

CONFIDENTIAL

ADVISORY OPINION

**Case No. 09034.A, Money for Advice
2009**

INTRODUCTION: On [REDACTED], 2009, [REDACTED], an Assistant Commissioner [REDACTED] in the Department of [REDACTED] informed Board of Ethics staff via telephone of facts showing that [REDACTED], an [REDACTED] with [REDACTED], may have violated the City's Governmental Ethics Ordinance. In an email dated [REDACTED], [REDACTED], Deputy [REDACTED] Commissioner, informed Board staff that [REDACTED] had been placed on paid administrative leave, pending an internal investigation. On [REDACTED], [REDACTED] sent Board staff records and interview notes that [REDACTED] compiled during its internal investigation. That same day, Board staff spoke with [REDACTED], Chief Assistant [REDACTED] in the City's [REDACTED] Department ([REDACTED]), who said that she had been contacted by [REDACTED], but was waiting for more information from [REDACTED] before her office proceeded on the case. On [REDACTED], Board staff received an email from [REDACTED] stating that [REDACTED] would document its evidence in a formal memorandum and present it to [REDACTED]. On [REDACTED], [REDACTED], Deputy [REDACTED] in [REDACTED], informed Board staff via email that [REDACTED] had provided the requested documentation, and requested an advisory opinion regarding whether [REDACTED] violated the Ethics Ordinance by soliciting money from City vendors at [REDACTED] [REDACTED] for his union's fundraising ad book.

As fully explained in this opinion, the Board has determined, based on the facts presented and summarized in this opinion, that [REDACTED] (i) violated his fiduciary duty to the City by using his City position to solicit [REDACTED] vendors in order to gain a private benefit; and (ii) engaged in the unauthorized use of City-owned property by using his City-issued and owned laptop for personal, union, and political activities, including such use while on City time.

The facts upon which the Board's determinations are based and the Board's analysis follow.

FACTS: Except where indicated, the facts in this advisory opinion are solely the pertinent portions of the records provided by the [REDACTED] and/or [REDACTED] Departments. Except where indicated, the Board has done no independent fact-gathering or verification on its own. These materials, containing the facts, are attached hereto and made a part hereof as:

- (i) Exhibit A: [REDACTED] Memo dated [REDACTED], 2009 and relevant attachments thereto;
- (ii) Exhibit B: Email from Ms. [REDACTED], dated [REDACTED], 2009;
- (iii) Exhibit C: Email to Board staff from [REDACTED], dated [REDACTED], 2009;
- (iv) Exhibit D: Notice to Employees-Ethics Rules acknowledgment, signed by [REDACTED] and [REDACTED]

dated [REDACTED].

The facts are set forth as follows.

Job Description. [REDACTED] is an [REDACTED] for the City's [REDACTED], a position he has held since [REDACTED]. He is responsible for managing the use of the [REDACTED] Building Automation System ([REDACTED]),² which electronically controls all the environmental (heating, air conditioning, fire safety) systems in [REDACTED].³ According to [REDACTED], [REDACTED] day-to-day job responsibilities include the following: (i) along with the [REDACTED] under his supervision, making recommendations to the [REDACTED] contractors on what maintenance, preventive, and repair work is needed in [REDACTED] with respect to the environmental systems; (ii) reviewing the work orders, called user forms, submitted by [REDACTED] contractors to ensure that they meet the specifications agreed to between them and [REDACTED]⁴; and (iii) reviewing and verifying that the contractor work is completed and conforms those job specifications.⁵ [REDACTED] approval and sign-off is required before payment of the invoices can be approved by his supervisor, [REDACTED], Chief [REDACTED].⁶

Laptop In order to enable him to perform his job duties, [REDACTED] granted [REDACTED] exclusive access to a City-issued and -owned laptop for access to [REDACTED].⁷ According to the [REDACTED] email, [REDACTED] had possession of the laptop "for over ten years."⁸ On [REDACTED], 2009 [REDACTED] Manager of [REDACTED], received an email, dated [REDACTED], 2009, from [REDACTED], Operating Supervisor at [REDACTED] ([REDACTED]), informing Mr. [REDACTED] that a [REDACTED] was using a laptop as a workstation.⁹ The email continued, "This normally would not alarm us; however this laptop could be being used as a personal laptop at home and also has the capabilities of connecting to the internet. With either

1. [REDACTED] job description was provided by [REDACTED] in a phone call with Board staff on [REDACTED], 2009 ([REDACTED] phone call) and in Exhibit A, page 1. [REDACTED] length of employment in the job title was obtained from his resume, Exhibit A, page 79.

