

**ADVISORY OPINION**  
**Case No. 00021.A**  
**Employment of Relatives**

To: [John]

Date: November 15, 2000

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In a letter dated October 9, 2000, you requested an advisory opinion on how the Governmental Ethics Ordinance would apply to you in your position as [an employee] in the [Bureau ] in the City's [Department ], if your wife [Mary] were to accept employment with and an equity interest in [ company Alpha ]. In the letter, and in a meeting and telephone calls with staff, you described your responsibilities as [an employee ], as well as your wife's anticipated responsibilities at the firm, [Company Alpha ], and [Alpha]'s operational specialties and possible contracts in the Chicago area.

Based on an analysis of the facts you have presented under the relevant Ordinance provisions, the Board has concluded that, were [Mary ] to accept the position and interest in [Alpha] as described here, under the Ordinance's restrictions delineated in section 2-156-130 you would not be prohibited from exercising contract management authority over companies that contract with [Alpha] on non-City contracts.

**FACTS:**

In your letter, and in a meeting and telephone calls with staff, you said that you presently serve as [Department]'s [employee ] in the [Bureau ]. The Bureau evaluates, awards, and supervises both [field x] and [field y ] consultancy contracts. You said that these functions can be described as "contract administration." You also said that you supervise [ n ] assistant [staff] and [ n ] project managers, and are personally involved with or have supervisory responsibility for the formulation or execution of all Bureau [field x ] and [field y ] consulting contracts. While you can recuse yourself from consultant evaluation and selection and from financial oversight (i.e., review of billing and progress statements) of contracts, you stated that it would be difficult, if not impossible, to recuse yourself from management oversight – you often participate in both formal and informal meetings related to contracts and, if there are problems with a project, would typically step in, make decisions, and exercise authority.

Your wife, [Mary ], is a professional [in field y ]. She has a B.S. in [field y], a [professional certification] in [branch of field y], and a Professional [field y ] License from the State of Illinois. For the past three years she worked

as a [topic z within field y] consultant for [Company Beta ].<sup>1</sup> Your wife is currently considering both employment with and acquiring a ten percent equity interest in [Company Alpha ]. [Alpha] is a Woman Business Enterprise (W.B.E.) firm that presently leases [topic z-related ] equipment to [field y] firms and does [topic z-related] work for [field y ] consultant subcontractors. [The z-related work] is, basically, the gathering of the data necessary for a [field y professional] to perform a professional analysis of [topic z data]. [Alpha] currently does this work for [field y] firms doing [topic z] analysis projects. The firm is now wholly owned by another woman, and she is offering the ten percent ownership to [Mary] if she would be willing to join the firm.

If [Mary] joins the firm, its name will be changed to [ Alpha ], and it will do the [topic z] analysis work itself. [Alpha], instead of being a sub-sub-consultant (i.e. doing [topic z-related ] work as a subcontractor for a [field y ] firm that does the actual [topic z ] analysis on a subcontract to a prime [field y ] consultant) will now act as a sub-consultant. [Mary's] Professional [field y] License, therefore, adds value to the firm by allowing it to do [field y] consultant work, a field that is regulated by the State of Illinois. [Mary's ] position with the firm will either be [managing officer 1] or [managing officer 2], because by statute, a person with a Professional [field y ] License must hold the position of a [managing officer] if the firm is doing [field y ] work (*see* [n] ILCS [n/n] and [n]). [Alpha] will market itself to the State of Illinois, Cook County, various independent agencies and local municipalities, and the private sector.

You said [Alpha] will neither do business with [Department] nor work on any City of Chicago contracts while you are employed in your present position. Consequently, you will not manage any contracts that [Alpha] either obtains or works on.

However, [Alpha] is a small firm. You believe it is unlikely that it will get many direct contracts with governmental bodies; more likely, it will obtain contracts as sub-consultants to prime general [field y] consultant firms. While [Alpha] will not work on contracts that these firms have with [Department], these "prime" consulting firms will, most likely, have contracts with [Department]. As an example, X "prime" consulting firm may hire [Alpha] as a sub-consultant on a contract with an outlying suburban community. At the same time, X may have a separate contract for a different project with [Department].

Because of the nature of [Alpha]'s proposed work, you said you believe it would be difficult if not impossible for it to stay in business and refuse work from any firm that is also contracting with

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<sup>1</sup>[Company Beta] contracts with the [Department's] [Bureau]. In 1998, after consultation with Board of Ethics staff, you recused yourself from most matters related to [Company Beta] and provided the Board of Ethics with a copy of your memorandum dated December 21, 1998, related to that recusal.

[Department]. If that is required, you said [Alpha] would, in your judgment, effectively be precluded from doing engineering work at all.

