

CONFIDENTIAL

ADVISORY OPINION

March 20, 2012

Department of Housing & Economic Development  
Department of Law

Case No. 12007-1.A, Interest in City Business

On February 6, 2012, [DHED] forwarded us a copy of a letter dated January 30 from a "Concerned Citizen." The letter was addressed to the City's Inspector General (IG), and was also sent to DHED's Commissioner. It alleges that: i) the "[C] Chamber of Commerce" and "[N] Chamber of Commerce" each have contracted (actually subcontracted) with a company called [W] ; ii) [W] is owned by [Y, a City employee] ; iii) [Y] the (sub)contracts themselves are in violation of the Municipal Code of Chicago; that [Y] : iv) holds memberships in all the chambers of commerce "and the SSA's [Special Service Areas] that he performs work for"; and v) "also has contracts with [sic] Chicago Public Schools"; and finally, vii) that these associated subcontracts are prohibited by the contracts that these chambers of commerce have with two SSAs.

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1. [DHED] explained, and documentation DHED provided to us confirms, that these chambers of commerce are under contract with two separate Special Service Areas (SSAs), #00 and #99, to be "service providers." In fact, there are only two chambers of commerce involved here-- The [C] Chamber of Commerce is under contract to be the service provider to SSA #99. The "[Q] Chamber of Commerce" is under contract with SSA #00 to be that SSA's service provider. These two SSAs themselves, like all SSAs in Chicago (there are about 45 City-wide) are established by ordinances enacted by City Council, pursuant to the authority granted to the City by Article VII, Sections 6(l) and 7(6) of the Illinois Constitution, and by the Special Service Area Tax Law, 35 ILCS 200/27-5 et seq., and by the Illinois Property Tax Code, 35 ILCS 200/1-1 et seq. As the Board has recognized, the SSAs are thus, for purposes of the Governmental Ethics Ordinance, City Commissions, and their Commissioners, who are appointed by the Mayor and confirmed by City Council, thus City appointed officials. See Case No. 93013.A; Board minutes of 1/13/93 meeting. SSAs are authorized by their enabling ordinances to spend City funds they are appropriated for designated neighborhood improvement and other projects: SSAs do not have their own full-time staff (the Commissioners are volunteers, and DHED staff provides assistance to all SSAs in the City). Thus they contract with service providers--typically local chambers of commerce--to secure and hire appropriate persons and firms and to enter into (sub)contracts necessary to accomplish these projects, and expend their appropriated City funds for these purposes. SSA Commissioners approve these subcontracts.

On February 6, [DHED] requested an advisory opinion from the Board of Ethics addressing whether these subcontracts with [W] or [Y] himself have been or are in violation of the City's Governmental Ethics Ordinance (the Ordinance), and may be prohibited by the SSA/service provider contracts. On February 6 and 8, Board staff sent DHED and Law a preliminary analysis of issues arising under the Ordinance, and recommended that DHED seek the advice of the Law Department as to issues raised by relevant contractual language. That advice was sought. Board staff then requested that DHED obtain answers from the service providers to a number of factual questions, and DHED kindly and efficiently did that.

On March 15, the [Law Dept.] forwarded to us an anonymous letter, dated February 3, addressed to the City's Corporation Counsel (and forwarded the letter to the IG as well). We received that letter on March 19. The Law Department has asked for our opinion as to whether the allegations contained in this February 3 letter involve possible violations of the Ordinance. The letter shows a "cc" to Andy Shaw of the Better Governmental Association and John Kass of the Chicago Tribune. It is attached as Exhibit 2, and alleges that:

- 1) that [Y] owns a [business] by the name of [W]... [which] holds numerous contracts with many Chambers of Commerce across the City of Chicago and SSA's Special Service Areas. Both the Chambers and SSA's are funded with taxpayer money;
- 2) [C] Chamber Executive Director [D] does not follow the correct procedures with respect to placing the contracts up for bid every year as required within the terms indicated in the SSA #99 bylaws and City of Chicago agreement... and has [W] preferential treatment by allowing them to receive more than a one year contract in violation of both the bylaws and agreement;
- 3) [Y] while on duty operates and supervises [W's] operation;
- 4) [W] also has the contract with city vendor [J] that is contracted by the City of Chicago to work special events and as back up to the [B] Department;
- 5) "another conflict involves a company by the name of [WT] which is contracted by the City" [sic] to on for the Department of [Z] by [Y's] son ;
- 6) "[W] is located at [address] in Chicago and it's [sic] website ... includes testimonials from clients. As a matter of fact [D] is listed and quoted at the top of the webpage praising the work that [W] performs ...";
- 7) "[D] was let go by former 51<sup>st</sup> Ward Alderman while serving on the alderman's license committee for soliciting money from the owner of the Pub, located at [address] to gather signatures on a petition to

allows for a zoning change for the Pub. This is very unethical in my opinion”;

