

ADVISORY OPINION
CASE NO. 05022.A
Employment of Relatives

To: Mr. Tom
Deputy Commissioner of Q

Date: xxxxxxxx, 2005

On xxxxxxxx, 2005, you wrote to the Board of Ethics (“the Board”) and asked for an opinion addressing how the City’s Governmental Ethics Ordinance applies to a situation you described in your letter (and orally in a previous telephone conversation with Board staff on xxxxxx, 2005).

You are the Deputy Commissioner of F for the City’s Department of Q. Among other duties (described below), you have had oversight responsibility since xxxxx 20xx for Airport Co’s (“APMG’s”) contract to manage one of Chicago’s airport facilities’ special terminals [“facility”]. T Engineering Corp. (“T”) is a xx% owner of APMG and a provider of managerial staff to APMG. On or about xxxxx, 20xx, your brother, Jerry, entered into a consulting agreement with T and registered with the Board of Ethics as a lobbyist on T’s behalf. The matters on which your brother was retained to assist T were unrelated to the [facility] and/or the Department of Q. Your brother and T terminated their agreement on or about xxxxx, 20xx. You have asked the Board whether, under the Ordinance, you were prohibited from overseeing the APMG contract during the period of that consulting agreement.

It is the Board’s opinion that:

1. because your brother had a consulting agreement with T Engineering Corp. between xxxxxxx, 20xx and xxxxxxx, 20xx, you were prohibited under Section 2-156-130(b) of the Ordinance (Employment of Relatives) from exercising contract management authority over T during that period;
2. by signing off on APMG’s monthly invoices during that xx-month period and by approving APMG’s proposed 20xx and 20xx operating budgets on xxxxx, 20xx, you exercised contract management authority over T Engineering Corp., a xx% owner of APMG and a provider of managerial staff to APMG, in violation of Section 2-156-130(b); and

3. given that both the President of T, who entered into the consulting agreement with your brother, and the Executive Director of APMG, who is responsible for overseeing APMG's day-to-day operations at the [facility], have told Board staff that neither you nor your brother ever used, or attempted to use, your City position to assist your brother in obtaining that consulting agreement with T, the presumption under Section 2-156-130(c) that the agreement was obtained in violation of the Ordinance has been rebutted.

The statement of facts on which the Board's opinion is based, our analysis under the relevant sections of the Governmental Ethics Ordinance, our determinations and our recommendations are set forth in detail below.

Statement of the Facts: Your City Duties. You have been a City employee and Deputy Commissioner of F for the City's Department of Q ("the Department") since July 16, 19xx. Your office is located at the [facility]. You have ultimate responsibility for maintenance and upkeep of the [facility's] physical plant, which consists of [several facilities] as well as all occupied outlying buildings. You also are responsible for maintaining [other facilities] in accordance with certain [certain] Regulations. Since July 17, 20xx, your responsibilities have included oversight responsibility for the APMG contract.¹

The Facilities workforce that you oversee currently consists of approximately xx City employees, more than 90% of whom are skilled trades people or middle managers. Approximately xx Facilities employees report directly to you, including the Assistant Commissioner for O; two Managers for O; the Supervising Architect; the General Superintendent for Utility Services; the General Manager for Grounds/Facilities; the Finance Advisor; the Director of Environmental Services; and the Manager of the [special terminal].

APMG. Airport Company ("APMG") has had a contract with the Department of Q to manage the facility since 19___. APMG is a joint venture of T Engineering Corp., M Management Corporation and L Enterprises; their respective ownership interest percentages in the joint venture are xx%, xx% and xx%.

Contract Services. The services provided to the Department under the APMG contract consist of engineering maintenance (e.g., ensuring that the facility's systems are functioning properly) as well as general maintenance (e.g., changing light bulbs and cleaning bathrooms, windows and floors.) To provide these services, APMG utilizes employees of the joint venturers² as well as subcontractors.³

¹ You provided to the Board a copy of a memorandum dated xxxxxx, 20xx from then-First Deputy Q Commissioner Mr. H notifying you, Deputy Commissioner of Real Estate RD and Chief Operating Officer DO that "effective xx xxxx 20xx, the duties and responsibilities for administration of the property management contract for the [facility]...will be transferred from the Department's Real Estate Division to the F Division. This action will also involve the transfer of Mr. S*****J*****..."

