

5

ADVISORY OPINION
CASE NO. 92020.A
POST-EMPLOYMENT

To [REDACTED]

On June 3, 1992, the Board of Ethics office received from you a written request for an opinion regarding a post-employment situation. In your letter and in telephone conversations with staff, you stated that you are a former employee of the Department of X [REDACTED] and currently volunteer your services as officer of [REDACTED] Group Q [REDACTED]. Group Q, a consortium of local [REDACTED] industries, is in the process of proposing a plan to the City's Department of Y [REDACTED] that would attract production factories to the Chicago area. You asked if your continued involvement in these plans on behalf of Group Q is prohibited by the Governmental Ethics Ordinance. It is the Board's opinion that your volunteer work for Group Q is not prohibited by the Ordinance.

FACTS: According to information you provided to the Board of Ethics staff, Group Q, "a trade group consisting of local industries involved in [REDACTED]," is in the process of developing and proposing a possible partnership plan with the City's Department of Y [REDACTED] for the purpose of attracting factories to the Chicago area that would use [REDACTED] materials in their products. The plan includes a proposal that Group Q would raise funds from Chicago area corporations to establish a development office, which might be partially staffed by personnel from the City Department of Y [REDACTED]. You stated that, to the best of your knowledge, Group Q is in conversation only with that department, and not with the Department of X [REDACTED] where you had worked. To date, the City has made no formal response to Group Q's partnership proposal.

While with the City, you were employed as the [REDACTED] [REDACTED] for the Department of X [REDACTED] until May [REDACTED], 1992 when your City employment was terminated. You stated that while in that position, you attended three or four Group Q board meetings, at which general information was discussed regarding the status of the [REDACTED] industry in Chicago. You told staff that the extent of your participation in these meetings was to field questions regarding whether the City might be interested in Group Q's ideas and to respond to questions about the City's departmental restructuring. You said that, at one point, you wrote a memo to your supervisor to inform her of Group Q's ideas and to ask if the Department of [REDACTED] had any interest in pursuing any kind of relationship with Group Q. You said you also wrote a brief memo to [REDACTED] a Federal Agency on behalf

of your department to inquire about its grant program for private-public partnerships. You received no response to either memo. You were also employed (under the same job title) by the Department of Z [REDACTED] from September [REDACTED], 1990 to January 1, 1992 when the departmental restructuring occurred. You stated that you had no involvement with Group Q plans before January 1, 1992.

You stated that you have not been involved in Group Q meetings since the termination of your City employment in May 1992, pending a decision from the Board of Ethics. If you are not prohibited from such activities, your participation in the group would consist of promoting its plans to Chicago area corporations in an attempt to solicit funds for the development project. You would not primarily be involved in working out the partnership plan with the City.

LAW AND ANALYSIS: The provisions of the Ethics Ordinance that apply to former City employees are section 2-156-070, entitled "Use or Disclosure of Confidential Information," and section 2-156-100, entitled "Post-Employment Restrictions."

Section 2-156-070 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.

This section prohibits an official or employee from using or revealing confidential information he or she may have acquired during the course of his or her City job. You informed staff that there was no confidential information involved in or relevant to the proposed partnership plan. Therefore, this section of the Ordinance would not prohibit your continued work with Group Q.

Section 2-156-100(b) of the Ethics Ordinance 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.

Section 2-156-010(g) defines "contract management authority:"

"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.

According to these sections, a former City official or employee is subject to two restrictions on employment after leaving City service: a one-year prohibition and a permanent prohibition. A former City official or employee is 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 he or she participated personally and substantially in the subject matter of that transaction. Under the permanent prohibition, a former City employee is permanently prohibited from assisting or representing any person in a particular business transaction involving the City if while a City employee, he or she exercised "contract management authority," as defined above, with respect to the particular transaction. See case number 92010.A, p. 3.

Based on the facts presented, because this development project is still in the conceptual stage and contract formulations between the City and Group Q were never discussed while you were a City employee, the permanent prohibition provided in this section is not applicable here.

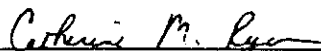
In regard to the one-year prohibition, the facts indicate that your post-employment activities would involve assisting Group Q in a business transaction--the development of a manufacturing market for using [REDACTED] material--that might involve a partnership relation with the City. The remaining question is whether you "participated personally and substantially in the subject matter of the transaction" during your City employment.

You stated that your involvement in this matter during your City tenure was limited to attending the initial informational meetings of Group Q, and writing two memos seeking guidance from your City department and information

from [REDACTED] a Federal Agency. In addition, you told staff that any City partnership relation with Group Q, if developed, would be undertaken by the Department of [REDACTED], and not by the Department of [REDACTED]. Furthermore, the activities in which you were involved while with the City related more to the partnership plan itself than to the promotion of the development project with area businesses, which is what you now would be doing for Group Q. It is the Board's opinion that, under these particular circumstances, the activities you performed in relation to the development project during your City employment do not constitute "substantial" involvement as intended by section 2-156-100(b) of the Ethics Ordinance.

CONCLUSION: The Board determines that your participation in Group Q, as you have described it to us is not prohibited by the Ethics Ordinance because (1) it does not involve the use of any confidential information you learned by virtue of your former City employment, and (2) your involvement in Group Q development plan while with the City cannot be considered "substantial" for the purposes of the Ordinance.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion. Other rules or laws may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those restrictions in the Governmental Ethics Ordinance.



Catherine M. Ryan
Chair