

ADVISORY OPINION
CASE NO. 01051.A
Outside Employment

To: [John Smith] , Deputy Commissioner
Department of [O] , Bureau of [S]

Date: December 12, 2001

In a letter dated November 27, 2001, you requested written advice from the Board of Ethics on how the City's Governmental Ethics Ordinance applies to the situation of two of your Bureau's employees, [Tom and Bill Jones] , who have been offered temporary part-time employment positions with [C] , as structural engineers.

After careful consideration of the facts that you presented, the purpose and language of the relevant provisions of the Ethics Ordinance, and prior Board opinions, the Board concludes that the Ordinance does not prohibit [the Jones's] from accepting the offer of part-time outside employment, although it does impose certain restrictions on their conduct, both in their positions with the City and in their employment with [C] . The Board advises the Department of [O] and [the Jones's] to be mindful of these restrictions, which are discussed in detail below.

Facts: [The Jones's] are employed by the Department of [O] , Bureau of [S] . Your letter describes both men as structural engineers in the Bureau, holding the title of "[engineer] ." In their City employment, you said, their day to day responsibilities are "limited to the supervision of Bureau day labor trades engaged in various maintenance and construction projects City-wide." As an example, you said that they had overseen the work on the construction of the [project 1] . You said that this project lasted approximately 10 months, and generally involved approximately 60 laborers and employees.

You said that [Mr. Seth] , the office manager for [C] 's Chicago office, had approached his brothers, [Bill and Tom] , concerning their availability to perform certain structural engineering design on behalf of [C] on weekends and evenings. An e-mail you forwarded Board staff, from [Seth] to you, clarified that [C] has two projects on which it would like to employ [Bill and Tom]. The first project involves reconstruction on the [Project 2] . [C] is working together with [I] on this project. The second project involves 20 rehabilitations along the Railroad Line. On this second project, [Seth] indicated that [C] is working for the [Agency G] . [Bill and Tom's] responsibilities on both of

these projects would include providing structural engineering design of columns, beams, connections, temporary shoring, foundations, rebar details, and similar elements. [Seth] stated that their work would not involve “interfacing with any City Departments.” Both projects, you said, have a limited time frame: at a maximum, four months. You stated that neither the Department of [O] , nor, as far as you know, any other City Department, are participating in any manner with either of these projects. [Seth] stated that the City is not a partner to either of these projects. He also stated that, as far as he is aware, the City is not contributing funding to either of these projects.

According to your letter, [C] has contracts with the Bureau of [S] . You stated that neither [Bill nor Tom] has engineering consultant oversight in the performance of their City jobs, and specifically no consultant oversight for any [C] contracts with the Bureau. Further, you stated that neither [Bill nor Tom] have participated in any other kind of work with respect to the [C] contracts with the City in the course of their City employment.

Law: As in all outside employment cases, several sections of the Ethics Ordinance are relevant to your question. Section 2-156-030(a), “Improper Influence” states that:

(a) 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 2-156-080(a), “Conflicts of Interest; Appearance of Impropriety” states that:

(a) 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.

Section 2-156-010(i) defines “economic interest” as “any interest valued or capable of valuation in monetary terms.”

These sections prohibit City employees from participating in or influencing governmental decisions or actions in which they have an “economic interest” (as defined) that is distinguishable from that of the public. Interpreting these sections, the Board has concluded that a City employee has an economic interest by virtue of outside, paid employment. (*See, e.g.*, Cases Nos. 98062.A, 94009.A, and 92044.A.) If that economic interest will be affected by the City employee’s governmental decisions, then a conflict of interest arises and the employee is prohibited from making such decisions. In Case No. 98062.A, the Board stated that the type of governmental decisions that a City employee cannot participate in or seek to influence are those “that are related to or may enhance his or her outside employment.”

