's] contract with the City.

However, as a [management level employee], you approve the [bills] and check requests submitted by [Company #1], which cover [subject matter of bills & check requests]. These invoices also include the cost of [the commodity] supplied by [Company #2's parent company], which currently holds the contract with [another City department] to supply [the commodity] to [certain City facilities], including [City facility at which you work].<sup>3</sup> Once you have signed off on bills provided by [Company #2] you forward them to the [CD's certain management level employee] for signature, after which the bills go to the Department's [XX] section for the creation of a payment voucher. Once the payment is printed, it goes to the [CD's certain management level employee] for signature and then to the City Comptroller's Office for payment.

**STATEMENT OF THE LAW:** The primary section of the Governmental Ethics Ordinance at issue in this case is §2-156-100, entitled "Post-Employment Restrictions," specifically part (b), which states:

*No former official or employee shall, for a period of one year after termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.*

Section 2-156-010(g) defines "contract management authority" as follows:

*"Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.*

---

2. [Discussion of regulatory aspects of commodity supplied by parent company of Company #2].

3. On February 28, 2012, Board staff reviewed, via the City's website, the publicly available contract between [a City Department] and [parent company of Company #2] for [supply of a particular commodity] to [City facility]. The contract has a start date of [date, month & year] and an end date of [date, month & year].

**APPLICATION OF THE LAW TO THE FACTS:** Ordinance §2-156-100(b) would prohibit you, as a former City employee, from assisting or representing any person, other than the City, in any business transaction involving the City for one year after leaving City service, if you “participated personally and substantially in the subject matter of the transaction” while a City employee. That section further provides that if you “exercised contract management authority” with respect to a contract, the prohibition shall be permanent as to that contract.

1. The Permanent Prohibition: Contract Management Authority. As noted above, contract management authority means “*personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluations of bids or proposals, negotiation of contract terms or supervision of performance.*”

A. The [Company #1] Job. You stated that, as a City employee, you had no involvement in any aspect of the award, negotiation or formula of [Company #1's] contract with the City. You also stated that, as a City employee, you had no involvement in the decision to utilize [Company #1]; that you were not responsible for supervising them; and you played no role in authorizing payment to them. Based upon the facts presented, the Board finds that the permanent prohibition in §100(b) would not restrict you from pursuing the duties of the position you are considering with [Company #1].

B. The [Company #2] Jobs. You are also considering employment with [Company #2] in one of two positions. You stated that you were not involved in any aspect of the award, negotiation or formulation of [parent company of Company #2's] contract with the City. Further, you have indicated that you have not supervised any work done by [Company #2] at any time for [CD]. Based upon the facts presented, the Board concludes that the permanent prohibition in §100(b) would not restrict you from pursuing the duties of the positions you are considering with [Company #2].<sup>4</sup>

2. The One Year Prohibition. As previously stated, §2-156-100(b) of the Ordinance would prohibit you, as a former City employee, from assisting or representing any person, other than the City, in any business transaction involving the City for one year after leaving City service, if you “participated personally and substantially in the subject matter of the transaction” while a City

---

4. Please note that the conclusions we reach in this opinion are limited to the particular job opportunities about which you have asked us - not any others. Our review of your City service indicates that you likely exercised contract management authority with respect to numerous other contracts or matters, and thus would be subject to numerous post-employment restrictions as to those contracts or projects associated with them, none of which we address. Therefore, in the event a different opportunity arises, we advise you to contact us for further guidance as you may be subject to prohibitions for one year or permanently.

employee.

A. The [Company #1] Job. The Board will address whether you participated personally and substantially in the City's contract with [Company #1] (and its subject matter) while a City employee. Based upon your representations, as set forth above, you have not. The subject matter at issue is the [contractually covered work] at [City facility]. You have told us that you have had no involvement with any aspect of the [contractually covered work] at any time during your time as a City employee. Based upon the facts presented, the Board concludes that the one year prohibition in §100(b) would not restrict you from pursuing the duties of the position you are considering with [Company #1].

Further, we conclude that your work for [Company #1] would be separate and distinct from work you performed and responsibilities you had with respect to the two [contracts involving 2 of the principals of Company #1] for which you did exercise contract oversight and thus it is not subject to the one year prohibition. In short, your City work involved different subject matters.