² According to APMG Executive Director Mr. [George], T Engineering Corp. currently provides 3 employees: an Engineer, a Property Manager and a Customer Service Representative; M Management

Letting, Award, Negotiation, Execution of APMG Contract. APMG was originally awarded the [facility] contract in April 19xx. Between xxxxx 19xx and xxxxxxxx 20xx, that contract was extended, modified or amended on various occasions. You stated that you had no involvement in the letting, award, negotiation or execution of that contract or in any of the subsequent extensions, modifications or amendments to it.

APMG's current contract was awarded in June 20xx, one month before you assumed oversight responsibility for the contract. You also stated that you had no involvement in the letting, award, negotiation or execution of that contract.⁴

Time Extensions of Current Contract. APMG's current contract, which was originally due to expire on xxxxxxx, 20xx, has been extended twice. You stated that, on each occasion, you

provides 4 employees: an Executive Director (Mr. B), a Financial Controls Manager, an Administrative Assistant and a Customer Service Representative; and APMG provides 15 engineers/engineer apprentices.

³ T International Incorporated (TII) has been a subcontractor on the APMG contract since 19xx. TII is responsible for the [facility's] preventive maintenance computer program. According to Mr. N S (see summary, infra, of Board staff's interview of Mr. N S), he is the sole owner of (APMG subcontractor) T International Inc.; he and [MO] are co-owners of (APMG joint venture member) T Engineering Corp. According to APMG Executive Director Mr. [George], currently, the other subcontractors are [Cline Elevator], [Dry-Starch, Inc.] and [Corporate Services].

⁴ Reviews by Board staff on May xx, 20xx and May xx, 20xx, respectively, of documents relating to APMG's current contract, contained in the files of the City's Office of Procurement Services and the Department of Q's Contracts Administration Section, disclosed the following: the current contract was awarded pursuant to a Request for Proposals (RFP) publicly advertised in xxxx 20xx. APMG and four other firms responded to the RFP. On xxxxx, 20xx, the Department's RFP Evaluation Committee, consisting of Assistant Q Commissioner Mr. B, General Manager of O Mr. [Joe] and Assistant Manager of Finance Mr. [John], recommended to R D, Deputy Commissioner of the Department's Real Estate Division, that APMG and two other responding firms, F and A, be "short-listed" and interviewed by a Selection Committee. On xxxxxx, 20xx, the Department's RFP Selection Committee, consisting of Ms. D, Managing Deputy Commissioner C F, Assistant Commissioner, Mr. [Jay] and Managing Deputy Commissioner Mr. P, recommended to Q Commissioner Mr. Y that APMG be awarded the contract. On xxxxx, 20xx, Commissioner Y notified Chief Procurement Officer (CPO) Ms. [Mile] that he concurred in the recommendation of the Selection Committee and requested that contract negotiations with APMG commence. On the same date, CPO [Mile] notified Commissioner Y that she concurred with the latter's recommendation and authorized the latter to enter into contract negotiations with APMG. On xxxxx, 20xx, APMG and the Department of Q entered into a new contract with a term of xxxxxxx, 20xx through xxxxxxxx, 20xx. Signatories to the contract were the Mayor, the Comptroller and the CPO, with a noted recommendation by the Q Commissioner (through then-First Deputy Q Commissioner Mr. H).

Documents contained in the same files disclosed the following regarding APMG's original contract: APMG was selected in 19xx pursuant to a publicly advertised RFP. The 19xx contract expired in 19xx, at which time a new RFP was issued. Several vendors responded; the proposals were evaluated and a tentative selection recommendation was made to the Q Commissioner. However, a new contract was not awarded; instead, the 19xx contract was serially extended until the award of the current contract in 20xx.

participated in the process by which the Department extended APMG's contract, and you provided to the Board copies of two memoranda issued in your name: the first, dated xxxxxx 13, 20xx, directed to Mr. RB, the Department's Director of Contracts, recommending the extension of APMG's contract from xxxxxxxx 1, 20xx to xxxxxxxx 31, 20xx; the second, dated xxxxxx 23, 20xx, directed to Assistant Procurement Commissioner Mr. V, recommending the extension of APMG's contract from xxxxxx 1, 20xx to xxxxxxxxxx 31, 20xx.

