

ADVISORY OPINION
CASE NO. 98020.A
Post-Employment

To: [John Doe]

Date: July 8, 1998

On April 29, 1998, you wrote this office to ask how the City's Governmental Ethics Ordinance applies to a possible post-employment situation. You told us that you were considering accepting the City's offer of early retirement, effective on July 1, 1998. If you retire, you plan to begin working for a consulting firm that provides services to your Department. Your responsibilities, as discussed below, would be similar to those you have held as a City employee.

FACTS: You are an [Title A] in the Bureau of [T], Department of [N]. You work with streetscaping projects, under a federal "[Type Q]" program as well as under local initiatives. These projects involve repair of, replacement, installation, and other improvements to the environment. Each project, you said, lasts somewhere between three and eight months, rarely taking more than a year to complete. The work on these projects is performed by construction firms working under bid contract. In order to help ensure that the work is done properly, the City hires consulting firms whose engineers provide "field construction supervision," or on-site inspections of the work performed by the construction contractors. These inspections can also be performed by City employees. For most of your City career, you have been a [Title 2], performing field construction supervision work. Most recently, as [Title A], you have coordinated the field construction supervision performed by other City employees and by engineers from consulting firms hired by the City. You have been responsible for coordinating the inspection work at each of the Bureau's [Type Q] projects. You said that in a typical year there are approximately five [Type Q] block projects, and from half a dozen to a dozen other streetscaping projects. You said that you have never been involved in the process by which consulting firms are selected or hired, whether by issuing Requests for Qualifications/Requests for Proposals, selecting firms, or negotiating contract terms. At times, however, you did assist your [manager] in deciding which specific engineers from a consulting firm should be assigned to work at particular sites.

You are now considering taking advantage of the City's early retirement program, which would allow you to retire on July 1, 1998. You plan to take a job with one of the consulting firms that provides field construction supervision

services under a retainer contract with the Bureau of [T] . You will likely be assigned to work on projects involving your former City bureau, doing the kind of field construction supervision work you currently coordinate, and which you previously performed as a [Title 2] . You also told us that you might be asked, in your capacity as a consulting engineer, to perform coordinating duties similar to those you currently carry out as a [Title 2] . You asked us what restrictions the Ethics Ordinance would impose on your work in such a post-employment situation.

LAW AND ANALYSIS: Section 2-156-100 of the Governmental Ethics Ordinance, entitled "Post-Employment Restrictions," states in relevant part:

(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.

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.

This section imposes a one-year and a permanent prohibition. The one-year prohibition applies to business transactions involving the City in whose subject matter a former employee participated personally and substantially during his or her City employment; the permanent prohibition applies to contracts over which a former employee exercised contract management authority. Note that the one-year prohibition begins on the effective date your City employment terminates, not on the date you stop performing particular tasks. We will analyze each prohibition in turn.

The One-Year Prohibition. For one year after leaving City service, you are prohibited from assisting or representing any person, including a new employer, in a business transaction involving the City if, while a City employee, you participated personally and substantially in the subject matter of that transaction. In your possible post-City employment, you expect to perform field construction supervision and/or coordination at particular City streetscaping projects. These projects are clearly business transactions involving the City. You will therefore be prohibited for one year from assisting a new employer with any of those projects if, in your City job, you participated personally and substantially in its subject matter.

On the basis of the facts as you have presented them, the Board finds that the work you performed as [Title 1 and Title 2] , in connection with particular [Type Q] projects, qualifies for purposes of the Governmental Ethics Ordinance as personal and substantial participation in the execution of those projects -- that is, the [work on] the designated sites. The Ordinance's one-year provision will therefore prohibit you, if you leave your City job, from assisting or representing any person, including your new employer, in a business transaction involving the City whose subject matter is streetscaping at one of those project sites at which you performed (as [Title 1]) or coordinated (as [Title 2]) field construction supervision in your City job. Since, as you said, you are currently responsible for coordinating work at all of the [Type Q] projects in your Bureau, and since none of those projects is due to last for longer than a year, this prohibition effectively means that if you retire from your City position, you will not be able to perform any work in connection with the current set of [Type Q] projects. This prohibition extends both to field construction supervision and to the coordination of field construction supervision. However, the Board also concludes that the one-year prohibition does not prohibit you, as an employee of a consulting firm, from performing field construction supervision or field-construction-supervision coordination on new City [Type Q] projects, or other projects with which you were not involved as a City employee. This conclusion, in which the one-year prohibition in effect extends only to particular sites or City projects, is consistent with opinions rendered by the Board in previous cases where a former employee's City work was likewise limited to particular sites or projects. (See Case Nos. 96001.A, 96015.A, 96024.A.)

The Permanent Prohibition. The facts indicate that you have not been involved in the process by which consulting firms are selected or hired by the Bureau of [T] , and have not participated in issuing Requests for Qualifications/Requests for Proposals, selecting firms, or negotiating contract terms. Based on these facts, the Board concludes that you did not exercise contract management authority over the consulting retainer contracts between the Bureau of [T] and the various firms that provide consulting engineers to the Bureau.

The individual projects with which you were involved in your City job do not require analysis under the permanent prohibition. Since these projects do not last for more than a year, and since the one-year prohibition already applies to any project with which you were involved in your City job, the Board does not find it necessary to address at this time whether you exercised contract management authority over any of those projects, and whether you thus might be prohibited from assisting or representing any person with respect to them following the one-year period after your retirement from City service. If, however, one of those projects *does* last for more than a year after your retirement from City employment, and you are requested as a non-City employee to assist on such a project, we caution you to contact the Board for further guidance.

DETERMINATIONS AND CONCLUSION: The Board determines that the Ethics Ordinance will prohibit you *for one year* after you leave your City job from assisting or representing any person, including a new employer, on City projects for which you served as [Title 1] or as [Title 2]

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during your City employment. The Board also determines that the Ethics Ordinance will not prohibit you, after you leave your City job, from performing field construction supervision or coordination services on new City [Type Q] projects with which you were not involved as a City employee.

We also advise you that section 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determinations in this case are based 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 determinations. Other laws or rules may also apply to this situation.

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