8) [D] has also been paid recently by a judicial candidate and Cook County State’s Attorney Anita Alvarez to circulate petition on while on chamber of commerce time. Just check the D-2’s of the candidates. He is to have no interest in any elected official under the Chicago Municipal Code governing the Chamber or SSA agreements;

9) Chambers of Commerce Executive Directors who receive taxpayer money consistently violate the provision of the SSA/service provider agreement; and

10) the IG “recently showed up unannounced with subpoenas at [business NAME] located at [address] in Chicago. The owner was ordered to turn over five years of records associated with events that held were by the [C] Center Chamber of Commerce in the 51<sup>st</sup> ward.”<sup>2</sup>

As DHED has sought and received an opinion from the Law Department addressing whether the subcontracts with [W], or [Y] himself, have violated the terms of the contracts between the SSAs and the chambers of commerce, we will not address those issues. And, as [DHED] has informed the IG that this Board opinion has been requested, and sent the IG our preliminary analysis of the case, and as we are making specific recommendations to the IG for further investigation and audit, we are requesting that DHED and Law forward a copy of this opinion to the IG.<sup>3</sup> Please also be advised that, pursuant to Board Rule 3-8, we are sending our opinion not only to DHED and the Law Department, as requestors, but also to [Y] (the opinion’s subject), and to [Y’s Dept. Head], who, together with Law, can consider and act on our recommendations. Under our Rules and Regulations, however, we have no authority to send our opinion to the Inspector General, who is neither the requestor nor the subject of the opinion, though we make several recommendations to his office.

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2. We note here that, of these allegations, only numbers 1 and 3 appear on their face to involve potential violations of the Ordinance. Numbers 4 and 5 may involve violations of the Ordinance, if it turns out that [W] or another entity owned by a City employee is a contractor or subcontractor on a contract, work or business paid with City funds, or with funds administered by a City department. Numbers 2 and 9 involve matters relating to potential breach by the service provider, the [C] Chamber of Commerce, of its contract with the SSA/City and its service provider. Numbers 6, 7, and 8 do not involve potential violations of the Ordinance. Number 10 is not really an allegation at all, and does not, on its face, concern the Ordinance, and thus falls out of the Board’s purview. We do note and recommend, however, that if the IG is, in fact, conducting an investigation that, in its judgment, uncovers issues that may constitute violations of the Ordinance, the IG discuss those issues with our staff, and request an independent advisory opinion from the Board addressing whether there were violations. In this way, the City would be put in the strongest possible legal position.

3. On March 19, our Executive Director had a phone conversation with the IG’s office, and explained that we were going to render this opinion today—without mentioning the names of the employees involved. He also explained that we are unable to send the IG a full, unredacted copy of our opinion, due to the wording of our law and Rules & Regulations, though we are sending it to the requestors and subjects of the opinion, as well as the subjects’ department heads.

At its meeting this afternoon, the Board carefully considered all the facts presented in light of prior relevant Board investigations and opinions in which we have interpreted and applied the pertinent Ordinance provisions. As fully explained in this opinion, the Board has determined that [Y] violated § 2-156-110 of the Ordinance ("Interest in City Business"), and that several City subcontracts were entered into between the respective SSAs' service providers and a company that [Y] wholly owns) and then performed in violation of the Ordinance. The Board has made eleven recommendations near the end of this opinion.

**FACTS:** Board staff reviewed several contracts, proposals, ordinances, and questionnaires that DHED staff sent and had prepared for us. These include contracts between SSA #99 and the [C] Chamber of Commerce for 2011 and 2012 and the accompanying ordinances enacted by City Council authorizing them, and the contract between SSA #00 and [Q] Chamber of Commerce for 2011 and the accompanying ordinance enacted by City Council authorizing it as well. From these documents, we have gleaned and here cite the facts relevant to the issues we are addressing under the Ordinance.

