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CONFIDENTIAL

November 18, 2003

[John], Investigator
City of Chicago [Department of A]

outside employment

Chicago, IL 606

Re: Board of Ethics File No. 03050.Q

Dear [John]:

You are an investigator with the City's [Department A] [(t h e Department)]. You also are the sole proprietor of an outside business, [John] & Associates. On October 2, 2003, you contacted the Board for advice as to how the Governmental Ethics Ordinance would apply, were you to undertake a particular venture, described below, in your outside business.

You have worked for [the Department] since [], investigating complaints of discrimination in the areas of housing, employment, public accommodation, credit and/or bonding.¹ Prior to joining the City, you worked for the U.S. Department of Health & Human Services for approximately 14 years in various capacities, including that of investigator.² You are contemplating submitting a bid in the name of [John] & Associates to [Alpha] & Associates [(Alpha)], a general contractor to the federal government, to work as a federal subcontractor, investigating "internal"³ complaints by federal employees of discrimination in the federal workplace.

You stated that [the Department] has no authority to investigate the type of complaint that you would be investigating as a federal subcontractor. That is, although several administrative bodies-- e.g., [the Department], the State of Illinois Department of Human Rights (IDHR), and the Federal EEOC-- may

¹Currently, you are a "lead investigator." In addition to carrying out investigations assigned to you by your supervisor, your responsibilities include assisting less experienced investigators by, for example, reviewing their investigative case plans and draft investigative reports.

²From 1973 to 1983, you were an employee of that federal agency; from 1983 to 1987, you were an independent contractor to that agency.

³"Internal complaints," you explained, refers to complaints filed by federal employees with their own departments, as opposed to some other federal agency such as the Federal EEOC.



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have concurrent jurisdiction over a particular claim of discrimination, and although [the Department] has authority to investigate various types of employment discrimination claims, [the Department] has no jurisdiction over complaints by federal employees of discrimination in the federal workplace. If [the Department] were to receive such a complaint, you explained, [the Department] would refer the complainant to the Federal EEOC.⁴

In order to be eligible to be considered as a federal subcontractor, one must first be certified by the federal government. You have applied for certification in the name of [John] & Associates and hope to be accorded that status by January 2004. If [John] & Associates ultimately is selected as a subcontractor by [Alpha], you envision conducting your investigations in the evening hours, on weekends and holidays. You also are considering hiring a former [Department] employee, now retired from City service, to assist [John] & Associates in fulfilling its federal subcontracts.⁵ Finally, you stated that you have discussed the issue of outside employment as a federal subcontractor with [the Department]'s First Deputy Commissioner, [Michael], and that he has approved the arrangement, subject to the opinion of the Board of Ethics.

LAW AND ANALYSIS: After reviewing the information you presented, Board staff concludes that the Governmental Ethics Ordinance does not prohibit you from working in your outside business as a federal subcontractor, investigating internal complaints by federal employees of discrimination in the federal workplace. Nevertheless, the Ordinance does impose significant restrictions on your conduct, both as a City employee and in your outside business, which we outline below.

Fiduciary Duty. First, we draw your attention to Section 2-156-020, "Fiduciary Duty," which states:

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

The fiduciary duty provision is a general admonition. It has been interpreted by the Board to impose upon a City employee the obligation to use his City position and City time responsibly and in the

⁴When asked by staff how, if at all, you interact in your City job with the Federal government, you described the nature and extent of your interaction as follows: [the Department] and the Federal EEOC have a "working relationship." In those instances where a complainant files claims with both agencies, and both have jurisdiction, the Federal EEOC decides which agency will proceed first. If the Federal EEOC elects to go first, [the Department] holds its investigation in abeyance until the Federal EEOC has completed its investigation, and vice versa. As an investigator for [the Department], therefore, you have occasion to confer periodically with your counterparts at the Federal EEOC regarding the status, or some aspect, of an investigation.

⁵In conversation with Board staff, you raised, but eventually dismissed, the possibility of also hiring current [Department] employees to work on their own time as investigators for [John] & Associates. Board staff advises you that this arrangement would raise issues not addressed in this letter. Should you, in the future, decide to reconsider this possibility, please contact the Board for specific guidance on those issues.

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best interest of the public. The Board has said that this fiduciary duty requires that employees and officials give undivided loyalty to the City in the discharge of their public duties, and it precludes the use of City time and resources to obtain a personal benefit or promote a purely private interest. See Case No. 96032.A.

City-Owned Property. Your conduct is also restricted by Section 2-156-060, "City-Owned Property," which states:

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

This section prohibits you from the unauthorized use of City property, including City time, City equipment or City supplies to carry out your investigations as a federal subcontractor or to conduct any other aspect of your outside business.

Confidential Information. You also are subject to Section 2-156-070, "Use or Disclosure of Confidential Information," which 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 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.

This section prohibits you from using or revealing confidential information you have acquired during the course of your City employment.

Representation. As you have described your possible outside employment as a federal subcontractor, the likelihood that you, in that role, would interact with the City or its agencies appears remote; nevertheless, we caution you that your conduct is also restricted by Ordinance Section 2-156-090, "Representation of Other Persons," which provides, in relevant part:

(a) No . . . 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 . . . (b) No . . . employee may have an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

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As the Board has interpreted it, the term "representation" applies to a broad range of activities in which one person acts as a spokesperson for another person, or seeks to communicate and promote the interests of one party to another. See Case No. 91047.A. Representing others before the City would include actions such as making personal appearances before City agencies on behalf of [John] & Associates, its clients or business partners. It would also include making telephone contact on their behalf with City employees and officials; submitting written requests or proposals on their behalf to City agencies; or signing contracts on their behalf with City agencies. See Case No. 96032.A.

Other Laws or Rules. 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 presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our conclusions. Please note that other laws or rules may apply to this situation, and that a City department may adopt and impose rules or policies stricter than those contained in the Governmental Ethics Ordinance.

We appreciate your bringing this matter to our attention and your concern to abide by the 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,

Michael Haggerty
Deputy Director

Approved:

Dorothy J. Eng
Executive Director