2. Exhibit A, page 1.

3. Exhibit A, page 3.

4. In a phone call with Board staff on [REDACTED], 2009, [REDACTED], a Deputy Commissioner of [REDACTED], explained that [REDACTED]s had "complete control over the whole [REDACTED] building." They "gave companies the authority to work in there, assisted them in getting around, they were responsible for the *entire* building." [REDACTED] further explained that [REDACTED]s had "lots of power going back years." In a follow up phone call with Board staff on [REDACTED], 2009, [REDACTED] said that is no longer the case. "Different management techniques now, though, since about a year ago. Way more oversight. They're still responsible for signing off on the user forms, though."

5. In a phone call on [REDACTED], 2009, an unidentified woman answering [REDACTED] phone in response to a Board staff call stated that there are "many" [REDACTED]s, who generally work one per terminal, plus per shift, so it was difficult to say exactly how many [REDACTED]s work for [REDACTED].

6. Exhibit B.

7. Exhibit A, page 2.

8. Exhibit A, page 13.

9. Exhibit A, page 11.

of these 2 scenarios a person could jeopardize the entire ██████████ Building Automation System via viruses that are spread from the internet or other hardware when used without proper protection.”¹⁰

██████████ emailed ██████████ about this issue, and ██████████ responded via email that he agreed that the access to the Building Automation System via laptop “should be disable[d]” and that a permanent PC workstation be installed for the laptop user.¹¹ According to ██████████, “██████████ was the only ██████████ with a laptop.”¹² In an email to Board staff on ██████████, 2009, ██████████ stated that he “spoke with [██████████]. We have no record that ██████████ was ever given specific instructions that the laptop could not be used for personal business. The laptop was issued by ██████████ as part of the ██████████ building system. The laptop is owned by the City of Chicago, but since the laptop and other related hardware associated with the ██████████ system were originally installed by ██████████, the normal IT messages were never installed. (The laptop was intended to only be used with the ██████████ building system).”¹³ ██████████ email also states, “The only warning given to ██████████ that is documented by an Acknowledgment of Receipt is ██████████ notification concerning the Ethics Rules which has a clause on the unauthorized use of City-owned property.”¹⁴

On ██████████, 2009, ██████████ emailed ██████████, Assistant ██████████ Commissioner, informing her that he had asked ██████████ to return the laptop “several times verbally” during the month of ██████████, 2009.¹⁵ The email states that on ██████████, 2009, ██████████ came to ██████████ office and told him that he “would not return the laptop as ██████████ had instructed.” When ██████████ asked ██████████ why he would not return the laptop, ██████████ stated that he used the laptop as a teaching tool for ██████████ staff.¹⁶ ██████████ told ██████████ that ██████████ had provided him with a new PC and handheld computer plus an extra handheld PC for ██████████ in ██████████ office. ██████████ was also told that “through the ██████████ contract there is a line item to train employees.” According to ██████████ email, “██████████ became extremely irate and started yelling that nobody knows his building better than him, even ██████████. That ██████████ will not touch anything in his building without his direction and that if I ██████████ take the laptop away he would inform all the ██████████ and the union that I am taking away his tool to teach employees.”¹⁷

Also on ██████████, 2009, ██████████ emailed ██████████ and asked him, “Who’s (*sic*) possession has

10. Exhibit A, page 11.

11. Exhibit A, page 10.

12. Exhibit A, page 3.

13. Exhibit C.

14. Exhibit D.

15. Exhibit A, page 16.

16. Exhibit A, page 16.

17. Exhibit A, page 16.

the laptop been in for the last several years?"¹⁸ [REDACTED] responded via email, "[REDACTED], it has been in my possession for over ten years."¹⁹ [REDACTED] then asked [REDACTED], "Was it given to [REDACTED] (another [REDACTED] employee) when he was in [REDACTED] to provide training?"²⁰ [REDACTED] responded "No" and also said that [REDACTED] and [REDACTED] had just picked up the laptop.²¹ [REDACTED] thanked [REDACTED] for that information, but continued that he was "looking for records that would show that the laptop was used for the training and development of our staff (in the last two years) as you wrote in your email. Please advise if you have any such records." However, [REDACTED] responded, "Sorry, [REDACTED], I have no official record- [REDACTED]."²²

