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October 6, 2003

CONFIDENTIAL

[Mary]
[Title]
[Department]
[Address]
Chicago, IL [

**Re: Case No. 03045.Q
Representation**

Dear [Mary]:

This letter is in response to your request of September 11, 2003 for an opinion from the Board of Ethics on what restrictions, if any, the Governmental Ethics Ordinance places on you, a City employee, with respect to your service as an uncompensated board member and president of [Non-Profit Company (NPC)], a non-profit corporation you propose to establish. Specifically, you asked the Board to address the following questions: 1) may [NPC] acquire, either through purchase or donation, City real property; and 2) may [NPC] receive City funding. Based on the facts you presented, it is Board staff's conclusion that the Ordinance does not prohibit you from establishing [NPC], or serving as an uncompensated board member and/or officer. Nor does the Ordinance prohibit [NPC] from engaging in the above-referenced activities. However, the Ordinance does impose certain restrictions on your conduct, as a City employee, and as a board member and officer of [NPC]. We set forth below the relevant facts, our analysis, and the restrictions applicable to you in this case.

FACTS. You are a [City Title] in the [Division] of the City's Department of []. As [City Title], you manage two programs for the City: 1) the [City Program 1 (CP1)]; and 2) the [City Program 2 (CP2)]. You said that the [CP1] is a State program that is administered by the City and that offers various incentives to businesses that wish to relocate or expand in areas designated as []. Such incentives include sales tax exemptions, property tax reductions, finance assistance, and real estate tax exemptions. The [City Program 2] is a program, administered in partnership with Cook County Assessor's Office, that offers Class 6(b), Class 7(a)/Class 7(b) and Class 8 incentives to businesses that wish to expand or relocate in areas of the City that the City has determined are in need of economic revitalization.

You said that, in managing these two programs, you are responsible for processing the applications submitted to your division, getting applications approved by your division introduced to the City Council, and representing your division at Council committee hearings. In addition, you meet with companies, community groups, developers, public officials and other agencies to encourage investment in the City.

NEIGHBORHOODS



Outside your City job, you propose to establish a non-profit corporation called [Non-Profit Company (NPC)]. You first organized [NPC] in June 2003, and anticipate incorporating it within 6 months to a year.¹ [NPC] will have eight members on its board of directors and three officers. You will act as one of the members of the board, and as [NPC's] president. You stated that all board members and officers will serve on an uncompensated basis.

The mission of [NPC] will be to conduct studies and projects to examine issues and policies affecting low-income individuals, families and communities. You said that you do not foresee any interaction between your division (the City's [Division]) and [NPC] because non-profit corporations normally do not apply for the incentives provided under the two programs you manage, nor under any other program managed by your division. You said that the tax and financial incentives afforded non-profit corporations usually fall under other laws and programs.

You explained to board staff that one of [NPC's] first projects is to develop a feasibility study to examine the feasibility of opening a "household resource center" (HRC), which will be a place where low-income individuals and families can get, free of charge, household items such as furniture, appliances, blankets, sheets and towels. You stated that [NPC] would acquire these household items through donations. You are currently looking for space where [NPC] can store donated items. You have asked the Board, generally, whether [NPC] may purchase real property (e.g., a vacant building) from the City, or otherwise request that the City donate real property to [NPC].

With respect to [NPC's] funding, you explained to Board staff that you anticipate [NPC's] funding to come primarily from grants provided by private foundations, HUD, and/or the State. You stated that, if the City's Ethics Ordinance does not prohibit it, [NPC] may, in the future, also wish to seek City funds. Therefore, you have asked the Board whether [NPC] may receive City funds.

APPLICABLE LAW AND ANALYSIS. The Governmental Ethics Ordinance does not *per se* prohibit you, as a City employee, from establishing, or serving as an uncompensated board member or officer of, [NPC]. Further, the Ordinance does not *per se* prohibit [NPC], by virtue of your City employment, from receiving City real property or City funds. The Ordinance does, however, impose certain restrictions on your conduct, as a City employee, and as a board member and an officer of [NPC]. The provisions of the Ordinance that are most relevant to your situation are Sections 2-156-090 (Representation of Other Persons), 2-156-030 (Improper Influence), 2-156-080 (Conflicts of Interest; Appearance of Impropriety), 2-156-070 (Use or Disclosure of Confidential Information), 2-156-020 (Fiduciary Duty), and 2-156-060 (City-Owned Property).

Please note that, as the questions you have posed to the Board are very general, the advice set forth in this letter is intended to provide you only with general guidance on how said sections of the Ordinance apply to you. Should you, in the future, desire guidance under the Ordinance based on more specific fact patterns, please contact the Board for further advice.

¹You stated that, until [NPC] obtains its own 501(c)(3) status, [NPC] will operate under a "physical agent" called [], a separate, private, non-profit corporation that already has 501(c)(3) status. Therefore, transactions entered into by [NPC] that require 501(c)(3) status will be through []. Further, you said that [] will also provide [NPC] with non-monetary resources and technical assistance until it can operate independently.

A. Section 2-156-090 (Representation of Other Persons)

Section 2-156-090 of the Ordinance provides, in relevant part, as follows:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a nonministerial nature . . .

