

May 16, 1991

[REDACTED]

City of Chicago
Richard M. Daley, Mayor

Board of Ethics

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Room 303
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Chicago, Illinois 60610
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CONFIDENTIAL

Re: Case No. 91052.A, ADVISORY OPINION

Dear [REDACTED]

This letter is in response to your request for an advisory opinion. You asked whether it would violate the City's Governmental Ethics Ordinance for the Department of Economic Development ("DED") to extend a business loan to [REDACTED] Bank, from which your wife, M [REDACTED] will directly benefit.

FACTS: You are a [REDACTED] for the City of Chicago's Department [REDACTED]. On May 5, 1991 you married M [REDACTED]. M [REDACTED] is a [REDACTED] with previous experience in [REDACTED] and is currently employed by [REDACTED].

M [REDACTED] is the president and 100% owner of a corporation formed for the purpose of establishing a [REDACTED] center in the City of Chicago. Approximately eight months ago, M [REDACTED] submitted a proposal to the DED for available funding under one of its programs that would ultimately provide her with a portion of the start-up capital for the proposed [REDACTED] center. Under the DED program, business loans are available at a 3% interest rate from the City to financial institutions that submit an application for specific business projects approved by the City. The financial institution uses a portion of its own money as well as the money from the City to make a loan for the project. The 3% interest rate charged by the City blended with the typical rate charged by the financial institution allows the institution to make the business loan for these special projects to debtors at a reduced interest rate.

At the time M [REDACTED] submitted her proposal for a [REDACTED] center, the DED was aware of your City employment and your intention to marry M [REDACTED]. You, M [REDACTED], [REDACTED] Bank, and the DED were initially involved in working out the details of the financing required for this [REDACTED] center. At the end of 1990, the bank began



procedures necessary to submit its application to the City. Approximately one month ago, M██████████ again contacted the DED explaining that the bank was ready to submit its application for funds.

Current plans, of which the DED has been aware, are that you and your father are to be the general contractors of a proposed \$460,000 dual purpose building. M██████████'s corporation will lease a portion of the building for \$3,000 per month for a term of 7 to 10 years for the ██████████ center. The building will also contain an apartment to be leased for \$1,500 a month. As lessor, M██████████'s corporation will be required to expend funds for improvements to the building. According to the City's assistant corporation counsel, it is not uncommon that a lease agreement would contain provisions requiring the lessee to make improvements.

The total amount of the 3% interest rate funds to be loaned by the City to ██████████ Bank for this project is anticipated to be \$60,000. The anticipated amount to be made available to M██████████'s corporation from ██████████ Bank as start-up capital for the ██████████ center is approximately \$137,992. The anticipated start-up expenditures are:

██████████ office furniture	\$26,850
██████████ appliances	5,500
Architectural fee	8,000
Paint and decorating	4,000
Carpeting and flooring	18,000
Stairs and railing	8,800
Partitions	11,720
Cabinets and shelving	6,100
Plumbing and fixtures	10,000
Electrical and fixtures	12,500
Working Capital	15,000
Contracting fee	6,922
Legal fees	3,000
<u>Other</u>	<u>1,600</u>
TOTAL	\$ 137,992

On or about May 1, 1991 you and M██████████ were notified by the DED that your ██████████ marriage might prohibit approval of the loan under the provisions of the Governmental Ethics Ordinance.

ISSUES: (1) Whether, under the Governmental Ethics Ordinance, you have a financial interest in the DED loan described above, from which your wife will directly benefit.

(2) Whether, under the Governmental Ethics Ordinance, your lease with M [REDACTED]'s corporation constitutes a financial interest in a contract, work, or business of the City.

ORDINANCE: The relevant provision of the Ordinance is section 2-156-010. This section prohibits a City employee from having a financial interest in City business. It states in relevant part:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

The definition of "financial interest" includes specific exceptions to the general provisions established in section 2-156-110. One exception is stated in sub-paragraph (1) of the definition:

[F]inancial interest shall not include (a) any interest of the spouse of an official or employee which interest is related to the spouse's independent occupation, profession or employment;....

