

Advisory Opinion
Case No. 04060.A, Post-employment
To: Walter Smithe
Date: January 12, 2005

You formerly served as the Director of the W Unit in the Mayor's Office of W Development ("M"), and subsequently as Assistant Commissioner of M. You also formerly served as the Executive Director of the B Office's E ("E"). Currently, you are being considered by the S Foundation ("S") for the position of Associate Vice President of WF Strategies. On October 27, 2004, you wrote our office and requested an advisory opinion under the City's Governmental Ethics Ordinance. You asked us to address how your former City service would affect your ability to assist your prospective employer, the S Foundation, on transactions with or involving the City.

After careful consideration of the facts presented and the relevant law, the Board has determined that you are subject to significant restrictions (set forth in detail below in the "Determinations" section of this opinion) under both the one-year and permanent prohibitions of the Ordinance's post-employment provisions.

FACTS: Background. You have a BA degree in psychology from Elmhurst College, and an MS degree in college administration from the University of Vermont. Between 1977 and 1997, you held various college administrative and private sector business positions.

City Service: M Duties. In April 1997, the Mayor's Office of W Development ("M") hired you as Director of its W Unit. Subsequently, in July 1998, you were promoted to the post of Assistant Commissioner of M. In both posts, you supervised a staff of 6 City employees.

M has primary responsibility for implementing the City's x development initiatives.¹ However, M is not a direct provider of workforce development services. Instead, to accomplish its initiatives, M utilizes third party delegate agencies (sometimes known as "community based organizations" or "CBOs") to identify, train and place job seekers with prospective employers. The types of services provided by these agencies include all of the following: (i) identifying job-seekers, typically from a targeted population associated with the mandates of a particular M funding source; (ii) assessing the prospective employee's skills; (iv) ensuring that any necessary job training is provided to, and completed by, the prospective employee; (v) identifying potential employers, often obtaining a commitment from the employer to hire one or more prospective employees;(vi)overseeing placement of the prospective employee with the

¹ M's x development initiatives are funded primarily through the City's corporate budget.

identified employer; and (vii) monitoring the employment through case management to ensure retention of the employee by the employer.²

During your tenure at M, you were instrumental in the creation of a “pool” of more than 30 “pre-qualified” CBOs. These agencies were identified and selected pursuant to an RFQ process. Your involvement in the creation of this pool included the following: overseeing the writing by W Unit staff of various scopes of services (subsequently integrated by M’s Contracts Unit into RFQs) designed to identify CBOs capable of providing workforce development services; and participating³, periodically, in the review of responses to the RFQs and in the determination as to whether a particular respondent was qualified.⁴

In addition to participating in the identification and selection of qualified CBOs, you oversaw M staff’s outreach to prospective employers, including assessing their employment needs; notifying eligible CBOs of those needs; and forwarding responses from CBOs to prospective employers. Upon selection of CBOs by employers, you oversaw the preparation by M staff of 3-party contracts between M, the CBOs and employers, and you executed those contracts on behalf of M. Following execution of these 3-party contracts, you supervised M staff in monitoring the performance of the other 2 parties—the CBOs and the employers--injecting yourself, as necessary, to resolve performance issues. You also reviewed, and approved or disapproved⁵, the CBOs’ requests for payment for services. Furthermore, although your job duties did not specifically include identifying potential funding sources, once such sources were identified by other M or City staffers, you would research the matter to determine if M might qualify as a recipient of funds.

Finally, you stated that, to the best of your recollection and belief, you had no involvement during

² You offered the following example of a successful M/CBO/employer collaboration on a workforce development initiative accomplished during your tenure: in the spring of 1998, when X Railroad was opening a new railcar transfer yard on the City’s southwest side and was in need of 50 new railcar conductors, you supervised the W Unit staff in coordinating with the Railroad, local businesses, the City’s Department of P, aldermanic staff and qualified CBOs --the Chicago City C and a local church council-- to match prospective employees with the Railroad.

³ Typically, the team consisted of you, a M Deputy Commissioner, a M Unit Director (other than you) and a W Unit staff member.

⁴ Upon a determination that a CBO was “qualified,” you explained, the CBO then entered into a 2-year term agreement with M (under the supervision of M’s Contract Unit) and was accorded, in essence, the status of a “pre-qualified M service provider.” Under the term agreement, the CBO was assured of payment by the City upon performance of services. This “pool” of pre-qualified M service providers was utilized on such projects as the Hotel A Project (Winter 1998) on which C Works provided training; the D’s Project (Summer 1998) on which P Training provided services; and the Home’s Project (Winter 1999) on which A Training Alliance provided training.