I. [Y]. Initially, we note that [Y] is employed by [B] Department as a [title], and began his City employment in 1980.<sup>4</sup>

II. SSA #00 and the [C] Chamber of Commerce. By City Council ordinances passed on 2010 and 2011, contracts between the [C] Chamber of Commerce and SSA #99 were approved for years 2011 and 2012.

A. 2010 Ordinance. In the 2010 ordinance, SSA #99's budget was approved for \$ (for fiscal 2011). Contained within the budget is the proposed contract between SSA #99 and its selected service provider, the [C] Chamber of Commerce, and a list of parties the SSA was expecting to retain in 2011, along with the payments that the SSA was estimating would be made to these parties in 2011. The 2010 ordinance (for 2011) lists, among others, "[W] Chicago 606 , 773 , 2011 Estimate: \$50,000+"

B. November 2, 2011 Ordinance. In the 2011 ordinance, SSA #99's budget was approved for \$ (for fiscal 2012). Contained within the budget is the proposed contract between SSA #99 and its selected service provider, the [c] Chamber of Commerce, and a list of parties that the SSA was expecting to retain in 2012. The 2011 ordinance (for 2012) lists, among others, "[W] Anticipated, [address] chicago [sic], IL 606 United States, Subcontractor- non MWBE, \$40,000+ Estimated."

C. Proposals from [W]. DHED also provided us with "Proposal # , " dated 2008, from [W] at Chicago, IL 606 , submitted to " SSA #99, [address] It shows service for 2008-2009, 2009-

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4. [Y] completed the 2007 mandatory all employee training program, in which restrictions on contracting with the City were covered. He has not attended a face-to-face ethics training session, at which restrictions on contracting with the City are covered.

2010 and 2010-2011," and shows totals, respectively , of \$30,000+, \$30,000+ and \$40,000+ The 2008-2009 season is broken up into what appears to be three [equal] payments DHED also provided us with "Proposal # dated 2011, from [W] , at Chicago, IL 606 , submitted to SSA #99, [address] It shows, under "description," " according to the RFP dated 2011 provided for the above location on a contract basis. invoicing will be in 3 installment [equal] payments \$ payable of this [year] agreement ... Service agreement and price will remain from 4/15/12."

D. Vendor Questionnaire. At Board staff's request, and in order for us to render this opinion, DHED presented the [C] Chamber of Commerce with a questionnaire Board staff provided the questions. DHED sent us the answers the Chamber provided . The answers show that the [C] Chamber of Commerce subcontracted with [W], with SSA funds, for services performed in 2010 and 2011, and that [W] was paid \$26,000 (from City/SSA funds) for services performed in 2010 and \$52,500 for services performed in 2011. It also shows states that "[Y] informed Chamber Staff that '[W] dba [W] is a Sub S Corporation. He is the sole owner.'" And, it states, the [C] Chamber of Commerce is currently subcontracting or intends to subcontract with [W] in 2012.

III. SSA #00 and the [Q] Chamber of Commerce.

By City Council ordinance approved on 2010, a contract between the [Q] Chamber of Commerce and SSA #00 was approved for 2011.

A. 2010 Ordinance. In the 2010 ordinance, SSA #00's budget was approved for \$ (for fiscal 2011). Contained within the budget is the approved contract with the service provider, the [Q] Chamber of Commerce. The list of parties that the SSA was expecting to retain in 2011, along with the estimated payments to these parties, shows "[W] Chicago, IL 606 773- - , Est. \$16,200 for . In addition, the page from the Economic Disclosure Statement filed by the [Q] Chamber in 2009 shows as a retained party "[W] , Chicago, IL 606 , 773- - , Est. \$12,000 for ."

