

EMMS



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Room 303  
320 North Clark Street  
Chicago, Illinois 60610  
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May 16, 1991

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

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Case No. 91046.A

Dear Alderman [REDACTED]:

On April 10, 1991, you called to ask whether the Governmental Ethics Ordinance permits you to accept a movie pass sent to you by the [REDACTED] Corporation. We appreciate your bringing this matter to our attention and your willingness to follow the ethical standards embodied in the Ordinance.

Based on the facts and information we received from you, the Department of [REDACTED], and Mr. [REDACTED], General Manager of [REDACTED] Corporation [REDACTED] for the Chicago area, the Board determines that your acceptance of this pass is not in violation of the Ordinance. However, there are negative implications that result from its acceptance and/or use that warrant your serious consideration. Under the circumstances, the Board has included them as an integral part of the opinion.

**FACTS:** You recently received an unsolicited movie pass from [REDACTED], a corporation that has numerous movie theatres in the Chicago area. The movie pass in question entitles you and a guest to pay a service charge of \$1.00 per movie to attend [REDACTED] theatres. The regular price of admission without a pass is usually \$6.50 per person.

City records indicate that [REDACTED]'s only transaction with the City is the obtaining of licenses for its cinemas, as required by Ordinance. This fact was confirmed through Mr. [REDACTED], the general manager, who also stated that his company has nothing pending before City Council. Mr. [REDACTED] further stated that it is company policy to send movie passes to city officials in municipalities throughout the country. In Chicago, passes are sent to individuals such as the Mayor, the Fire Chief, the Police Chief, and aldermen. The



individuals to whom the passes are sent are chosen by the person in charge of a given territory, in this case Mr. [REDACTED]. He indicated that in the past, few passes have been returned by officials in various municipalities. He was unable to establish a value for the pass since the value is dependent on the number of times the pass is used.

The facts also show that you are a member of the City Council's Committee on License. You stated that since you began serving on the Committee on License, it has not dealt with cinemas, only with liquor licenses and hot dog vending licenses. According to the City Council's Rules of Order and Procedure, "the Committee on License shall have jurisdiction over the licensing of persons, property, businesses and occupations." [pg. 17, paragraph 10] Therefore, any legislation regarding licensing regulations would come before this committee.

**LAW & ANALYSIS:** The relevant sections of the Ordinance's gifts provisions that apply to this case are § 2-156-040 (b) and (c) of the Municipal Code of Chicago. Section 2-156-040(b) states:

**No person shall give or offer to give to any official, employee, or City contractor, or the spouse or minor child of either of them, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgement of any official, employee or City contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a non-monetary gift having a value of less than \$50 does not involve such an understanding.**

This provision specifically prohibits you from accepting gifts based on either an explicit or implicit mutual understanding that the gift will influence your official actions, decisions, or judgments concerning business of the City. Furthermore, under this provision it is presumed that a non-monetary gift having a value of less than \$50.00 does not involve any mutual understanding.

Since there is no evidence that any such understanding exists between you and [REDACTED], and since the pass can be used such that its value can be less than \$50.00, the Board concludes your acceptance of this theatre pass does not constitute a violation of this provision.

Section 2-156-040(c), which is also applicable to this case, prohibits you from receiving gifts from persons who have an economic interest in a specific City business, service, or transaction, if you are in a position to substantially affect that business, service, or transaction. However, this provision allows for an occasional non-monetary gift valued under \$50.00. Section 2-156-040(c) states:

No person who has an economic interest in a specific City business, service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such transaction, or to the spouse or minor child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than an occasional one of nominal value (less than \$50) provided, however, nothing herein shall be construed to prohibit accepting such gifts from relatives.

Although the facts do show that [REDACTED] has an economic interest in City regulatory transactions, they do not show that [REDACTED] currently has an economic interest in a specific City business, service, or regulatory transaction that you can substantially affect by your decisions or actions. Moreover, at this time, the theatre pass can be used such that it is considered an occasional non-monetary gift valued under \$50.00. Therefore, the Board determines that your acceptance of the pass does not violate section 2-156-040(c) of the Ordinance.

Although your acceptance of the movie pass is not in violation of the Ordinance, your serious consideration of related matters is warranted; namely, your being placed in a position of conflict and the appearance of impropriety. For example, if you decide to keep and use the pass extensively and then must vote on an issue that advances the donor's interest, you are placed in a position of a conflict that could require disclosure of your receipt of the pass. Moreover, if you then vote favorably on the issue, the question arises under § 2-156-040(b) of whether there was a mutual understanding that your decision was influenced by this gift.

In addition, serious thought should be given to the appearance of impropriety based on the mere offer and acceptance of the pass. Because you vote on matters related to regulatory transactions such as licensing, the actions could be construed by the general public as being

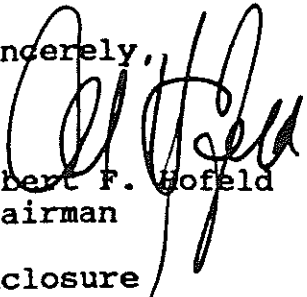
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inappropriate. To avoid such an appearance you can return the pass.

**CONCLUSION:** Based upon our analysis it is the Board's determination that acceptance of the [REDACTED] pass does not violate the provisions of the Governmental Ethics Ordinance.<sup>1</sup> However, as stated in this letter, there are related matters such as the appearance of impropriety and an apparent conflict that require your serious consideration. Because such matters are not specifically covered in the Ordinance they warrant your personal judgement of whether to return the pass, keep the pass and disclose its acceptance should a conflict situation arise in the future, or limit its use.

We appreciate your efforts to comply with the ethical standards embodied in the Ordinance. For your convenience we have enclosed our procedural guidelines for your review.

Sincerely,

  
Albert F. Hofeld  
Chairman

Enclosure

cc: Kelly Welsh, Corporation Counsel  


91046.L1

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<sup>1</sup>The Board's opinion is based on the facts as stated in this letter. If they are incorrect or incomplete, please notify us immediately, as any change may alter our decision.

## NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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 the opinion is rendered.