Laptop Files. According to [REDACTED], when [REDACTED] laptop was picked up on [REDACTED], 2009, it had been completely cleared of any documentation, software, or information.²³ In fact, every time [REDACTED] had logged onto the laptop, the information that was on it had uploaded to [REDACTED]'s server.²⁴ [REDACTED]-Information Technology personnel conducted a scan of the laptop on [REDACTED], 2009 of files that [REDACTED] recovered: that scan found 235 personal pictures, AOL internet software, 534 mixed documents, 3 excel spreadsheets, 17 Microsoft Word documents, "documents which appeared to reflect [REDACTED] political activities," and "documents which were found to be of a personal nature and appeared to reflect union activity."²⁵ Moreover, the scan confirmed that [REDACTED] accessed both his union and his personal files while at work.²⁶ The [REDACTED] program indicates the last dates and times each file was saved. These times and dates were cross-referenced with [REDACTED] time and attendance records, and showed, according to a notation on the files, that "personal documents [were] modified when [REDACTED] was working."²⁷

Solicitation Activities. [REDACTED] is a member of the [REDACTED]

18. Exhibit A, page 13, 8:45 a.m.

19. Exhibit A, page 13, 8:51 a.m.

20. Exhibit A, page 13, 9:00 a.m.

21. Exhibit A, page 13, 10:02 a.m.

22. Exhibit A, page 13, 12:48 p.m.

23. [REDACTED] phone call.

24. [REDACTED] phone call.

25. Exhibit A, page 6. In addition to the personal photographs, other documents of a personal nature included [REDACTED] resume, an analysis of his personal finances, and an analysis of his monthly personal expenses. Documents which appeared to be of a political nature included a political message entitled "Resident of the [REDACTED] Precinct of the [REDACTED] Ward" and political voting records entitled "[REDACTED]," "[REDACTED] election feb 2003" and "[REDACTED] 2004." Documents which appeared to reflect union activity included "Promotional Fund Ads- 2005," "Invoices," "Ad purchase for 2001," "[REDACTED] Acceptance to trustee," "[REDACTED] Add notice," "[REDACTED] Contract Negotiations Issues," "[REDACTED] letter re: zero days," "[REDACTED] Phone directory," "[REDACTED] contract notes," "[REDACTED] memo," "[REDACTED] elections," and "[REDACTED] Feb 2002." Exhibit " , pages 29-51, 53, 55-77.

26. Exhibit A, pages 104, 108, 121, and 130. The Exhibit A documents are: [REDACTED] Ad Notice, modified 10/03/2004 8:14 a.m.; [REDACTED] Add (sic) Notice, modified 12-19-2002 10:00 a.m.; and Promo ad2005.xls modified 04-20-2005 12:02 p.m.

27. Exhibit A, page 4.

[REDACTED] Union [REDACTED] and a union trustee.²⁸ [REDACTED] stated in his memo that [REDACTED] "has repeatedly contacted vendors responsible for services and materials in [REDACTED] to solicit funds for an ad book produced every two years."²⁹ The ad book is a fund raiser for [REDACTED]. In addition, the memo states that [REDACTED] solicited vendors to contribute funds for a charity benefit.³¹ After consulting with [REDACTED], as part of [REDACTED]'s own investigation, [REDACTED] interviewed several [REDACTED] contractors on [REDACTED], 2009.³² [REDACTED] asked them the following questions:

1. Have you ever been solicited by a union employee for fundraising?;
2. Who?;
3. When?; and
4. What for?³³

[REDACTED] provided summaries of [REDACTED] interviews with the following City contractor representatives:

