

ADVISORY OPINION
CASE NO. 99018.A
Outside Employment

To: [John]
[Coordinator of Program A]
[Bureau X], [Department]

Date: May 12, 1999

You will soon begin working for the City's [Department]. On April 13, 1999, you requested written advice from the Board of Ethics on whether the Governmental Ethics Ordinance will limit or prohibit your ongoing work for a not-for-profit arts organization, [Alpha Organization], and whether your dual employment would result in restrictions on this organization's activities with respect to the City. This advisory opinion reviews the facts you presented and sets forth the Board's analysis and conclusions.

FACTS: [Bureau X]/[Program A]. You have been offered and have accepted a full-time job, which you will begin on May 17, as Coordinator of [Program A] in the Chicago Department of []s [Bureau X]. [Bureau X] is the department's [] arts [] program for Chicago area high school students. Students who qualify for the [Bureau X] program [] work with professional [artists in a variety of settings

[]. [Program A], which you will coordinate in your new position, is [a] program for [younger] students. It is designed to build awareness of [] opportunities within [Bureau X] once students reach high school. Local artists submit proposals to lead workshops through [Program A], and those selected run their programs in area [schools]. This summer, [Program A] will run programs in some 8 schools around the City, with 2 artists and about 20 students participating at each school. [Program A] is funded by the [Department] and by [Beta Organization] ("[Beta]"), a not-for-profit arts education organization that has been managing and raising funds for [Bureau X] in conjunction with the department.

You have been coordinating [Program A] since November 1998 as an employee of [Beta]. In effect, when you begin your new job with [the Department], the City will be paying you to do the same job you have been doing through [Beta]. When you begin your City position, you will no longer be employed by [Beta].

Your specific responsibilities in coordinating [Program A] in your new City position will include helping recruit students and schools to participate in the

program; reviewing and selecting artists' proposals for participating in [Program A]; working with the Chicago Board of Education, arts education organizations, and independent artists to schedule and administer programs; overseeing [Program A's] budget; approving expenditures; and working with potential donors who express interest in supporting the program. [Program A], you said, does not solicit funding, but will accept donations from interested entities, such as local merchants. As coordinator of [Program A], you will also sit on a committee, with other [Bureau X] program heads, that develops policy for [Bureau X] as a whole and reviews proposals from artists and arts organizations interested in having [student artists] through [Bureau X].

[Alpha Organization]. In addition to your work with [Bureau X], you are also the founder and paid Executive Director of [Alpha Organization] ("[Alpha]"). You are currently on an unpaid leave of absence from this position. [Alpha] is a not-for-profit organization that runs arts programs and workshops for certain isolated groups in the Chicago area, including developmentally disabled adults, victims of abuse, the homeless, and chronically ill children. In the past, [Alpha] has also held programs for troubled youth. However, you said, it no longer intends to offer programs specifically for youth and will focus solely on programs in hospitals, mental health care facilities, and shelters. [Alpha]'s programs are run by local artists recruited primarily by word of mouth.

[Alpha Organization] was founded in late 1992 and received not-for-profit status in April 1993. It has a 10-member board of directors, and you are the sole paid administrator. As Executive Director, you develop [Alpha]'s programs, coordinate with facilities and artists to implement the programs, and manage finances, including book keeping and fund raising. You handle most of the administration, but you said board members occasionally help with administrative tasks, such as completing taxes. As in any not-for-profit, the board must approve any significant developments with respect to [Alpha Organization]'s mission and strategy.

[Alpha Organization]'s interaction with the City. You explained that in the past, [Alpha Organization] had [student artists] through the [Bureau X] program, but that when you began your job coordinating [Program A] with [Beta], [Alpha] stopped working with [Bureau X] at the suggestion of your supervisors. [Alpha Organization] has also run programs in conjunction with the Chicago Park District in the past, although it does not do so now. You said [Alpha] currently does not run or participate in arts programs with [Bureau X], the [Department], or any other City department. However, [Alpha] solicited and received a 1999 "[Development]" grant for \$2,000 from the [Department's] [Bureau Y]. You applied for and received this grant on behalf of [Alpha] before you interviewed for your job with [the Department]. You said [Alpha] has designated the grant money for use at a hospital and a homeless shelter not run by the City. This grant, you said, represents less than 5% of [Alpha]'s annual budget. [Alpha Organization] currently receives no City monies other than this [Development] grant. The rest of [Alpha]'s funding comes from non-City grants and private donations that it solicits.

