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Board of Ethics

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Room 303
320 North Clark Street
Chicago, Illinois 60610
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October 9, 1990

CONFIDENTIAL

[REDACTED]

Re: Case No. 91090.A

Dear [REDACTED]

On September 18, 1991, you telephoned this office to ask whether there is anything in the Governmental Ethics Ordinance that (1) prohibits a commissioner of the Chicago Commission on Human Relations ("CCHR") from filing complaints before that Commission or (2) prohibits the Commission members from addressing and making a determination regarding the case that is filed by one of its members. We appreciate your consulting with us on this matter and your and the Commission's efforts to follow the ethical standards embodied in the Ordinance. Based on the facts gathered, the Board determines that there is nothing in the Ordinance that prohibits such action as long as certain practices are observed. These practices and our analysis are set forth below.

FACTS: The CCHR is a City agency established to "investigate complaints of discrimination, enforce civil rights ordinances, and promote harmony and understanding among various segments of society." Municipal Code § 2-120-480. The CCHR consists of the chairs of eight Advisory Councils, which were established to deal with "matters of special concern to groups that historically have been the subject of discrimination and bias," and 15 additional members appointed by the Mayor with the approval of City Council. With the exception of the chairperson of the CCHR, members serve without compensation. § 2-120-490.

Among the duties of the CCHR are "to initiate, receive and investigate complaints of alleged violations of Chapter 2-160 [Chicago Human Rights Ordinance] and Chapter 5-8 [Chicago Fair Housing Ordinance] of the Municipal Code." § 2-120-510(e).

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The Rules and Regulations of the CCHR state that any person may file a complaint alleging a violation of the Human Rights or Fair Housing Ordinances with the CCHR if the alleged violation occurred within the City of Chicago. Rules & Regs. § 210.100. In addition, the CCHR itself may initiate a complaint if it has information that any person has allegedly violated the Ordinance. § 210.120.

You explained that a complaint filed with the CCHR is often settled before it reaches the Commission during one of several preliminary evaluations. The first of these evaluations is made by a group of staff members who determine whether there is sufficient evidence of an Ordinance violation to pursue the complaint. The next step is a conciliation conference, which is conducted by a conciliator designated by the CCHR. If the action is not resolved by means of the conciliation conference, an administrative hearing is held. The hearing officer is one of approximately 15 attorneys designated by the CCHR; the attorneys serve on a rotating basis. At the close of an administrative hearing, the hearing officer submits a report of findings of fact along with a recommended order to the CCHR. Finally, the CCHR may adopt, reject, or modify the hearing officer's recommendations. This is the only stage of the case in which the commissioners are involved. You stated that the CCHR has, thus far, always adopted the hearing officer's recommendations.

The Human Rights and Fair Housing Ordinances impose mandatory fines if a violation is found, which fines are paid to the City, not the complainant. However, the respondent to a complaint may be required to reimburse the complainant for a portion or all of the complainant's attorney's fees as well as pay for damages, as determined by the CCHR. You stated that the complainant is often awarded attorney's fees and/or damages, which are paid directly from the respondent to the complainant.

You pose the following hypothetical situation: a complaint is filed by a commissioner of the CCHR on his or her own behalf and this commissioner is the only complainant. The commissioner agrees to recuse himself or herself from all proceedings on the complaint. You asked how the Governmental Ethics Ordinance applies to this situation.

ISSUE: Does the Ethics Ordinance prohibit a commissioner of the CCHR from filing a complaint with the Commission on his

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or her own behalf or prohibit the CCHR commissioners from addressing and making a determination on a complaint filed by one of its members?

LAW AND ANALYSIS: There are three sections of the Ordinance that are relevant to the situation you described.

Section 2-156-030, entitled "Improper Influence," and section 2-156-080, entitled "Conflicts of Interests," state in relevant part:

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 2-156-030)

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 2-156-080(a))

The term "economic interest" is defined in the Ordinance as "any interest valued or capable of valuation in monetary terms" 2-156-010(i). These sections prohibit influence of or participation in any governmental decision in which an employee or official has an economic interest. In the situation described in this case, the commissioner who filed the complaint may be awarded attorney's fees and damages and, therefore, has an economic interest in the outcome of the proceeding before the CCHR. Since the facts indicate the commissioner will recuse himself or herself, such recusal complies with these sections.

In addition to recusing himself or herself from any decision-making, the commissioner who files the complaint may not attempt to influence the outcome of the proceedings at any of the four stages. As for the members of the Commission who will be participating in rendering a decision, as long as they have no economic interest in the outcome of their fellow commissioner's complaint, these sections of the Ordinance do not require them to recuse themselves.

The third section that applies to this fact situation is section 2-156-020, entitled "Fiduciary Duty," which states:

"Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." This section requires City employees and officials to use their City positions responsibly and in the best interest of the public.

A commissioner's action in filing a bona fide complaint in good faith is not a breach of the fiduciary duty imposed by the Ordinance. This provision does not prohibit City employees or officials from seeking meritorious recourse from City agencies for wrongdoing. Rather, the section prohibits City employees and officials from using their City positions to gain unfair advantage or benefits, not from availing themselves of proper recourse available to the public.

As for the commissioners of the CCHR who did not bring the complaint, this section of the Ordinance does not prohibit them from participating in good faith in proceedings concerning a fellow Commission member. Rather, it requires that the commissioners put the best interests of the City before any personal feelings they may have for the complainant. See, e.g., case nos. 91028.Q and 91044.A. Any commissioners who cannot exercise unbiased judgement and, therefore, would not properly perform their duties as City commissioners, should recuse themselves.

CONCLUSION: Based on the facts presented, the Board determines that there is nothing in the Ethics Ordinance that prohibits a commissioner of the CCHR from filing a complaint before his or her own Commission as long as he or she recuses himself or herself from and refrains from influencing the proceedings at each and every stage. The Board also determines that there is nothing in the Ordinance that prohibits the other commissioners of the CCHR from rendering a determination on a complaint lodged by a member of their own Commission as long as they exercise unbiased judgement in the matter.

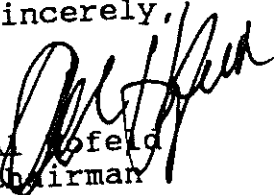
The Board's determination is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion.¹ Other rules or laws may be applicable to this situation.

¹ If any of the facts presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter the Board's determination.

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The Board appreciates your and the Commission's willingness to comply with the ethical standards embodied in the Governmental Ethics Ordinance. We enclose the Board's procedural rules that apply after it renders a decision. If you have any further questions, please do not hesitate to contact us.

Sincerely,



Al Hofeld
Chairman

Enclosure

cc: Kelly Welsh, Corporation Counsel

mk:91090.L

NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory 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 that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.