**Note: the Board of Ethics approved this as an advisory opinion at its meeting on October 19, 2011, by a vote of 4-0.**

**MEMORANDUM**

**CONFIDENTIAL**

To: The Honorable Will Burns, Alderman, 4th Ward

From: Steve Berlin, Executive Director

Re: Restrictions and obligations imposed due to secondary employment

 **Case No. 11044.Q**

Date: September 21, 2011

Last week, we discussed the restrictions in the Governmental Ethics Ordinance that would be placed on you because of your secondary, non-City employment with a private firm. This letter will summarize those restrictions.

There is no prohibition on aldermen (or other City officials and employees) from having outside, secondary or “dual” employment (except for department heads, like me, and non-clerical personnel in the Mayor’s Office; but that’s by Personnel Rule). You said that you are not an owner of the firm, but rather an employee. If that changes and you do become an owner, then there are a few more restrictions, discussed below. This memo will guide you through all of the restrictions. In brief, the Board said it best in Case No. 88022.A, which is attached:

“[the Ordinance does not prohibit [an alderman] from contacting other City officials or employees on behalf of person who seek business with the City provided that (1) [the alderman has] no economic interests which would be affected by the outcome of an official’s decisions regarding the person [the alderman] represent[s]; and (2) [the alderman does] not accept any ‘thing of value’ (including any money, gift, service, favor, promise of political support, campaign contribution, or any other significant personal benefit) in return for providing this assistance.”

**(1) Representation of Other Persons.** § 2-156-090(a) prohibits an elected official, like you (or a City employee, like me) from “representing” or “having an economic interest in the representation of” any person other than the City in any formal or informal proceeding or transaction before any City agency where the City’s involvement is non-ministerial. But it explicitly allows an elected official to “appear [...] without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.” This means that, unless you are, in effect, doing your job as an elected official, you cannot speak on behalf of or contact other City personnel on behalf of your outside employer or its known clients.

The only instance in which Board has addressed this provision as it applies to aldermanic contacts is Case No. 08022.A. [See attached; it’s the case we talked about.] There, an alderman asked which restrictions apply when he is asked to contact other City employees or officials by persons seeking City contracts or business relations with City agencies. Some of these requests would come to him in his capacity as Chair of a City Council Committee. The Board took notice that this provision allows elected officials to appear without compensation on behalf of constituents, but went on to advise the alderman that “although the spectrum of activities allowed under this provision is not specified, the Board believes that such activities would include contacting officials on behalf of persons who seek your assistance in obtaining City business or who seek a remedy for what they perceive to be unfair treatment by a City agency. Therefore, under this section, such activities would be allowed provided that you do not accept compensation for performing these services.” Note that it’s unclear whether the Board meant that persons requesting the alderman’s support would be his “constituents,” or that such activities do not constitute “representation” within the meaning or intention of this provision. Given the Board’s conclusion that the aldermen may not accept compensation for these services, I believe that it was saying that this activity is a form of appearing on behalf of constituents. Nevertheless, the import of this decision is that aldermen may contact City employees (such as department heads) on behalf of people or entities seeking City business, or checking on the status of their pending City business, without violating § 2-156-090(a)–provided they have no economic interest in or to be derived from making the contact.

***However, under this section, and the sections that follow, you’re best advised to steer clear in your City position of any dealings that your outside employer or its known clients have or may have with the City and its departments, commissions and agencies. The firm or its clients may have certain dealings with the City, but this restriction against representing them is on you, and you may not represent them (or “lobby” on behalf of them) in these dealings, whether before Council or one of its committees, or any other City department.***

**(2) Conflicts of Interest; Improper Influence.** §§ 030(a), -080(a) and -080(b)(1) prohibit a City official from making, participating in, or in any attempting to use his position to influence any City governmental decision or action “in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally,” or “with respect to any matter in which he has any economic interest distinguishable from that of the general public.” They also require an alderman with such an interest to disclose it to the Board within 3 days of discovering it, and then to disclose it on the record of the Council proceedings or committee proceedings and abstain from voting (but be counted present for quorum purposes).