⁵ For example, if a CBO were contracted to recruit 76 job seekers for job placement or to perform an assessment of reading skills for 100 prospective employees and did not meet its contractual requirement, you could recommend to the F Unit of M not to pay that CBO until it cured the deficiency.

your tenure at M with any contract between the City and the S Foundation.

City Service: E Duties. In May 2000, you left M to become Executive Director of the E (“E”)⁶, a division of the City’s Office of B (“B”). As Executive Director of the E, you supervised a staff of 21 City employees and reported directly to the Director of B.

The mission of the E, you explained, overlapped with that of M in that it included workforce development; ultimately, however, the E’s mission was much broader than M’s. The E was responsible for implementing 7 distinct City community development initiatives: (i) workforce development; (ii) youth programs, *e.g.*, to discourage drug abuse; (iii) cultural development, *e.g.*, construction of art venues; (iv) affordable housing; (v) economic development, *e.g.*, building businesses by guiding entrepreneurs in the process of starting a business; (vi) “capacity building,” *e.g.*, enhancing a CBO’s ability to perform through working, staff retreats; and (vii) health and human services, *e.g.*, construction of day care centers.

These initiatives were carried out, in the main, by CBOs. An RFP process was utilized for identifying and selecting qualified CBOs. You stated that, prior to the time you assumed the role of Executive Director, the E had released two RFPs seeking qualified CBOs to provide assorted community development services. During your tenure, an additional four RFPs, modeled after the original two, issued. They varied from the original two in terms of the nature of the initiative to be achieved, and the scope of services to be provided, by the selected CBOs.

Your role in the RFP process essentially consisted of the following: you oversaw the writing of a draft scope of services by E staff; you presented the draft scope of services to the E’s governing body, the Council⁷, for approval; once the draft was approved, you oversaw the publication of the RFP; following review of responses to the RFP and selection of qualified respondents (by a team of other E and City staffers), you presented the CBOs’ proposals to the E’s Council for review and approval; following that approval, you prepared a request that the City’s Office of I (I) introduce to City Council an ordinance authorizing the E to contract with the selected CBOs; and attended the

⁶ In the Fall of 1993, as part of the Federal Omnibus Budget Reconciliation Act, the Program (hereinafter “E” as the Y Community program is inapposite to this opinion) was created to promote jobs and other development in distressed communities. On December 21, 1994, on the basis of a comprehensive strategic plan submitted by the City, the federal government, through the Federal Department of Housing and Urban Development, awarded an E (“E”) to the City of Chicago. Pursuant to this award, the City received, over the course of 10 years, \$100 million in Federal funds, \$38 million in State grants as well as federal tax incentives to fund initiatives identified in the plan submitted by the City to the federal government. This funding included block grants, federal tax credits for employers, accelerated depreciation of capital equipment and tax-exempt bonds. The City’s E expired in December 2004.

⁷ The terms of the E Program mandated the creation of a Council to advise the City on, among other things, allocating funds; providing social and other services; assessing progress in carrying out programs; monitor funds; and making recommendations to City Council on all applications for funds. The Council was comprised of 39 members representing zone residents, businesses located in such zones, government agencies, not-for-profit agencies, philanthropic agencies, members of the education community and other unrepresented communities within a zone. Members were nominated by the Mayor with City Council approval.

City Council meeting at which the ordinance was considered to answer questions by aldermen.

Upon passage of the requisite enabling ordinance by City Council, you initially met with the selected CBOs to outline the contract process; subsequently, you oversaw contract negotiations with the CBOs by E staff, injecting yourself, as necessary, in the process to resolve contract issues; in addition, following review of a proposed contract by outside City counsel and approval by the E's Program and Budget Directors, you signed the contract on behalf of the E. Once the contracts were executed, you oversaw E staff in their supervision of the CBOs' performance; following approval by the E's Project Manager, Program Director and Budget Director, you also authorized payment to the CBOs by "signing off on" their invoices; in addition, if problems arose regarding performance or payment, you acted, as necessary, to resolve the issue.

You estimate that, during your tenure as Executive Director, you executed 225 contracts with CBOs on behalf of the E. All the contracts were based on RFPs issued by the E and involved one or more of the 7 (above-stated) community development initiatives of the E⁸. You stated that, to the best of your recollection and belief, only one of the contracts that you executed during your tenure at the E involved the S Foundation: it was a 12-month contract, executed in 2001, which has since expired, the specific subject matter of which you cannot recall.

