

ADVISORY OPINION
Case No. 99012.A, Post-Employment

To: [John Smith]

Date: March 24, 1999

On February 22, 1999, you wrote to the Board of Ethics seeking guidance on how the Governmental Ethics Ordinance's post-employment restrictions apply to you, a [computer operator] with [Department 1], as you begin to interview for positions in the private sector. You noted that some of the private-sector employers with whom you may interview could have contracts with the City. Specifically, in a meeting with staff, you explained that you would like to begin your search for private-sector employment by interviewing for a position with [Alpha], a computer consulting firm, which, you said, has two contracts with the City's [Department 2].

Based on the facts you presented and the Board's analysis of prior opinions, the Board finds that neither the one-year post-employment restriction nor the permanent post-employment restriction of the Ordinance prohibit you from accepting a position with [Alpha] installing and managing computer server hardware. However, the Board finds that the Ethics Ordinance's one-year post-employment restriction does prohibit you from assisting or representing [Alpha], or any person, on any contract to provide technical support to the City's [information technology] Committee. The Board's analysis follows.

FACTS: You are a [computer operator] with [Department 1], []Division. You have been a City employee for more than 22 years. You have an undergraduate degree in accounting and finance; you completed many graduate courses in computer science; and you have extensive formal and technical training in computer science.

You informed staff that a number of years ago you installed [Department 1]'s mainframe computers and servers and configured their operating systems. The servers were manufactured by Sun Microsystems, Inc., a computer equipment manufacturer. You are now responsible for the day-to-day management of [Department 1]'s mainframe computers and servers. You said that these computer systems coordinate [Department 1] generated data [] and some [Department 1] administrative data.

You explained to staff that you are beginning to search for a job in the private sector and that you would like to interview for a position with [Alpha]. You said that [Alpha] currently has two contracts with [Dept. 2]. Under the terms of the first contract, [Alpha] is installing and managing newly-purchased Sun Microsystems servers for [Dept. 2]. You said that [Dept. 2] plans to use these new servers to integrate and coordinate many individual City departments' computer information and support needs. You explained that [Dept. 1] is not one of the City departments which will use the new servers. Because you have experience installing and managing servers built by Sun Microsystems, [Alpha] employees have suggested that you submit your resume and interview for a position with [Alpha].

You explained that [Alpha's] second contract with [Dept. 2] is to provide technical support to the City's [information technology] Committee. The [information technology] Committee includes representatives from each City department. The committee's charge is to uncover and solve [] problems which may arise as a result of [an information technology issue]. You are [Dept. 1]'s representative to the committee. You are responsible for providing information to [Dept. 2] and [Alpha] regarding [Dept. 1]'s computer systems. You also keep your supervisors informed of the material and suggestions distributed by [Dept. 2] and [Alpha] at committee meetings. You indicated to staff that if you are hired by [Alpha], you do not foresee [Alpha] assigning you to work as a technical advisor to the City's [information technology] Committee.

ANALYSIS

Post-Employment Restrictions: Former City employees are not prohibited by the City's Governmental Ethics Ordinance from working for any particular new employer, but the Ordinance does restrict the activities which former City employees may perform for their new employers. Section 2-156-100(b) of the 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 the respect to a contract this prohibition shall be permanent as to that contract.

Under this provision, former City employees are subject to *both* a one-year prohibition and a permanent prohibition after leaving City service. First, for one year after leaving City employment, former employees are prohibited from assisting or representing any person in a business transaction involving the City or any of its agencies if they participated personally and substantially in the subject matter of that transaction during their City employment. Second, former City employees are

permanently prohibited from assisting or representing any person in any contract if, as a City employee, they exercised “contract management authority” over that contract.

A. Proposed employment with [Alpha]

1. Permanent Prohibition: The Board finds that the permanent prohibition does not apply here because the position in question, representing [Alpha] on its contract(s) with [Dept. 2], does not involve a contract with which you were involved during your City employment.

2. One-year Prohibition: Section 2-156-100(b) of the Ethics Ordinance prohibits you, for one year after you leave City employment, from assisting or representing [Alpha], or any other person, in a business transaction involving the City if you participated personally and substantially in the subject matter of that transaction during your City employment. “Assisting” and “representing” another person in a business transaction involving the City includes helping a person perform its contract with the City. Case Nos. 98053.A; 89119.A. The Ethics Ordinance defines “person” to include corporations, partnerships, firms, and associations.