To ensure that City employees do not make decisions that relate to their outside employment, the Board has looked with great care at any situation in which a City employee's outside employer seeks to do or does business with that employee's Department. With respect to this particular situation, you have emphasized that neither [Bill nor Tom] are in a position to influence or participate in any City decision or City business that affects or relates to [C] . You stated that the work that [Bill and Tom] do for the City is completely unrelated to [C] 's contracts with the Bureau of [S] . Therefore, because neither [Bill nor Tom] makes or participates in making governmental decisions relating to [C] , the Board concludes that Sections 2-156-030 and 2-156-080 do not prohibit [Bill or Tom] from accepting the proposed outside employment with [C] . However, the Board notes that if they accept the proposed outside employment, a new limitation is imposed on what [Bill and Tom] can do in their City employment, namely, they cannot make, participate in the making of, or seek to influence City governmental decisions relating to [C] .

There are two other sections of the Ordinance that the Board has considered with respect to the situation of [Bill and Tom]. Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance" states that:

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 from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as a part of his or her non-City employment, occupation or profession.

With respect to situations of outside employment, this section prohibits City employees from accepting payment in return for advice or assistance on the operation or business of the City. Specifically, the Board has applied this provision to cases where, conceivably, City employees, in their outside employment, were benefitting by using knowledge that was not publicly available and was not "wholly unrelated" to their City duties and responsibilities. (Case No. 91103.A) You have stated that [C] wishes to employ [Bill and Tom] on two projects, for which they would be providing structural engineering design for columns, beams, connections, temporary shoring, and foundations . From this definition, it appears that [Bill and Tom] will be performing work for which they are qualified, due their education and their status as structural engineers. This expertise is not specifically or uniquely related to their City jobs, therefore, the Board concludes that their benefitting from the performance of the duties proposed in this outside employment, as described, does not result in a violation of the provision on "Money for Advice."

In addition to the provisions on "Conflict of Interest" and "Money for Advice,"[Bill and Tom] should be aware of Section 2-156-110, "Interest in City Business." This provision 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. The Board has recognized that METRA and the CTA are not to be considered as City agencies, within the meaning of the Governmental Ethics Ordinance. (Case No. 90013.A) It follows that the contracts, work or business of METRA and the CTA are not considered to be contracts, work or business of the City, within the meaning of the Ordinance. Therefore, although this outside employment may result in [Bill and Tom] having a financial interest in the [C] contracts with Metra and the CTA, it does not result in them having a prohibited financial interest in City business, within the meaning of Section 2-156-110.

Other Restrictions: In addition, several other provisions of the Governmental Ethics Ordinance may restrict certain aspects of [Bill and Tom]'s outside employment. Section 2-156-020, "Fiduciary Duty," states: "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." Pursuant to this provision they owe a primary loyalty to the City. This provision obliges them to use their City position responsibly and in the best interests of the public, therefore, exercising their professional judgment and City responsibilities free from conflicting duties to outside entities or clients. (Case No. 99009.A) Section 2-156-060, "City-Owned Property," prohibits them from using any City property or resources in their non-City position, and prohibits them from performing outside employment duties on City time. Finally, Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits them from disclosing any confidential information obtained through their 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.

Determination: The Board determines that while the Governmental Ethics Ordinance does not prohibit [Bill and Tom Jones] from accepting a temporary, part-time outside employment position with [C], it does place restrictions on their conduct, both within their City job and their outside employment. These restrictions require that they avoid:

- making (or using their position to influence) any City governmental decision or action in which they have an economic interest distinguishable from its effect on the public generally (§ 2-156-030; § 2-156-080); and
- soliciting or accepting money in return for advice or assistance on matters concerning the City's operation or business (§ 2-156-050); and
- using their City position or City resources to obtain a personal benefit or to promote a purely private interest (§ 2-156-020); and

- using or permitting the unauthorized use of any City property, resources or time for any private benefit, including your non-City employment (§ 2-156-060); and
- using confidential information to benefit their outside employer or employment (§ 2-156-070)

Our determination 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. Other laws or rules also may apply to this situation. 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.

Darryl L. DePriest
Chair