

January 30, 2017

**Confidential**

[redacted]

Via email: [redacted]

Re: Case No.: 17010.Q - Outside Employment

Dear [redacted]:

On January 19, 2017, you emailed the Board of Ethics (“Board”) regarding whether the restrictions in the City of Chicago’s Governmental Ethics Ordinance (“Ethics Ordinance”) would prohibit you from engaging in outside employment. In your email, you state that you are a licensed real estate broker and are contemplating developing real estate property to sell in Chicago. You posed the following two questions:

- 1) Can I conduct such business outside of work? I will hire a general contractor to build the house and I am just going to sell it at market price.
- 2) If I want to purchase City lots at auction by the City to improve a particular neighborhood, is that allowed?

However, in order to vet your questions properly, we needed additional information regarding both your job duties in your position as a [City employee] in the City’s Department [redacted], and your responsibilities as a real estate developer.

During our follow-up phone conversation on January 20, you stated that, in your City position with [City Department], you process [redacted] applications for City licenses. You explained that this processing includes: (i) reviewing applications for completeness; (ii) processing fees; (iii) referring the application to other applicable City departments (*e.g.*, zoning, Public Health, Buildings) for their own review and processing (those departments manage any issues directly with the applicant); (iv) collecting the certificates issued by those other departments; (v) checking for any additional restrictions (*e.g.*, encumbrances, unpaid taxes); and, (v) entering the data into the City’s computer system, which then generates the actual license to the applicant.

As a real estate developer, you would effectively be an investor. You said that developers are licensed through [your Department]. However, you said that you would hire a general contractor and an architect to create and oversee the construction of the development(s). Both of those positions require licensing and oversight through [another City] Department. In addition, you said that you would form your development company as a corporation. You explained that, per City law, this means that you would be required to have a corporate counsel represent your interests with respect to any City matters, such as licensing. You summed it up by stating that you are “outsourcing” the work.

As to your first question: If you have not already done so, you must have your proposed outside employment approved in writing by your Department before you start working - the form is available on the intranet. Additionally, since you said that you as the developer would be licensed through [your Department], the Ethics Ordinance does not prohibit your corporation counsel from applying for your license; however, the Ethics Ordinance would prohibit you from processing your own license application, as it would constitute a clear conflict of interest, or from in any way representing your corporation before any City employee, official or department in pursuing any required licenses. Lastly, you stated that general contractors and architects are licensed through [another City] Department and that no issues would arise regarding them through [your Department]. However, we caution that if you should you have any dealings or regulatory matters through your City position regarding your corporation's contractor or architect – or with respect to any other person or entity that your corporation contracts or seeks to contract, including any potential buyer of property you develop you would be prohibited from personally handling the matter, and would need to ensure that another [redacted] employee [in your Department] handles it, without any communication from you; or alternatively, you would have to find another contractor, architect or buyer, *etc.*, as the case may be.

As to your second question: It depends on how the property is sold by the Department of Planning and Development (“DPD”). The general rule under the Ethics Ordinance is that City employees are prohibited from having a “financial interest” (an interest in a City-administered loan or grant program, or in the purchase of City-owned property). A financial interest means any ownership interest that is valued at more than \$1,000 in any City contract, work, or business. However, the Ordinance does allow City employees and officials to purchase City-owned property, such as real estate, if (i) it is sold pursuant to public notice followed by competitive bidding; or, (ii) the Commissioner of the City's Department of Planning & Development has specifically designated that City employees are eligible to participate in the specific City program. For example, a City employee is not prohibited from purchasing a vacant lot from the City under the City's Adjacent Neighbor's or ANLAP Program, because the ANLAP procedures (under which the property is being sold) meet the Ethics Ordinance's exception for sales accomplished pursuant to competitive bidding following public notice. The ANLAP process includes ensuring that the buyer is the owner/occupier of the adjacent property and that public notice of a proposed sale is served to neighbors. As long as those factors are met, and the property is sold under the competitive bidding process, then the Ethics Ordinance would not prohibit you, as a City employee, from purchasing the property. However, because you have not provided us with any specifics about how the City might be selling property you might attempt to purchase, we can give you only general advice here. We urge you to contact us with more specific information about sales processes once it becomes available to you.

Additionally, you are subject to the standard conditions that apply to all City employees engaging in outside employment. Please be advised that you (i) may not use City resources for non-city purposes (including your City title, or any property or equipment belong to [your Department], including its logo); (ii) may not disclose confidential or non-public information; and (iii) owe your fiduciary duty to the City.

Please note that this opinion addresses only the City's Ethics Ordinance. Other City or State laws, rules or policies may apply to your situation.

For your reference, I have also attached a copy of our brochures on Outside Employment and Financial Interest in City Business. If you have any questions, please email or call me at (312) 744-9660.