Our Board has long recognized that a City employee or official who has outside or secondary employment with a firm thereby has an economic interest in the firm. These provisions, strictly read, would prohibit you from participating in or voting only on *matters* in which you have an economic interest, but not necessarily on all matters *involving* *persons* in which you have an economic interest. That is, say your outside employer wishes to buy a parcel of real estate. Do you, strictly and technically speaking, have an economic interest in the matter–the purchase of the property? No, not as an employee of the firm (were you an owner of the firm, the answer would be different, legally, as discussed below, under Interest in City Business). Nonetheless, the Board has interpreted this broadly in the outside employment context. ***Especially in light of the sections discussed below, my advice is that you recuse yourself–take a “Rule 14”–on any matters involving your outside employer, and disclose to my office and then on the record of the Council or committee proceedings that you are an employee of the firm, and thus will not participate in or vote on the matter.***

What about matters involving your firm’s clients? To be on the safe side, and to avoid any perception of favoritism, ***I’d advise you likewise to disclose and recuse yourself from participating in and voting on these matters involving known clients as well.*** Certainly, if it’s a matter involving a client for which you have provided services yourself, you would know. But are you bound to know all the firm’s clients at any given time, as an employee of the firm? No–the law doesn’t impose an absolute standard. But you are bound to exercise the diligence expected of a reasonable businessperson. If you have a suspicion that a company or person is a firm client, ask.

If the firm or its clients do have any matters before the City Council, you’ll need to file a § 080(a) disclosure with my office. I’ve attached a sample below.

**(3) Money for Advice.** This one, § 2-156-050, is pretty straightforward, and prohibits you from accepting compensation from anyone other than the City, such as your outside employer, for giving advice or assistance on matters relating to City business, if those matters are at all related to your position. It covers behind the scenes advice. The Board concluded, in Case No. 08022.A, at 3, that this prohibits an alderman:

“from accepting any monetary benefit or service of any kind, including campaign funds or voluntary fundraising services, in return for the assistance [given] to persons seeking City contracts. Moreover, this prohibition applies to gifts, favors, or promises made either prior or subsequent to any assistance” [the alderman] offer[s] the donor. In other words, the Ordinance would prohibit [an alderman] from accepting any ‘thing of value’ in exchange for assistance on a matter of City business, whether [the alderman accepts] such gifts prior to [the] assistance or in a deferred fashion.” [emphasis in original.]

**(4) Improper Influence/Conflicts of Interests; Appearance of Impropriety.** These are prohibitions against your participation in a matter involving any person or business with which you have a “business relationship.” § 2-156-030(b) provides that:

**no elected official, or any person acting at the direction of such official, shall contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship ... In addition, no elected official may participate in any discussion in any City Council committee hearing or in any City Council meeting or vote on any matter involving the person with whom the elected official has a business relationship.**

§ 2-156-080(b) (2) provides, in relevant part, that

 **(2) To avoid even an appearance of impropriety, any member of the City Council who has a business relationship with a person or entity with a matter pending before the City Council or any Council Committee shall publicly disclose the nature of such business relationship on the records of proceedings of the City Council, and shall also notify the Board of Ethics of such relationship within 72 hours of delivery by the clerk to the member, of the introduction of any ordinance, resolution, order or other matter in the City Council, or as soon thereafter as the member is or should be aware of such potential conflict of interest. The Board of Ethics shall make such disclosures available for public inspection and copying immediately upon receipt. He or she shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council is or should be aware of such potential conflict.**

 **For purposes of this subsection (2) only: (i) "matter pending before the City Council or any Council Committee" shall refer to Council action involving the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification...**

A Mayoral Press Release from November 1998 stated that this section was intended “to toughen the City’s ethics ordinance by prohibiting elected City officials from talking or writing to any City officials or employees on behalf of their business associates or clients ... [and] also [to] prohibit [them] from discussing these matters in Council meeting or committee hearings. Existing law prohibits them from voting on such issues ... “ The refinement here is the addition of an *in personam* restriction: aldermen are prohibited from contacting *any* other City personnel on behalf of outside persons if they have a business relationship with those other persons–even if they’re not being compensated in any way for making the contact(s) or don’t have an economic interest in the particular *matter*. “Business relationship” is defined in § 080(b) (2): as:

**any contractual or other private business dealing of an alderman, or his or her spouse or domestic partner, or of any entity in which the [alderman/spouse/domestic partner] has a financial interest, with a person or entity which entitles an alderman to compensation or payment in the amount of $2500 or more in a calendar year, provided, however, that the exclusions applicable to a “financial interest,” as set forth in ... 010(l), except for the exclusion set forth as §010(l)(a), shall also apply with respect to a “business relationship” ... “contractual or other private business dealing” shall not include any employment relationship of an alderman’s spouse or domestic partner with an entity when such spouse or domestic partner has no discretion concerning or input relating to the relationship between that entity and the City.**

