



90069.A, [REDACTED]  
December 20, 1990  
Page 2

Mr. A [REDACTED] acted as moderator between the Commission, his office, and the public. He also supervised the operations of the Dept X [REDACTED] which assists the Commission in carrying out its duties.

### Transfer of Co. B to Co. A

In 1985, Company B [REDACTED] was granted a contract by the City of Chicago. [REDACTED], Company B's [REDACTED] parent corporation put Company B [REDACTED] up for sale in 1986 as part of its disposition of all of its [REDACTED] companies. Company A made an offer to purchase Company B's [REDACTED] assets in 1986 which Company B declined. It appears that Company B was losing money [REDACTED]. It is unequivocal that the City had no right to direct Company B [REDACTED] to sell its assets to any particular company.

Company A again made an offer to purchase Company B's [REDACTED] assets, and on [REDACTED] signed a letter of intent to purchase. An asset purchase agreement was negotiated and finally signed on [REDACTED]. In early [REDACTED], Company B and Company A submitted to the related commission [REDACTED] their application for approval of the transfer.

The facts show that throughout the entire approval process, Mr. A's conduct was that of supervisor or moderator among those agencies and persons involved in the transfer. He made no decision regarding Company A's [REDACTED] approval [REDACTED], as approval decisions are the province of City Council.

Additionally, it was noted that it was another employee [REDACTED] who redrafted the form application given to Company A [REDACTED] and reviewed the application submitted. Corporation Counsel chose the law firm of [REDACTED] to provide outside assistance in the legal area and the accounting firm of [REDACTED] to provide accounting assistance.

[REDACTED] The law firm [REDACTED] submitted their report on [REDACTED] which supported City Council's approval of the application. The accounting firm also submitted their report [REDACTED] which showed there was nothing inconsistent with the financial information set forth in the application. Under Mr. A's [REDACTED] supervision, the [REDACTED] the other employee [REDACTED] then prepared a [REDACTED] report to the [REDACTED] Commission, which report was based upon the accounting and legal reports of the two outside firms.

The [REDACTED] Commission considered Company A's application at three meetings. [REDACTED]  
[REDACTED] Mr. A [REDACTED] was present at all of these meetings.

Although he did have access to all reports and communications resulting from Company A's application, Mr. A [REDACTED] did not make the decision and did not cast a vote to approve Company A's application. Throughout the process, he reviewed the findings and recommendations of the independent agencies hired to provide outside assistance, presented his department's [REDACTED] review and recommendation to the [REDACTED] Commission, and on [REDACTED] [REDACTED], presented the review and recommendation of the [REDACTED] Commission to the City Council. At that time, City Council voted to approve of Company B's transfer of the Contract rights to Company A. [REDACTED] In addition, a Resolution was passed imposing additional Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") reporting requirements on Company A. [REDACTED]  
[REDACTED]

#### [REDACTED] Mr. A's Offer From Company A

According to both Mr. B [REDACTED], Company A's general manager, and Mr. A [REDACTED], they never discussed any employment opportunities during the approval process, and there was no agreement of employment in exchange for approval.

They both stated that Mr. A [REDACTED] approached Mr. B [REDACTED] for the first time about his interest in the job [REDACTED] [REDACTED], after the [REDACTED] transfer application was approved. Mr. A [REDACTED] was eventually offered the job, at which time he went to the law firm of [REDACTED] to obtain an opinion as to the propriety of his accepting the position in light of the post-employment provisions of the City's Governmental Ethics Ordinance.

ISSUE: Whether the former head of Dept. X [REDACTED] can take the position [REDACTED] with Company A [REDACTED], a [REDACTED] company that received its Contract rights with the City during his tenure.

LAW: There are two relevant provisions of the Governmental Ethics Ordinance--advice or assistance in exchange for a favor, § 2-156-050 (prior code § 26.2-5) and post-employment restrictions § 2-156-100(b) (prior code § 26.2-10(b)).

Solicitation or receipt of money for advice or assistance:

Section 2-156-050: 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 part of his or her non-City employment, occupation or profession.