Regarding the one year prohibition as it relates to the position at [Company #1], please be advised that as long as your work for [Company #1] is limited to projects covering matters you were not "personally and substantially" involved in at any of your City jobs, and to contracts over which you have not exercised management authority, the fact that you have had oversight on other [contracts involving 2 of the principals of Company #1] does not affect our analysis. As the Board has long recognized, a City employee can work for a company that has contracts or projects with that employee's prior City department as long as that employee is screened off from assisting or working with colleagues on those contracts or projects. Case No. 04058.A. Further, the Ordinance does not prohibit you from associating with [the two principals of Company #1 who have City contracts over which you do exercise contract oversight] or their staffs.

B. The [Company #2] Jobs. With respect to the two positions you are considering at [Company #2], you told us that you currently have responsibility for [specific job responsibility] at [City facility at which you work] by [Company #2's parent company]. This responsibility qualifies as "personal and substantial involvement" in the subject matter of the [Company #2's contract with the City]. Accordingly, should your work in either of the two possible [Company #2] positions at any time involve [specific subject matter in which you had "personal and substantial" involvement] at [City facility] you must ensure that you are screened off from those matters, and that someone else handle them, for a period of one year.

**POST-EMPLOYMENT RESTRICTIONS ON LOBBYING:**

As a [management level employee] with the [CD], you are a Shakman-exempt employee. Under §2-156-105 of the Ordinance<sup>5</sup>, you may not, for two years after leaving City service, lobby the

---

5. In its entirety, §2-156-105 provides:

[CD], which is the City department in which you have served. The Ordinance does not prohibit you from lobbying other City departments.

“Lobbying” for purposes of this restriction means acting on behalf of another person, like an employer or client, to influence any City governmental action. *See* §2-156-010.

As a best practice and by means of example, if you accept the [potential position #1] at [Company #1] and the company wants to amend its contract with the City or if a dispute arises under that contract, or a legislative or regulatory matter arises with [CD], this lobbying ban would apply. Similarly, if you accept employment with [Company #2] and, by way of example, the company wishes for you to meet with City officials to discuss expanded services, new contracts, or regulatory matter that involve [CD], the lobbying ban would likely apply.

We advise you to consult with our office for guidance as to how to proceed before taking any such action. The penalties for violating the Ethics pledge and the post-employment provisions of the Ordinance are severe.

**DETERMINATIONS:** In summary, after careful consideration of the facts presented and the relevant law, the Board has determined that:

1. You are not restricted from pursuing the duties of the position you are considering with [Company #1] under the permanent prohibition found in §2-156-100(b) of the Ordinance.

---

*2-156-105 Post-employment Restrictions on Lobbying.*(a) Any person who serves as (i) a non-clerical employee of the Office of the Mayor, or (ii) a department head, shall be prohibited from lobbying the City of Chicago or any city department, board or other city agency for a period of two years after leaving that position.

(b) Any employee who holds an exempt position in a City department, board or other city agency on or after May 16, 2011, other than a person described in subsection (a) of this section, shall be prohibited from lobbying the department, board or agency in which he or she was employed for a period of two years after that employment ends.

(c) Any person who is appointed by the Mayor to the board of any board, commission, authority or agency, on or after May 16, 2011, shall be prohibited from lobbying that board, commission, authority or agency for a period of two years after the date on which his or her service on the board ends.

(d) The prohibitions on lobbying set forth in this section shall not apply to any person who (i) occupied the position before May 16, 2011, and (ii) resigned from that position before November 16, 2011. Nothing in this section shall be construed to prohibit a person from lobbying on behalf of, and while employed by, another government agency.

2. Analysis of the one year prohibition found in §2-156-100(b) of the Ordinance is not indicated under the facts you have presented with respect to [Company #2].
3. You are not restricted from pursuing the duties of the positions you are considering with [Company #2] under the permanent prohibition found in §2-156-100(b) of the Ordinance.
4. Under §2-156-100(b) of the Ordinance, with respect to the positions you are considering with [Company #2] you are prohibited for one year from the date you leave City service from working on any matters involving [subject matter involving Company #2's contract with the City in which you had "personal and substantial" involvement].
5. Under §2-156-015 of the Ordinance, you may not, for two years after leaving City service, lobby the [CD], which is the City department in which you have served.

**CONFIDENTIAL INFORMATION:** We also draw your attention to §2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City employee, from using or revealing confidential information you acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act. 5 ILCS 140/1 *et seq.*

**RELIANCE:** This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

---

Miguel A. Ruiz, Chair