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CONFIDENTIAL



July 26 1989

Re:

Case No. 89103.A

Dear [redacted]

The Board of Ethics has received your request for an advisory opinion regarding the application of the Ethics Ordinance to your employment by another company.

In your letter of May 23, 1989, you state that (1) you plan to work part-time for this company as an attorney concurrent with your tenure as City of Chicago; (2) you anticipate working no more than twenty hours a week for this company at a fixed salary; (3) you own stock options in this company's parent corporation but that this ownership interest constitutes less than .001% of the company; and finally (4) these stock options and salary are the only monetary interests that you have in this company.

The issue arose under the Ethics Ordinance because your outside employer does business with the City of Chicago. This business is mainly in the form of the company's franchise for a specific service within the City boundaries and its sales of equipment and services to City government. The Ethics Ordinance imposes certain restrictions on City personnel who work for entities who do business with the City.

ANALYSIS: Following is an analysis of your employment plans under the applicable provisions of the Ethics Ordinance (Chapter 26.2 of the Municipal Code of Chicago). These provisions are Sections 26.2-8 (Conflicts of Interests), 26.2-11 (Financial Interests in City Business), 26.2-5 (Advice or Assistance Concerning City Business) and 26.2-9 (Representation).

(1) Section 26.2-8 of the Ordinance prohibits City personnel from taking part in governmental decisions which touch upon matters in which they have a pecuniary interest that is different from that of the general public. The section states:



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 (emphasis added).

"Economic interest" is broadly defined in Section 26.2-1(i) of the Ordinance as "any interest valued or capable of valuation in monetary terms...." Employment certainly falls within this definition, and will give you an "economic interest" in the company. Therefore, under Section 26.2-8, you must recuse yourself from participation in city decisions involving this company or touching upon its interests.

(2) Section 26.2-11 prohibits elected officials and employees from having a "financial interest" in city business directly or via another person or business entity. This prohibition is much more stringent than the one regarding "economic interests" (in the case of "financial interests," recusal is not a sufficient remedy). "Financial interest," however, is a more narrowly defined term. Section 26.2-11 states:

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 (emphasis added).

"Financial interest" is defined by Section 26.2-1(1) as:

(i) 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; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.

Based upon the information that you have provided (see above), the Board concludes that you do not have a financial interest in this company's business with the city. In the absence of complicating factors, simple salary and de minimis stock ownership will not give you such an interest. Therefore, you will not be prohibited by this section from maintaining your employment relationship with this company. However, under

26.2-1(i) and (ii), your employment by *this company* will give you a financial interest in the company itself (as distinguished from a financial interest in its business with the City). This interest must be reported on your annual Statement of Financial Interests per Article 2 of the Ethics Ordinance.

(3) Section 26.2-5 and Section 26.2-9 of the Ordinance involve similar issues and will be considered jointly:

Section 26.2-5 prohibits employees and officials from accepting compensation in return for advice or assistance on matters concerning the operation or business of the City.

Section 26.2-9 prohibits elected officials and employees from representing, or have an economic interest in the representation of, any person (natural or legal) before the City in any matter in which the City action involved is non-ministerial.

In this connection, our staff requested further information regarding your anticipated duties with *this company*. On June 29, 1989 you responded as follows:

1. You will be a Senior Attorney with responsibilities as follows:

a. Provide advice and counsel to *this company* officers and managers with respect to insurance coverage and the processing of claims under existing insurance policies.

b. Assist in the provision of advice and counsel to *this company's* managers with respect to federal and state antitrust laws including compliance with Modification of Final Judgment (MFG) issued by the United States District Court for the District of Columbia.

c. Assist in the provision of advice and counsel to *this company's* managers with respect to advertising and promotion of *this company* services to ensure that *this company* is in compliance with state and federal laws and regulations relating to fair compensation.

d. Coordinate and arrange educational seminars for the legal staff of *this company*.

Ad hoc issues including assistance to the Vice President, General Counsel and Secretary on general corporate matters, by-laws, Board of Directors, etc., as required.

You will not be assigned cases or issues which involve the City of Chicago. External court appearances or appearances before administrative agencies, will not be part of her responsibilities.

These job responsibilities do not involve (1) representing *this company* before the City of Chicago or (2) advising *this company* on the operation or business of the City. Therefore, we conclude that these responsibilities would not violate either Section 26.2-5 or 26.2-9 of the Ethics Ordinance.

CONCLUSION: On the basis of the facts contained in this letter, it is the Board's determination that your employment by *this company* is not prohibited by any applicable provision of the Ethics Ordinance. However, the Board is concerned by the potential for the appearance of impropriety when a high elected official of the City is on the payroll of a company that has a significant interest in business with City government. Even in the absence of any violations of the Ethics Ordinance whatsoever, it could appear that *this company* either derives or expects to derive an improper benefit from your association with City government. In order to avoid this, the Board advises (1) that you be extremely careful to avoid any contact or association with any City action which would affect the interests of *this company* and (2) that you be circumspect in your work for *this company* to guard against there being any appearance that your payment by that company is not genuine compensation for your formal employment responsibilities.

POST-EMPLOYMENT: Also please be advised that the Ethics Ordinance establishes restrictions upon former officials and employees who assist or represent persons in dealings with City government concerning matters in which they (the former officials and employees) were involved while still with the City. The severity of the restriction depends upon the degree of this previous involvement. Section 26.2-10(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


S. Brandzel
Chairman

Sincerely,

RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

during his term of office or employment [the one-year prohibition]; provided, that if the official or employee exercised contract management authority with respect to a contract that prohibition shall be permanent as to that contract [the permanent ban].