



October 9, 1991

CONFIDENTIAL

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Board of Ethics

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Chicago, Illinois 60610  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Re: [REDACTED]  
Case No. 91047.A  
ADVISORY OPINION

Dear [REDACTED]

On April 15, 1991, the Board of Ethics received a letter from you on behalf of your client, [REDACTED] INDIVIDUAL A, WHO IS [REDACTED] a City employee, serving as a staff assistant to [REDACTED] CITY OFFICIAL B. [REDACTED] She is also the president and authorized agent of an organization known as [REDACTED] CORPORATION X [REDACTED]

[REDACTED] based in the [REDACTED] Ward. You requested an advisory opinion as to whether [REDACTED] INDIVIDUAL A'S [REDACTED] activities as president of [REDACTED] CORPORATION [REDACTED] are in compliance with the restrictions imposed on City employees under the Governmental Ethics Ordinance. The Board appreciates your bringing this matter to our attention.

In a letter dated June 19, 1991, you were notified of the Board's determination that [REDACTED] INDIVIDUAL A [REDACTED] had violated the representation section of the Ordinance, § 2-156-090, by representing [REDACTED] CORPORATION X [REDACTED] before [REDACTED] A CITY [REDACTED] Commission. You were notified that she must cease undertaking similar activities in order to avoid further violations. In that letter, you were also asked to provide additional information in order for the Board to complete our analysis and render an advisory opinion. We appreciate your responses to our requests.

After reviewing all of the gathered information, the Board determines that while the Ordinance does restrict many [REDACTED] of INDIVIDUAL A'S [REDACTED] activities as president of [REDACTED] CORPORATION X [REDACTED], it does not specifically prohibit her from holding the position of president. However, as stated previously, the Board determines that [REDACTED] INDIVIDUAL A [REDACTED] violated the representation section of the



Ordinance. The Board provides its opinion and analysis below.

**FACTS:** CORPORATION X [REDACTED] is a not-for-profit Illinois corporation. According to its Articles of Incorporation, it is a charitable organization formed for the purposes of promoting economic and community development; combatting community deterioration; providing job training, counseling and assistance in job placement and retention for community residents; and providing educational opportunities and technical assistance to local businessmen and community residents in the [REDACTED] area. You stated that, to date, CORPORATION X [REDACTED] has not received any funds from any source.

You stated that work towards forming CORPORATION X [REDACTED] began in [REDACTED] 1989, largely through the efforts of INDIVIDUAL A [REDACTED]. CORPORATION X [REDACTED] was incorporated in [REDACTED] 1990. AS CORPORATION X'S [REDACTED] president, INDIVIDUAL A'S [REDACTED] duties include acting as the authorized agent for the Board in all matters unless otherwise stated in the by-laws. (By-laws, p. 10) You also informed us that INDIVIDUAL A [REDACTED] is not and will not in the future be paid for her service as member and officer of the Board of CORPORATION X [REDACTED].

In [REDACTED] 1990, CORPORATION X [REDACTED] entered into an agreement with CORPORATION Y [REDACTED] to develop the proposed PROJECT Q [REDACTED] at A CITY LOCATION [REDACTED].

According to the agreement, CORPORATION X [REDACTED] would assist CORPORATION Y [REDACTED] in the coordination of identifying and addressing community needs and input in order to gain support for the construction of the PROJECT Q [REDACTED].

The agreement stipulates that the CORPORATION X [REDACTED] would "use its best efforts . . . to support CORPORATION Y [REDACTED] and the PROJECT [REDACTED] in the [REDACTED] Community and with the City, including but not limited to hearings in front of CITY AGENCIES [REDACTED]."

In addition, the agreement states that CORPORATION Y [REDACTED] and CORPORATION X [REDACTED] "shall jointly use their best efforts to cause the City to approve [REDACTED] funding for [REDACTED] project development funding categories . . . ."

The agreement specifically states that the project was contingent on obtaining the desired [REDACTED] funds from the City.

The agreement provides that in exchange for this assistance,

CORP. Y would provide many benefits to CORP. X, all contingent on approval of the City funds. CORP. Y agreed, among other things, to employ an affirmative action policy with respect to to include and encourage ETHNIC businesses as tenants in the Center and to deed, or lease for years at \$1 per year, two spaces in the to CORP. X for use as a day care center and a cultural center. The agreement provides CORP. X with FINANCIAL BENEFITS

Specifically, you stated that the monies anticipated for CORP. X would be used "as seed money for the operation of a day care center and a cultural center, as well as for a community job training program and related projects." In addition, CORP. Y agreed to provide CORP. X with copies of all plans, specifications, permit applications or documents related to the PROJECT submitted to any City agency for the purpose of review. You stated that INDIVIDUAL A has not received and does not expect to receive anything of value as a result of the project, and that she has no economic interest in the project.

Although you stated that it now appears that the City will not approve the funds, several steps were taken by CORP. Y in the approval process. According to CITY EE C,

INDIVIDUAL A was involved in all City department proceedings at least since last autumn when she became involved in the project. CITY EE C stated that INDIVIDUAL A herself attended a number of these meetings as well as private meetings with staff. Transcripts from public hearing held on 1991, show that INDIVIDUAL A advocated in favor of the project before the Commission in order to "represent CORP. X."

In addition, minutes from several of CORP. X's board meetings mention meetings between INDIVIDUAL A as CORP. X's REPRESENTATIVE and City officials.