Annual Negotiation of Operating Budget. APMG's current contract (which upon execution on xxxxxxxx 1, 20xx contained a fixed annual budget covering only the period through xxxxxxxx 31, 20xx) provides for the annual negotiation of APMG's operating budget. You stated that, since assuming oversight responsibility for the APMG contract in xxxxx 20xx, you have participated, along with Assistant Commissioner S***** J*****, Contracts Administrator Mr. [David] and Finance Advisor Mr. D, in the annual process by which the Department reviews, negotiates and approves APMG's annual budget. Most recently, on xxxxxxxx 2, 20xx, you approved APMG's proposed operating budgets for calendar years 20xx and 20xx. You directed Board staff to Mr. [David] who provided Board staff with copies of these two approvals.

Payment Under Contract. On xxxx 25, 20xx, with your knowledge and permission, Board staff spoke with Department of Q Finance Advisor Mr. D who explained the following regarding the process by which APMG is paid: the dollar amount of APMG's contract is negotiated annually; APMG is then paid at a fixed, monthly rate of one-twelfth (1/12) of the total annual contract amount⁵; when APMG submits an invoice, the package typically consists of a cover letter on APMG letterhead, directed to your attention, and a one-page invoice that neither itemizes specific tasks nor references subcontractors; the invoice is first reviewed by Assistant Commissioner S***** J***** who, after verifying the dollar amount, signs the invoice and forwards it, as well as APMG's cover letter and his own cover memo, to Mr. D; he then reviews the invoice to ensure that the appropriate contract is being utilized and that adequate funding exists, initials the cover memo from Mr. S*****J***** and submits that memo and APMG's one-page invoice to you;⁶ after you have reviewed and signed off on the invoice and cover memo from Mr. S*****J*****, those documents are returned by you to him; he then submits the invoice to the Department's Finance Section for payment; once in the Finance Section, the invoice goes through various other Department reviews and signatures, including that of the Q Commissioner⁷, before payment to APMG can be made.

⁵ According to Mr. D, the dollar amount paid to APMG may vary if additional liability insurance is required or if extraordinary expenses not contemplated by the annual budget arise. In the latter case, payment for such expenses are requested, reviewed, approved and paid by way of a task order process, separate from the monthly invoice process.

⁶ Mr. D stated that because the F Division manages approximately xx contracts, and because the documentation submitted by contractors in support of a single invoice may approach several hundred pages, it is standard practice to submit the contractor invoices, but not the accompanying documentation, to you for your review and signature.

⁷ According to Mr. D, because APMG's monthly invoice exceeds \$xxxxx, the signature of the Commissioner is required by Department rule.

Supervision of Contract. You stated that Assistant Q Commissioner S**** J****, who reports to you, is responsible for supervising the day-to-day performance of the APMG contract. You stated that your interaction with APMG personnel is typically limited to major incidents (e.g., flooding, power outages, fires, etc.) that could result in disruptions for the traveling public or otherwise impact the general operation of [the facility]. In such instances, which you estimate occur 4-6 times per year, you and Mr. S****J**** typically deal directly with APMG General Manager Mr. [Jorge] to resolve the issue. To the best of your recollection, you have never had occasion to interact with any of APMG's subcontractors.

On xxxxxxx, 20xx and xxxxxxx, 20xx, with your knowledge and permission, Board staff interviewed Assistant Commissioner S*****J***** by telephone. Mr S*****J***** stated that since 19__ he has been responsible for overseeing the day-to-day operations of the [facility], including supervising the day-to-day performance of the APMG contract.⁸ Mr. S*****J***** stated that from 19xx until xxx 20xx, he reported to the Department's Deputy Commissioner of Real Estate. Since xxxx 20xx, when then-Q Commissioner Y transferred oversight responsibility for the [facility] from the Department's Real Estate Section to its F Section, Mr. S*****J***** has reported to you. Mr. S*****J***** stated that you do not direct or approve APMG's daily activities and that he does not inform you about the details of APMG's daily work. Instead, Mr. S*****J***** submits written reports to you (on a weekly and monthly basis) in which he summarizes among other things, operations, budget and personnel issues relating to [the facility], including APMG's performance. Otherwise, your involvement in the supervision of APMG's performance is limited to emergency matters.

