

**ADVISORY OPINION  
CASE NO. 99046.A, Part 2  
Post-Employment**

To: [James]

Date: January 12, 2000

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In your recent communications with the Board of Ethics about matters of concern to you, you informed us of circumstances that involve a consulting agreement that exists between your consulting firm and your former city department, the Department of [Q] . This agreement obliges you to work on several City contracts on which you worked during your City employment; you continue to provide services on three of these contracts. From the facts you presented, we have concluded that, to avoid violations in the future, Board advice and recommendations, both to you and your former department, are warranted.

In Part 2 of this opinion we present facts you stated to us, our analysis of those facts under the relevant provisions of the Ordinance, and our determinations and recommendations.

**FACTS: Your City job.** You served as [Title] Division of the City's Department of [Q] from until 1997. During that time, you worked on three projects related to the post-City employment you have been performing as a consultant:

(1) Acquisition of collateral land. Among other responsibilities, you said you acted as "the project manager and lead negotiator for the City with respect to the City's acquisition" of 350 acres of "collateral land" in the northeast quadrant of [site 1] that was owned by the U.S. [military] . Once the City has gained ownership of this area (anticipated by Spring 2000), it plans to lease it in parcels to contractors who will develop the land in ways beneficial to the airport and surrounding community. You explained that you coordinated the entire acquisition project during your City employment and worked on a daily basis to implement the purchase. You were personally involved in negotiating and supervising the performance of several contracts related to the acquisition of this property, including the City's purchase agreement with the U.S. [military] , the City's operating agreement that covered the operation of the facilities during the interim while the [military] still occupied the buildings, and the lease agreement under which the City leased the properties until the acquisition is completed. You also negotiated and daily supervised the performance of several City contracts with consultants in connection with the acquisition deal, including contracts for appraisal,

environmental, and other legal services. While the Department Commissioner had the final decision-making authority on all these projects and contracts, you said the Commissioner never disagreed with your recommendations on these matters.

(2) [site] \_\_\_\_\_ ground lease. You said you served as “lead negotiator” for the ground lease, a 45-acre [facility] \_\_\_\_\_ that is now fully leased. You said you also coordinated and attended meetings to draft and execute the lease; these meetings were with the prospective tenant of the property as well as with [P] Department officials and representatives of [Company B] \_\_\_\_\_, a consulting firm that served (and still serves) as the City’s real estate advisor on the management of the collateral land properties.

(3) [B’s] \_\_\_\_\_ preliminary re-use planning contract. You also said you handled every aspect of the City’s contract with [B] \_\_\_\_\_ to perform preliminary re-use planning studies for the collateral land area, which were geared toward projecting the economic potential of the land. You were the person primarily responsible for drafting the City’s Request for Qualifications (“RFQs”) to engage a real estate consultant for the project; you participated in the selection of LaSalle to do the work; you helped set the specifications for, and negotiated, the firm’s City contract; and you personally supervised [B’s] \_\_\_\_\_ performance of the contract on a daily basis.

**Your post-City employment.** You resigned from City service on May 31, 1997. You told staff you had intended to return to your real estate law practice. However, Department officials (including the First Deputy Commissioner) asked you to continue working on the three projects described above after you announced your plans to resign, you said, because of your past experience working on them. [Jane] \_\_\_\_\_ the current [title] \_\_\_\_\_ in the Department of [Q] \_\_\_\_\_, confirmed that the Department requested your continuing services as a consultant. You agreed to see these projects through, and proposed to the Department that you provide the consulting services requested through a personally-owned corporation, [Company A] \_\_\_\_\_, a real estate consulting firm of which you would be the sole shareholder.

According to your conversations with our staff, your department then sought guidance from the [P] Department as to whether this would be appropriate under the post-employment provisions of the Governmental Ethics Ordinance. You said the [P] Department provided advice to the Department of [Q] \_\_\_\_\_ indicating that those Ordinance provisions did not intend to prohibit a former employee from working for the City as a consultant under these circumstances, that is, through a corporation wholly owned by the former employee. You said you then incorporated [Company A] \_\_\_\_\_ and, on June 1, 1997, the day after you resigned from City service, the [Q] \_\_\_\_\_ Department, acting on the [P] Department’s advice, entered into a contract with [Company A] \_\_\_\_\_. Under that contract, you would provide consulting and project management services to the [Q] Department; those services involved three projects on which you had previously worked during your City employment, as described above. Your post-employment activities on these projects was as follows:

(1) Acquisition of the collateral land. Through [A], you continued to provide whatever services were required to implement the City's purchase of the military properties. You said the Department wanted there to be "a virtually seamless turnaround" in your work on these contracts. The Department, you said, wanted to reassure the [military] that you would play the same role as a consultant that you had played as a City employee, and that you would continue to implement and oversee the City's agreements with the [military] without interruption. Your services as a consultant included continuing to negotiate with the [military] on behalf of the City for the purchase, operation, and lease of the properties, and continuing to supervise the City's contracts with the individual consultants providing services connected with the acquisition and leasing of the properties. The City's purchase, operation, and lease agreements with the [military] on which [A] has worked are the same contracts on which you worked during your City service, you said.