Thus, as is relevant in this case, a city employee cannot provide assistance or advice in exchange for a promise of employment.

Post-employment restrictions:

Section 2-156-100(b): No former official or employee shall, for a period of one year after the 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:"

"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.

According to these sections, a former City employee is subject to two restrictions on his employment after leaving City service: a one-year prohibition and a permanent prohibition. A former City employee is prohibited, for one year after leaving City service, from assisting or representing any person in any business transaction involving the City if (1) the transaction involves a subject matter or area of City business in which the person

participated as a City employee, and (2) the person's participation in this subject matter or area was personal and substantial. A former City employee is prohibited permanently from assisting or representing someone in a business transaction involving the City if (1) the transaction is a contract, and (2) the person exercised "contract management authority," as defined above, with respect to this particular transaction while acting as a City employee.

**ANALYSIS:**

**I. Solicitation or receipt of money for advice or assistance:**

Having interviewed each relevant person in this case, the Board learned of no facts that could lead it to conclude that Mr. A [REDACTED] violated the Ordinance by assisting or advising Company A [REDACTED] in exchange for an offer of employment. Both Mr. A [REDACTED] and Mr. B [REDACTED] of Company A [REDACTED] insist that there was no such arrangement.

The facts show that it was Company B [REDACTED] who chose to sell to Company A [REDACTED]. In addition, the letter of intent to purchase was signed over one year before Mr. A [REDACTED] took a position in Dept. X.

Finally, both Mr. A [REDACTED] and Mr. B [REDACTED] stated that they did not discuss the possibility of employment until after the application was approved.

**II. Post-employment restrictions:**

We first note that the post-employment restrictions do not limit where a former employee may work but rather what the former employee can do. A former employee is not precluded from taking a position with an entity simply because the entity does business with the City.

The two provisions of the post-employment restrictions raise three subissues in this case. First, was Mr. A [REDACTED] personally and substantially involved in the subject matter of the transaction? Second, did Mr. A [REDACTED] have contract management authority over the application approval process? Third, does his offered position at Company A [REDACTED] constitute representation of and assistance to Company A [REDACTED] in their business transaction with the City? This last issue, whether his job will involve representation or assistance in the business transaction, applies to both the one-year and permanent restrictions.

90069.A/[REDACTED]  
December 20, 1990  
Page 6

### One Year Prohibition

The one-year ban prohibits a person from representing and assisting a person with a transaction if he or she was personally and substantially involved in the subject matter of the transaction. As set forth in the facts above, it is clear that Mr. A [REDACTED] was personally and substantially involved in the transfer approval process, and in this area of work as it relates to the City.

Therefore, it is the decision of the Board that for one year Mr. A [REDACTED] cannot represent or assist Company A [REDACTED] in this area of work as it relates to the City.

### Contract Management Authority

The permanent ban prohibits a person from representing and assisting a person with a contract if, while an employee of the City, he or she exercised contract management authority over the contract. The Board has in the past applied this prohibition to transactions in general rather than requiring the existence of a contract. (See case no. 89119.A, p.8).

The contract or transaction in this situation is the application for approval of the transfer of the rights from Company B to Company A. It was Mr. A's obligation to supervise the approval process of reviewing the application and the experts' reports, to facilitate the process by heading the Commission meetings, to present the recommendation and evaluation of Dept. X [REDACTED] to the [REDACTED] Commission, to present the Commission's recommendation to City Council, and to keep fully apprised of the process. Our review of the facts shows that Mr. A fulfilled this obligation and performed these tasks. As such, his conduct falls within the definition of contract management authority.

Therefore, Mr. A [REDACTED] is prohibited from representing and assisting Company A with its franchise agreement with the City through the life of the agreement.

[REDACTED], the Board has carefully and thoroughly reviewed the facts of this particular case to reach its conclusion, and cautions that a blanket statement of what constitutes contract management authority cannot be made. Each case is different and requires an independent evaluation of the facts.

As mentioned above, the post-employment restrictions of the Ordinance do not limit where a person may be employed. Therefore, Mr. A [REDACTED] is not restricted from taking a position with Company A. Rather, he is restricted in what he can do for Company A.

