CONFIDENTIAL

[Steven Smith]

Acting Director of [Division]
Chicago [X] Department
[123 Main Street]
Chicago IL 606xx

Re: Case No. 10060.CNS

Dear Mr. [Smith],

In [a date] 2010, [Mr. Jones], formerly the Director of [Division] in the Chicago [X] Department ("X"), orally requested guidance from our agency with respect to whether the Governmental Ethics Ordinance prohibits senior [X] employees from teaching at the [institution's school] ("Institution").

Facts. The information she provided shows that, for years, [X] employees, including, at times, the [X] Commissioner, have been teaching courses at [Institution], on [emergency responding techniques], and were paid by [Institution] for this work (whether as employees or independent contractors of [Institution] is unclear). [Institution] is part of the [school]. Its mission is to provide continuing [education in emergency responding techniques]. [Institution]: 1) conducts certain unique classes, such as regional technical rescue team-type responses for municipal [employees], including those from Chicago, but does not teach individual [emergency responding techniques] to departments *per se* (although [Mr. Jones] provided a blank form contract that would be executed by [Institution] and an unnamed "client," for training, as she said that the [X] Commissioner has been approved by the City Council to execute such a contract); and 2) evaluates students who need to satisfy the requirements for State [Commission]); and 3) performs "research" in the [generic] safety area in conjunction with the City.

The City obtains grants from the State of Illinois and the federal government to conduct internal training, and to send City [X] employees to [Institution] (or its training competitors, such as [N] Public Safety Academy). According to the information provided by [Mr. Jones], [Institution] hires instructors from other Illinois municipalities and other states; its instructors also teach courses geared toward other certifications, *e.g.*, Department of Homeland Security-- Urban Area Security funds enabling [X] employeesd to be trained and certified at varying levels of proficiency; [Institution] instructors also teach throughout the State.

There are a few courses peculiar to the City, *e.g.*, those for emergency first responders in subway systems. [Institution] students are from all over the country, but the [Institution] student population-- whom [X]-[Institution] instructors instruct--also has [X] firefighters.

[X] also has its own internal [emergency responding techniques] training program. By sending representatives to [Institution], [X] "trains the trainer," but the [X]''s own [X School] does not have all of the special training facilities that [Institution] has in its [special] headquarters. Staff was advised that the [X]'s [School] training is a "subset" of the more general [Institution] training, as it is focused on urban rescue; the only difference between the City's [School] training and [Institution] training is certain specialization classes at the City's [School]. Once a City [S] employee is properly taught to train others, that fact becomes part of his or her job description, and the [employee] then can receive a promotion.

Much of the agenda for [X] employkee training, whether internally by [X], or externally at [Institution], is established by State regulation through the Office of the Illinois [Commission]. [Institution] sets its own training schedule; a [X]/[Institution] instructor could, therefore, end up training a [X] employee at [Institution] who may outrank the instructor, or, possibly a [X] employee who reports directly to the [X]/[Institution] instructor in their [X] positions. We analyzed these facts as follows

Law and Analysis.

Improper Influence; Conflicts of Interest

Under §§2-156-030(a) and -080(a), if the [X] Commissioner or other [X] personnel have "any economic interest with respect to any matter ... [that is] distinguishable" from that of the general public or from a City decision''s effect on the public, then they cannot participate in or attempt to use their City positions to make that decision. Board precedent is clear that a City employee has an "economic interest" in his or her outside employment, and in his or her outside employer. Case No. 98062.A. Accordingly, any [X] employee who is teaching at and being compensated by [Institution] is prohibited from participating in the decision to enter into any [X] contract with [Institution].

Solicitation or Receipt of Money for Advice of Assistance

Under §2-156-050, [X] employees are prohibited from accepting compensation or anything else of value in return for giving advice or assistance on matters concerning the operation or business of the City--unless that compensation is for advice or assistance on matters that are "wholly unrelated" to their City duties and responsibilities. Accordingly, at first glance, [Institution]/[X] instructors would be prohibited from receiving compensation from [Institution] for teaching subject matters related to their [X] duties (regardless whether their students are fellow [X] employees). It would appear that, in essence, [Institution] teachers who are [X] employees would be paid by both the City and by the [Institution] for the same knowledge base, and, possibly, paid by [Institution] to teach the same activities they perform for [X] either in day-to-day operations or in their teaching at the [X] [School].