At the date of this opinion, the purchase and lease agreements are still ongoing because the City does not yet have the deed to the land, and [A] continues to provide services on these, including drafting any necessary amendments and handling fund transfers to make the City's payments to the federal government. The City's operating agreement with the [military] for running the facilities in the interim, however, expired in July 1999, you said, when the [military] vacated the property. [A] also continues to oversee one remaining consulting contract connected with the acquisition of the properties that you negotiated during your City employment. This contract involves environmental investigations at the military sites.

(2) Center ground lease. In July and August 1997, working through [A], you assisted the City in drafting amendments to the Center ground lease when the tenant wanted to convey its lease on the property to another entity. You said this activity involved only three days' worth of work, consisting mostly of telephone conferences. Your post-employment work on this lease ended by September 1997.

(3) [B's] preliminary re-use planning contract. From June to September 1997, working through [A], you performed approximately 37 hours of consulting services to the [Q] Department, you said, which consisted of reviewing and commenting on one of [B's] market analyses. This was an aspect of the [B] contract for the preliminary re-use planning studies for the collateral land at [site] that you had negotiated during your City employment. You said [A's] involvement on this contract ended in September 1997, four months after you left City employment.

You provided Board staff with copies of [A's] consulting contract with the City, as well as the extension agreements. The original contract was a one-year contract between [A] and the City that began on June 1, 1997. There have been two one-year extensions of that contract; the current extension is due to expire on May 31, 2000. You said you expect [A's] consulting work for the City to be completed by then and that you do not believe any more extensions are possible under the

terms of the contract. If the City wishes to continue your consulting services beyond May 31, 2000, you said, a new contract would have to be negotiated.

You stated that all of the consulting work you have performed for the City has been through [A] . You also said you have not worked on any other projects or contracts that involved your previous work for the City, either on a personal basis or through [A] .

**LAW AND ANALYSIS:** The provision of the Ethics Ordinance at issue here is Section 2-156-100(b), under the title of "Post-employment Restrictions," which states:

**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.**

According to this section, you are subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition. You are prohibited for one year after leaving City service from assisting or representing any person in a business transaction involving the City if while a City employee you participated personally and substantially in the subject matter of that transaction. Under the permanent prohibition, you are permanently prohibited from assisting or representing any person with respect to a contract if while a City employee, you exercised "contract management authority" over that contract. Contract management authority is defined in the Ordinance as:

**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. (§ 2-156-010(g))**

Since 1993, the Board has held that former employees may assist or represent the City on matters on which they would otherwise be prohibited as long as certain criteria are met (Case No. 93018.A). The criteria set forth in Case No. 93018.A were: (1) that the City seeks the services of the former employee and stands to benefit substantially by hiring the former employee as a consultant; and (2) that the former employee does not represent the interests of any other entity in connection with his or her consulting responsibilities to the City. The Board used this two-pronged test to allow the City to take advantage of the skills and knowledge of the former employee, while preventing what the

Board saw as the major harm envisioned by the post-employment provisions—the exposure of the former employee to competing loyalties. In that same case, the Board also observed that the agreement between the City and the former employee was in writing and that it recited the latter’s fiduciary duty to the City. In Case No. 93018.A, the former employee was seeking to assist the City directly, as an individual and not through a personally-owned corporation.

In a more recent case, in 1999, the Board issued an opinion that addresses the second criterion set out in Case No. 93018.A as applied to corporations wholly owned by former employees. In Case No. 99010.A, the Board was asked by a former employee if she could perform consulting work for her former City department, either as an individual or as a professional services corporation of which she would be the sole officer, shareholder and employee. The Board determined that the Ordinance’s post-employment provisions did not prohibit her from assisting her former department on matters that would otherwise be prohibited by the Ordinance, if the contract was directly between her and the City because she would not be assisting or representing a third party interest. However, the Board concluded that if she were to consult for the City in her capacity as an employee of her own professional services corporation, she would be assisting or representing a third party—the corporation—and, as such, would owe loyalties both to the City and to her corporation, the situation the Board viewed in Case No. 93018.A as the major harm the post-employment provisions were designed to avoid. In Case No. 99010.A, the Board opinion stated that “*the fact that you would be the sole owner, shareholder, officer, and employee of the corporation does not change the Board’s conclusion. A corporation is a separate entity. If your corporation were to enter into a consulting agreement under which you would personally provide services to your former Department, you would owe a fiduciary duty to the corporation*”(p. 4). The Board determined that the Ordinance prohibited that former employee from assisting her former department under these circumstances, that is, through her own corporation.

