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MEH



May 1, 1990

City of Chicago
Richard M. Daley, Mayor

C O N F I D E N T I A L

[REDACTED]

at emp

Board of Ethics
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Executive Director
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Vice Chair

Margaret Carter
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Re: [REDACTED]
Case No. 90018.Q

Dear [REDACTED]

Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

On March 12, 1990, you requested an opinion from the Board of Ethics pertaining to the following matter: X, of [REDACTED]

[REDACTED] Department [REDACTED], is also 100% owner of A [REDACTED] Limited, a firm which does health care consulting work. In July 1989, X [REDACTED] negotiated to be a subcontractor to M [REDACTED], which is a subcontractor to N. [REDACTED]

These two corporations are consultants to [REDACTED] Hospital for health care planning issues. In February 1990, X [REDACTED] agreed to provide market research services to the contractors, involving 500 telephone interviews of [REDACTED] Hospital patients. The purpose of the research is to provide evidence regarding the feasibility of re-opening [REDACTED] Hospital [REDACTED]

X will report the findings of the research to Y [REDACTED], President and Chief Executive Officer of M. [REDACTED]

As of March 27, 1990, she had not yet begun the research but was waiting for the contracts to be finalized.

Although N [REDACTED] is a contractor for the City [REDACTED], X [REDACTED]

[REDACTED] stated March 27 in a telephone conversation with Board staff that she has had no contact with anyone from that firm, and that she will be doing business only through Y [REDACTED], of M. [REDACTED]. She also stated that neither [REDACTED] nor M [REDACTED]

[REDACTED] has any business or regulatory transactions pending before the City relating to



her department [REDACTED], and that the project with which her firm would be engaged would not involve any construction or new building projects related to her department [REDACTED]. In a telephone conversation with Board staff on March 27, [REDACTED] confirmed that his corporation is not involved in any business with the City, including her Department [REDACTED].

ETHICS ORDINANCE PROVISIONS AFFECTING OUTSIDE EMPLOYMENT:
Several sections of the Ethics Ordinance (Chapter 26.2 of the Municipal Code of Chicago) limit an employee's work activities outside of, or in addition to, her City employment:

Section 26.2-2: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City."

This section establishes an obligation for City employees to use their City positions responsibly and in the best interest of the public. It affects outside employment by precluding the use of City time and City resources to obtain a personal benefit or to promote a purely private interest.

Section 26.2-3: "No official or employee shall make, participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect on the public generally."

Section 26.2-8: "No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which he has any economic interest distinguishable from that of the general public."

These sections would prohibit a City employee from outside employment if she participated in, or tried to use her position to influence, a governmental decision or action in which she had an economic interest arising from that outside employment.

Section 26.2-5: "No official or employee ... shall solicit or accept any money or other thing of value ... in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee ... from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession."

This section prohibits a City employee from accepting outside employment if the employment includes giving advice or assistance on the operation or business of the City. However, this section is not intended to prohibit a City employee from outside employment if the work is wholly unrelated to City duties and is rendered as part of her non-City profession.

Section 26.2-7: "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."

Under this section, an employee engaging in outside work must be careful to avoid using or revealing confidential information she may have acquired during the course of her City job.

Section 26.2-6: "No official or employee shall engage in or permit the unauthorized use of City-owned property."

Under this section, city-owned property (e.g., stationery, equipment) cannot be used for non-City business or for any other private purpose.

Section 26.2-9 states that no 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."

As the Board has interpreted it, the term "representation" here applies to any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another. Under this definition, representing others before the City would include actions such as making personal appearances before City agencies on behalf of others; making telephone contact with City employees and officials on behalf of others; and submitting written requests and proposals to City agencies, employees or officials on behalf of others.

Section 26.2-11: "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 or in the sale of any article, 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."

"Financial interest" is defined in the Ethics Ordinance as "(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; (ii) any interest with a cost or present value of \$5,000 or more;

or (iii) any interest representing more than 10% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit."

Under this section, an employee may engage in non-City business as long as such business does not constitute a "financial interest," so defined, derived from City funds.

APPLICATION OF THE ETHICS ORDINANCE PROVISIONS: Based on the facts provided, the Board of Ethics handled this case as a staff query. From the available evidence, the staff concluded X's [REDACTED] outside employment: (1) is not expected to involve any advice or assistance concerning the operation or business of the City; and (2) in any case, her outside employment project appears to be wholly unrelated to her City duties and responsibilities in [REDACTED] her Department [REDACTED] [REDACTED] (Section 26.2-5).

Relating the other applicable provisions of the Ethics Ordinance to her proposed outside employment with M [REDACTED] [REDACTED], the staff finds that:

- (1) Complying with Sections 26.2-3 and 26.2-8, X [REDACTED] [REDACTED] will have contact only with Y [REDACTED] of M [REDACTED] [REDACTED], who has no business pending before the City;
- (2) No city funding will be involved in the research project or in the results of its findings, (as required under Section 26.2-11);
- (3) Based on telephone conversations with Board staff, no mutual understanding, either explicit or implicit, exists between Y [REDACTED] and X [REDACTED] that she may be in a position to influence City business in any way on behalf of M [REDACTED] (in accordance with Sections 26.2-3 and 26.2-9);
- (4) Given that there is no matter related to [REDACTED] Hospital pending before any City department or agency, X [REDACTED] [REDACTED] has neither any financial or economic interest in City business, nor any apparent opportunity to influence City business, as a result of this research project (Sections 26.2-3, 26.2-8, 26.2-9, 26.2-11); and
- (5) X [REDACTED] [REDACTED] has indicated that she will not use City time, resources or property in her outside employment or for any other private purpose, as required by Sections 26.2-2 and 26.2-6.

The staff of the Board finds no evidence that X's [REDACTED] non-City employment on this research project would involve any economic or financial interest in City business, conflict of interest, or improper influence in City business.

In conclusion, based solely on the facts provided by your office, by X [REDACTED], and by Y. [REDACTED], the Board staff concluded that the Ethics Ordinance would not prohibit the employment of X's [REDACTED] consulting firm in this research project, provided that she abide by the following provisions:

1. She may not perform her outside business work on City time or with City resources (Section 26.2-2).
2. She may not influence or participate in making any City governmental decision or action in which her non-City business would give her an economic interest distinguishable from that of the public generally (Sections 26.2-3, 26.2-8).
3. In her outside employment, she may not advise or in any way assist anyone on any matter related to City business (Section 26.2-5).
4. She may not use or disclose confidential information gained in the course of, or by reason of, her position with the City (Section 26.2-7).
5. She may not use City-owned property in performing her non-City business (Section 26.2-6).
6. She may not represent, or have any economic interest in representing, any of her non-City business colleagues before any City agency (Section 26.2-9).
7. In her outside employment, she must not derive any financial interest from City funds (Section 26.2-11).

Note that this letter considers only the application of the Governmental Ethics Ordinance of the City of Chicago to the facts provided. If you have reason to believe that other laws may apply to the situation, please consult the Corporation Counsel. You should also be aware that nothing in the Governmental Ethics Ordinance prohibits a City department from adopting rules more stringent than the Ordinance.

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On March 27, [REDACTED] was notified of the Board staff's response to this case. If you have any further questions, please contact the staff at 744-9660.

Sincerely,

Johnnie B. De Wilde

Johnnie B. DeWilde
Executive Director

cc: [REDACTED]
[REDACTED]

JGJ: 90018.L