[REDACTED] Operating Supervisor, is [REDACTED]'s contact person with [REDACTED] A. [REDACTED] personally interviewed [REDACTED] on [REDACTED], 2009. [REDACTED] interview notes indicate that [REDACTED] had solicited [REDACTED] employees for union ad book fundraising "Before I ([REDACTED]) was assigned here" and that [REDACTED] would provide a written statement.³⁴ [REDACTED]'s written statement to [REDACTED], dated [REDACTED], 2009, said, "In our conversation on [REDACTED], 2009, you asked me if any Union employees employed by the City of Chicago and working for the Department [REDACTED] solicited any [REDACTED] employees for donations. I personally have not been solicited. However, I have spoken with my employees and they have informed me that a gentleman by the name of [REDACTED] had solicited both current and former [REDACTED] employees for [donations to the union ad book]."³⁵

[REDACTED] works for [REDACTED], another [REDACTED] contractor. [REDACTED] personally interviewed [REDACTED] on [REDACTED], 2009. [REDACTED] told [REDACTED] that [REDACTED] had solicited him in the [REDACTED] of [REDACTED]

28. Exhibit A, page 56.

29. Exhibit A, page 4.

30. Exhibit A, page 4.

31. Exhibit A, page 4.

32. Exhibit A, pages 19, 21, 23, 25, and 27. [REDACTED] confirmed that these five were the only [REDACTED] contractor representatives that [REDACTED] interviewed.

33. Exhibit A, page 25, document entitled "Notes from Interviews conducted by [REDACTED]."

34. Exhibit [REDACTED], page 25.

35. Exhibit A, page 19.

[REDACTED], but he “can’t remember for what.”³⁶ [REDACTED] wrote [REDACTED] a letter on [REDACTED], 2009 that said, “In accordance with your request of [REDACTED], 2009– [in answer to your question whether [REDACTED] has contributed to [REDACTED] personnel or participated in any golf outings, ad pages, or fund raising requests– [REDACTED] identified one instance going back to [REDACTED], when there was a purchase [by an [REDACTED] employee] of two (2) tickets (\$50.00 each) from [REDACTED] for a charity benefit for [REDACTED], [REDACTED] reimbursed this employee and he did attend the event....”

[REDACTED] is an employee of [REDACTED], a [REDACTED] contractor. He worked directly with [REDACTED]. In notes from a phone call between [REDACTED] and [REDACTED] dated [REDACTED], 2009, [REDACTED] stated that he had been solicited by [REDACTED] for fundraising over the “last several years” for “Ads for Union Book” and “Church Annual Christmas.”³⁷ The note said, “[REDACTED] came with an ad book you need to buy (sic) an ad, if you want to get stuff done around here you need to buy a bigger ad. First ad that was bought was not enough [I] was told to spend more.”³⁸

[REDACTED] was the contact person for [REDACTED], another contractor. [REDACTED] told [REDACTED] that he had been solicited by [REDACTED] “for the last three years” for the “[REDACTED] ad book.”³⁹

[REDACTED]. An interview note prepared by [REDACTED] stated that on [REDACTED], 2009, [REDACTED], General Manager [REDACTED] at [REDACTED], and [REDACTED] all met with [REDACTED], an employee [REDACTED], another [REDACTED] contractor, to discuss an incident involving [REDACTED].⁴⁰ According to [REDACTED] verbal statement, [REDACTED] “had solicited [REDACTED] to sponsor a hole at an upcoming [REDACTED] golf outing.”⁴¹ He said that [REDACTED] handed him a flyer with the information, and [REDACTED] then gave the flyer to his boss. [REDACTED] stated this was not the first occasion where [REDACTED] solicited monies from his company, and in fact [REDACTED] had in past years purchased space in the [REDACTED] “Ad Book.”⁴²

[REDACTED] Election-Related Activities. A scan conducted by [REDACTED]-Information Technology personnel on [REDACTED], 2009 shows that several files were deleted from [REDACTED] laptop during the time period in which [REDACTED] confirmed that the laptop had at all times been in his sole

36. Exhibit A, page 25.

37. Exhibit A, page 23.

38. Exhibit A, page 23. In a phone call with Board staff on [REDACTED], 2009, [REDACTED] said that [REDACTED] was the only vendor interviewed who expressed a concern about unfavorable treatment if he did contribute to [REDACTED] fundraising.