S Foundation The S Foundation (S) is an Illinois-based, not-for-profit established in 1972. S works exclusively with ex-offenders (former inmates of the penal system). S provides various social services to these clients, including substance abuse treatment, housing, education, and workforce development services. S employs approximately 250 people and receives its funding from a variety of sources including private-foundation, Federal, State and City grants.

As Associate Vice President of WF Strategies for the S Foundation, you would not be involved in the direct provision of services; instead, you would supervise S staff in their work with clients. You also would review and, where indicated, seek to improve, S's client-service strategies, operating procedures, budget, staffing needs, resources, scheduling and supervision protocols. In addition, you would monitor the release of public and private NOFAs,⁹ RFPs and RFQs (by lenders, businesses, foundations and governmental units) to keep S apprised of funding opportunities, and where appropriate, assist S in preparing a response.¹⁰

S Foundation as City Contractor. You stated that, to your knowledge, the S Foundation currently has 6 contracts with the City of Chicago. You stated that you expect the S Foundation may request

⁸ You offered the following examples of the contracts you executed during your tenure as Executive Director of the EZ: a contract to process job applications; a contract to train employees; a contract to build a workforce development center; a contract to build a day care center; a contract to build an art venue; and a contract to operate a day care center.

⁹ NOFAs are "Notices of Funds Available."

¹⁰ New initiatives might include fundable geographic areas, funded research, financial incentives for targeted neighborhood and Federal and State pass-through dollars administered by the City.

your assistance on some or all of those contracts. You stated that, during your tenure with the City, you had no involvement of any kind in the letting, award, negotiation or supervision of any of those 6 contracts. You stated that you are certain that one of the 6 contracts—Contract No. Z, an agreement between S and M entitled “a”—directly involves w development.

You stated that you are uncertain as to the subject matter of S’s other 5 City contracts, titled: (i) “M, Supportive Services, Social Adjustment and Rehabilitation”; (ii) “b; M/WIA, Core and Intensive Case Management; training; placement and recruitment services for former offenders”; (iii) “c; M/WIA, Out of School Youth; Innovative Classroom training, enhancement of functional skills, world of work training”; (iv) “d; CDBG/Youth Empowerment Program; Innovative Classroom training, enhancement of functional skills, world of work training”; and (v) “DARE, Employability Development.”

LAW AND ANALYSIS:

Section 2-156-100 of the Governmental Ethics Ordinance (Post-Employment Restrictions) states:

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(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 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.

You asked us to address how your former City service would affect your ability to assist your prospective employer, the S Foundation, on business transactions involving the City relating to City of Chicago workforce development matters.

One-Year Prohibition.

Subsection 2-156-100(b). We first address the one-year prohibition. Under the first clause of subsection 2-156-100(b), you are prohibited, for one year after leaving City service, from assisting or representing any person in a business transaction involving the City, if you participated personally and substantially in the subject matter of that transaction as a City employee.

As the Director of M’s W Unit, and subsequently as a M Assistant Commissioner, you were responsible for implementing City workforce development initiatives. Your duties included creating a pool of pre-qualified CBOs, pursuant to an RFQ process. With regard to that process, you

supervised the writing of various scopes of services by M staff and, periodically, participated in the review and selection of respondents. In addition, you oversaw M staff's outreach to prospective employers and the preparation by M staff of 3-party contracts between M, CBOs and employers. You also supervised M staff in monitoring the performance of those contracts and approved or disapproved the CBOs' requests for payment for services.

As Executive Director of the B Office's E, you had overall responsibility for implementing 7 distinct community development initiatives. Your duties included, among other things, overseeing the writing by E staff of the various scopes of services to be provided by the CBOs; securing Council approval for the same; overseeing the identification and selection of qualified CBOs; directing selected CBOs and E staff in the negotiation of contracts between E and the CBOs; executing approximately 225 CBO contracts on behalf of the E; overseeing E staff in its supervision of the CBOs' performance under those contracts; and authorizing payment to the CBOs pursuant to the contract.

Based on your City duties, both at M and the E, as described by you, the Board concludes that you were personally and substantially involved in implementing City workforce development initiatives. Therefore, the Board determines that, under subsection 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until June 1, 2005, from assisting or representing the S Foundation or any other person other than the City, on any business transaction involving City workforce development initiatives, including but not limited to Contract No. Z, an agreement between S and M entitled "a."