Before making a decision to proceed, [Mary] is waiting to see if her decision will affect you in your present position. Even if the Board of Ethics determines that there will not be an impact on your present employment, you intend to discuss the matter with, and seek approval from, your departmental superiors.

**LAW:**

The following provisions of the City of Chicago Governmental Ethics Ordinance are especially relevant to the situation you describe.

Section 2-156-130, Employment of Relatives, sub-sections (b) and (c), state:

**(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.**

**(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.**

Section 2-156-010, Definitions, provides, among others, the following relevant definitions:

**(g) "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.**

**(r) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, whether or not operated for profit.**

**(w) "Relative" means a person who is related to an official or employee as spouse . . .**

Under these provisions, you as a City employee are prohibited from exercising contract management authority (as defined above) over City work if the person doing that work either *employs* or *contracts with* your relative – in this instance, your wife (§ 2-156-130(b)). These provisions also prohibit you from using your City position to help your wife in gaining employment or contracts with persons over whom you exercise contract management authority (§ 2-156-130(c)). Further, if your wife were to become employed by, or contract with, a person over whom you exercise contract management authority either during the pendency of the person's City contract or six months before or after the contract's term, that would be, under Section 2-156-130(c), evidence that you used your position to assist your wife, in violation of Section 2-156-130(c). (See statement of law on Section 2-156-130(c) in Case No. 95027.A, pgs. 3 and 4.)

#### **ANALYSIS:**

##### **A. Would Your Wife Be "Employed By A Person Doing City Work?"**

The Board first addresses whether, if your wife were to accept employment and a ten percent equity interest in [Alpha ], she would be “employed by [a] person . . . doing City work” over whom you have or exercise contract management authority, within the meaning of the Sections 2-156-130(b) and (c). You have represented to Board staff that, as long as you are employed by [Department] in your current position, and as long as your wife continues to be employed by and an owner of [Alpha], [Alpha] will not work on any City contract in any capacity. As long as that remains the case, your wife would not be employed by a person doing City work.

##### **B. Would Your Wife "Have Contracts With" Persons Doing City Work?**

You told Board staff that, although [Alpha] will not work on any City contracts during your tenure in the [Bureau ], [Alpha] will almost certainly have occasion to enter into contracts, *unrelated to the City of Chicago*, with persons doing City work over which you exercise contract management authority. The second question we address, then, is the following: if [Alpha] were to enter into a contract, unrelated to City work, with a person over whom you would have or exercise contract management authority (on an obviously unrelated matter), could *your wife* then be said, within the meaning of the Ordinance, to have a “contract with” the same person over whom you exercise contract management authority? The Board believes that there are two possible ways in which your wife could be said to "have" such a contract: 1) by virtue of her employment with [Alpha]; or 2) by virtue of her ten percent equity interest in [Alpha]. The Board analyzes each below.

1. By Virtue of Her Employment With [Alpha]. [Mary ] proposes to be employed by [Alpha], and by operation of law, her status must be as a [managing officer]; her title will be [Managing Officer 1] or [Managing Officer 2]. You have said that [Alpha] will almost certainly have contracts, unrelated to City work, with persons over whom you have or exercise contract management authority in your City position. However, any contract [Alpha] may enter into with a person over whom you would exercise contract management authority would be entered into by [Alpha] itself, as a corporate entity, not by [Mary] individually. Moreover, as an employee or officer of [Alpha], your wife's obligations as an agent, a fiduciary, an officer, and in any case as an employee possibly under contract – would be owed to her employer, [Alpha], not to any company with which [Alpha] would have contracts. The fact that her title will be either [Managing Office 1 ] or [Managing Officer 2 ] does not

change this analysis. Though she will be an executive, she will not have a controlling ownership interest in [Alpha] (see discussion below). For these reasons, we conclude that, in her capacity as an employee of [Alpha], your wife cannot be said to have contracts with any person over whom you would exercise contract management authority in your City position.

2. By Virtue of Her Ten Percent Equity Ownership. Your wife proposes to have a ten percent equity interest in [Company Alpha ], an Illinois corporation [ ... ]. Because she will have an equity interest, the next question we address is the following: if a firm enters into a contract with [Alpha], can it be said that, because she has an equity interest in [Alpha], that firm's contract is with [Mary]?