B. Proposals from [W]. DHED also provided us with two " Proposals" from [W] . In the first, # , dated 10, (in it, the company is designated as "[W] ), submitted to the [q] Chamber of Commerce, , the total is \$13,200. There is a signature showing acceptance, by the SSA's chair, dated 2010 . In the second proposal, # dated 11, and submitted to the [Q] Chamber of Commerce, the company is designated "[W] , Chicago, IL 606 ." It is for a term from at a rate of \$30,000+ and also lists additional services at \$3,400 and \$1,800. It, too was signed and accepted by [the SSA's Chair]

C. Vendor Questionnaire. At Board staff's request, and in order for us to render this opinion, DHED presented the [Q] Chamber with a questionnaire Board staff provided the questions. The response document states that the [Q]

[Q] Chamber of Commerce subcontracted with [W], with SSA funds, for services performed in 2010 and 2011, and that [W] was paid--with City/SSA funds--\$11,100 for services performed in 2010 and \$16,250 for services performed in 2011. The respondent from the Chamber replied that "We, the SSA #00 Commission and I assumed [Y] to be the owner" of [W], and are not sure what percentage of ownership he might have had in each year. He or she also states that there is currently an open invoice with [W] for the period through 3/31/12, but that the Chamber has "been holding off paying him based on this review."

IV. Statements of Financial Interests. Board staff reviewed the Statements of Financial Interests that [Y] filed for years 2008-2011 (he has not filed his 2012 form yet). In them, [Y] disclosed that he is the President of [W] which is doing business in the City, and that this business received compensation from the Chicago City Colleges, Metropolitan Pier and Exposition Authority, and Chicago Public Schools in various years. In the forms he filed in 2010 and 2011, however, there is more: he disclosed that he was the "owner" or "sole shareholder" of [W], and that he was its president and had a financial interest in it in 2009 and 2010, when it was "doing business with the City."<sup>5</sup>

#### LAW AND ANALYSIS:

I. Interest in City Business. The relevant provision of the Ordinance is § 2-156-110, "Interest in City Business." It states, in relevant part:

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.

"Financial interest," defined in §2-156-010(l), means, in relevant part, "(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; [or] (ii) any interest with a cost or present value of \$5,000.00 or more." As the Board has interpreted these provisions, if a company or firm is owned completely or partly by a City employee, the value of the employee's ownership interest in the firm's City contract or business is calculated as the gross amount of the company or firm's contract, work or business with the City, multiplied by the employee's percentage of ownership interest in the company or firm. Case Nos. 04049.A, 97019.A; 90077.A. If the City employee's interest (which effectively is an ownership interest) in the City contract (or in City work or business) yields to the employee, or entitles the employee to receive, income of more than \$2,500 per year, then the employee has a prohibited financial interest in City business [emphasis added]. The applicable subdefinition in this case is

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5. Board staff has in past years been able to make an effort to review filed Statements of Financial Interests to identify and follow up on potential ethics issues. However, the agency has had to refocus its resources and efforts elsewhere for several years, and has been unable to review filed Statements proactively. It is possible that, with the ability to review these forms thoroughly, this disclosure might have been picked up.

(i), which, the Board recognized in Case Nos. 04049.A and 97010.A, governs situations where a City employee or official receives or is entitled to receive money as a result of an ownership interest. If the amount of money an employee or official receives or is entitled to receive from his or her ownership interest in a City contract or in City business is more than \$2,500 per year, the employee has a prohibited financial interest in City business (note that appointed officials are subject to a slightly different standard, which is not germane to this case) in violation of the Ordinance. Case No. 04049.A.

However, here, [W] is not and hasn't been a City contractor, but, rather, a City subcontractor. These two chambers of commerce, using City funds appropriated to the SSAs with which they contracted, were authorized to enter into these subcontracts by the SSAs and City Council. The names of the proposed subcontractors were disclosed to and then voted on and approved by City Council in public meetings—and were approved by SSA Commissioners. The question, then, is whether [Y] had an "interest in his own name or in the name of any other person" in payments [W] received, or was entitled to receive. If yes, then, under the holdings of Case Nos. 04049.A and 90077.A, [Y] would have prohibited financial interests in City contracts for years 2010-2011, because he owned 100% of [W] in those years, and possibly in 2008 and 2009 as well.

