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EMWS

July 6, 2000

CONFIDENTIAL

Mr. [John Smith]
[Title]
[Department of X]
Chicago, IL 606[xx]

out emp

**Re: Case No. 00012.Q
Outside Employment**

Dear [John],

By telephone on May 10, 2000, you asked the Board of Ethics staff whether the Governmental Ethics Ordinance prohibits you from accepting outside employment as a consultant to [Alpha Corporation], on a project for [a nearby] County government. Based on the advice you received in the course of this telephone conversation, you began the consulting work on a limited basis. Before committing to an increased role in the project, however, you sought written advice from the staff in a letter dated June 6, 2000.

Based on the facts you have presented, it is staff's opinion that the Ethics Ordinance does not prohibit you from accepting or continuing this outside employment as you have described it, although the Ordinance does impose certain restrictions on your conduct that are discussed in this letter.

FACTS: You are currently [a superintendent] in [Bureau X] of [the Department]. The Bureau designs, installs, maintains and operates [various electrical and mechanical systems throughout the City]. In your capacity as [a superintendent], you oversee the Bureau's warehouses of [....] equipment, a task which entails purchasing such [...] equipment and other "hard goods" as are necessary to the Department's activities.

According to your letter, in your work for [Alpha Corporation] you consult on the feasibility and design of a fiber optic network for [a nearby] County government. You stated that this work is unrelated to your present duties in [Bureau X], and that similar networking projects within City limits are administered under the auspices of the Department of General Services.

You also stressed in your letter and telephone conversations that your Department has had no dealings with [Alpha Corporation], though the firm has completed contract work for other City Departments,



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including the Departments of Water and Sewers. Despite its work with the City, by your account [Alpha Corporation's] primary business clients are local suburban governments that require its expertise in water and drainage engineering.

Finally, you stated that you have sought and received tentative approval for this outside employment from the [Department Commissioner], pending approval by the Board of Ethics or its staff.

LAW AND ANALYSIS: The provisions of the Ethics Ordinance most relevant to your proposed non-City employment are those governing "Interest in City Business," "Improper Influence," and "Conflicts of Interest." We address each of these below.

Interest in City Business. While it does not prohibit your outside employment, the provision of the Ethics Ordinance concerning "Interest in City Business" does restrict your activity as a consultant to [Alpha Corporation]. Section 2-156-110 of the 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 not serve as a consultant to [Alpha Corporation] on any contracts involving City business; as long as this remains true, Section 2-156-110 of the Ordinance would not restrict your activities as described.

Improper Influence; Conflicts of Interest. Sections 2-156-030 and 2-156-080 of the Ethics Ordinance prohibit City employees from making, participating in making, or in any way attempting to influence City governmental decisions or actions in which those City employees have an economic interest. Economic interest is broadly defined in Section 2-156-010(i) to include "any interest valued or capable of valuation in monetary terms." The Board of Ethics has determined that an employee has an economic interest in his outside employment (Case No. 98062.A). Under these sections, then, you are prohibited from making, participating in, or attempting to use your City position to influence City decisions or actions that are related to or may enhance your outside employment. As you have described your City job and your proposed outside employment, it is unlikely that such a conflict of interest will arise. However, in your capacity as a city employee, if you have the authority to make or influence decisions that could possibly affect [Alpha Corporation], staff advises you to seek Board guidance before taking part in any such decision.

Several additional provisions of the Ordinance also specifically restrict your outside employment: section 2-156-060 prohibits you from engaging in the unauthorized use of City-owned property; section 2-156-070 prohibits you from using or disclosing confidential information gained by reason

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of your City employment; and section 2-156-020 establishes that you owe a fiduciary duty to the City at all times in the performance of your public duties.

CONCLUSION: Based on the facts you have presented and the foregoing analysis, it is staff's opinion that the Governmental Ethics Ordinance does not prohibit you from engaging in outside employment as a consultant to [Alpha Corporation] for the project as described.

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. Likewise, if the scope or nature of this consulting project changes, we recommend that you seek additional advice from the Board or its staff before continuing the outside employment.

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 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]

Ellen M. W. Sewell
Legal Counsel

Approved by:

[Signature]

Dorothy J. Eng
Executive Director

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