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**Advisory Opinion  
92035.A, Post-Employment**

[REDACTED]

Date: [REDACTED], 1992

On [REDACTED], 1992, you called the Board of Ethics to request an advisory opinion on the application of the post-employment provision of the Governmental Ethics Ordinance to your involvement in Entity X's [REDACTED] response to the City's Request for Proposals (RFP) [REDACTED]. You followed up that telephone call with a letter [REDACTED].

After carefully considering all the facts presented, the Board determines that your dealings with [REDACTED] and others that resulted in the submission of a viable proposal in response to the City's Request for Proposals, specifically your dealings that took place after you became aware or reasonably should have been aware that a likely outcome of the conduct was submission of the proposal to the City, violate the one-year post-employment prohibition of the Governmental Ethics Ordinance. Further be advised that you are prohibited from assisting or representing anyone in the redevelopment of [REDACTED] until [REDACTED], 1993, if the redevelopment plans involve the City.

The facts on which the Board relies, a discussion of the one-year post-employment prohibition and its application to the facts, and the Board's complete decision follow.

**FACTS:** The facts presented here have been garnered from information received from you and from about twelve other people, both those from the City and those involved in some way with the [REDACTED] proposal.

City Employment -- General. You were employed by the City as [REDACTED] in the Department of [REDACTED] from [REDACTED] to [REDACTED], [REDACTED]. You stayed with the City from [REDACTED] to [REDACTED], [REDACTED] as head of the [REDACTED] project. You left City employment on [REDACTED]. Your responsibility as [REDACTED] was



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development of [REDACTED], although you were also involved in some other redevelopment matters. Among other transactions, you closed the redevelopment agreements on [REDACTED], the [REDACTED], and the [REDACTED]. The City's plans for Area G [REDACTED] include the [REDACTED] development of the [REDACTED] Building, in question.

[REDACTED] Proposal with [REDACTED] building. While an employee of the City for [REDACTED], you played a major role in a proposal the City sent to Co. Z [REDACTED]

[REDACTED] The Chicago proposal [REDACTED] highlighted the [REDACTED] Building, [REDACTED]

[REDACTED] the proposal, submitted in [REDACTED] was [REDACTED] under the Department of: B [REDACTED] you and your staff put out the schedule of meetings, set out what each would provide at the meetings, and generally coordinated and managed the proposal; you said that for about a month, this proposal was virtually all you worked on. You had regular contact with nearly everyone involved in any important way, and you were [REDACTED] about the proposal. [REDACTED], but you left the project in about [REDACTED] or [REDACTED]; a redevelopment agreement was entered into, [REDACTED]

[REDACTED] Bldg Q [REDACTED] in the Area G [REDACTED] Plan. The Area G [REDACTED] Plan and Program, developed in the early eighties, names Bldg Q [REDACTED] as a [REDACTED] building to which the City is committed to having restored [REDACTED]; and funds for restoration of Bldg Q [REDACTED] are an "eligible expenditure" from a City fund created by certain real estate tax income. Bldg Q [REDACTED] is located within [REDACTED] Tax Increment Redevelopment Area" and the [REDACTED] Blighted Commercial Area," which allows the City to condemn the building. [REDACTED]

[REDACTED]

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On [REDACTED], 1992 the City sent an RFP to persons on a list compiled by the Department of A [REDACTED] for restoration and redevelopment of Bldg. Q [REDACTED]; [REDACTED]. The deadline for responses was [REDACTED].

Your Meetings with Org. Y and Discussions with Mr. H [REDACTED]. On [REDACTED], you lunched with [REDACTED] and Mr. L [REDACTED] of Org. Y, who is in charge of [REDACTED], and who had set up the meeting, to talk about the possibility of your parttime employment [REDACTED]. The three of you also discussed Org. Y's need for [REDACTED].

As a result of that conversation, you undertook a course of conduct which would, you hoped, result in development of the [REDACTED] building [REDACTED] for proposed use [REDACTED]; you had previously investigated, on your own behalf, developing that [REDACTED] building [REDACTED]. You contacted [REDACTED], an architect, [REDACTED] who had analyzed that [REDACTED] building for [REDACTED] and another individual [REDACTED], to discuss financing.

On [REDACTED] Mr. H [REDACTED], called you, as he did from time to time, and asked you if you had responded to the City RFP. Although Mr. H [REDACTED] received notice of the RFP, he had not been contacted [REDACTED] and was not planning to respond to it; you told him the City was [REDACTED] and he should think about responding. By the time Mr. H [REDACTED] called you, you and Mr. L [REDACTED] of Org. Y [REDACTED] had each independently learned about the RFP.