In Case Nos. 97019.A and 04049.A, we addressed the circumstances under which a City employee would have a prohibited financial interest in a City contract if a firm owned in part or wholly by the employee were to become a subcontractor on a City contract. In those cases, the firms were also City-certified MBEs, and, as such, the firms' names were required to be listed on the prime contractors' bid proposals, so the City could exercise discretion and evaluate the proposed subcontractors. Considering that fact, we determined that, where the participation of particular subcontractors is a component in the City's consideration of the (prime) contract award, then such consideration gives those subcontractors an "ownership" interest in the City contract, and of course in their own City subcontract(s). And, we said, where a subcontractor is listed on the prime contractor's bid proposal (whether as an MBE/WBE or, as here, otherwise), the participation of that subcontractor becomes subject to the City's approval, and thus the subcontractor has an "ownership" interest in City business, even though it typically is not paid by the City directly. Here, the subcontracts were actually awarded by the chambers of commerce, but were also voted on and approved by both the SSAs and the full City Council. In other words, under Board case law, [Y] could have had prohibited financial interests in City contracts, work or business through these subcontracts if he received or was entitled to receive \$2,500 or more per year through them. Case Nos. 90077.A; 04049.A. It remains then, simply to "do the math."

"The Math." [Y] owned 100% of [W] in years 2009 and 2010, and, he told a member of the [C] Chamber of Commerce, in 2011 as well. This being the case, under the way in which the Board has interpreted § 2-156-110, he has had ownership interests in several City contracts—in the name of another, namely, in the name of [W]—in the amounts of \$26,000 + \$11,100 in 2010 (a total of \$37,100), and \$16,250 + \$52,500 in 2011 (a total of \$68,750). Moreover, the record shows that, through his 100% ownership interest in [W], he is currently entitled to at least \$32,500 (and possibly up to an additional \$3,400 and \$1,800) from SSA #00 through 2012, and that he was likely entitled to the following amounts from it for [previous

years] \$39,000, \$40,000 and \$41,000 respectively. Thus, we conclude that [Y] violated § 2-156-110 of the Ordinance by having a prohibited financial interest in City contracts, work or business in 2009, 2010 and 2011 and 2012 (we also note here that he may have had such an interest in 2008 and 2009 as well, if, in fact, he owned at least 6.4% of [W] in 2008. That would have yielded him an ownership interest in SSA #99 contracts, City subcontracts, of more than \$2,500 in that year, and he thus would have violated this section of the Ordinance in those years as well).<sup>6</sup>

## II. Remaining Allegations.

A. The January 30 complaint. The January 30 complaint filed with the IG also alleges that [Y]:

i) holds memberships in all the chambers of commerce "and the SSA's [Special Service Areas] that he performs work for"; and

ii) "also has contracts with [sic] Chicago Public Schools"; and finally,

iii) that these associated subcontracts are prohibited by the contracts that these chambers of commerce have with two SSAs.

As stated above, the Board is not addressing (iii), and it is our understanding that the Law Department has provided an official interpretation of the relevant contract language to both DHED and the IG. As to (i), above, nothing in the Ordinance prohibits a business from becoming a member of a local chamber of commerce, even a local chamber that is under contract with a City agency, such as an SSA. That is true regardless of whether the business is owned wholly or partly by a City employee or official (or employs City employees or officials). We do not know what the letter writer meant by alleging that [Y] holds a membership in SSA #99. He is not and has not been an SSA #99 Commissioner. Thus, we conclude that this allegation has no legal significance under the Ordinance.

And last, as to (ii) the Board has long recognized that the Ordinance does not prohibit City employees, officials, or business entities in which they have an ownership interest, from seeking, entering into, or receiving compensation from any of the City's so-called "sister agencies," such as the Chicago Public Schools, City Colleges of Chicago, Metropolitan Pier and Exposition Authority, Public Building Commission, Chicago Transit Authority or Chicago Park District. This

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6. We note here that [Y] did not disclose, on question #5 of the Statements of Financial Interests he filed with the Board in 2010 and 2011, and possibly 2009 and 2008, that [W], a business in which he had a financial interest (here, an ownership interest representing 10% or more of the entity) received compensation from the City of Chicago in amounts greater than \$5000. And, if in fact he owned 10% or more of [W] in 2008, and it received \$10,000 or more in City subcontracts in 2008, then he failed to disclose, in question 6 of the Statement he filed in 2009, that in 2008, he had a financial interest in a person—namely, [W]—that did business with the City. However, the standard for determining that a City employee violated the Ordinance for failing to disclose such information requires *intent to mislead*. See § 2-156-410(a). Having reviewed [Y's] filings, we find that nothing warrants the conclusion that he intended to mislead, given that he disclosed his affiliation and ownership interest in [W] on these forms, and that [W's] subcontracts were with SSAs and their service providers, which he might understandably have thought were not City subcontracts.