With regard to her City job, you informed us that INDIVIDUAL A has no role in making any of the governmental decisions involved in the project. According to both you and

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INDIVIDUAL A [REDACTED], her duties as staff assistant to CITY OFFICIAL B [REDACTED] are largely devoted to community service. [REDACTED] INDIVIDUAL A [REDACTED] handles [REDACTED] complaints by conducting interviews and offering referrals to agencies that might be of assistance; her only regular direct contact with another City department is for the purpose of reporting problems [REDACTED].

**LAW AND ANALYSIS:** The following is based on the facts as they have been presented to us.

Section 2-156-090(a), entitled "Representation of Others," states:

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 non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

The Board has interpreted the term "representation" to apply to a broad range of activities in which one person acts as a spokesperson for another person or seeks to communicate and promote the interests of one party to another, including making personal appearances before City agencies on behalf of others.

According to the facts, INDIVIDUAL A [REDACTED] has already represented CORP. X [REDACTED] before the City at the [REDACTED] public hearing held on [REDACTED] 1991, and has met privately with City personnel supporting the [REDACTED] project. The minutes of CORP. X [REDACTED] board meetings provide further evidence that INDIVIDUAL A [REDACTED] has represented CORP. X [REDACTED] before City agencies in violation of the Ordinance.

Although INDIVIDUAL A [REDACTED] is not prohibited per se from serving as president of CORP. X [REDACTED], she may not represent (as defined above) CORP. X, CORP. Y, [REDACTED] or any other person before any City agency. If she fails to cease these activities, the Board will be forced to [REDACTED] [REDACTED] she may be subject to sanctions and any contracts negotiated, entered into, or performed in [REDACTED].

violation of this provision or any permit, license, ruling, determination, or other official action sought, obtained, or undertaken in violation of this provision can be voided. See section 2-156-430.

Other sections of the Ordinance are relevant to INDIVIDUAL A's situation. While they do not necessarily prohibit her from holding the office of president of CORP. X, they do affect the activities she may perform.

Section 2-156-020 states:

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

Within lawful limits, INDIVIDUAL A must give undivided loyalty to the City of Chicago in the discharge of her public duties. Therefore, INDIVIDUAL A may not in any way use her City position to gain an advantage for CORP. X, for the Project, or for any other person even if she is not compensated by CORP. X and has no economic interest in the project. (See case no. 89087.A) If the duty she owes to CORP. X as its president and board member should conflict with her fiduciary duty to the City, the Ordinance requires that she put the City's interests first. Although the facts presented do not evidence a present conflict, as she is not involved with the Project as a City employee, INDIVIDUAL A should contact the Board for assistance if such a conflict should occur.

Section 2-156-060 states:

No official or employee shall engage in or permit the unauthorized use of City-owned property.

This section prohibits INDIVIDUAL A, as president of CORP. X, from using any City property or resources for any private benefit, including but not limited to the benefit of CORP. X, CORP. Y, or the Project.

Section 2-156-070 states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by

reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Under this section, INDIVIDUAL A must be careful to avoid using or revealing confidential information acquired during the course of her City job, even if it would benefit CORP. X, CORP. Y or the PROJECT.

There are additional sections of the Ordinance that do not effect INDIVIDUAL A as long as she is not compensated for her work for CORP. X and has no interest in any of its projects. If this situation should change, INDIVIDUAL A should contact the Board of Ethics for further guidance. (See sections 2-156-030, 2-156-050, 2-156-080, and 2-156-110.)

**CONCLUSION:** As a City employee, INDIVIDUAL A is prohibited from representing others before any City agency. According to the facts as stated above, INDIVIDUAL A has appeared on behalf of CORP. X at the public hearing on 1991 and at other meetings with City officials. As stated in our letter of June 19, 1991, the Board determines that INDIVIDUAL A has violated the Ordinance and must cease all such activities or be subject to sanctions.

The Board further determines that the Governmental Ethics Ordinance does not prohibit INDIVIDUAL A from serving as president of CORP. X. However, she may continue to serve as president only if she can do so without representing CORP. X or any other person before any City agency. Insofar as her position as president of CORP. X requires her to represent others before the City, she is prohibited from continuing to act in that role.

Several other sections of the Ordinance affect her actions as president. INDIVIDUAL A must uphold her fiduciary duty to the City, may not use City time or property to fulfill her outside duties, and may not disclose any confidential information learned during the course of her City position in order to further her outside interests. If a situation should arise in which INDIVIDUAL A's fiduciary duty to the City may be compromised in any way, or if she should be compensated for her work as president of CORP. X or acquire an interest in any of its projects, she should contact the Board of Ethics.

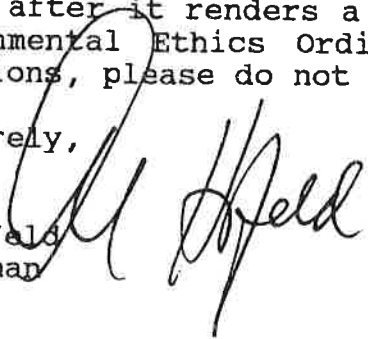
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The Board's determination is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.<sup>1</sup> Other rules or laws may be applicable to this situation.

The Board appreciates your bringing this matter to our attention. We enclose the Board's procedural rules that apply after it renders a decision along with a copy of the Governmental Ethics Ordinance. If you have any further questions, please do not hesitate to contact us.

Sincerely,

Al Hofeld  
Chairman



enclosure

cc:



mk:91047.L4

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<sup>1</sup>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.