Oversight of Other Contracts. You said that, in addition to having oversight authority for the APMG contract, you have oversight authority for approximately xx other F contracts. These contracts range from the provision of [certain] striping to respirator training and involve approximately xxx contractors and subcontractors. As with the APMG contract, one or more of your subordinates are responsible for the direct, day-to-day supervision of these contracts; you become involved in the resolution of performance or other contact issues on an as-needed basis; you also review and sign off on contractor invoices after they have been reviewed by your subordinates.

T as Client of U.S. On xxxxxx, 20xx, your brother, Jerry, registered with the Board of Ethics as a lobbyist on behalf of, among other clients, T Engineering Corp. In his filing with the Board, your brother indicated that he had been retained in connection with matters involving three City Departments: Transportation; Water Management; and Construction and Permits. In his filing, your brother also indicated that he had been retained by T on a month-to-month basis pursuant to an oral agreement.

⁸ According to Mr. S*****J*****, in 19xx then-Q Commissioner Mr. L assigned him to manage the [facility], which at that time was located in [a different structure].

On xxxxx, 20xx, with your knowledge and permission, Board staff spoke by telephone with your brother. Your brother stated that he is the sole owner of U.S., Inc.⁹; that on or about xxxxxx, 20xx, he was retained by T's owner Mr. N S to provide consulting and marketing services to T on matters involving the City's Departments of Water Management, Transportation and Construction and Permits; that during discussions with Mr. N S, he advised Mr. N S—as he does with all prospective clients—that he could not assist T on any matter involving the [facility] or the City's Department of Q because you work at [the facility]; that neither T's interest in, nor work on, any Department of Q contract was mentioned during those discussions; that he registered with the Board of Ethics as a lobbyist essentially as a precaution, that is, in the event his services on behalf of T might constitute lobbying; that his agreement with T was an oral, month-to-month agreement; that he first learned that T had an ownership interest in a contract at [the facility] on or about xxxxxx, 20xx from the news media; that, upon learning of T's interest, he telephoned you on the same day and advised you of his consulting agreement with T; and that on or about xxxxxx, 20xx, he terminated his relationship with T.

On xxxxxx, 20xx, Board staff spoke again by telephone with your brother to clarify how he came to be retained as a consultant by T. Your brother stated that he has known Mr. N S for approximately 8-10 years; that after having not seen one another for some time, they had a chance public encounter; that they briefly updated one another on their ongoing business endeavors; that there was no overt solicitation by either for business; that one of the two then suggested that they “work together some time”; that the two agreed to meet, and shortly thereafter did meet to discuss the possibility of collaborating; and that, during that meeting, he and Mr. N S came to the terms of their consulting agreement, noted above.

You stated that you were unaware of the relationship between your brother and T until your brother telephoned you on or about xxxxxx, 20xx and advised you of his consulting agreement with T, following an inquiry of him by the Chicago Tribune on the same date.

Board Staff Interviews of Messrs N S and MO. On xxxxx, 20xx, with your knowledge and permission, Board staff interviewed Mr. N S, President of T Engineering Corp. (“GEC”), by telephone. Attorney J D C of [law firm], GEC's corporate attorney, participated in the conference call. In summary, in response to staff's questions, Mr. N S stated that he and [MO] are the owners of GEC; that GEC is a partner in the APMG joint venture, along with M Management Corporation and L Enterprises; that he is also the sole owner of T International Incorporated (TII); that both GEC and TII are providing services to APMG on the [facility] contract; that neither he nor any other GEC personnel directly oversees the work of GEC or TII on the APMG contract; that Mr. [George], an employee of M Management Corporation, oversees the APMG contract, including the work of subcontractors, on behalf of the joint venture; that he is uncertain of the year in which the current contract was awarded, how many times the contract has been extended or the current status of the 20xx and 20xx APMG contract budgets; that, to the best of his recollection, he has had only one contact during the last xx months with you; that the

⁹ According to the records of the Office of the Illinois Secretary of State, U.S., Inc. was incorporated on xxxxxxxxxxx, 20xx.