is because, as a matter of both municipal ordinance and state law, these "sister agencies," including the Chicago Public Schools or the Chicago Board of Education, are not part of the government of the City of Chicago. They do not, absent special circumstances such as joint ventures with the City, pay their contracts with "funds belonging to or administered by the City," or authorized by ordinance enacted by the City Council. See, e.g., Case Nos. 87077.A; 88091.A; 87020.Q; 95022.Q; 05002.Q. Thus, the fact that [W] appears to have had (as [Y] disclosed on his Statements of Financial Interests), or actually did have or continues to have contracts or subcontracts with the Metropolitan Pier and Exposition Authority, City Colleges of Chicago or Chicago Public Schools, does not indicate a violation of the Ordinance.

B. The February 3 letter. This letter contains several allegations. As we noted above, in footnote 2, of these, only numbers 1 and 3 appear on their face to involve potential violations of the Ordinance. We have, in effect, determined and resolved number 1.<sup>7</sup> Number 3 requires further investigation. Numbers 4 and 5 may involve violations of the Ordinance, if it turns out that [W] or another entity owned by a City employee (presumably [Y]) is a contractor or subcontractor on a contract, work or business paid with City funds, or with funds administered by a City department. The remaining allegations in the letter do not appear to involve potential violations of the Ordinance.

**DETERMINATIONS:** For the foregoing reasons, the Board determines that: 1) [Y] violated § 2-156-110 of the Ordinance by having a prohibited financial interest in City contracts, work or business in 2010, 2011 and 2012 (and possibly in 2008 and 2009 as well, if, in fact, he owned at least 6.4% of [W] in those years); and 2) although [Y] did not disclose, on Statements of Financial Interests he filed with the Board of Ethics in 2010 and 2011, and possibly 2009 and 2008, that [W], a business in which he had a financial interest (here, an ownership interest representing 10% or more of the entity) received compensation from the City of Chicago in amounts greater than \$5000, there is no evidence before us that he intended to mislead, given that he disclosed his affiliation with [W] on each of these forms, and that [W]'s subcontracts were with SSAs and their service providers, which he might understandably have thought were not entering into City subcontracts. Thus, we determine that he did not violate § 2-156-410(a) of the Ordinance through his 2008-2011 Statements of Financial Interests filed with the Board.

The Board's determinations do not necessarily dispose of all the issues relevant to this situation, but are based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter the Board's opinion. Other laws or rules may also apply. The Board notes that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

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7. We note that the Ordinance does not *per se* prohibit [Y] from having contracts with chambers of commerce; rather, it prohibits him, as a City employee, from having a financial interest in City work, contract or business. Therefore we recommend that the Law Department discuss with the IG whether further investigation is warranted into whether there are other contracts between SSA's or their chambers of commerce/service provider and [W] that are paid with City-owned or City-administered funds.

**RECOMMENDATIONS:** Given: 1) the complexity of this case; 2) the possibility that there may be other similar violations of the Ordinance involving [Y] or other City employees, SSAs, their service providers, and subcontracts entered into by those service providers; 3) the fact that the Board has determined that there were violations in this situation, brought to light by an anonymous complaint; and 4) pursuant to the Board's powers and duties under §§ 2-156-380(e) and (n), the Board of Ethics recommends:

[Y's] Department:

Pursuant to §2-156-410(a), the Board recommends that [Y's] Department:

- 1) consider imposing employment sanctions as to [Y] as [Y's department head] deems appropriate, and report its action back to the Board's Executive Director<sup>8</sup>; and
- 2) advise [Y] that, if he is interested in pursuing SSA or other City contracts or subcontracts on behalf of either [W] or himself as an independent contractor, he must consider terminating his City employment; and
- 3) require him to attend face-to-face ethics training.

Why is the Board not recommending specific discipline in this case? In most cases in which it determines that an employee has violated the Ordinance, the Board does not make specific recommendations for discipline. Rather, it leaves that decision to the employee's department head, who is in a better position to know the employee's overall record. In those cases where the Board has recommended specific discipline, the employee(s) or official(s) have either committed repeat violations, or have sought and disregarded Board advice.