You indicated that [Alpha Organization] and [Program A] would not be competing for the same program participants, since the two programs have different target audiences. You also explained

that the two programs would not be competing for the same funding sources, since [Program A] is funded by [Beta] and the [Department], does not receive [Development] grants, and does not directly solicit outside funding. You do not anticipate making any decisions in your City job that may affect [Alpha], due to the differences in the two programs' target audiences and program sites. In addition, you said, you would not make City decisions about [Development] grants.

You said your supervisors within [Bureau X] approved of your working for both [Alpha Organization] and [Bureau X] under the auspices of [Beta], provided [Alpha] did not contract with [Bureau X]. In your interview for your new position with the [Department], [Mary], Deputy Director of [Bureau X], suggested that you contact the Board of Ethics about your ongoing work with [Alpha Organization], since the City's Ethics Ordinance would apply to you in your position with the department. In your letter to the Board, you indicated that you would like to continue working for [Alpha] part-time in addition to working for [the Department]. You specifically asked whether, once you begin City employment, the Ethics Ordinance will prohibit [Alpha] from accepting future [Development] grants or from keeping its 1999 [Development] grant if you continue working as [Alpha]'s Executive Director but are not paid for doing so. You also asked whether the Ordinance will prohibit [Alpha] from running programs in conjunction with City agencies or the City's sister agencies, including the Chicago Park District, while you are a City employee and an unpaid employee of [Alpha Organization].

LAW, ANALYSIS, AND CONCLUSIONS: The Ordinance does not prohibit City employees from being employed outside their City jobs. However, it does impose restrictions on employees who have outside work, whether compensated or not. Based on the facts of the case, the Board has concluded that the Ordinance would not prohibit you from serving as Executive Director of [Alpha Organization], paid or unpaid, while you are also employed by the City. However, it will impose some restrictions on your activities on behalf of [Alpha]. In the remainder of this opinion we outline the restrictions the Ordinance will impose on you, as a City employee, if you remain Executive Director of [Alpha]. We also analyze how the Ordinance affects [Alpha]'s 1999 and future [Development] grants.

Restrictions under the Ethics Ordinance. Under Section 2-156-020, "Fiduciary Duty," you owe your primary loyalty to the City. This provision obliges you to use your City position responsibly and in the best interests of the public, and to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities. The fiduciary duty provision of the Ordinance also prohibits you from using your City position to obtain private benefits, such as to benefit your outside employment or promote the interests of [Alpha Organization]. For example, your fiduciary duty under the Ordinance would prohibit you from using your City position to solicit or obtain funds or artists for [Alpha]. (See Case No. 97061.A, in which the Board determined that a City employee's fiduciary duty to the City prohibited her from using her City position to obtain clients for an outside law firm by which she was employed.) In addition, if your obligations in your City work and your work for [Alpha] were to conflict, this section of the Ordinance would oblige you to put your duties to the City ahead of your duties to this organization. To avoid any appearance

of bias that may result from your dual loyalties—to the City and to [Alpha]—we advise that you and your supervisors in [the Department] be alert to situations in which your City work and your outside employment may overlap (e.g., if you were to deal with artists and private donors in your City position who may also be interested in working with [Alpha]), and that you establish guidelines on how to handle such situations.

Section 2-156-090, "Representation of Other Persons," states, in relevant part:

(a) No elected official or employee may represent, or have 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 in which the agency's action or non-action is of a nonministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment...

The Board has construed the terms "represent" and "representation" to apply to a broad range of activities in which one person acts as a spokesperson for another. Representing another before the City would include making personal appearances before City agencies, making telephone contact with City employees and officials, and signing or submitting proposals, contracts, or other documents to any City personnel or agencies on behalf of another. (See Case No. 96032.A.)

Subsection (a) of § 2-156-090 would prohibit you, as a City employee, from representing or having an economic interest in the representation of [Alpha Organization], or any person other than the City, in a transaction or proceeding before a City agency whose action is non-ministerial (i.e., involves discretion), except in the performance of your City duties. This subsection would prohibit you from writing grant applications or otherwise lobbying on behalf of [Alpha] for grants awarded by the City. This subsection would also prohibit you from negotiating on behalf of [Alpha] with City employees to organize [Alpha] programs in conjunction with the City or a City agency. We note that this subsection would not prohibit you from representing [Alpha], including negotiating to organize arts projects, before the Chicago Park District, since this body is not a division of the City for purposes of the Ethics Ordinance.