contact occurred approximately xx months ago during a meeting at the [facility] between representatives of APMG and the Department of Q; that the meeting was convened by Q Commissioner Mr. R to discuss, primarily, APMG's operations at the [facility]; that at no time did he and you ever have any discussion regarding GEC's contract with your brother, or the possibility of such a contract; that he (Mr. N S) retained your brother as a consultant in or around xxxxxx 20xx; that he could not recall who approached him; that the agreement between him (on behalf of GEC) and your brother (on behalf of U.S.) was an oral agreement; that GEC retained U.S. to assist on matters involving the City's Department of Transportation and Department of Water Management; that none of the matters involved the City's Department of Q; that during their discussions, your brother told him that he (Jerry) could not assist GEC on any matter involving the Department of Q because you are a City employee assigned to [the facility]; that at no time did your brother ever say, intimate, suggest or imply to him that APMG's contract or GEC's/TII's work at [the facility] could/would/might be affected by GEC's decision to retain (or not to retain) your brother; that, to the best of his knowledge, information and belief, at no time did your brother ever say, intimate, suggest or imply to any other owner, officer, employee or representative of GEC that APMG's contract or GEC's/TII's work at [the facility] could/would/might be affected by GEC's decision to retain (or not to retain) your brother; and that in late xxxxx 20xx, following publication of an article in the Chicago Tribune, he and your brother spoke and mutually agreed to terminate GEC's contract with U.S. (On xxxxx, 20xx, in a communication with Board staff, attorney J D C provided the following clarifications regarding GEC's retention of your brother: Mr. N S has known your brother for at least five years; that in or around xxxxx 20xx, your brother told Mr. N S that he (Jerry) had started a consulting company; that Mr. N S was not seeking assistance on matters relating to [the facility]; that your brother volunteered that he was not doing any work with the Department of Q because you work at the [facility]; and that the two did not discuss APMG.)

On xxxxx, 20xx, Board staff also interviewed [MO], Chairman of T Engineering Corp., by telephone. Attorney J D C also participated in this conference call. In summary, in response to staff's questions, Mr. [MO] stated that he is eighty-one years old; that he works approximately four hours per day; that he has no involvement in T' City of Chicago work; that he is involved primarily with T's work as it relates to Cook County government and four south suburban municipalities; that he has never met or spoken with either you or your brother; that he has no knowledge of the circumstances surrounding T's retention of U.S.; and that he was unaware that you were a City employee until an article appeared in the newspaper.

Board Staff Interview of Mr. [George]. On xxxxx, 20xx, xxxxxx, 20xx and xxxxx, 20xx, with your knowledge and permission, Board staff interviewed Mr. [George], Executive Director of APMG. In summary, in response to staff's questions, Mr. [George] stated that he is an employee of M Management, a member of the APMG joint venture; that T Engineering Corp. (GEC) and L Enterprises are the other two members of the joint venture; that he served as APMG's Property Manager on the [facility] contract from 19xx until approximately four or five years ago, at which time he was promoted to the position of Executive Director; that as Executive Director he is responsible for overseeing APMG's day-to-day operations at [the facility]; that he reports to Mr. S, President of M Management, and Mr. N S, Chairman of T Engineering Corp; that T

Engineering Corp. provides 3 employees (an Engineer, a Property Manager and a Customer Service Representative) to assist in the performance of the contract; that T International Incorporated (TII) is a subcontractor to the joint venture and provides one employee who is responsible for the [facility's] preventive maintenance computer program; that he interacts with Assistant Commissioner S*****J***** on a daily basis, sometimes several times a day, in connection with [facility] maintenance issues; that, in addition, he and other APMG personnel—including APMG's General Manager, Property Manager and Chief Engineer—meet weekly with Mr. S****J***** to review the status of maintenance issues and initiatives; that he is acquainted with you; that you do not attend the weekly staff meetings; that, on average, he has met with you approximately three times per year, typically in the context of a budget meeting; that, to the best of his recollection, he has never had a one-on-one meeting or conversation with you; that, to the best of his recollection, either Assistant Commissioner S*****J***** or Finance Advisor Mr. D has been present during all his meetings with you; that he last met with you approximately five to six months ago, in order to discuss APMG's proposed 20xx budget; that Mr. S****J*****—and possibly Mr. D—was present during that meeting; that at no time during his interactions with you did you ever speak of or allude to your brother, or of a contract (or possible contract) between your brother/U.S. and T; that at no time did you ever say, intimate, suggest or imply to him that APMG's contract or GEC's/TII's work at [the facility] might be affected by GEC's decision to retain (or not to retain) your brother; that, to the best of his knowledge, information and belief, at no time did you ever say, intimate, suggest or imply to any other employee, owner, officer, or representative of APMG that APMG's contract or GEC's/TII's work at [the facility] might be affected by T's decision to retain (or not to retain) your brother; that he has never met or spoken with your brother; that T Chairman N S never disclosed to him that T had retained your brother; and that he was unaware of their consulting agreement until he read of it in a Chicago Tribune article some weeks ago.