On [REDACTED] you met with Mr. L [REDACTED] to discuss the results of your investigations about the other building's use for proposed use [REDACTED]; alternative or supplementary sites were also discussed, and Mr. L [REDACTED].

[REDACTED], expressed interest in Bldg. Q [REDACTED]. Later that day, you called [REDACTED] [REDACTED], to tell [REDACTED] about [REDACTED]'s interest; in that call or one shortly after, [REDACTED] said he would be interested in working with [REDACTED]. The critical question, he thought, was whether the building would work for proposed use [REDACTED]; [REDACTED] was going to [REDACTED], and he asked you to contact Mr. J [REDACTED] to have him assess the viability of [REDACTED].



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that use for the building. [REDACTED] had analyzed the restoration needs of the [REDACTED]

As a result of those conversations with [REDACTED] and [REDACTED], during the period [REDACTED] you met and consulted with a number of people in the process of their determining the feasibility of restoring and adapting [REDACTED] Building [REDACTED]. You did not personally work on calculating the feasibility of the building for the proposed use, or calculate financing. Your major contribution was in bringing together [REDACTED]

[REDACTED]; you then acted as a kind of go-between [REDACTED]. You also helped get together some pieces that went into the proposal that was submitted to the City. On behalf of [REDACTED], on [REDACTED] and subsequent days, you negotiated the [REDACTED] by [REDACTED] specifically, on the City's acceptance [REDACTED].

The timing of the consultations and meetings was governed by the need to be able to respond to the RFP by the deadline, [REDACTED] if it should turn out that the building would work for [REDACTED] and the City would be needed for financing. People started to gather or put in place materials that would be needed to respond from about [REDACTED].

It was clear from an early point that it was somewhat unrealistic to imagine financing without the City. Some believed it might be possible to finance without the City, and that alternative financing, such as [REDACTED], would be preferable; but, alternative financing was understood to be a long shot. On [REDACTED] after long meetings that resulted in final estimated costs, people from [REDACTED] made the definitive decision to submit a proposal to the City, due the afternoon of [REDACTED]. On [REDACTED], the same day as [REDACTED], [REDACTED] development consultant was first asked to pull all the material together for the RFP, [REDACTED] worked the entire weekend. [REDACTED] calculated the final figures Friday night, and [REDACTED] provided photographs and some other assistance, but most of the substantive information was in place by [REDACTED].

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Your primary activities on behalf of the proposal after [REDACTED] were two. First, you completed the negotiation and drafting of some relevant documents [REDACTED]

Second, you assisted in clerical tasks -- proofreading, copying, and collating.

The proposal was submitted on [REDACTED] by [REDACTED]. You did not participate in working out arrangements between [REDACTED], or in working out [REDACTED], as set forth in the RFP.

Your potential role as [REDACTED] According to everyone's accounts, you were never paid [REDACTED] for your role before the submission of the proposal. At some point, you and [REDACTED] discussed your doing [REDACTED] work in the future, and on [REDACTED] after the proposal was submitted, you received [REDACTED] a check [REDACTED]

You returned the check the next day, subject to a decision by the Board of Ethics. According to both you and [REDACTED] you never discussed with him your [REDACTED] employment.

You seek an advisory opinion about whether your participation in events leading up to the proposal violated the Governmental Ethics Ordinance, and whether you may perform [REDACTED] services for [REDACTED] that are not transactions with the City, for example, work related to setting up [REDACTED] or related to county taxation. If, you said, the Board finds that this kind of transaction is one "involving the City," in the language of the post-employment provision of the ordinance, you would like further guidance about the kinds of activities and transactions you may engage in.

**LAW:** The section of the Governmental Ethics Ordinance in question is § 2-156-100, entitled "Post-employment Restrictions," especially part (b). It states:

(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

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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.

Section 2-156-100(b) bans a former employee permanently from participating in a transaction with the City on a matter over which the employee exercised contract authority. Contract management authority is defined as supervisory responsibility over a City contract. As a City employee, you had no supervisory responsibility over the contract, or potential contract, at issue here, so the permanent prohibition does not apply.

The portion of § 2-156-100(b) at issue prohibits a former City official or employee from assisting or representing any person "in any business transaction involving the City" for one year after leaving City service, if while a City employee he or she "participated personally and substantially in the subject matter" of that transaction. "Assisting" and "representing" a person in a business transaction involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. See Case No. 89119.A. In the language of the ordinance, the business transaction need not be one directly with the City, but one "involving the City."

Section 2-156-070, entitled "Use or Disclosure of Confidential Information," also comes into play in any post-employment case. It states:

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

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required by law, confidential information gained in the course of or by reason of his position or employment.