**Departments Housing and Economic Development and Law:** The Board recommends that the Departments of Housing and Economic Development and Law:

- 4) implement steps to ensure that: i) SSA Commissioners and the persons (or their representatives) they retain as service providers properly screen potential subcontractors that would be paid with City funds to ascertain whether these subcontractors are owned in part or whole by City employees or officials--this could be done by written questionnaire, similar to (but less extensive than) Economic Disclosure Statements filed by potential City contractors; and ii) documents filed with the City by potential contractors and subcontractors, including applications for MBE or WBE certification, disclosure statements and contract bids, require disclosure of any owners who are City employees or officials, and are thoroughly reviewed, specifically with respect to identifying those owners of potential contractors and subcontractors who are City employees or officials; and

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8. The record also shows that [Y] took mandatory online ethics training in 2007, in which restrictions on contracting with the City were discussed. However, the training did not discuss the fact that SSAs are City agencies, and thus contracts made by SSA service providers constitute contracts, work or business of the City. The 2012 training makes this explicit.

- 5) work with the Board of Ethics to develop a training program for SSA Commissioners and personnel affiliated with their service providers; and
- 6) consider, pursuant to § 2-156-430, voiding the current SSA #00 contract with [W], which expires
- 7) advise the two SSAs that, as long as [Y] remains as a City employee, he and any entities in which he has an ownership interest are severely restricted (if not outright prohibited) from having any contracts with the service providers;
- 8) discuss whether, under § 2-156-440, the City should bring a lawsuit for an accounting of any pecuniary benefit received by [W], and to recover them; and
- 9) that consideration be given to amending two sections of the standard SSA-Service Provider agreement, as follows (see *italicized, underlined* text for recommendations):

6.01 E. "That it [the SSA provider, agrees that], all Subcontractors and their respective officers, directors, agents, partners, and employees shall cooperate with the Inspector General *or Board of Ethics* in any investigation or hearing undertaken pursuant to Chapters 2-56 or 2-156 of the Municipal Code of Chicago; that it understands and will abide by all provisions of Chapters 2-56 and 2-156 of the Municipal Code of Chicago and all subcontracts shall inform Subcontractors of such provisions and require understanding and compliance therewith."

And,

6.03 Conflict of Interest. "Pursuant to Chapter 2-156 of the Municipal Code of Chicago, and 65 ILCS 5/3.1-55-10, no member of the government body of the City or other unit of government, nor other officer, employee, SSAC member or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement or related subcontract pertain, and no relative of any SSAC member shall have any personal economic or financial interest, directly or indirectly, in this Agreement or any such subcontract except to the extent that such benefits are provided equally to all residents and/or business owners in the area. Furthermore, no SSAC member, relative of any SSAC member, City official, agent, or employee shall be a Subcontractor *or have any financial interest in any Subcontractor*, or an employee or shareholder of the Contractor or receive anything of value from the Contractor."

**Inspector General:** The Board has pointed out various gaps in the factual record relevant to potential Ordinance violations, and we recommend that the Inspector General discuss with the Departments of Law, DHED and [B] whether it should commence or continue with an investigation that would ascertain facts necessary to close those gaps. Specifically:

10. Did [Y] have an ownership interest in [W] in 2008 and other years not mentioned in this opinion? If so, did [W] have similar subcontracts with SSAs #00, #99 or others? If so, for how

much, and with whom, and when?

11. Given the holdings and rationale articulated in this opinion, are there other SSA subcontracts that are being performed in violation of the Governmental Ethics Ordinance because they yield City employees prohibited financial interests, either in their own name or in the name of a business entity in which they have an ownership interest? We recommend that the IG conduct an audit of SSA subcontracts, and consult with the Board as to its findings and recommendations.

We note here that the Board of Ethics believes that it is inappropriate for it to recommend specific disciplinary measures regarding [Y] to his department head. And, moreover, we believe it inappropriate to recommend to the IG whether to continue with or suspend any investigation into this complaint that it may have commenced, or to recommend to the Law Department that it pursue legal action seeking recovery of pecuniary benefits received by through these City subcontracts. However, if the Law Department does decide to pursue such action, it would seem appropriate for the IG to continue its investigation and coordinate its findings with the Law Department so that the full recovery could be pursued.

**RELIANCE:** This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

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Miguel A. Ruiz, Chair