Based on your City duties at the E, as described by you, the Board concludes that you also were personally and substantially involved in implementing 7 distinct community development initiatives. Therefore, the Board determines that, under subsection 2-156-100(b) of the Governmental Ethics Ordinance, you are prohibited for one year from the date you left City service, that is, until June 1, 2005, from assisting or representing the S Foundation or any other person other than the City, on any business transaction involving any of those specific initiatives.

Permanent Prohibitions.

Sub-Section 2-156-100(b). We next address the permanent prohibitions. Under the second clause of sub-section 2-156-100(b), you are permanently prohibited from assisting or representing any person other than the City on a contract over which you exercised contract management authority as a City employee. Section 2-156-010(g) defines the term "contract management authority" 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."

You stated that, to your knowledge, the S Foundation currently has 6 contracts with the City of Chicago. You also stated that during your tenure with the City, you had no involvement of any kind in the letting, award, negotiation or supervision of any of those contracts. Based on that representation by you, the Board concludes that you did not exercise contract management authority, and therefore are not subject to the permanent prohibition, with respect to those 6 contracts. However, based on your duties at both M and the E, as described by you, you did exercise

management authority over many City contracts not presently at issue. If, in the future, you have a question as to whether you are permanently prohibited from assisting the S Foundation, or any other person, on some other City contract not addressed in this opinion, we advise you to contact the Board for specific guidance.

Sub-Section 2-156-100(a). Under sub-section 2-156-100(a), you are permanently prohibited from assisting or representing any person other than the City in any judicial or administrative proceeding involving the City if you participated personally and substantially in the proceeding as a City employee. You have not identified any judicial or administrative proceeding in which you may have participated as a City employee which you wish the Board to address. In the future, should you be asked to assist the S Foundation in a particular proceeding or transaction in which you had any involvement as a City employee, we advise you to contact the Board for specific guidance.

DETERMINATIONS: In summary, after careful consideration of the facts presented and the relevant sections of the Governmental Ethics Ordinance, the Board has determined that:

1. under subsection 2-156-100(b) of the Governmental Ethics Ordinance, **you are prohibited for one year from the date you left City service**, that is, until June 1, 2005, from assisting or representing the S Foundation, or any other person other than the City, on any business transaction involving the City if you were personally and substantially involved in the subject matter of the transaction during your tenure as a City employee. This prohibition includes assisting or representing the S Foundation on any business transaction involving City workforce development initiatives, including M Contract No. Z, "a". This prohibition also includes assisting or representing the S Foundation on any business transaction involving any of the E's 7 distinct community development initiatives.

NOTE: You stated that, to your knowledge, the S Foundation currently has 5 other contracts with the City of Chicago; however, you stated that you are uncertain as to the subject matter of those contracts. For authoritative guidance under the one-year prohibition as to those other 5 contracts, you would need to provide detailed information to the Board regarding the substance of those contracts.

2. under subsection 2-156-100(b) of the Governmental Ethics Ordinance, **you would be permanently prohibited** from assisting or representing the S Foundation, or any other person other than the City, on any City contract over which you exercised contract management authority during your tenure as a City employee.

Because (i) you stated that, to your knowledge, the S Foundation currently has 6 contracts with the City of Chicago; and (ii) you also stated that during your tenure with the City, you had no involvement of any kind in the letting, award, negotiation or supervision of any of those contracts; therefore, based on those representations by you, the Board concludes that you did not exercise contract management authority, and therefore are not subject to the permanent prohibition, with respect to any of those 6 contracts. However, based on your duties at both M and the E, as described by you, you did exercise

management authority over many City contracts not presently at issue. If, in the future, you have a question as to whether you are permanently prohibited from assisting the S Foundation, or any other person, on some other City contract not addressed in this opinion, we advise you to contact the Board for specific guidance.

3. under subsection 2-156-100(a) of the Governmental Ethics Ordinance, **you would be permanently prohibited** from assisting or representing the S Foundation or any other person other than the City, in any judicial or administrative proceeding involving the City or any of its agencies, if you participated personally and substantially in the proceeding during your tenure as a City employee.

Because (i) you have not identified any judicial or administrative proceeding which you wish the Board to address in this opinion; and (ii) the Board notes that, based on the nature of the posts you occupied during your years of City service, it is possible that you participated personally and substantially in judicial or administrative proceedings involving the City; therefore, if, in the future, you have a question as to whether you are permanently prohibited from assisting the S Foundation, or any other person, in some judicial or administrative proceeding, we advise you to contact the Board for specific guidance.

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. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act.

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. 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.

Darryl L. DePriest
Chair