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December 6, 1994

**CONFIDENTIAL**

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Board of Ethics

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Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
(312) 744-9660  
(312) 744-2793 (FAX)  
(312) 744-5996 (TDD)

**Re: Case No. 94039.Q**

Dear \_\_\_\_\_ :

On \_\_\_\_\_, you contacted the Board of Ethics and asked whether the City's Governmental Ethics Ordinance prohibits you from serving as a member of the Board of Directors for the Coalition (the "Coalition") while you continue to serve in your City position.

After reviewing the information you provided, Board staff concludes that nothing in the Governmental Ethics Ordinance prohibits you from holding a position on the Board of Directors of the Coalition. However, as explained in this letter, the Ordinance places certain restrictions on your activities once you accept the position as a Coalition Director. Because at this time you have only a general idea of the tasks your new position will entail, the restrictions we outline in this letter can be only general in nature. We advise you to be alert to specific situations that could involve the restrictions we discuss below.

**FACTS:** You are a City employee working on program A, a unit of the City government. You stated that Program A's mission is to work to prevent problem X in Chicago, and to promote healthy alternative behaviors. You indicated that, while Program A's primary mission is to promote prevention of problem X, it also works to prevent problem Z in Chicago. Program A's target audience is primarily younger persons, so its activities include making presentations in and to schools, churches, and neighborhood youth groups.

You also explained that Program A initiatives are funded by federal monies through the federal government.



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Prog. A receives these federal monies through grants from the State of Illinois Department which administers the federal funds.

As an employee of Prog A, you are responsible for managing the program, including administering the budget and staffs for specific projects, generating and discussing ideas for future Prog. A projects, and making presentations in schools, churches, etc. While you are not directly involved in the preparation or drafting of grant proposals that Prog A submits to its state and federal funding sources, you do discuss and review proposals before they are submitted. In addition, you said, you are sometimes asked to review grant proposals submitted in response to Requests for Proposals issued by the City Agency.

You have been invited to join the Board of Directors of the Coalition, a not-for-profit organization in Chicago. The directorship would be a non-compensated position; you said you do not and would not have any type of economic interest in the Coalition.

You believe that the mission of the Coalition differs from that of Prog. A, in that the Coalition directs its efforts toward prevention of problem Z. Additionally, you believe that the Coalition works primarily with the adult population, rather than with youths. Finally, you believe that, in contrast to Prog A, the Coalition is not involved in any projects or work promoting prevention of problem X.

To your knowledge, the Coalition receives its funding through the City of Chicago Department B. You stated that you can think of no instance where the Coalition would be applying for a grant from your City Agency. On the other hand, although the funding sources, primary missions, and target service populations of Prog A and the Coalition differ, you believe it is possible that both could seek supplementary funding from the same source. For example, a federal or State funding agency or entity might issue a Request for Proposals to fund projects in an area in which the work of the Coalition and Prog A overlap, perhaps problem Z. Although the proposals submitted by Prog A and the Coalition would likely differ, the proposals might be submitted to the same funding agency and thus might compete with one another for the same available monies.

At this time, you are not sure what your duties would be with the Coalition. You anticipate that, as one of the Coalition's

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Directors, you would attend meetings every other month and discuss and advise it on organizational matters, future projects, and the needs of the population it serves.

**LAW AND ANALYSIS:** There are four provisions of the City's Governmental Ethics Ordinance that are relevant to your situation.

The first section is §2-156-090(a), entitled "Representation of Other Persons." This provision, when applied to your situation, would prohibit you, as a member of the Board of Directors of the Coalition, from undertaking any conduct that would constitute "representation" of the Coalition before any City agency or department, including your own and the Department B . The provision states, in relevant part:

No elected official or employee may represent ... 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 ...

As the Board has interpreted it, the term "representation" here applies to a broad range of activities in which one person acts as a spokesperson for another--whether an individual or an entity such as an organization--or seeks to communicate and promote the interests of one party to another. Under this definition, representing others before the City would include actions on behalf of others such as making personal appearances before City agencies, making telephone contact with City employees and officials, or submitting or signing written requests and proposals to City agencies, employees or officials.

The second section that applies to your situation is §2-156-020 of the Ordinance, entitled "Fiduciary Duty." It states: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." This section requires you, as a City employee, within lawful limits, to give undivided loyalty to the City in the discharge of your public duties, and to use your City position and City time responsibly and in the best interest of the public. It does not prohibit you from serving as a Director of a not-for-profit organization, but it does require that, in performing your public duties, you put the City's interests before any obligations you may owe to the outside organization. Case nos. 91047.A, 91090.A. As the Board has recognized, though, a City employee who, like you, becomes a Director of a not-for-profit organization, also owes a fiduciary duty to that organization,

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though this itself would not prohibit you from serving in both capacities. Case no. 88144.A.

Applying this section of the Ordinance to your situation, your fiduciary duty to the City does not prevent you from serving as a Director of the Coalition, as long as you satisfy two conditions. First, you must be able to exercise your professional judgments in the City's best interests, free from obligations you owe the Coalition. Second, if in your good faith judgment you cannot do so, then you must be able, without impairing your own capacity to perform your responsibilities to the City, to excuse yourself from involvement in any situation or decision in your City position that would affect Prog A's interests. As you explained, such a situation may include, for example, one where Prog A and the Coalition were to seek the same funding, or the Coalition submitted a proposal in response to a Request for Proposals offered by the City Agency. ---

You indicated that, because Prog A's and the Coalition's missions and funding differ, it will be unlikely that you would be asked to participate in such a situation or decision. Thus, you should be able both to fulfill your responsibilities to Prog A and to advise the Coalition usefully in many areas, while avoiding such situations, if they arise, by following these conditions.

Two other sections of the Ordinance would affect the conduct of a City employee, who like you, serves on the Board of any private organization. Section 2-156-070, entitled "Use or Disclosure of Confidential Information," prohibits you, other than in the performance of your City duties, from using or revealing, to any person or entity, including the Coalition, confidential information that you gain in the course of or by reason of your City employment. "Confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Finally, § 2-156-060, entitled "City-Owned Property," prohibits you from engaging in or permitting the unauthorized use of City property or resources for any private benefit. This would include the benefit of any organization with which you are affiliated, such as the Coalition.

**CONCLUSION:** Staff concludes that you can successfully undertake your dual role of City employee and Director in compliance with the Ethics Ordinance, as long as your actions conform to the provisions that are discussed in this letter. In addition, we advise you to be alert in your work with both the City and the Coalition for projects or areas of activity that might affect both the City's and the Coalition's interests. If later you are asked to participate in such a

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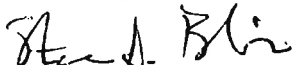
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project or area, and are unsure about how the Ordinance may apply, please do not hesitate to contact us for specific guidance.

Staff's conclusion is based on the application of the City's Governmental Ethics Ordinance and past Board opinions to the facts you provided. If these facts are incorrect or incomplete, please notify us immediately, as any change may alter our conclusion. Please note that rules or laws other than the City's Governmental Ethics Ordinance may apply to your situation.

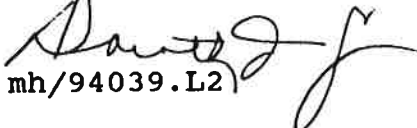
We appreciate your bringing this matter to our attention and your willingness to abide by the ethical standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,

  
Steven I. Berlin  
Deputy Director

Approved:

Dorothy J. Eng  
Executive Director

  
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