

EMIS



ADVISORY OPINION
CASE NO. 92044.A
OUTSIDE EMPLOYMENT

City of Chicago
Richard M. Daley, Mayor

To: [REDACTED]

Date: [REDACTED]

Board of Ethics

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On [REDACTED], you telephoned the Board of Ethics office with a question about outside employment. You asked whether the Governmental Ethics Ordinance prohibits you from maintaining your part-time position as an intake specialist for the [REDACTED] A Club ("A") while you also work for the City. Based on the facts presented below, the Board determines that the Ethics Ordinance does not prohibit you from maintaining your outside employment as long as certain conditions are met. The facts of your situation as we know them and our analysis follow.

FACTS: You worked for the B Department [REDACTED] [REDACTED] ("B"), as [REDACTED] [REDACTED], until [REDACTED], when you were laid off by the City. After leaving City employment, you were hired by A as an intake specialist for its [REDACTED] placement program, a program whose funding is administered through B. On December 1, you were rehired by B, but in the position of [REDACTED], and at that time you switched to part-time employment with A. Your question is: Does the Ethics Ordinance prohibit you, as a City employee working as [REDACTED] for B, from continuing in your part-time position with A?

The A [REDACTED] placement program. The A [REDACTED] placement program, for which you work as intake specialist, is created under Title [REDACTED] of the [REDACTED] Act, [REDACTED]. In such a program, agencies such as A contract with local governments to place applicants in [REDACTED] positions available through private employers. Federal funds pay administrative costs and up to 50% of the trainees' wages during their training period. The funds for the A program are administered through B.

Work of intake specialist. As an intake specialist for A, you gather the necessary information that establishes an applicant's



eligibility for the program. For an applicant to be eligible, he or she must: 1) reside within Chicago, 2) present a verifiable social security number, and 3) qualify as a low-income-wage earner, according to standard government figures. After ascertaining eligibility by these criteria, you administer a standardized test to eligible applicants. You then give the applicant's case-record folder to the (A) job developer, who determines where the applicant is to be employed for his or her [REDACTED]. The case-record folder contains documentation on eligibility, test results, and a work history, if any.

(B) contract with (A). B's contract with (A) provides approximately \$125,000 for [REDACTED] placement costs and the administration of (A)'s program. The cost of your services are part of the administrative costs. Under the contract, (A) is to make 36 [REDACTED] placements; there are quotas for the number of placements per month. The funds allocated to (A) are not affected by the total number of [REDACTED] that (A) actually places.

City Duties. In your employment for the City as an [REDACTED] for (B), you are responsible for providing callers with information about [REDACTED] programs, [REDACTED] placement programs, and [REDACTED] placement programs. These three types of programs are available under Titles [REDACTED] and [REDACTED] of the [REDACTED] Act; they are funded with federal funds administered by the City. The outside agencies that offer these programs contract with (B) to provide the necessary services. People who call the City to ask about these programs are referred to contracting agencies nearest their home.

(A) is included on the list of [REDACTED] placement agencies maintained by (B). However, you stated that your supervisor, [REDACTED], [REDACTED], has told you that if necessary, you may remove (A) from your list and, thereby, avoid referring any callers to (A). You added that referrals to (A) could still be made by the (B) receptionist, who also provides referrals for the three types of [REDACTED] programs.

You stated that in your City position you have no role in writing proposals for grants or other funds and you have no decision-making power over which outside agencies are awarded contracts to participate in programs administered by (B).

LAW AND ANALYSIS: Although the Ethics Ordinance does not preclude a City employee from working outside his or her City

job per se, it does restrict what you may do in that non-City employment. An analysis of the relevant provisions follows.

Sections 2-156-030, entitled "Improper Influence," and 2-156-080, entitled "Conflicts of Interest," state:

No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally. (§ 2-156-030)

No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public. (§ 2-156-080(a))

"Economic Interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest." (§ 2-156-010(i))

These sections prohibit City employees and officials from participating in, or trying to use their positions to influence, a governmental decision or action in which they have an "economic interest," as that term is defined. A City employee who is also employed by another entity has an economic interest in the entity by virtue of that employment. If the employee also makes governmental decisions that affect the entity that employs him, then a conflict of interest arises. (Case no. 91059.A.)

As an employee of [A], you have an economic interest in [A]. The remaining issue, for the purposes of these provisions, is whether, in your City position, you make or participate in making governmental decisions or actions that affect [A].

You stated that as [REDACTED] for [B], you are responsible for referring callers to agencies that provide [REDACTED] training and [REDACTED] placement, and [REDACTED] placement. Your outside employer, [A], is among those agencies to which you could refer callers seeking placement in [REDACTED] the third [REDACTED] program. However, you have permission from your supervisor to remove [A] from your referral list and, therefore, can avoid making any referrals to your outside employer.

Although, A currently holds a contract with B and may well seek future contracts with (B), you stated that you do not participate in the formulation or award of such contracts.

Based on the facts presented, it appears that it is possible for you to avoid making or participating in making any governmental decisions or actions that affect A. If you do remove A from your referral list and avoid participating in any decisions or actions affecting A, then sections 2-156-030 and 2-156-080 would not prohibit you from holding outside employment with A, as you have described that employment to us. The Board also advises you that you are prohibited from attempting to influence others who are involved in any governmental actions or decisions affecting A.

Another section of the Ordinance that is relevant to your situation is 2-156-110, entitled "Interest in City Business," which states in relevant part:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

The term "financial interest" is defined in relevant part as (1) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year, or (2) any interest with a cost or present value of \$5,000 or more (§ 2-156-010(1)).

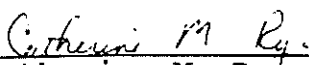
Under this section, a City employee may not have a financial interest in any contract, work, or business with the City when the cost of that contract, work, or business is paid for with funds from the City, administered by the City, or approved by ordinance. A City employee who also is employed and paid a salary by, but has no ownership interest in, a private entity that has contracts with the City does not, by virtue of his or her employment with the private entity, have a financial interest in that entity's City business. (Case nos. 91072.A and 92030.A.)

The facts indicate that you have an economic interest in A but no ownership interest. Therefore, the Board determines that your compensation from (A) would not constitute an interest in City business for the purposes of this provision.

There are three additional sections of the Governmental Ethics Ordinance of which you should be aware. Section 2-156-020, entitled "Fiduciary Duty," obligates you to use your City position responsibly and in the best interests of the City. It requires you to exercise professional judgments free from outside influences or conflicting duties to another entity. It also precludes you from using City time for your non-City job or for any private benefit. (Case Nos. 90018.Q and 90020.A.) Section 2-156-060, entitled "City-owned Property," prohibits you from using any City property or resources in your non-City employment or for any private benefit. Section 2-156-070, entitled "Use or Disclosure of Confidential Information," prohibits you from using or revealing confidential information you may have acquired during the course of your City job.

CONCLUSION: Based on the facts presented, the Board determines that the Governmental Ethics Ordinance does not prohibit you, as [REDACTED] for B, from maintaining your part-time position as an intake specialist for A, as long as you remove A from your referral list for [REDACTED] placement programs and avoid referring any callers to A and you do not make or participate in making any governmental decisions or actions affecting A. Please be advised that the Ordinance also prohibits you from attempting to influence others involved in making decisions or in actions affecting A. In addition, you may not use City time or resources for your non-City job and you may not use or reveal confidential information acquired during the course of your City job.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. This advisory 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 with respect to which the opinion is rendered.



Catherine M. Ryan
Chair