Law and Analysis: Section 2-156-130(b). The first question presented by these facts arises under Section 2-156-130(b) of the Ordinance which provides, in relevant part:

No official or employee shall exercise contract management authority where any relative...of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

As a City employee, then, you are prohibited from exercising contract management authority over any City work being performed by a person who employs or contracts with your relative. The relationship of "brother" is included in the definition of the term "relative" found at Section 2-156-010(w) of the Ordinance.¹⁰ Thus, the issues before the Board are: 1) whether between xxxxx, 20xx and xxxxxx, 20xx, your brother was "employed by or had contracts with" T Engineering Corp. within the meaning of Section 2-156-130(b) and, if so, 2) whether, during that

¹⁰ "Relative" means a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister. §2-156-010(w).

period, you exercised “contract management authority” over T within the meaning of that same Ordinance section.

U.S. Contract With T. The Board first addresses your brother’s relationship with T Engineering Corp. The facts presented establish that your brother, Jerry, is the sole owner of U.S., Inc.; that on or about xxxxxx, 20xx, U.S. was retained by T to provide consulting and marketing services; that U.S.’s agreement with T was an oral, month-to-month agreement; and that on xxxxxx, 20xx, your brother terminated his relationship with T. Based on those facts, the Board concludes that, between xxxxxx, 20xx and xxxxxxxx, 20xx, your brother had a contract with T within the meaning of Section 2-156-130(b).

Contract Management Authority. The Board next addresses the issue of whether, during that xxxx-month period, you exercised “contract management authority” over T. The term “contract management authority” is defined at Section 2-156-010(g) of the Ordinance as:

personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

The facts presented establish that Airport Company (“APMG”) has had a contract with the Department of Q to manage [the facility] since 19xx; that APMG is a joint venture of T Engineering Corp., M Management Corporation and L Enterprises; that their respective ownership interest percentages in the joint venture are xx%, xx% and xx%; that T also provides 3 managerial employees to APMG to assist in the performance of the contract; that you had no involvement in any aspect of the letting, award, negotiation or execution of APMG’s original contract in 19xx, nor with any of the modifications/extensions to it; that you had no involvement in the letting, award, negotiation or execution of APMG’s current contract in xxxx 20xx; that you assumed oversight responsibility for the APMG contract in xxxx 20xx; that in xxxxxx 20xx, you requested (via written memorandum to the Department’s Director of Contracts) the extension of APMG’s contract from xxxxxxxx, 20xx to xxxxxxxx, 20xx; that in xxxxxx 20xx you requested (via written memorandum to the Assistant Procurement Commissioner) the extension of APMG’s contract from xxxxxxxx, 20xx to xxxxxxxx, 20xx; that since assuming oversight of the contract, you have participated in the annual review, negotiation and approval of APMG’s operating budget; that on xxxxxxxx, 20xx, you approved APMG’s proposed operating budgets for 20xx and 20xx; that APMG is paid a fixed, monthly sum pursuant to an invoice process; that you participate in the payment process by reviewing and signing off on APMG’s monthly invoices; and that your involvement in the supervision of APMG’s performance is essentially limited to emergency matters.

Based on the facts presented, and consistent with the Board's analysis in prior cases¹¹, the Board concludes that since assuming oversight responsibility for the APMG contract in xxxx 20xx, you have exercised contract management authority over the APMG contract, and over T Engineering Corp.—a xx% owner of APMG and a provider of managerial staff to APMG—by requesting one-year extensions of the APMG contract in xxxxxx 20xx and xxxxxx 20xx; by participating in the Department's annual review, negotiation and approval of APMG's operating budget; and by signing off on APMG's monthly invoices.

