

MRS

April 2, 2002

CONFIDENTIAL

[Mary], [Assistant]

[Department]

[Address]

[Address]

Re: Case No. 02007.Q

FCB

Dear [Mary]:

On March 1, 2002, you asked the Board of Ethics for a staff opinion on what restrictions, if any, the Governmental Ethics Ordinance places on your husband's prospective application for a City contract. You work for the [Department] as an [assistant]. In this capacity you take complaints from citizens that are having problems with their [businesses] which typically concern [business activities]. You said that you have no control over any contracts that the City has with [businesses], or with anyone else. You stated that your husband, [John], is the sole owner of an unincorporated business, [Alpha], which provides [products] for concerts and public address systems. When your husband started his business in [Date], the Immigration and Naturalization Service (INS) recommended that you sign all official papers that he was required to sign because he was a resident alien of the United States, not a citizen. You said that you were a signatory (along with your husband) on the first business license application filed with the City's Department of Revenue for [Alpha]. That business license was issued on [Date], and lists only your husband's name. When [John] applied for the renewal of his business license, which was issued in [Date], your name did not appear on the application for the renewal license or on the renewal license that was issued. You said that you have never had any ownership interest in [Alpha], and you stated that you have not been involved in the business in the past, are not involved with the business in the present, and have no plans to be involved in the business in the future.

Under the facts you presented, Board staff concludes that [Alpha] is your husband's independent occupation. Therefore, that company may apply for and be awarded City contracts without violating the Ordinance provisions concerning financial interest in City business. However, the Ordinance does place limitations on your conduct as a City employee. The relevant provisions and staff's analysis are reviewed below.



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The City of Chicago Governmental Ethics Ordinance Provision that applies most directly to your situation is Section 2-156-110, "Interest in City Business," which 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...

However, according to Section 2-156-010(I) of the Ordinance:

...financial 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...

In previous opinions interpreting the spouse's independent occupation exception to Section 2-156-110, the Board has determined that the exception applies only if the City employee does not participate in the management or operation of the spouse's project, does not have an ownership interest in the spouse's project, and does not exercise any legal or financial control over the project or related business. (See Case Nos. 91052.A, 88156.A, 88069.A.) You stated that you have never been involved in the management or operation of the business and have no plans to become involved with the business in the future. You further stated that [John] is the sole owner of [Alpha]; you do not have an ownership interest in [Alpha] and exercise no legal or financial control over the company. You said that you did sign your husband's first application for a business license, but only because of the INS's recommendation that you to sign all official papers that he signed, not because you were involved in any way with the business. The fact that you did not sign the application for renewal of the business license in [Date] supports your claim that you are not involved in [Alpha]. Based on these facts and on previous Board decisions, staff concludes that [John's] business is his independent occupation. Thus, the financial interests that he has by virtue of his business are not attributable to you, his spouse. Therefore, if [John] seeks or obtain contracts with the City through [Alpha], this action will not result in a financial interest in City business that is prohibited by Section 2-156-110 of the Ethics Ordinance.

Section 2-156-130 (Employment of Relatives) states, in relevant part:

(b) 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.

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(c) 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.

Under this provision you are prohibited from exercising contract management authority over contracts with persons who employ or contract with your husband. You are also prohibited from using your City position to assist your husband in securing employment or contracts with persons over whom you exercise contract management authority.

Under the facts you presented, staff concludes that [Alpha] is the independent occupation of your spouse. Therefore, the Ordinance does not prohibit [John] from applying for, or entering into, a contract with the City. However, the Ordinance does prohibit you from exercising contract management authority over contracts with persons who employ or contract with your husband and from using your City position to attempt to affect your husband's business.

We appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ethics Ordinance. Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this query letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance. If you have any further questions, please do not hesitate to contact us.

Very truly yours,
[Signature]
Jamie Schilling
Research Assistant

Approved By: [Signature]

Dorothy J. Eng
Executive Director, Board of Ethics

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The term "contract management authority" is defined in Section 2-156-010(g) 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."

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