

December 13, 2000

CONFIDENTIAL

Mr. [John Smith]
[Address]
Chicago, IL 606[xx]

**Re: Case No. 00026.Q
Outside Employment**

*- outside employment
- real estate sales
- fiduciary duty/FOIA*

Dear [John],

In a letter dated December 4, 2000, you asked whether the Governmental Ethics Ordinance would prohibit you from mailing an announcement of your recent affiliation with [Alpha Real Estate] to employees and officials of the City, whose acquaintances you made while working at City Hall. It is staff's opinion that the Ethics Ordinance does not prohibit you from mailing this announcement, though the Ordinance does impose certain restrictions, which are discussed in this letter.

FACTS: You are [a supervisor] in [the Department], a post you assumed on [date], 2000. You entered City service in [year], and from [year] to 2000 you served four [Department] Commissioners in an appointed capacity, most recently as [a liaison officer] in [one of] the Department's [Bureaus]. According to your letter, your return to [a supervisory post] in [the Department] coincides with your interest in pursuing a career in real estate when not [working for the City].

Toward this end, you have associated with [Alpha Real Estate], and you wish to send an announcement of this association to persons you "have come to know during [your] tenure at City Hall." In your discussion with staff, you stated that these persons include twenty to thirty City employees and officials, including various Cabinet officials and aldermen. You stressed that the announcements have been printed by [Alpha], without the use of City resources of any kind, and that you would mail them to your acquaintances' office addresses, which are publicly available in telephone books and on the Internet.

LAW AND ANALYSIS: The provisions of the Ethics Ordinance most relevant to your query are those governing "Fiduciary Duty," "City-Owned Property," "Interest in City Business," and "Representation." We address each of these provisions below.

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Fiduciary Duty. Section 2-156-020 of the City's Governmental Ethics Ordinance states, in relevant part, that "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." In Case No. 92014.A, the Board determined that the fiduciary duty provision prohibits direct access to departmental records that would otherwise be available only through a standard Freedom of Information Act request, since direct access would constitute the receipt of a private benefit by virtue of a person's City position. Staff therefore advises you that you may not gather mailing addresses for your announcements by utilizing City or Departmental resources not available to the general public. It is understood, however, that the mailing addresses of City Departments and aldermanic offices constitute publicly available information.

City-Owned Property. Section 2-156-060 of the City's Governmental Ethics Ordinance states, in relevant part, that "No official or employee shall engage in or permit the unauthorized use of City-owned property." Staff therefore reminds you that you are prohibited from using City time or City-owned property in the course of your outside employment with [Alpha Real Estate]; this would include making telephone calls, writing emails, or handing out business cards relating to your real estate business while working on City time or property.

Interest in City Business. Section 2-156-110 of the City's Governmental Ethics Ordinance prohibits City employees from having a financial interest in any contract, work or business of the City "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." By your account, you will be pursuing clients for residential real estate transactions only, and are therefore will not have as a client for your business any City Department or agency. As long as this remains true, Section § 2-156-110 of the Ordinance would not restrict your activities as described.

Representation. Section 2-156-090(a) of the Ethics Ordinance prohibits City employees from representing or having an economic interest in the representation of any person other than the City in any proceeding before any City agency that concerns nonministerial action or inaction. Section 2-156-090(b) of the Ordinance prohibits a City employee from having an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before a court or City agency when that person's interest is adverse to that of the City. Staff reminds you of your obligations under these provisions, and counsels you to seek further clarification from the Board should [Alpha] or any of its clients ask you to testify in their behalf in any City administrative hearing or in any Court case involving the City.

CONCLUSION: Based on previous Board opinions and the foregoing analysis, it is staff's opinion that the Governmental Ethics Ordinance does not prohibit you from mailing an

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announcement of your affiliation with [Alpha Real Estate] to acquaintances you have made while working for the City.

As in all inquiries regarding outside employment cases, Board staff takes this opportunity to remind you that you are also prohibited from using or disclosing confidential information gained by reason of your City employment (§2-156-070).

Staff's opinion does not necessarily dispose 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 letter. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion.

Other laws or rules may apply to this situation, such as Personnel Rule XX, Section 3, which delineates the requirements for secondary employment, and requires City employees to file a written request with their department head for permission to engage in outside employment. In addition, we remind you 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. We therefore advise you to secure the approval of [your Department Commissioner] on this matter before you mail your announcements.

We appreciate your inquiry and your concern to abide by the standards embodied in the Governmental Ethics Ordinance. We enclose a copy of the Ordinance for your convenience, as well as a summary of restrictions concerning outside employment of City employees. Please contact us if you have further questions.

Very truly yours,

[*Signature*]

Michael Haggerty
Deputy Director

Approved by:

[*Signature*]

Dorothy J. Eng
Executive Director