

November 4, 1998

**CONFIDENTIAL**

*- outside employment  
- food safety inspections  
- fiduciary duty  
- conflicts of i*

**Re: Case No. 98051.Q  
Outside Employment**

Dear [ John ]:

You requested an opinion from Board of Ethics staff on how the Governmental Ethics Ordinance applies to your proposed non-City employment as a food safety consultant. It is the staff's opinion that while the activities you described are not a violation of the Ordinance, your current City position is such that there exists a strong potential for future conflicts of interest. Further, your holding such a responsible position in a department that makes decisions affecting your proposed clients may give rise to an appearance that your clients will receive preferential treatment. Accordingly, we do not believe it would be appropriate for us to advise you to undertake the outside employment you described, while you are in your present position. This letter explains our analysis of the situation you presented under the relevant provisions of the Ethics Ordinance.

**FACTS:** You are the [ ] of the Department of [ ]. You said you are the chief operating officer for the Department: you are responsible for managing personnel matters and administrative procedures, making policy decisions about the procedures used throughout the Department, and overseeing and meeting regularly with the heads of the various divisions who implement those procedures. You stated that you do not personally participate or directly oversee the [ ] permit or inspection processes, and you do not approve or sign any documents related to individual permits or inspections. Prior to this post, which you began [ ], you served as the [ ] for [ another ] Department.

You are a 50% owner of [ Company Alpha ], a food sanitation consulting firm that offers review, inspection, education, and staff training services to restaurants and other private food service providers. [ Mary ], who is the [ ] for the City of Evanston, is the other 50% owner. Both you and [Mary ] are state-licensed sanitarians. You said that the two of you are the only employees of the corporation, and that it

has not yet had any business. You also stated that your company currently will not seek any business with the City of Chicago.

You said you were contacted recently by two entities that have expressed interest in the services your company provides. [Corporation Beta ], which owns and operates four restaurants in Chicago, and [Corporation Gamma], which operates food services at [ two locations ], are interested in contracting with your company to provide periodic inspections of their facilities and regular training of their staff. You said a service contract of this kind would most likely involve inspecting each facility once a quarter on a range of food safety issues, issuing a report to the management on your findings, recommending corrections or improvements where needed, and training their staff on food sanitation (perhaps a three-hour session once a month at each location). You said either you or [ Mary ] could perform these services. You told us that all of the services your company would perform are related to general food safety and sanitation matters—for example, the proper refrigeration and preparation of food, and the cleanliness of the facilities and staff—and are designed to improve the overall food safety quality of the establishments you inspect. Those services are not geared specifically toward City health inspection requirements, you said, although the services you provide should enhance the food sanitation practices of the corporations with whom you contract and, therefore, can be expected to improve their performance on health inspections. You told us you are interested in pursuing the contracts with these two corporations on behalf of your company, but that you will not proceed further until you have received advice from our office.

You stated, and City records confirm, that neither [Corporation Beta] nor [Corporation Gamma] do business with the City. However, because they operate food service facilities within the City of Chicago, these corporations come before [ your ] Department on a regular basis. Public business establishments within the City are required to pass annual [ ] Department inspections in a variety of areas, including [ ]. These establishments also must pass any inspections deemed necessary as a result of complaints received by your department. In addition, they would need to apply for [ ] Department permits if they want to [ ]. You stated that you do not make the kind of decisions in your City job that would directly affect either [Corporation Beta] or [Corporation Gamma] in any permit or inspection matters since you do not personally supervise or participate in the permit or inspection processes of your department. However, you are in charge of all the divisions of your department that handle such matters, and you make policy decisions that affect how these procedures are administered, including in what manner and under what conditions permits are issued and inspections conducted.

**LAW AND ANALYSIS:** The main provisions of the Ethics Ordinance that apply to your proposed non-City employment are those governing “Improper Influence,” “Conflicts of Interest,” and “Fiduciary Duty.” We set forth each of these provisions as they apply to your situation.

IMPROPER INFLUENCE AND CONFLICTS OF INTEREST. Ordinance Sections 2-156-030 and 2-156-080, entitled “Improper Influence” and “Conflicts of Interest” respectively, prohibit

you, as a City employee, from making, participating in, or trying to use your position to influence, a governmental decision or action or a decision on a matter in which you have an economic interest. An "economic interest" means "any interest valued or capable of valuation in monetary terms" (§ 2-156-010(i)). In past cases, the Board has said that a City employee has an economic interest in an outside employer by virtue of the employment, and a conflict of interest arises if the employee were to make City decisions affecting that employer (Case Nos 94009.A and Case No. 92044).

You said you do not make decisions in your City job that could affect your own company or that would directly affect [Corporation Beta] or [Corporation Gamma]. Even if [Corporation Beta] or [Corporation Gamma] come before [your ] Department for permit or inspection purposes, you said you do not personally supervise or participate in those processes. However, because you have such broad authority over every division of your department, we cannot rule out the possibility that, in the normal course of your City duties, at some time in the future you will be called upon to make decisions in policy or operational matters in which you have an economic interest by virtue of your outside employment. For example, if your proposed client [ Corporation Beta ] were to need permits from your department to [ ], and ran into some issues that needed to be resolved, you would have an economic interest in the matter that was before your department for resolution, because of your company's contract to do conduct food inspections for [Corporation Beta]'s restaurants. A similar conflict of interests could arise if, because of your ultimate responsibility for the division that conducts regular annual [ ] inspections, problems arose in the inspection of one of your client's restaurants, and you were called upon to make a decision that would solve the problems. Furthermore, because of the breadth of your authority over the daily operations of your department, if a corporation with whom your private company contracts comes before [ your ] Department, it may give rise to an appearance that these corporations will receive preferential treatment, and raise questions about the fairness of your actions in your City job.

FIDUCIARY DUTY. The Ethics Ordinance also provides that City officials and employees "shall at all times in the performance of their public duties owe a fiduciary duty to the City" (§ 2-156-020). This section obliges you to use your City position responsibly and in the best interest of the public, and to exercise your professional judgments and City responsibilities free from outside influence or conflicting duties to other entities, such as to your own company or its clients. It also prohibits you from using City time, resources, or your position or title to obtain a personal benefit or to promote a purely private interest, such as a private business.

City employees engaging in outside employment or business ownership are also subject to several other Ordinance provisions. We attach a summary entitled "Restrictions Concerning Outside Employment or Business Activities of City Employees," which we ask that you review.

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**CONCLUSIONS:** It is Board staff's opinion, based on the facts you presented, that your proposed outside employment as you have described it does not violate the Ethics Ordinance. However, for the reasons we have stated -- to avoid conflicts in the future, and to avoid giving rise to the appearance that preferential treatment is given to your clients due to your departmental position of responsibility and authority -- we believe it would not be appropriate to advise you to undertake this outside employment while you hold your current City position.

Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion.

Other laws or rules also may apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment; Personnel Rule XXIX, Sections 2 and 4, which provide that City employees shall not have any employment or business relationship with any person who is doing business with the City if they exercise contract management authority with respect to that person's City business, and that City employees may not recommend, retain or hire as a City contractor any person with whom they have a business relationship; and Personnel Rule XVIII, Section 1, nos. 43 and 53, which provide that a City employee may be disciplined for failure to comply with Rules XX and XXIX. In addition, we remind you 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.

We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. We enclose a copy of the Ordinance for your convenience. Please contact us if you have any further questions.

Very truly yours,

Dorothy J. Eng  
Executive Director

Enclosures