### Representation and Assistance

Under both the one-year and the permanent prohibitions, the former employee is prohibited from representing or assisting another person in particular business transactions involving the City.

[REDACTED] Mr. A has been offered the position of [REDACTED]. His job duties are specifically listed in his job description, which he submitted to us. The job description indicates that his position amounts to a PUBLIC RELATIONS position with Company A.

Under a broad reading of the terms "representing" and "assisting," the tasks of his position [REDACTED] could be construed as assisting and representing Company A in fulfilling their agreement with the City. However, this broad reading would include the CUSTODIAN [REDACTED] and the receptionist who answers the telephone. Under such an interpretation, every position would constitute representation and assistance. If such were the case, then every former City employee would be precluded from working for a company that did business with the City. This is not what the Ordinance states and the Board does not believe such was intended.

In his position with Company A [REDACTED], Mr. A will be dealing with media relations. [REDACTED] While such activities [REDACTED] assist Company A in carrying out its contract provisions, the Board determined that this conduct should not be deemed a violation of the Ordinance. The Board does not believe this position is so interrelated to Company A's business with the City that Mr. A should be barred from performing these services.

The Board carefully reviewed the job description drafted for Mr. A [REDACTED] and concluded that only one activity, [REDACTED]

would be prohibited by the one-year ban. It would not be prohibited under the permanent prohibition since it would not involve Company A's carrying out the terms of the agreement.

RESPONSE TO MR. A'S SPECIFIC REQUESTS: Mr. A asked that the Board address specific situations that he may encounter.

First, he asked whether he could represent Company A in any manner before State, County, and Federal agencies. Second, he asked whether he could have contact with City employees or officials on a (1) social basis, (2) promotional basis, or (3) informational basis. Third, Mr. A would like to know what he can do after the one-year anniversary of his retirement from City employment. Fourth, he asked if he may work on behalf of Company A with other City departments. For example, whether he can use the Purchasing Department to improve MBE and WBE identification, [REDACTED] or work with the City's office of employment and training to locate, recruit, and/or train minority employees for jobs available at Company A. Finally, Mr. B posed the following question: If Mr. A is engaging in a job related activity and a City employee or official happens to be a participant, is Mr. A permitted to act on behalf of Company A?

The focus of the post-employment provision is to prevent a former employee from using his or her influence or expertise to assist another which does business with the City. The focus is not to isolate the former City employee from City government. Unfortunately, we cannot answer most questions without reviewing a specific factual situation. The answer to each question in this case turns on the following: if the work would constitute representing or assisting Company A in fulfilling their City agreement, then Mr. A would be prohibited from the activity until that agreement expires; if it involves the subject area as it relates to the City, he would be prohibited for one year from representing or assisting Company A with the subject area as it relates to the City. There are some questions that we can definitively answer in an effort to offer guidance. For example, Mr. A may not, during the life of this contract, represent Company A before Dept. X [REDACTED], the related Commission, and City Council as to that contract. Mr. A may not for one year assist a City Department with the subject area; he may do so after one year because it is not helping Company A fulfill their agreement but rather it relates to the subject area. With regard to his question concerning representation of Company A before state, city and



90069.A, [REDACTED]  
December 20, 1990  
Page 9

federal agencies, it is difficult to conceive of a situation where his representation would constitute a violation. In the future if a questionable situation arises, with regard to these agencies, he should consult with the Board at that time. Finally, to the extent that contact with a City employee or official is strictly social and has nothing to do with the *Subject area* he is free to have this social contact.

Because questions raised cannot be addressed without a review of the particular facts involved, Mr. *A* is advised to contact the Board of Ethics if he intends to have contact with any City department, employee, or official on behalf of *Company A* to clarify whether the contact is permissible.

**RECONSIDERATION:** This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

**RELIANCE:** This advisory 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 which is indistinguishable in all its material aspects from the transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

  
Albert Hofeld  
Chairman, Board of Ethics

cc: [REDACTED]

Kelly Welsh, Corporation Counsel  
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