To determine how the one-year prohibition applied to you, the Board first determined the subject matter of the business transactions on which [Alpha] may ask you to work. Potential future projects are discussed below.

a. Installation and management of [Dept. 2’s] Sun Microsystems servers: You told staff that [Alpha] is seeking to hire an individual to install and manage [Dept. 2’s] Sun Microsystems servers. These servers will integrate the computer needs of a number of City departments, but not [Dept. 1].

In a number of prior opinions, the Board has held that the one-year post-employment restriction does not apply to work that falls under the rubric of trade skills — skills acquired through training and education. For example, in Case No. 91098.A, the Board found that the Ordinance’s one-year post-employment restriction did not prohibit a former City employee, who was a medical professional, from being hired by the City as a consultant to perform medical examinations. The Board explained that the tasks which the medical professional performed for the City as an employee and the tasks he would perform for the City as a contractor involved the “occupational skills of his profession, skills acquired through his occupational education and training.” Case No. 91098.A, p. 2. Based on these facts, the Board found that the one-year post-employment restriction was inapplicable because the situation did not “fall within the intended meaning of the one-year post-employment provisions.” Id.

Additionally, in Case No. 93006.Q, the Board approved a staff opinion which stated that the Ordinance’s one-year post-employment restriction did not prohibit a former City employee, who was a foreign-language translator, from contracting with the City to translate documents after leaving

City employment. The opinion explained that the skills required to translate documents “were the occupational skills of the former employee’s profession, gained through her education and training as a specialist,” Case No. 93006.Q, p. 2, and that when the employee was translating documents she would not be using any special knowledge about the operation of the City which she gained as a City employee.

If you were offered and you accepted a position with [Alpha] installing and managing Sun Microsystems servers you would be using the trade skills of your profession, skills acquired through your education and training, not the knowledge you have gained as a result of working for the City’s [Dept. 1]. Therefore, the Board finds that the one-year post-employment restriction does not apply in this situation and the Ethics Ordinance does not prohibit you from working for [Alpha] installing and managing Sun Microsystems servers.

b. City’s [information technology] Committee: You told staff that [Dept. 2] has a contract with [Alpha] to provide technical support to the City’s [information technology] Committee. Unlike the proposed work installing and managing servers, this contract would involve more than the use of trade skills. The subject matter of this transaction is the provision of computer support to City departments as these departments work to [address issues regarding upcoming changes]. The Board notes that you are [Dept. 1’s] representative to the [information technology] Committee. You attend committee meetings and provide [Alpha] and [Dept. 2] personnel with [Dept. 1] information and concerns regarding [issues regarding upcoming changes]. You inform your supervisors of information and requests forwarded by [Alpha] and [Dept. 2].

Based on these facts, the Board determines that you were personally and substantially involved with the City’s [information technology] Committee. As a result of your personal and substantial involvement, the Board determines that the Ethics Ordinance prohibits you, for one year, from assisting or representing [Alpha], or any other City contractor, on the City’s [information technology] Committee.

B. Employment with another City contractor: Although at this early stage in your search you are unable to provide the Board with information on any other company with which you plan to seek employment, the Board cautions you to closely examine the matters your new employer expects you to undertake. If your private-sector employer asks you to represent it in a business transaction with the City and you are unsure of whether the one-year restriction would prohibit you from assisting in the transaction, the Board recommends that you seek additional Board advice.

The Board also reminds you that the permanent post-employment restriction of the Ethics Ordinance permanently prohibits you from assisting or representing any person in performing a contract with the City if, during the course of your City employment, you exercised “contract management authority” over that contract. Contract management authority is defined 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.” § 2-156-010(g). Therefore, if you are faced with such a situation in your new employment, the Board suggests that you seek further advice.

Confidential Information: Finally, the Board also advises that Section 2-156-070 of the Ethics 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 by the Ethics Ordinance as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

DETERMINATIONS: The Board determines that:

1. you are not prohibited from working for [Alpha] on its contract with [Dept. 2] to install and manage newly-purchased Sun Microsystems servers; and
2. you are prohibited, for one year, from assisting or representing [Alpha], or any person, on any contract to provide technical support to the City’s [information technology] Committee.

Our determinations are not necessarily dispositive 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 determinations. Other laws or rules also may 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.

RELIANCE: This opinion may be relied on by any person involved in the specific transaction or activity discussed above or any person involved in a transaction or activity that is indistinguishable in all material aspects from the above-described transaction or activity.

Darryl L. DePriest, Chair
City of Chicago Board of Ethics