Case No. 99010.A specifically states the requirement that the consulting agreement between the City and the former employee be in writing and contain language that obligates the employee to act at all times in the best interests of the City. Such language, the Board said, “*is intended to protect the City by having the former employee consider the problem of dual loyalties and expressly affirm that his or her primary obligation is to the City*” (p. 5).

In your situation, it is apparent from the information presented to us that your continuing post-City employment contract is in compliance with the first criterion set out in Cases 93018.A and 99010.A: you have stated and Board staff has confirmed that your former department sought your services as a consultant because the City would benefit substantially by those services. However, it is not in conformity Case No. 99010.A, which prohibits former employees from assisting or representing any third party, including their own corporations, in connection with their consulting responsibilities to the City, if those consulting activities would otherwise be prohibited under Section 2-156-100(b).

Under Section 1-156-100(b) of the post-employment provisions, you are prohibited permanently from assisting or representing any other entity, including [A], with respect to a contract if, while a City employee, you exercised contract management authority over that contract. It is clear from the facts you presented that, during your City employment, you exercised management authority over the following contracts by, among other things, negotiating them: (1) the contracts connected to the acquisition of the military property, including the purchase, lease, and operating agreements between the City and the [military], and the service contracts between the City and various consultants to provide appraisal, environmental, and other legal services; (2) the [ ] Center ground lease; and (3) [B's] preliminary re-use planning contract. It is also clear from the facts you presented that you assisted and represented [A] on all of these contracts during your post-City employment. You continued to negotiate and work on the contracts associated with the City's acquisition of the military sites at [site] you drafted amendments to the [ ] Center ground lease; and you reviewed and commented on an aspect of [B's] preliminary re-use planning contract with the City. Under [B's] consulting contract with the City, you continue to work on three ongoing contracts over which you exercised management authority while you were a City employee: the City's purchase and lease agreements with the [military], and the service provider contract for environmental investigations at the military site. In sum, under [A's] consulting contract with the City, you have in the past and are now advising a third party, [A], on contracts over which you exercised management authority while you were a City employee. Under a similar consulting agreement entered into since the opinion in Case No. 99010.A was rendered, your activity would be in violation of Section 100(b) of the post-employment provisions of the Ordinance.

However, it is apparent from the facts presented, that in initially having [A], rather than you, personally, enter the consulting contract with the City, you and the department acted in good faith reliance on advice based on a reasonable interpretation of the case law at that time.

**BOARD DETERMINATIONS AND RECOMMENDATIONS:** Therefore, given the totality of the circumstances described above, we cannot conclude that your advising [A], under Ironwood's consulting contract with the City, on contracts over which you exercised management authority while you were a City employee, is in violation of the post-employment provisions of the Ordinance. However, if [A] were to enter such a consulting contract at this time, after the statement of the law in Case No. 99010.A, and you continued to provide the same services, you would be acting in violation of Section 100(b) of the Ethics Ordinance. To avoid violations in the future, we make several recommendations.

1. We provide this opinion, Part 2, to you, and a copy to [George], Commissioner of the Department of [Q], to notify you and [George] of the requirements of the law with regard to City consulting contracts with former City employees.

2. We recommend that the Department of [Q] take steps to assure that the proper persons in the Department are informed of these requirements.
3. We recommend that you and the Department of [Q] amend the existing City contract—under which you provide consulting services on the purchase and lease agreements with the [military], and on the service provider contract for environmental investigations at the military site—to identify you personally as the contracting party rather than [A]
4. We advise you and [George] that, if you and the Department wish to continue your consulting services to the City on the purchase and lease agreements with the [military], and on the service provider contract for environmental investigations at the military site, beyond the expiration of the current contract, the new contract must be entered by you personally and not in the name of [A] or any other corporation, and the contract must contain specific language obligating you to act in the best interest of the City.

In addition, we remind you that Section 2-156-070 of the Ethics Ordinance, “Use or Disclosure of Confidential Information,” prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. “Confidential information” is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determination does not necessarily dispose of all issues relevant to this situation, but is based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation.

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

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Darryl L. DePriest  
Chair

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