In addition, we note three other provisions of the Ordinance pertinent to a City employee's outside activities. Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you, as a City employee, from accepting payment or anything of value in exchange for giving advice or assistance on the operation or business of the City, but does not prohibit you from receiving compensation for rendering services that are wholly unrelated to your City duties and rendered as part of your non-City occupation. Section 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, without authorization. Section 2-156-070, "Use or Disclosure Of Confidential Information," prohibits your using or revealing, except in the performance of your City duties, confidential information gained in the course of your City employment. Confidential information, for purposes of this section, means

any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

The above restrictions would apply to you whether or not you are paid as Executive Director of [Alpha Organization]. If you are paid by [Alpha Organization], two additional restrictions would apply. Sections 2-156-030, "Improper Influence," and 2-156-080, "Conflicts of Interest," will prohibit you, as a City employee, from participating in, or in any way attempting to use your City position to influence, a City governmental decision or action in any matter in which you have an economic interest distinguishable from that of the general public. In a recent opinion, the Board considered the case of a City employee who had accepted a part-time, paid position with a non-City company. (Case No. 98062.A.) The Board concluded that the City employee had an economic interest by virtue of her employment with the company and determined that she was prohibited from participating in, making, or attempting in any way to use her City position to influence, any City decisions or actions that would be related to or benefit her employment with this company. Thus, if you are compensated by [Alpha] you would have an economic interest in your employment, and you would be prohibited, under the Ordinance, from making or in any way attempting to use your City position to influence a City governmental decision that would relate to or benefit that employment. As you said, you do not anticipate having to make decisions about [Alpha] in your City job. However, if you remain the paid Executive Director, we advise that you contact this Board for advice if you are asked to make a decision relating to [Alpha Organization] in your City job.

[Alpha Organization]'s 1999 [Development] grant and future [Development] grants. Because, as you stated, you were not a City employee when [Alpha Organization] applied for and received a 1999 [Development] grant, your representation of [Alpha] before the City in this case was not in violation of the Ordinance's provision on representation of other persons. Also, because the [Development] grant was not awarded to you personally, but to a not-for-profit organization in which you have no ownership interest, it is the Board's opinion that the grant to [Alpha], even if accepted and used while you are [Alpha]'s Executive Director, does not constitute a prohibited interest in City business on your part, for purposes of the Ordinance.¹ Moreover, the amount of the grant, \$2,000, even if it were awarded to an entity in which you had an ownership interest, does not rise to the level of a prohibited interest in City business. For these reasons, the Board concludes that there is nothing in the Ethics Ordinance that would prohibit [Alpha Organization] from keeping its 1999 [Development] grant.

You also asked whether the Ethics Ordinance would prohibit [Alpha Organization] from accepting future [Development] grants. It is the Board's opinion that an appearance of impropriety could be

¹Section 2-156-110, "Interest in City Business," prohibits City employees and officials from having a financial interest, in their own name or in the name of another, in any contract or business transaction with the City. Section 2-156-010(1) defines "financial interest," in relevant part, as any interest that entitles the owner to receive more than \$2,500 per year; any interest with a cost or present value of \$5,000 or more; and any interest representing 10% of any entity organized for profit.

created if [Alpha Organization] solicited and were awarded a grant administered by the [Department] while you are both a City employee and [Alpha]'s paid or unpaid Executive Director. In such a case, [Alpha] could appear to have an unfair advantage over other [Development] grant seekers, regardless of who within [Alpha]'s administrative structure completed or signed the application for the grant. (As stated above, the Ordinance will prohibit you, as a City employee, from applying for [Development] grants yourself on behalf of [Alpha].) For the reasons described above, [Alpha]'s accepting a [Development] grant in these circumstances would not put you in violation of the Ordinance's provision on interest in City business. However, we advise that you inform your supervisors within the [Department] if [Alpha Organization] intends to apply for [Development] grants, and that you and the department consider the possible appearance of bias that awarding [Alpha Organization] these grants, or other monies administered by the department, could create.

DETERMINATIONS: The Board determines that the Ordinance would not prohibit you from serving as Executive Director of [Alpha Organization], paid or unpaid, while you are also employed by the City. However, it will impose restrictions on your activities on behalf of [Alpha], as outlined in this opinion. It will not prohibit [Alpha] from running programs with the Chicago Park District. The Board also determines that there is nothing in the Ordinance that would prohibit [Alpha Organization] from keeping its 1999 [Development] grant. However, we advise that you consult with your supervisors in the [Department] before [Alpha] solicits future [Development] grants, or any other monies administered by the department, so long as you are employed by the City and retain your position as Executive Director, paid or unpaid, of [Alpha Organization].

The Board's determination in this case 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 opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. We also note that other laws, rules, or regulations may apply to this situation. The City's Personnel Rules XVIII, Section 1, no. 43, and XX, Section 3, may impose additional restrictions on employees engaged in outside employment. 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.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Angeles L. Eames
Vice Chair