However, a review of Board precedent with respect to this "money for advice" prohibition involving outside teaching by City employees shows that, in many cases, outside teaching has not been considered a violation of §2-156-050. In those cases in which City employees' outside teaching did not violate §2-156-050, there are two common threads: (i) the matters to be taught would not give students an "insider's" advantage in dealing with the City; and (ii) it would be unlikely that the instructor would have any supervisory or other affect on the students (sometimes other or potential City employees). Many of these cases involved City employees teaching at Chicago City Colleges. *See, e.g.*, Case Nos. 91101.Q; 91103.A; 94023.Q; 93021.A; 96002.Q; 96046.Q; and 95014.Q; and *see also* Case Nos. 08014.Q and 08033.Q (employees were not prohibited from teaching, as they were teaching only general knowledge, not any City-specific procedures

that were not already publicly available; these cases, however, did not discuss any "control" the teaching employees might have had over their students, or even whether they would be teaching fellow employees).

In Case No. 91057.A, the Board concluded that, although the City employee-teachers had been selected and hired by the City Colleges for their expertise (the courses they taught dealt with City business in the area of food sanitation), these teachers would not be in violation of §2-156-050. The Board''s rationale was based on distinguishing that situation from the facts of an earlier Board opinion, Case No. 90020.A. In this earlier case, the Board had determined that the Chief Sanitary Officer in the Department of Public Health could *not* teach two classes included in "the certification process" for Food Sanitarians, because: (i) he would be teaching people applying to him for employment or promotion; (ii) the courses he would teach were *not* part of a set of training programs that the City Colleges had contracted with the City to provide; (iii) he was one of two people who established the requirements for the two courses he desired to teach, as well as the certification standards; and (iv) he would be teaching students placed with him as interns. In Case No. 91057.A, however, the City employee-teachers were all field supervisors for the City''s Department of Health. Although some of their students would be City employees, not all would be. Further, these students would not be applying to the field supervisors for employment or promotion. In addition, the courses *were* part of a set of training programs that the City Colleges had contracted with the City to provide. Also, although the food protection programs being taught by the field supervisors was structured to aid City employees in the Department of Health, it was the City Colleges, not the field supervisors, who were developing the courses. As a result of these distinguishable facts, the Board concluded that the "teaching of these three courses by the field supervisors from the Health Department d[id] not fall within the intended meaning of ''advice or assistance'' as contained in the Ordinance, and [was] therefore permissible under section 2-156-050 of the Ordinance." *Id.* page 3.

More recently, in Case No. 10024.CNS, the Board approved staff''s guidance to the Department of Public Health prohibiting nurses who would be paid by a third party for performing on weekends precisely those tasks that, during the work week, they performed for the City (namely giving injections), on the basis that this weekend work was not "wholly unrelated" to their City responsibilities. §2-156-050. And, in informal guidance staff gave to the Police Department this past summer, CPD was advised that its personnel could not be paid by a movie production company to provide security for local movie shoots.

In your case, the [X] teachers are in a position, as teachers, of teaching their City knowledge. Accordingly, they are in a position of providing a "leg up" to students dealing with the City. In addition, some of them appear to be in a position to affect their [X] colleagues within and during regular [X] operations. It is unclear to what extent these teachers are teaching courses necessary for certain required certifications, although it does appear these [X]/[Institution] instructors are not involved in setting the certification requirements that need to be met through the training they give.

At its meeting yesterday, December 16, the Board, after reviewing staff's application of the relevant precedent to your facts, directed legal staff to advise you that [X] employees are not prohibited from serving as paid [Institution] instructors, provided that:

1. no [X] employee serving as an [Institution] instructor, or who has reason to know that he or she will likely be invited to serve as an [Institution] instructor, may be involved in the decision regarding the proposed [Institution] contract; and

2. no [X] employee, while serving as an [Institution] instructor, can affect, or be in a position to affect, any [Institution] student of his or hers regarding the student's dealings with the City Fire Department or City employment, including promotions, pay raises or job assignments; this means that no [X] employee, while serving as an [Institution] instructor, may teach any other [X] employee whom he or she supervises. This will likely necessitate coordinating class rosters with [Institution]; and

3. no [X] employee, while serving as an [Institution] instructor, may teach any standards or techniques that are unique and apply only to the City of Chicago, but instead must limit teaching only to subjects involving knowledge or techniques that are known and/or utilized generally.

If the facts herein are materially inaccurate, please advise as that might cause staff to give different guidance. Please note that the Governmental Ethics Ordinance was applied to your case and no other laws or rules. Thank you for your willingness to abide by the Governmental Ethics Ordinance.

Sincerely,

_____
Richard J. Superfine
Legal Counsel

Approved:

_____
Steven I. Berlin
Executive Director