

EMJ



July 15, 1992

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

City of Chicago
Richard M. Daley, Mayor

[REDACTED]

Board of Ethics

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Executive Director

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Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
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Re: Case No. 92014.A
RECONSIDERATION

Dear [REDACTED]:

On June 30, 1992, we received your letter requesting reconsideration of the June 24, 1992 advisory opinion rendered in this case. After carefully reviewing your letter dated June 28, 1992, and your oral arguments as related to Ms. Eng on July 1, 1992, please be advised that the Board has denied your request for reconsideration. This decision is based on the fact that the additional information you presented for reconsideration did not contain material facts or circumstances that would alter the Board's decision or that were not before the Board in its deliberations on the advisory opinion. We are cognizant of the fact that you voluntarily brought this matter to the Board on the good faith belief that such conduct would be appropriate and we appreciate your concern and willingness to comply with the standards of the Governmental Ethics Ordinance as interpreted by this Board.

REVIEW

In summary, the facts presented show that you are a City police patrolman as well as a licensed insurance agent and that, as an insurance agent, you sell property and casualty coverage, including car insurance. You asked whether the Governmental Ethics Ordinance prohibits you from using Police Department traffic citation records from your fellow officers to market car insurance to uninsured motorists during your off-duty hours. After reviewing all the facts presented, the Board determined on June 24, 1992 that your use of traffic citation information directly from Police Department records, whether from your own records or those of fellow officers, for the purpose of marketing car insurance is prohibited by the fiduciary duty provision (§ 2-156-020) of the Ordinance because it would constitute the use of



your City position to obtain a private benefit. You then requested that the Board reconsider its opinion.

Argument for Reconsideration: Your request raises four general points of argument to which we shall respond. First, you restate your contention that you would undertake your insurance marketing activities during your off-duty hours. It has been the Board's determination that the purpose of the fiduciary duty provision of the Ordinance extends beyond the matter of City time. The provision not only prohibits a City employee from performing private business activities during hours officially designated as City time, but also from using their City positions or City resources to obtain a private benefit. We understand that you perceive your marketing of automobile insurance to uninsured motorists as a service in the interest of the public. However, for the purposes of the City's Ethics Ordinance, your insurance business is a matter of private economic interest. To use City resources, such as internal departmental records--to which you have access only by virtue of your City position--to solicit insurance business and further your personal business interests violates the fiduciary duty provision of the Ethics Ordinance.

Your second general contention that the staff opinion, issued before the Board reviewed the facts in your case, should stand is without merit. It has always been the policy of this office that any staff opinion in written or verbal form is subject to a final determination by the membership of the Board. Review by the Board resulted in the reversal of the staff opinion, of which you were promptly notified.

The third general point you raise involves your direct access to department records for the purpose of acquiring clients for your private business transactions, thus bypassing the standard freedom of information procedure that persons without the advantage of your City position must use to obtain similar information. As we stated in our advisory opinion, this conduct clearly would be in violation of the Ordinance because it would constitute the use of your City position to gain a private benefit. You stated in your letter that you consider this use of your City job a "fringe benefit" of holding such a position, much like employees of other organizations who receive employee discounts. Moreover, you stated that, because your marketing technique, which is directed to the individuals whose names you acquired through City records, does not identify you as a City police officer and the choice to purchase the insurance is at the sole discretion of the

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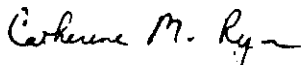
consumer, you believe that your solicitation through direct mail would be proper. As stated in its preamble, the Governmental Ethics Ordinance was instituted for the purpose of engendering and preserving public confidence in the fair and honest administration of City government and it does so by providing for "the avoidance of conflicts of interest, impropriety, or the appearance of them." When City employees receive private benefits or obtain an advantage over the public generally by virtue of their City positions, then public confidence in government is undermined. Such conduct by City employees is exactly the kind of activity the Governmental Ethics Ordinance was designed to avert.

Finally, you restate your assertion that you would not use your own traffic citation records in your private business but only those of your fellow officers. Once again, it was the Board's determination in its advisory opinion that your use of traffic citation information directly from Police Department records, whether from your own records or those of your fellow officers, for the purpose of marketing car insurance is prohibited by the fiduciary duty provision of the Ordinance. The fact that you would not have had direct contact with these potential insurance customers during your patrol duties and that they would not identify you as a City patrolman does not alter the fact that you would be using information available to you only by virtue of your City position and thereby be obtaining an advantage over others in your private business interests.

Please be advised that although the Board commented only on the major points you presented, your request for reconsideration was reviewed in its entirety. Because no material facts or circumstances were presented that would alter the Board's decision, your request for reconsideration has been denied.

We appreciate the fact that you brought this matter to the Board's attention out of your concern to comply with the ethical standards embodied in the Ordinance. If you have any additional questions, please feel free to contact us.

Sincerely,



Catherine M. Ryan
Chair

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**ADVISORY OPINION
CASE NUMBER 92014.A
Non-City Employment**

To [REDACTED]

On March 25, 1992, you called the office of the Board of Ethics and asked whether you are prohibited by the Governmental Ethics Ordinance from using Police Department traffic citation records to market car insurance to uninsured motorists. After reviewing all the facts presented, the Board determines that your use of traffic citation information from your own records or the records of fellow officers for the purpose of marketing car insurance is prohibited by the Ordinance.

FACTS: You are a City police patrolman and part of your job is to write tickets for traffic violations. You told us that the standard process of citing traffic violations includes checking on the status of motorists' car insurance. Persons driving without insurance may be cited in violation of State law, and that information is a matter of public record.

You also explained that you are a licensed insurance agent, selling property and casualty insurance, including car insurance. You asked whether the Ethics Ordinance prohibits you from using traffic citation information from your own records or from the records of fellow officers to market car insurance to uninsured motorists during your off-duty hours.

The relevant provision of the Ethics Ordinance, section 2-156-020 entitled "Fiduciary Duty," states:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This section establishes an obligation for City employees to use their City positions responsibly and in the best interest of the public. Within lawful limits, a City employee must give undivided loyalty to the City of Chicago in the discharge of his or her public duties. In cases of non-City employment, it precludes the use of City time and City resources to obtain a personal benefit or to promote a purely private interest. See Case Nos. 89126.A and 88087.A.

It is the Board's determination that your use of traffic citation information from your own records or from the records of fellow officers for the purpose of marketing car insurance is prohibited by this section of the Ordinance because it constitutes the use of your City position to obtain a private benefit. Although the information you would use from traffic citations becomes a matter of public record, there is a

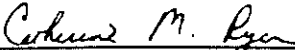
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standard freedom of information procedure involved in acquiring such records. Your access to this information directly from departmental records would allow you to bypass that procedure, thus giving you an advantage in your private business transactions by virtue of your City position.

In addition, please be advised that since police officers are required to appear in court to testify on behalf of the City against the drivers cited, your marketing insurance to those drivers could place you in a conflict of interest situation.

The determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented in this opinion are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.

We appreciate your bringing this matter to our attention and your willingness to comply with the ethical standards embodied in the Ordinance.



Catherine M. Ryan
Chair

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