Because your brother had a consulting agreement with T Engineering Corp. between xxxxxx, 20xx and xxxxxx, 20xx, you were prohibited under Section 2-156-130(b) of the Ordinance from exercising contract management authority over T during that period. Your xxxxxx 20xx and xxxxxx 20xx requests that APMG's contract be extended precede that period. However, by signing off on APMG's monthly invoices during that xxxxx-month period and by approving APMG's proposed 20xx and 20xx operating budgets on xxxxxxx, 20xx, you exercised contract management authority over T Engineering Corp., a xx% owner of APMG and a provider of managerial staff to APMG, in violation of Section 2-156-130(b).

Section 2-156-130(c). The second question presented by these facts arises under Section 2-156-130(c) of the Ordinance which provides, in relevant part:

No official or employee shall use or permit the use of his position to assist any relative... in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative...of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

Section 2-156-130(c) of the Ordinance, then, prohibits a City employee from using or permitting the use of his City position to help his relatives gain employment or contracts with persons over whom the City employee exercises authority. It also provides that the employment of, or contracting with, a relative of a City employee by a person over whom the City employee exercises contract management authority creates, in effect, a rebuttable presumption that the employment or contract was obtained in violation of the Ordinance. See Case No. 03051.A, pp. 4-5.

¹¹ See, e.g., Case No. 93032.A, in which the Board concluded that a City employee had contract management authority over a contract because he had direct supervisory authority over the department employee who formulated and negotiated the contract and because he exercised his professional and official judgment in reviewing the contract and deciding whether to sign or reject it; Case No. 95059.I, in which the Board concluded that a City employee had exercised contract management authority over a contract by approving payment to a City contractor under the contract; and Case No. 00006.A, in which the Board concluded that a City employee had exercised contract management authority over a contract by serving as a voting member of the committee that awarded the contract and by authorizing payment vouchers under the contract.

In this case, T Engineering Corp.'s retention of your brother in xxxxx 20xx, at a time when you (as discussed above) were exercising contract management authority over T creates, as a matter of law, a rebuttable presumption that your brother's consulting agreement with T was obtained in violation of the Ordinance. Given that both the President of T, who entered into the consulting agreement with your brother, and the Executive Director of APMG, who is responsible for overseeing APMG's day-to-day operations at [the facility], have told Board staff that neither you nor your brother ever used or attempted to use your City position to assist your brother in obtaining that consulting agreement, the Board finds that the presumption under Ordinance Section 2-156-130(c) that the agreement was obtained in violation of the Ordinance has been rebutted.

Determinations: After careful consideration of the facts presented and the relevant law, the Board determines:

1. because your brother had a consulting agreement with T Engineering Corp. between xxxxx, 20xx and xxxxxx, 20xx, you were prohibited under Section 2-156-130(b) of the Ordinance (Employment of Relatives) from exercising contract management authority over T during that period;
2. by signing off on APMG's monthly invoices during that xxxxx-month period and by approving APMG's proposed 20xx and 20xx operating budgets on xxxxxx, 20xx, you exercised contract management authority over T Engineering Corp., a xx% owner of APMG and a provider of managerial staff to APMG, in violation of Section 2-156-130(b); and
3. given that both the President of T, who entered into the consulting agreement with your brother, and the Executive Director of APMG, who is responsible for overseeing APMG's day-to-day operations at [the facility], have told Board staff that neither you nor your brother ever used, or attempted to use, your City position to assist your brother in obtaining that consulting agreement with T, the presumption under Section 2-156-130(c) that the agreement was obtained in violation of the Ordinance has been rebutted.

Recommendations: Given the inference of impropriety which can be drawn from the factual scenario in this case and given the considerable number of contracts, contractors and subcontractors over which you and other Department of Q employees have authority, the Board recommends that the Department of Q promptly formulate and implement Department processes and procedures to safeguard against similar violations in the future. The Board requests that the Department advise the Board in writing within fifteen days, that is, on or before xxxxxx, 20xx, of the actions taken.

Other Laws Or Rules. The Board's determinations in this matter are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion and may not necessarily dispose of all issues relevant to your situation. If the facts presented are

incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

Reliance: This opinion may be relied upon by: 1) any person involved in the specific transaction or activity with respect to which this opinion is rendered; and 2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

Darryl L. DePriest
Chair

RJS MH 05022.A redaction
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