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EMUS

December 16, 1993

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

Ms.

out emp

Chicago IL

RE: Case No. 93043.Q

Dear Ms.

You are a licensed architect, and serve as a member of the City's On
November 5, 1993, you telephoned our office and asked whether, under the City's Governmental Ethics Ordinance, you could accept an offer of employment you had received from and still
remain on the and if so, what restrictions the
Ordinance would impose on your activities in both positions. You have since accepted this offer. You currently serve in a full-time, compensated capacity as (the
Architect for "Hospital"").

Shortly after you contacted this office, staff advised you that, while the Ordinance would not prohibit you from assuming this position with the Hospital, it would impose certain restrictions on your activities in this employment, as well as on your activities as a Member of the This letter
explains these restrictions more completely. Our analysis of the relevant provisions of the Ordinance is based on the facts as you have described them to us.

FACTS: You are an architect licensed in Illinois, and serve as a member of the The is a
quasi-judicial body that adjudicates cases in which decisions of the are appealed,
and cases in which citizens request approval for changes from mandated land uses and certain building requirements. You stated that the deals only
with ordinances and not at all with the
Building or health codes. The Hospital has not had a case before the while you have served on the
. In fact, to the best of your knowledge, the
Hospital has never has a case before the

As a member of the you attend meetings once a
month and receive compensation of \$1000 per month. Because you receive compensation for your service on the you would be considered a City employee for
purposes of interpreting the Ordinance.



In your new position as Architect for Hospital, you are responsible for overseeing the renovation and reconfiguration of the Hospital's interior. At this time, you believe that your job will involve you in supervising the performance of renovations to the Hospital's interior in accordance with the applicable State and City building and health codes. You anticipate that the functions of your new position, like many of those an architect performs, would almost certainly require that you exercise judgment about whether the drawings, plans, and contracted work at the Hospital satisfies the requirements of any applicable State and City codes. You believe that you will work mostly with contractors, outside architects, and your staff. You stated that you are still unsure at this time whether and to what extent your position might involve dealing with City departments and City personnel. In any event, you expect that various City departments will inspect the Hospital property to verify that the renovation is being performed in accordance with the City codes. You stated, however, that it is the past experience and expectation of other Hospital personnel that, were City personnel to inspect the Hospital's premises, the inspection would occur in relation to projects of sufficient magnitude that the Hospital would have retained an outside architect, who would deal directly with City personnel. You expect that you would be able to limit your contact in these instances to communications with that outside architect.

LAW AND ANALYSIS: Although the Governmental Ethics Ordinance does not per se preclude a City employee from having outside employment, several provisions of the Governmental Ethics Ordinance restrict the activities of employees in their dual employment. The provisions relevant to your situation are set forth below.

Representation of Other Persons. Section 2-156-090 of the Governmental Ethics Ordinance, under the title "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 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.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any

administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

As long as you retain your Membership on the you may not, under this provision, "represent" the Hospital before any City agency. As the Board has interpreted it, the term "representation" here applies 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. Thus, under this definition, you may not represent the Hospital before the City, including, for example, making personal appearances before City agencies on behalf of the Hospital, making telephone contact with City agencies on behalf of the Hospital, and submitting written requests and proposals to City agencies on behalf of the Hospital. "Representation" also includes signing any plans, proposals, contracts, or other documents that are submitted to City agencies. (See Case Nos. 90077.A, 89087.A, and 89018.A.) If the need for such action were to arise in your work for the Hospital, you would need to delegate the particular responsibility to someone else in order to comply with the Ordinance.

Fiduciary Duty. Section 2-156-020 of the Ordinance, entitled "Fiduciary Duty," states:

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 officials and employees to use their City positions responsibly and in the best interest of the public. While acting as a member of the you must carry out your City duties in the best interests of the City, and must be able to exercise professional judgments free from outside influence or conflicting duties to another employer, in this case the Hospital.

This section also precludes you from using City time and City resources to obtain a personal benefit or to promote a purely private interest--that is, to benefit the Hospital.

Conflict of Interest and Improper Influence. Two sections of the Ordinance, § 2-156-030, entitled "Improper Influence," and § 2-156-080, entitled "Conflicts of Interest," prohibit City employees from participating in, or in any way attempting to use their positions to influence, a governmental decision or action in which they have an "economic interest." An "economic interest" means, in relevant part, any interest valued or capable of valuation in monetary terms. By virtue of your employment with the Hospital, you have an economic interest in it.

Under these sections, then, you are prohibited from using your position with the City to attempt to influence any City decision involving your outside employer. Thus, for example, you may not use your position on the _____ to influence any City decision involving the Hospital, and you must recuse yourself from participating in any _____ decision or matter involving the Hospital.

Solicitation or Receipt of Money for Advice or Assistance. § 2-156-050 of the Governmental Ethics Ordinance, entitled "Solicitation or Receipt of Money for Advice or Assistance," states:

No official or employee, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, 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, or the spouse of 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 you from accepting money in return for advice or assistance on matters concerning the City's operation or business, unless the matter is wholly unrelated to your City duties on the _____. Thus, under this section, you may not give advice or assistance to the Hospital on any City business or matter unless the subject of the advice or assistance is wholly unrelated to the work of the _____.

Use or Disclosure of Confidential Information. § 2-156-070, entitled "Use or Disclosure of Confidential Information," 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.

This section prohibits you from revealing confidential information you have acquired during the course of your Membership on the _____. The Ordinance defines confidential information as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

CONCLUSION: So long as you retain your Membership on the _____ the Ordinance prohibits you from representing _____ Hospital before any City agency. The Ordinance also requires you to recuse

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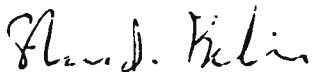
yourself from involvement in any matters or cases that involve the Hospital and to refrain from assisting or advising the Hospital in any matters that concern the operation or business of the Hospital. Finally, the Ordinance prohibits you from revealing any confidential information acquired during the course of your tenure as a Member of the Board and from using City time or City resources to promote the interests of the Hospital. If, during the course of your employment with the Hospital or your work as a Member of the Board, you are asked to or feel you must undertake activity that you believe may be prohibited by the Ordinance, as we have described those prohibitions in this letter, we urge you to seek specific guidance from the Board at that time.

Our conclusions in this case are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in these facts may alter our conclusions.

For your convenience, I enclose a copy of the City's Governmental Ethics Ordinance and a copy of the summary of restrictions related to outside employment that our staff has prepared.

We appreciate your bringing this matter to our attention and your willingness to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,



Steven I. Berlin
Deputy Director

approved by:



Dorothy J. Eng
Executive Director

enclosures

cc: Susan Sher, Corporation Counsel

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