

CONFIDENTIAL

, 2010

[HW] , Attorney at Law

Chicago, IL

**RE: Board Case No. 10052.Q
Appointment of Board Members**

Dear [HW] :

You are an associate with the Chicago office of the law firm [FIRM] , where you work in the firm's Energy and Regulatory Group. You are interested in serving, and are being considered, as a board member on the City's Board of Ethics. On [date] , you contacted me at the suggestion of the Office of Intergovernmental Affairs and explained that [FIRM] performs legal work for the City, but that you have no involvement in this work. You asked whether that may affect your ability to serve on the Board.

As explained in this letter, it is Board legal staff's conclusion that, under these facts, the City's Governmental Ethics Ordinance does not prohibit you from being appointed or serving as a Board member. Our analysis follows.

The sole issue in this case is whether you would have a "financial interest" in any contract, work or business the City, given the fact that [FIRM], your employer, performs legal work for the City. If you do, then the Ordinance would prohibit you from becoming a Board member. See Case No. 95004.A. The relevant provision of the Ordinance is § 2-156-310 (a) (iv). It establishes the Board and governs the appointment of Board members. In pertinent part, it states:

Members of the Board shall... (iv) have no financial interest in any work or business of the City, or any other governmental agency within the jurisdiction of the State of Illinois, County of Cook, or City of Chicago.

The term "financial Interest" is defined in § 2-156-010(l), in pertinent part, as:

(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more; or (iii) any interest representing more than 10 percent of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit...

The Board has, over the years, interpreted the term "financial interest in City business,"¹ such that, if a City

1. With the exception of Case No. 95004.A, which deals with a member of the Board of Ethics, all Board cases

employee or official *owns* a company or other legal entity in whole or in part, and that company or legal entity has a City contractor subcontract, then the value of that employee's or official's interest in the firm's or entity's City contract or business is determined by taking the gross amount of the City contract, work or business, and multiplying it by the employee's or official's percentage of ownership in the company or firm (if the official or employee has an independent contract with the City, in addition to his or her employment or appointment, then that contract must yield less than \$2,500 in income to the employee or official per year in order not to violate this provision). *See* Case Nos. 04049.A; 97019.A; 90077.A. If that calculation yields \$5,000 or more, then the employee or official has a prohibited financial interest (in the name of another) in City business. However, the Board has also said that an employee or official can be deemed to have a "financial interest" in the name of another, i.e. in his or her firm's or entity's City contracts, work or business, *only* if the monetary conditions described above obtain, *and* he or she is an owner of that firm or entity—in contrast, a City employee or official who is (merely) an employee or other non-owner of a firm may have a "financial interest" in the firm itself (this point has not been completely settled, but in any event is not relevant here), but not in its City contracts, business or work. *See* Case Nos. 07005.Q; 89103.A; 91072.A; cf. Case No. 95004.A (Ethics Board member was an equity partner in her law firm, so the prohibition was relevant, though ultimately inapplicable to her situation for other reasons; in Case No. 07005.Q, the Board member was an employee of a school that was entering into a development agreement with the City, so the prohibition did not apply). Thus, as long as you are not an owner of or partner in GSH, you do not have a financial interest in its City contracts, work or business, nor would you have a financial interest in any of its contracts, work or business with other governmental entities in the State of Illinois. For these reasons, Board staff concludes that § 2-156-310(a) (iv) does not prohibit your appointment to the Board of Ethics.²

In fact, the only restrictions we want to make you aware of are the ones we discussed on the phone. They are embodied in Board Rule 2-5, "Conflict of Interest," which states:

It shall be the policy of the Board of Ethics that no member shall participate in the consideration of or vote on any matter if that matter: (1) concerns a business or legal relationship of that member; (2) involves an individual with whom the member has or expects to have significant dealings in a public or private capacity; [n]or shall any member of the Board participate in the consideration of or vote on any matter if for any reason such participation or vote would cause the appearance of impropriety on the part of that member or of the Board in general.

construing the term "financial interest" have arisen in the context of § 2-156-110, which prohibits City employees and elected officials from having a financial interest in their own name or in the name of another in any City contract, work or business, and also prohibits appointed officials (other than members of the Board of Ethics, who are governed by § 2-156-310), from having a financial interest in any City contract, work or business unless the matter is "wholly unrelated" to their duties and responsibilities as City Board or Commission members. Members of the Board of Ethics, however, are subject to the far more stringent prohibition in § 310, given that this is, after all, the Board of Ethics.

2. We note here that Case No. 95004.A does outline the conditions under which a partner in a law firm with contracts, work or business with Illinois governmental entities can still serve on the Board. When that time comes for you, we would be honored to advise you accordingly.

This Board Rule would require you to recuse yourself from any Board matters or decisions involving [FIRM], of course (matters involving [FIRM]'s non-City clients can be addressed on a case-by-case basis, though the presumption should be for you to recuse yourself from these as well). Finally, you said that you have not and would not likely be expected to work on [FIRM]'s City business. We advise you to continue to avoid legal work involving the City while at [FIRM], so as to avoid even an appearance of impropriety.³

Our conclusions in this letter are based on our application of the City's Governmental Ethics Ordinance (and the Board's Rules and Regulations) to the facts and assumptions stated in it. If these facts are incorrect or incomplete, or if you wish us to make assumptions different from those discussed here, please notify us, as any change in the facts or assumptions may alter our conclusions.

My legal staff and I sincerely appreciate your inquiry, and your interest in serving as one of our Board members. As I mentioned to you, I find the work we do to be very challenging, important and rewarding (not financially, of course), and I know that all of our Board members and our entire staff feel the same way. I'm confident you will too. I hope to be able to welcome you soon as our newest Board member. If you have any further questions, please do not hesitate to contact me or Courtney Kimble of my staff.

Very truly yours,

Steven I. Berlin
Executive Director

3. However, we do note that, in Case No. 95004.A, the Board concluded that §2-156-310 (a)(iv) does not per se prohibit a Board member from personally performing legal services for *non-City* Illinois governmental entities (the fact that that Board member/attorney was personally involved in her firm's work with a non-City governmental did not change the Board's conclusion that, assuming she received no compensation from that work, she would not have a prohibited financial interest in it, and could work on those matters without compensation). However, that analysis notwithstanding, and given that [FIRM's] business is with the City itself, we would still advise you to recuse yourself from [FIRM's] legal work involving the City, but, if a situation arises in which you or your firm have a question, certainly to seek specific advice at that time.