Under Section 2-156-090, you are prohibited from representing any person, other than the City, in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature. The Board has interpreted the term "representation" to apply to a broad range of activities in which a person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another, including making personal appearances before, or telephone calls to, City agencies on behalf of others, and signing and submitting written requests to City agencies on behalf of others. Note, however, that this prohibition goes to representations that you, personally, undertake; that is, other [NPC] staff, officers or board members who are not City employees are not prohibited, by virtue of your City employment, from undertaking representations before City agencies.

In this case, you have asked the Board: 1) whether [NPC] may acquire, either through purchase or donation, City real property; and 2) whether [NPC] may receive City funds. These scenarios raise the question of whether the Ordinance prohibits you, as board member and president of [NPC], from representing [NPC] before City departments or agencies with regard to the sale, or donation, of City property, or with regard to obtaining City funds. Although other [NPC] staff, officers or board members who are not City employees may represent [NPC] before City departments or agencies with regard to the sale, or donation, of City property, and with regard to obtaining City funds, under Section 2-156-090 of the Ordinance, you are prohibited from doing so. Therefore, for example, you are prohibited from meeting with, or making telephone calls to, any City agency on behalf of [NPC]; and you are prohibited from signing, on behalf of [NPC], requests or proposals submitted to, or contracts with, the City.

B. Section 2-156-030 (Improper Influence) and Section 2-156-080 (Conflicts of Interest)

Section 2-156-030 provides, in relevant part, as follows:

(a) No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally. . . .

Similarly, Section 2-156-080 provides, in relevant part, as follows:

(a) No official or employee shall make or participate in the making of any government decision with respect to any matter in which he has any economic interest distinguishable from that of the general public. . . .

The term "economic interest" is defined in Section 2-156-010(i) as "**any interest valued or capable of valuation in monetary terms . . .**"

As a City employee, then, you are prohibited from making, or attempting to use your City position to influence, the making of any City decision if:

1. you have an *economic interest*, distinguishable from its effect on the public generally, *in the decision*; or
2. you have an *economic interest*, distinguishable from that of the general public, *in the matter* with respect to which the decision is made.

In this case, because you will be uncompensated for your service as a board member and president of [NPC], you will have no economic interest in [NPC]. Therefore, Sections 2-156-030 and 2-156-080 would not apply unless that changes. As the facts presented do not implicate these sections. Board staff only cautions you about these prohibitions at this time. However, should any matter involving [NPC] come before you, as a City employee, that requires your decision, or your participation in making a decision, we strongly recommend that you recuse yourself from any such matter in order to avoid even the appearance of impropriety.

C. Section 2-156-070 (Confidential Information), Section 2-156-020 (Fiduciary Duty) and Section 2-156-060 (City-Owned Property)

We remind you of three other provisions of the Ordinance of which you should be aware. Section 2-156-070 (Use or Disclosure of Confidential Information) provides:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Under this section, current and former City officials and employees are prohibited from using or disclosing any confidential information gained in the course of their City service.

Section 2-156-020 (Fiduciary Duty) states, in relevant part:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This section obligates City officials to use their City position responsibly and in the best interest of the City. It requires them to exercise professional judgments free from outside influences or conflicting duties to other entities.

Finally, Section 2-156-060 (City-Owned Property) provides:

No official or employee shall engage in or permit the unauthorized use of City-owned property.

This section prohibits you from using City-owned property or resources for the benefit of [NPC]. Further, you are prohibited from using City time to promote the interests of [NPC].

Our conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts are incomplete or incorrect, please notify us, as any change in the facts may alter our conclusion. Please note that a City department may adopt and impose rules stricter than those contained in the Ethics Ordinance.

We appreciate your contacting us about this matter, and your concern to abide by the standards of the Ethics Ordinance. The full text of the Ethics Ordinance may be found at the Board's Web site at www.cityofchicago.org/Ethics/. Please do not hesitate to call us if you need any further guidance.

Very truly yours,

[Signature]

Mary Rose D. Silva
Attorney/Investigator

Approved by:

[Signature]

Dorothy J. Eng
Executive Director



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<http://www.cityofchicago.org>

January 14, 2004

CONFIDENTIAL

03045.A (Rec)

[Mary]
[Title]
[Department]
[Address]
Chicago, IL []

Re: Case No. 03045.Q
Outside Business Activities

Dear [Mary]:

On October 6, 2003, at your request, Board staff issued to you a staff opinion letter, a copy of which is enclosed for reference, regarding how the City's Governmental Ethics Ordinance applies to your proposed service as an uncompensated Board member and president of a non-profit corporation that you intend to establish.

On November 20, 2003, Board staff reported to the Board at its monthly meeting the advice given to you by staff in this matter. Following discussion, the Board directed staff to supplement its October 6th advice to you in two respects. First, please be mindful that, although the non-profit organization, as you have described it, is not *per se* prohibited from seeking City funding or acquiring City property, given your status as a City employee, were your organization to receive City funding or City property, an appearance of impropriety could result. Second, should your currently uncompensated position with the non-profit organization become compensated, you should immediately contact Board staff for additional guidance, as other Ordinance provisions, not presently relevant, could apply to your situation.

Again, we appreciate you having brought this matter to the Board's attention. Should you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

[Signature]

Mary Rose Silva
Attorney/Investigator

Enclosure

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