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<http://www.cityofchicago.org>

CONFIDENTIAL

January 19, 2005

[REDACTED]

Chicago, IL 60601

Re: Case No. 05002.Q  
Outside Business Ownership

Dear Mr. [REDACTED]

On December 7, 2005, you called the Board and asked whether the City's Governmental Ethics Ordinance imposes any restrictions on or prohibits you, as a City employee, with respect to your obtaining rights for your outside business to operate a candy and toy vending machine concession at Navy Pier. After the December telephone conversation, Board staff sent you a redacted opinion directly on point, namely 01029.Q. By letter dated January 8, 2005, you asked for either an advisory opinion or query letter from the Board or Board staff on this issue. You stated that your business is called [REDACTED] Services, Inc. Attached to the letter you sent Board staff was an undated Request for Qualifications ("RFQ") from the Metropolitan Pier and Exposition Authority ("MPEA") to which you wish to respond through your outside business. As explained in this letter, it is Board staff's conclusion that nothing in the Ordinance prohibits you (directly or through your business entity) from operating this concession as you have described it to us, though the Ordinance does impose certain restrictions on your conduct in your City position, as described in this letter.

You have been a City employee since August [REDACTED] and, since [REDACTED], you are one of three [REDACTED] for the City of Chicago. You stated that, in your City position, your role is to supervise the Department [REDACTED] ("Department") and the programs therein which are called (i) [REDACTED] Program; (ii) [REDACTED] Program; (iii) [REDACTED] Program; and (iv) [REDACTED] Presentations (the "Program" or "Programs"). Programs (i) - (iv) are carried out by you and one other employee in the Department; that employee is the same for each Program. You stated that your position in your City job provides no opportunity to influence Navy Pier or the MPEA in any way, including obtaining City contracts for your outside business. Your role in your position [REDACTED] does not provide any opportunity for you to work with the MPEA and you have no contact with it or any of its officials or employees, nor have you in the past.

NEIGHBORHOODS



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In Program (i), you work with [REDACTED] to encourage them to make loans to [REDACTED] businesses by depositing money or putting a CD from another bank into that bank through the [REDACTED] Department [REDACTED]. You meet with bank officers to carry out Program (i). Also, you make neighborhood presentations to [REDACTED] businesses to tell them about the Program [REDACTED]. These banks are approved Municipal Depositories; and of approximately [REDACTED] such depositories, about [REDACTED] participate thus far in Program (i). In your capacity as owner of [REDACTED] Services, Inc. you have never attempted to take advantage of Program (i).

In Program (ii), you collaborate with the Federal [REDACTED] and the City Colleges of Chicago to provide a free [REDACTED] literacy program through their adult continuing education program, which program is open to all students. In Program (iii), you coordinate the [REDACTED] Exposition ("Expo"). Your role is to negotiate with: the University of [REDACTED] (for space for the Expo and its workshops); caterers; exhibitors; and presenters. In Program (iv), you go to churches, community-based organizations, community meetings, sister agencies (which are the Chicago Transit Authority; Board of Education, including the Chicago School Reform Board of Trustees; Chicago Park District; Chicago City Colleges; and Metropolitan Pier and Exposition Authority) (but you have not presented to the MPEA) and to various alderman's public meetings, and you make a presentation. The presentation is on [REDACTED].

You and your spouse are the only owners of your outside business, [REDACTED] Services, Inc. Your spouse is not a City employee, nor does she own or is employed by a business contracting with the City. You are the President of your business. Your spouse is Secretary/Treasurer. Your company is an Illinois corporation and has no presence in any other city or state. You and your spouse are the only employees. Your company is in the business of placing toy and candy vending machines at specific sites throughout the City of Chicago. The company began October [REDACTED]. You have stated that your City supervisor has approved of you operating your company and has apprised you of your Department's [REDACTED] personnel policies. You stated that, thus far, you have been able to place vending machines at several locations, but not in connection with the City or its sister agencies. These placements are accomplished pursuant to a written contract and provide that, for a two year period, you will pay the owner of the location a set commission. The machine dispenses toys or candy at a retail price. You own, operate and maintain the vending machines. You purchase your inventory from a third party. Your vendors are located in Arizona and have no connection, to your knowledge, with the City or its sister agencies.

MPEA has issued an RFQ that includes a need for the placement of toy and candy vending machines at Navy Pier to which you wish to respond if there are no prohibitions under the Governmental Ethics Ordinance. You desire to place one or more of your vending machines at Navy Pier pursuant to a license with MPEA that is satisfactory to both parties if you are selected under the RFQ process. The RFQ is written in order that the respondents are businesses that perform the same services as your business, [REDACTED] Services, Inc. You are prepared to respond to the RFQ.

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Under state law, and as recognized by the Board of Ethics in previous cases, MPEA is not a City agency for purposes of the Governmental Ethics Ordinance, and has the power to enter into its own concession contracts. See Case Nos. 90013.A; 96022.Q; 01029.Q. Applying these cases to your situation, Board staff's concludes that your proposed concession at Navy Pier does not constitute a contract, work or business of the City, and that you do not have a prohibited financial interest in City business under § 2-156-110 of the Ordinance by virtue of your proposed agreement with MPEA. Accordingly, it is Board staff's conclusion that nothing in the Ordinance prohibits you from your business operating this concession (if awarded to you) as you have described it to us, though the Ordinance does impose certain restrictions on your conduct in your City position, as set forth below.

These restrictions are relevant to all City employees who have ownership interests in businesses outside of City government. They are set forth in summary fashion (along with the Ethics Ordinance) on the web site for the Board of Ethics. Specifically, you are prohibited from the unauthorized use of City-owned property, which includes, but is not limited to, the City's time, the City's telephones, computers or photocopy machines for the benefit of your outside business as set forth in Section 2-156-060 of the Ethics Ordinance. Moreover, Sections 2-156-030 and 2-156-080 prohibit you from making, participating in, or in any way attempting to influence City governmental decisions or actions in which you have an economic interest. Because you have an economic interest in your vending business and MPEA license or lease, if awarded, you are prohibited from making, participating in, or attempting to use your City position to influence City decisions or actions that are related to or may enhance either of these. Board staff cautions you that any departmental decision you would make or attempt to influence that involves Navy Pier or the MPEA could be perceived as an attempt to benefit your concession license or its continuation in later years, and to therefore recuse yourself from taking part in or influencing the outcome of any such decision or matter. Additionally, you owe a fiduciary duty to the City at all times in the performance of your public duties (§ 2-156-020); you are prohibited from soliciting or accepting any money or other thing of value in return for giving advice or assistance on matters concerning City business (§2-156-050); you are prohibited from using or disclosing confidential information gained by reason of your City employment (§2-156-070); and, except in the performance of your official City duties, you are prohibited from representing or having an economic interest in the representation of any person other than the City in any non-ministerial transaction before your own or any other City agency or department (§2-156-090(a)).

Our conclusion does not necessarily dispose of all issues relevant to your 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 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. 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 City's


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Governmental Ethics Ordinance. We ask that you permit us to send this query letter to your Commissioner at our discretion.

We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. Please contact us if you have further questions.

Very truly yours,

  
Richard J. Superfine  
Legal Counsel

Approved by:

  
Dorothy J. Eng  
Executive Director

[REDACTED]