This section prohibits current and former officials and employees from revealing confidential information they may have acquired during the course of their City job. The former employee is permanently prohibited from revealing confidential information, that is, information that may not be obtained under the Illinois Freedom of Information Act.

DISCUSSION: No permanent ban. Although your work on [REDACTED] proposal to bring [REDACTED] and to [REDACTED] building may even be characterized as "project management," that involved a proposed contract [REDACTED]. The RFP is a different transaction, and would involve a different contract entirely, although they may have certain elements in common, such as the need to meet various local and national requirements for restoration of a [REDACTED]. Therefore the ordinance does not permanently ban you from working on redevelopment of [REDACTED] building.

One-year prohibition. (1) Subject matter and personal and substantial involvement. You [REDACTED] maintain that the subject matter of the RFP and of your prior work for the City is not the same, in that the current subject matter is [REDACTED] and the prior subject matter was [REDACTED]. Your position is that the RFP involves particular considerations that are very different from those that were involved in submitting the proposal [REDACTED]. It is the Board's opinion, however, that the [REDACTED] restoration of [REDACTED] is at the core of the RFP and was an essential element of [REDACTED], an element that you, as [REDACTED] in charge of [REDACTED], were particularly responsible for. Restoration of the [REDACTED] was on the agenda of the Department of [REDACTED] and it was your area of responsibility -- you did, for example, close the [REDACTED] agreement on [REDACTED], that involved an agreement for the developers either to [REDACTED] or put [REDACTED] dollars into a fund for its restoration. As [REDACTED] of the Department of [REDACTED], you were personally and substantially involved in the subject matter of the RFP - the [REDACTED] and development of [REDACTED].

(2) Transaction involving the City. Your position, and that of [REDACTED], is that the work you propose to do (for example, transactions about County taxes, or purely



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[REDACTED] matters), and your work leading up to the RFP of a similar nature (e.g., negotiating the [REDACTED] [REDACTED]) is not a part of a transaction involving the City.

But the ordinance refers to a transaction "involving the City," rather than "with the City." The transaction need not be a direct one with the City, if the City's involvement in the larger transaction is substantial, so that, for example, the transaction in which the former employee is acting is directed toward City action or its parameters are set by the City's role. Further, under Board precedent, seeking a contract with the City is included within the meaning of "transaction involving the City." The conduct that led to submission of the proposal, after you became aware or reasonably should have been aware that the likely outcome was submission of the proposal, constituted a transaction involving the City. It was a transaction involving the City because the conduct was primarily framed by and oriented to meeting the needs of the proposal, and, at that point, you were involved in seeking a contract with the City.

From the analysis above, the Board concludes that you assisted persons in a business transaction involving the City and that the subject matter of that transaction is subject matter in which you participated personally and substantially in your City employment. Your assistance in that transaction violates the one-year post-employment prohibition of the Governmental Ethics Ordinance, § 2-156-100(b).

**Confidential or exclusive information.** There is no evidence at all that you have disclosed any confidential information. Further, from interviews with people who were involved in [REDACTED] [REDACTED], including some in City employ and others, it appears that you do not have knowledge available to you from your former position that could have been useful to the RFP, that others who had been involved in [REDACTED] as private citizens would not have had access to. It is possible that you may know the source of funds for City assistance that others who participated in [REDACTED] would not know, but that appears unlikely to create any advantage to the proposal.

**DECISION:** The Board determines that in your dealings with [REDACTED], [REDACTED] and others that resulted in the formulation of a viable proposal submitted to the City in response to the City's Request for Proposals for the restoration and redevelopment of [REDACTED],



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specifically those dealings that took place after you became aware or reasonably should have been aware that a likely outcome of the conduct was submission of the proposal to the City, violates the one-year post-employment prohibition of the Governmental Ethics Ordinance. Therefore, the Board recommends that the Department of ██████████, pursuant to Article 5 of the Governmental Ethics Ordinance, impose appropriate sanctions or remedies.

Additionally, the Board determines that you are prohibited from assisting or representing any person in the redevelopment of that building until ██████████, 1993, if such redevelopment plans involve the City. You are not prohibited from performing ██████████ services for ██████████ that do not involve such prohibited activity.

In response to your request for further guidance concerning the kinds of activities and transactions you may engage in, this opinion setting forth the reasoning of the Board should provide some guidance for other transactions. Beyond that, the Board would need further facts concerning your proposed activities and your degree of involvement while you were with the City in the subject matter of those activities.

**RELIANCE:** The Board's decisions are based upon the facts presented in this advisory opinion. This 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 that is indistinguishable in all its material aspects from the transaction or activity.

*Catherine M. Ryan*  
Catherine M. Ryan  
Chair

*[Signature]*