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September 20, 1990

Appointed officials
Conflicts/Imptnt

C O N F I D E N T I A L

[REDACTED]

Re: **Case 89155.Q**
Potential Conflict Situations

Dear [REDACTED]

You requested assistance from the Board with regard to potential conflicts between the private employment of **BOARD A** members and their public responsibilities. I recognize that this response has been delayed, and apologize for any inconvenience our delay may have caused to you.

Your request stems from the requirement that the **BOARD A** engage a national accounting firm to conduct an audit of the City's compliance with a court order. In your letter, you outlined the contacts several members of the **BOARD A** had with various accounting firms which sought accounting contracts with the City. You noted the actions those members took with respect to voting on the award of the contracts, and requested guidance to deal with future conflicts.

Since the Board of Ethics cannot predict what situations may arise which will present conflicts of interest questions to **BOARD A** it can only provide general guidance by setting forth the relevant provisions of the Ordinance and provide a short explanation of each.

Under the Ordinance, in the circumstances presented, **BOARD A** members are prohibited from participating in or attempting to influence governmental decisions which concern matters in which they have or might have a personal economic interest. Section 26.2-3 of the Ordinance (Improper Influence) states:

No official or employee shall make, participate in making or in any way



attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally.

Similarly, Section 26.2-8(a) (Conflicts of Interests) states:

No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public.

"Economic interest" is defined by Section 26.2-1(i) very broadly as "any interest capable of valuation in monetary terms." The Board has previously determined that Section 26.2-8 "prohibits persons from taking part in City decisions which will have a foreseeable effect on their private interests." Case No. 87079.A.

In other words, each time BOARD A is called upon to review bids, or make any decisions, its members must determine from the facts existing at that time whether they have a conflict of interest--whether they have an economic interest, distinguishable from that of the general public, with respect to the matter to be decided. They must also determine if they are using improper influence--making a decision or taking any action in which they have an economic interest. Because each decision is necessarily based upon the facts as they exist, the Board cannot make a recommendation of what is proper without such facts.

With regard to the specific situation which previously arose and which you presented in your letter, we note that if an accounting firm pays a law firm for the latter's services, any person who has an economic interest in that law firm should refrain from making a decision as to whether to accept that accounting firm's bids. Therefore, it appears that those of you who recused yourselves acted in accordance with the Ethics Ordinance. With regard to the situation presented by INDIVIDUAL X, who was for some years a partner of a law firm that represented one or more of the accounting firms that submitted proposals to the BOARD A we cannot make a determination at this time as to the propriety of her conduct. Before a determination could be made, additional facts would be needed, such as the terms of her severance from the law firm.

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I sincerely hope this response offers some general assistance. Should a situation arise again regarding a conflict, please contact us. We will promptly assess the situation and render an opinion at that time.

As you know, in addition to the Ethics Ordinance, your attorney/board members must also consider the rules governing their profession. Moreover, there may be other laws which govern their conduct. If there is, perhaps the Law Department could offer some guidance.

I thank you for your inquiry and again extend apologies for the delay in responding. In the future we will be able to provide you with a timely response.

Very truly yours,



Dorothy J. Eng
Deputy Director

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