39. Exhibit A, page 25.

40. Exhibit A, page 27.

41. Exhibit A, page 27.

42. Exhibit A, page 27.

possession.⁴³ According to ██████████ memo, these documents “appear to reflect ██████████’s political activities”: (i) a letter addressed to “Resident of ██████████ Precinct of the ██████████ Ward;” (ii) a document entitled “██████████” (iii) a document entitled “██████████ Election Feb 2003;” and (iv) a document entitled “██████████ 2004.”⁴⁴ ██████████’s computer scan also confirmed that ██████████ accessed these political files while at work.⁴⁵ The “Resident” letter read, in its entirety, “I would like to extend my thanks for those who participated in the recent electoral process for ██████████ on February 25th. Thank you for your continued support for *all* the ██████████ Ward ██████████ Party endorsed candidates. I will continue to keep you well informed in any future elections in order to maintain a dedicated and important ██████████ precinct of the ██████████ Ward. Thanks.” [Emphasis in original.]⁴⁶ The “██████████E” document contained what appeared to ██████████ to be a list of voters’ names, addresses, and political affiliations.⁴⁷ The “██████████ Election Feb 2003” document was apparently also a list of voters’ names, their addresses, and their political affiliations.⁴⁸ The “██████████ 2004” document listed three names, two addresses, and “██████████” next to one of the names.⁴⁹

LAW AND ANALYSIS: This situation presents issues under two sections of the Governmental Ethics Ordinance. We address them in order.

1. Fiduciary Duty. The first section is Fiduciary Duty, §2-156-020, which states:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

The Board has, over the years, said that a City employee or official violates his or her fiduciary duty to the City by using City time and City resources to obtain a personal benefit or to promote a purely private interest. See Case No. 92041.A. This section also obligates City employees and officials to use their City position responsibly and in the best interest of the City. See Case No. 92028.I. While there are no previous cases in which the Board has specifically addressed a situation in

43. Exhibit A, page 6.

43. Exhibit A, page 6.

44. Exhibit A, pages 85-90.

45. Exhibit A, pages 103, 122.

46. The “Resident” letter was modified on 2-26-04 at 12:26 p.m.; “Resident” letter was also modified on 4-01-03 at 1:51 p.m.

47. Exhibit A, 87-88.

48. Exhibit A, page 89.

49. Exhibit A, page 90.

which a City employee personally solicits City contractors in order to fill his union ad book, we conclude that, as analyzed below, this activity constitutes—in these circumstances—an act by a City employee in which he has employed his City position for “a purely private interest” in violation of his fiduciary duty. See Case No. 92028.I.

According to the clear and detailed factual record presented to the Board, ██████████ “repeatedly contacted vendors responsible for services and materials in ██████████ to solicit funds for an ad book produced every two years”⁵⁰ and “solicited vendors to contribute funds for a charity benefit.”⁵¹ Parsing his actions, and describing them bluntly, ██████████ personally and directly approached specific City contractors with whom he regularly dealt—and over whom he exercised personal authority in his City position—to contribute to his union, and, at least in one instance, reasonably conveyed the impression that there would be consequences to the contractor’s City business for contributing or failing to contribute. To aid in his success in filling his union ad book, ██████████ took advantage of his enhanced access to these City contractors arising from his position as an ██████████, which, but for his City position, he would not have possessed.

In order to determine whether a City employee violates his fiduciary duty to the City under a set of facts in which the employee solicits City contractors, and, consistent with prior Board cases, the Board finds that it must review and apply, in each specific situation, the following four factors: (i) whether the employee’s activity was in furtherance of, or a part of, an approved or official City initiative; (ii) whether the employee personally and directly solicited the City contractor; (iii) whether the employee was, in his or her City job, in a position of direct authority over the City contractor; and (iv) whether a reasonable person assessing these circumstances could infer that the contractor’s relationship would be positively affected by agreeing to the solicitation, or negatively impacted by refusing it. In this case, ██████████ was soliciting on behalf of his union, not, for example, in the course of soliciting for a City-approved charity; he approached the City contractors directly and personally; he had direct contractual authority with respect to each of them; and, taking into consideration all the circumstances and the above facts, including his statement to ██████████, placed the City contractors in a position in which a reasonable person could infer that their compliance with or refusal of ██████████’s solicitations would have either a positive or negative effect *vis-a-vis* the City. Accordingly, the Board concludes that ██████████ violated his fiduciary obligation to use his City position in the best interests of the City but, instead, used it in order to gain a private benefit. See Case No. 92014.A (police officer used his position to obtain expedited access to public records).