With regard to this exception, the Board in previous opinions dealing with similar situations determined that for the exception to apply a City employee may not participate in the management or operation of the spouse's project, may not have an ownership interest in the spouse's project, and may not exercise any legal or financial control over the project or related business. See case nos. 88069.A and 88156.A.

ANALYSIS: Issue 1: Whether, under the Governmental Ethics Ordinance, you have a financial interest in the DED loan described above, from which your wife will directly benefit.

As stated above, the Ordinance prohibits an employee from having a financial interest in a contract, work, or business of the City. However, the definition of the term "financial interest" specifically excepts an employee's interest that is related to his or her spouse's independent occupation, profession, or employment.

The facts show that M [REDACTED] is a [REDACTED] with experience in [REDACTED]. The corporation, formed for the purpose of establishing the [REDACTED] center, is 100% owned by M [REDACTED]. You have stated that you will not be involved in

the management or operation of M██████████'s corporation or the ██████████ center. Based on these facts and the information and records we received from the DED, the Board concludes that M██████████'s corporation and the ██████████ center are part of her independent occupation. Because spouses' interests related to their independent occupation or profession are excluded from the definition of a financial interest, it is the Board's opinion that you do not have a financial interest in any contract, work, or business of the City.

However, based on its past opinions, the Board explicitly warns that you may not participate in the management or operation of the ██████████ center or the corporation, you may not have an ownership interest in the ██████████ center or the corporation, and you may not exercise any legal or financial control over the ██████████ center or the corporation. Any such activities would indicate that you have a financial interest in the ██████████ center and corporation, in violation of the Governmental Ethics Ordinance.

The Board's conclusion in this case is also supported by case no. 90075.A. In that case, the Board determined that a City employee who had a loan agreement with an intermediary, who in turn received the money from the City, did not have a contract with the City. Rather the contract was with the intermediary. In the same regard, M██████████'s loan contract does not appear to be with the City, but with the ██████████ Bank.

Issue 2: Whether, under the Governmental Ethics Ordinance, your lease with M██████████'s corporation constitutes a financial interest in a contract, work, or business of the City.

The facts stated show that you will have a lease agreement with M██████████'s corporation pursuant to which you will lease the space for the proposed ██████████ center. As stated previously, the Ordinance prohibits an employee from having a financial interest in a contract, work, or business of the City. However, following the reasoning in case no. 90075.A stated above, since your contract, work, or business (the lease) is with M██████████'s corporation and not with the City, the lease arrangement does not constitute a financial interest as defined in the Governmental Ethics Ordinance.

CONCLUSION: The Board, in applying the provisions of the

Governmental Ethics Ordinance to the facts presented,¹ determines that the DED loan to [REDACTED] Bank, which will ultimately directly benefit M [REDACTED]'s corporation, does not constitute a financial interest of yours and is not prohibited under the Ordinance. However, based on its past opinions, the Board explicitly warns that you may not participate in the management or operation of the [REDACTED] center or the corporation, you may not have an ownership interest in the [REDACTED] center or the corporation, and you may not exercise any legal or financial control over the [REDACTED] center or the corporation. Any such activities would indicate that you have a financial interest in the [REDACTED] center and corporation, in violation of the Governmental Ethics Ordinance.

The Board also finds that your interest in the lease with M [REDACTED]'s corporation is not a financial interest in a contract, work, or business of the City, but rather an interest in a contract with the corporation. Accordingly this lease agreement would not be prohibited by the Ordinance.

This opinion is based only on the provisions of the City's Governmental Ethics Ordinance. It is not applicable to any other rules or laws that may be relevant. We thank you for bringing this matter to our attention. If you have any further questions please do not hesitate to contact us.

Sincerely,


Albert A. Hofeld
Chairman

cc: Kelly Welsh, Corporation Council
[REDACTED]
[REDACTED]
[REDACTED]

MEH:tl/91053.L1

¹ If the facts presented are incorrect or incomplete, notify the Board immediately, as a change in the facts may alter the opinion of the Board.