The relevance of this question is that, if the answer is “yes,” then, under subsection 130 (b) of the Ordinance, you will be prohibited from exercising contract management authority over [Department] contractors who have any contracts with [Alpha ], even though those contracts with [Alpha] do not involve any City work. For the following reasons, the Board believes that [Mary ]’s interest in [Alpha ] does not give rise to the conclusion that a contract with [Alpha ] is a contract with [Mary ]. First, the Board here recognizes a general principle of the law of corporations in Illinois and elsewhere, namely, that a business corporation is a legal person distinct from its owners and employees. (*See, e.g.*, Case No. 99010.A, using that principle of law in the context of applying the 0postemployment provisions of the Ordinance.) There is nothing in the facts you have presented with respect to [Alpha ] and your wife's interest in it that would cause the Board to disregard the corporate structure and equate your wife with [Alpha]. The Board recognizes that one might incorporate or use a corporate ownership interest in an attempt to circumvent a law.<sup>2</sup> But in this instance, the indications are to the contrary – you and your wife wish to be certain that you will not be in violation of the "Employment of Relatives" provisions of the Ordinance. Moreover, [Alpha]'s ninety percent owner has agreed to the condition that, if your wife joins [Alpha], it will not seek nor do any work on City projects; this seems to be a sacrifice for her company. We note that in Case No. 95027.A, the Board, with the agreement of the City employee who sought Board advice, treated a corporation that was wholly a creation of his spouse, who was the corporation’s president and only full-time employee, as the same person as the spouse herself for purposes of applying this section of the Ordinance. In your wife's situation, by contrast, [Alpha] is not [Mary’s ] creation, and her proposed ten percent interest is hardly a controlling interest in the corporation. Ninety percent of the entity's ownership is held by another person.

Second, the Board observes that, in another section (Section 2-156-010(l), which defines “financial interest”), the Ordinance makes clear its intent to respect the independent occupation of a spouse as distinct from the interests of a City employee. While, of course, the restrictions in the "Employment of Relatives" section may effectively result in limiting to some extent the freedom of a City

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<sup>2</sup>If there were indications that a corporate device were being used to circumvent the Ordinance, the Board could disregard the corporate entity and look directly at the individuals involved. Decisions to treat a corporate form in this way are made on a case by case basis.

employee's spouse in exercising an independent occupation, we believe the intent expressed in Section 2-156-010(1) bolsters a reading of the "Employment of Relatives" section that would respect the independent character of a corporation not formed or used by a spouse (or other relative) to avoid the prohibitions of the Governmental Ethics Ordinance, and that would not result in the most extremely restrictive interpretation of this provision.

Based on these facts you have presented and the analysis above, the Board concludes that if [Alpha] were to enter into a contract, unrelated to City work, with a person over whom you have or exercise contract management authority, your wife would not have, within the meaning of the Ordinance, a contract with a person over whom you exercise contract management authority.

### **C. Conclusion**

Therefore, the Board concludes that, if [Mary ] were to take the position with [Alpha] as it has been described here, you would not be prohibited from exercising contract management authority over companies that contract with [Alpha].

However, you are prohibited by the Ordinance from using or permitting the use of your City position to aid or assist [Alpha] in any way. Your fiduciary duty to the City (set forth in Section 2-156-020) would prohibit such a use of your City position. Further, such assistance to [Alpha] would serve as evidence that the corporate form was being used to circumvent the Ordinance and to gain an advantage for your spouse, which, in turn, would lead to an almost certain finding of a violation of Section 2-156-030(c).

Further, we advise you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits you from using or disclosing any confidential information gained in the course of your City employment, whether to aid your wife or for any other reason. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act.

Finally, we advise you that, if your wife accepts the ten percent equity interest in [Alpha], and [Alpha] seeks and obtains one or more contracts with persons or firms that do business with the City, then you will, as you may already know, be required to disclose her ownership interest on a form prescribed by the Board each year, pursuant to Mayoral Executive Order 97-1. Additionally, the Ordinance, Section 2-156-160(b), may impose disclosure requirements on you on your annual Statement of Financial Interests if [Alpha] seeks and obtains contracts with persons or firms that do business with the City or any of its "sister agencies" (as named in Section 2-156-160 (b) of the Ordinance).

### **DETERMINATIONS:**

Based on the facts you have presented and an analysis of the provisions of the Ordinance relevant to those facts, the Board determines that if your wife, [Mary ], were to accept the offer of employment with and equity interest in [Alpha ] as it has been described here, you

would not be prohibited from exercising contract management authority over companies that contract with [Alpha] on non-City contracts.

However, your fiduciary duty to the City (Section 2-156-020) prohibits you from using or permitting the use of your City position to aid the corporation your wife hopes to join, [Alpha]. Were you to use or permit the use of your position to assist [Alpha] in any way, that would serve as evidence that the corporate form was being used to circumvent the Ordinance, which in turn, would lead to a likely finding of a violation of Section 2-156-030(c).

Our determinations do not necessarily dispose of all issues relevant to this situation, but are 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 opinion. Other laws or rules may also apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

**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.

[signature]

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Darryl L. DePriest  
Chair