2. City-owned Property. This situation also presents an issue under §2-156-060, entitled “City-owned Property.” It states:

No official or employee shall engage in or permit the unauthorized use of City-owned property.

City employees, such as ██████████, violate this section if they engage in or permit the

50. Exhibit A, page 4.

51. Exhibit A, page 4.

unauthorized use of City-owned property. See Case No. 98025.I.06. A scan of ██████████ City issued and owned laptop revealed a very large number of personal and election-related documents: 235 personal pictures, AOL internet software, 534 mixed documents, 3 excel spreadsheets, 17 Microsoft Word documents, 4 “documents which reflect ██████████ political activities,”⁵² and at least 12 “documents which were found to be of a personal nature and appeared to reflect union activity.” Moreover, the scan revealed that many of these documents were accessed while ██████████ was on City time. As the Board found in Case No. 88087.A, “Any attempt to use time designated for public service to obtain a personal or private advantage is a violation of this section.”

Although ██████████ and ██████████ said that they had “no record that ██████████ was ever given specific instructions that the laptop could not be used for personal business,”⁵³ on ██████████, ██████████, ██████████ signed an Acknowledgment of Receipt of notification concerning the City’s Ethics Rules, which has a clause on the unauthorized use of City-owned property. ██████████ had sole control over the laptop “for over ten years,”⁵⁴ had signed an acknowledgment regarding the unauthorized use of City-owned property, and returned the laptop completely clear of any documentation, software, or information.⁵⁵ Accordingly, the Board concludes that ██████████ engaged in the unauthorized use of City-owned property by using his City-issued and owned laptop for personal, union, and political activities, including such use while on City time.

DETERMINATIONS AND RECOMMENDATIONS: Based on the Board’s analysis of the facts presented in this opinion under the City’s Governmental Ethics Ordinance, the Board determines that ██████████ i) violated §2-156-020 of the City’s Governmental Ethics Ordinance by soliciting vendors during his work hours and by using his City-owned and issued laptop to manage his union activities; and (ii) violated §2-156-060 by using his City-issued and owned laptop for personal, union, and political activities, while on City time.

Accordingly, under §§ 2-156-410(a) and -380(e) of the City’s Governmental Ethics Ordinance, the Board, having considered the nature of the determined violations, recommends to the Department of Aviation that, in consultation with the Law Department, it consider pursuing any and all available sanctions for these violations, including discharge of ██████████ from City employment.

Further, the Board recommends that, pursuant to § 2-156-410(b) of the Ordinance, the Law Department review whether ██████████ “intentionally violate[d] ... Sections 2-156-020 or 2-156-060 in a manner that would constitute a violation of Section 5-15 of the State Officials and Employees Ethics Act if the illegal action were committed by an employee or official of the state government.” If he did, then, under that provision, he is guilty of a Class A misdemeanor as defined

52. We conclude that the documents referenced above in footnotes 44-49 constitute political activity as defined in § 2-156-010(s) (5), (7) and (10), which read, respectively: “Taking an active part in managing the political campaign of a candidate for public office in an election or a candidate for political party office”; “Soliciting votes in support of or in opposition to a candidate for public office in an election or a candidate for political party office”; and “Endorsing or opposing a candidate for public office in an election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material, or distributing such material.”

53. Exhibit C.

54. Exhibit A, page 13, 8:51 a.m.

55. ██████████ phone call.

in the Illinois Criminal Code.

The Board's determinations do not necessarily dispose 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. Other City rules or policies or laws may also apply.⁵⁶ If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those determinations.

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.

Miguel A. Ruiz, Chair

cc: [REDACTED]

56. Although the Board has no authority to interpret the City's Personnel Rules, the Board nonetheless recommends that the Department of [REDACTED], in consultation with the Department of [REDACTED], also pursue all available remedies thereunder.