If you earned $2500 or more from the firm in 2010, or likely will earn $2500 or more from it in 2011, then you have a business relationship with the firm. ***This means that: 1) upon discovering that the firm has any matters pending before Council, you will need to disclose in writing to my office on a form similar the one below that you have a business relationship with the firm, and will be recusing yourself/taking a Rule 14 from all discussion and voting on the matter; 2) while it’s not clear, you’re best advised to do the same thing for known clients of your firm; and 3) under § 2-156-111(b), the firm cannot be a “City contractor” while you are employed by it.*** We don’t know precisely what a City contractor is, but it’s defined, somewhat unhelpfully, in the Ordinance. It means “any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City ordinance, *for services to* any City agency ...”) § 2-156-010(e) (emphasis added). ***Practically, this means that your outside employer can’t provide professional services to the City.*** But I do not believe that it would preclude the firm from purchasing property from the City, applying for or receiving financial assistance from the City, applying for M/WBE certification, or from other legal arrangements in which it is not providing professional or public relations services to the City. However, as discussed above, you’d need to steer clear of those matters both when you’re performing your outside employment duties, and as an alderman.

**(5) Interest in City Business.** If you were or were to become an owner of the firm, then the firm would, in effect be prohibited from have nearly any financial dealing with the City that was worth $5000 or more to you. Under § 2-156-110, no elected official may have a “financial interest” in any City contract, work or business. A financial interest means an ownership interest that’s worth $5000 or more at present value to its owner, or yields an income stream of $2500 or more per year to its owner. Put simply, this means that in any deal between your firm and the City (say, e.g. your firm wishes to buy and renovate a parcel of City-owned property, or wishes to seek a small business loan administered by the City), we would need to take your % of ownership in the firm and multiply it by the gross amount of the transaction with the City, namely the purchase price or total amount of the loan or grant. If that multiplication yields a figure of $5000 or more, then the contract would be prohibited, because that would be your “interest” in the contract or business.)

**Relevant Required Disclosures.**

**1) FIS forms**. As you know, if you derive $2500 or more in compensation from the firm, then you’ll have to disclose it on your annual statement of financial interests.

**2) Economic Disclosure Statements (EDS).** On EDS forms, persons applying for actions requiring an ordinance, ordinance amendment, City Council approval, or other City agency approval, with respect to sale or purchase of real, estate, real property tax classification, zoning, vacation of streets and alleys, leases and contracts, must file an economic disclosure statement (EDS). On the form, they must answer whether they have had a “business relationship,” as defined in Chapter 2-156 of the Municipal Code, with any elected City official in the 12 months before the date this EDS is signed. This would apply only your outside employer were to have a City matter in which it needs to file an EDS.

**3) Aldermanic disclosures.** Under § 2-156-080(b), if an alderman has: (i) a business relationship with a person or entity with a matter pending before the City Council or any Council Committee; or (ii) any economic interest distinguishable from that of the general public or all aldermen in any matter pending before the Council or any Committee, he must publicly disclose the nature of such business relationship or interest on the Council record, and in writing to the Board, within 3 days of discovering it. When this requirement was added to the Ordinance in 1998, the Board discussed whether to require aldermen to use a pre-printed form created by the Board, but decided against it. Unfortunately, many of the disclosures received by the Board under this section do not name the person with whom the alderman has a business relationship, and do not indicate whether the disclosure is being filed due a business relationship or for some other reason (there are many reasons why an alderman might file such a disclosure, or a “take a Rule 14”).

Thus, I recommend a disclosure in the following format:

***MEMO***

*To: Steve Berlin, Board of Ethics*

*From: Alderman Will Burns*

*Re: Rule 14's/Recusals for items to be introduced at the [date] City Council meeting*

*Date:*

*I am informing you that, pursuant to § 2-156-080 of the City’s Municipal Code and Rule 14 of the City Council, I will abstain from discussion and voting on the following matters, but will be present for purposes of constituting a quorum:*

***Committee on [name committee]***

*Describe the item by number of by official description, and name the parties involved where possible. I have a business relationship with [name the party]. OR I have outside employment with [name the party]. OR [Name the party] is a client of my outside employer, ABC, Inc.*