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ADVISORY OPINION
CASE NO. 95011.A
REPRESENTATION/CONFLICTS OF INTEREST

City of Chicago
Richard M. Daley, Mayor

To: Alderman

Board of Ethics

Date: June 9, 1995

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In a letter the Board received April 10, 1995, you ask whether the Governmental Ethics Ordinance allows you to represent, on matters unrelated to transactions with the City, a client who does business with the City. If so, you ask, must you disclose your representation and abstain from voting on matters involving your client?

PREVIOUS INQUIRY: On January 12, 1994, the Board approved a screening and fee arrangement you proposed that allows you to serve as "of counsel" with a private law firm. (Case no. 93048.A.) The previous opinion does not answer the questions posed in this case. The conclusions in this case supplement the January 1994 advisory opinion.

QUESTION ONE: You first ask whether you may represent a client who does business with the City. You write that this question "assumes that my legal representation has nothing to do with the transaction or transactions between the city and such client. In other words the company in question supplies goods or services to the city and I represent that company on other, unrelated, transactions."

QUESTION ONE -- LAW AND ANALYSIS: The primary Ordinance provision governing this question is § 2-156-090, "Representation of Other Persons." The provision 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



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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.

"Economic Interest" is defined as:

any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest." (§ 2-156-010(i).)

Subsection (a) of § 2-156-090 concerns transactions before a City agency. It prohibits you from either representing or having an economic interest in the representation of a person other than the City in a transaction or proceeding before a City agency, unless the agency action is merely ministerial. You may, however, represent constituents before a City agency, without pay, in the course of your public duties.

You said you intend to represent the company only in matters unrelated to its City transactions. If the matters are unrelated to City transactions, then they will not involve proceedings or transactions before a City agency. Under these conditions, subsection (a) does not prohibit you from representing the client company.

Subsection (b) of § 2-156-090 prohibits you from having an economic interest in representing a client in any judicial or quasi-judicial proceeding in which the City is a party and your client's interest is adverse to that of the City. If you represent a client for compensation you have an "economic interest" in the representation. (Case no. 88054.A.)¹ Subsection (b) does not prohibit your representing for compensation the client who does business with the City, as long as you follow these strictures of subsection (b).

¹ In Case no. 93048.A, the Board evaluated the fee and screening arrangement by which you could serve in an of counsel relation to a law firm, and not have an economic interest in the firm's representation of its clients for whom you performed no services. The questions in the current case concern solely your own activity in representing a client.

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In your letter, you ask about § 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance." You indicate that you believe that it does not prohibit you from representing, on matters unrelated to City transactions, a client who does business with the City. The Board agrees. Section 2-156-050 of the Governmental Ethics Ordinance 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 or anything of value for advice or assistance on matters concerning the operation or business of the City. But it expressly permits you to receive compensation for services wholly unrelated to your City duties, rendered as part of your non-City profession. Provided, as your letter states, your legal work for the client will be limited to matters unrelated to City transactions, the legal work seems unlikely to give rise to problems under this provision. The Board advises you that while § 2-156-050 does not prevent you from representing the company, you are, of course, required to act within the section's limitations.

QUESTION TWO: Your second question is whether § 2-156-080, "Conflicts of Interest," requires you to disclose your interest and abstain from voting on a matter that involves your client.

QUESTION TWO -- LAW AND ANALYSIS: Section 2-156-080 states, in relevant part:

(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.

(b) Any member of the City Council who has any economic interest distinguishable from that of the

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general public or all aldermen in any matter pending before the City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the records of proceedings of the City Council. He shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council is or should be aware of such potential conflict.

Subsection (a) prohibits an alderman from participating in any "governmental decision with respect to any matter" in which the alderman has an economic interest. Subsection (b) governs the conduct of an alderman who has an economic interest in a matter pending before City Council or any of its committees.

In the absence of specific facts, the Board cannot determine whether § 2-156-080, "Conflicts of Interest," applies to your situation; however, if you abstain from voting in City Council or in any City Council committee on matters involving a current client, and publicly disclose the nature and extent of your interest on the records of the proceedings of City Council, you will clearly be in a position to avoid violating § 2-156-080 in City Council and committee decisions involving the client.

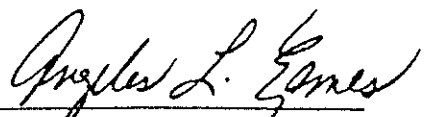
DETERMINATIONS: The Board determines that the Ethics Ordinance does not prohibit you from representing, on matters unrelated to transactions with the City, a client who does business with the City, although certain restrictions do apply: the Ordinance prohibits you from representing a client in any formal or informal proceeding or transaction before any City agency (including City Council), except that you may represent constituents before a City agency, without pay, in the course of your public duties; from representing for compensation a client in any judicial or quasi-judicial proceeding before an administrative agency or court in which the City is a party and the client's interest is adverse to the interest of the City; and from soliciting or accepting any item of value in return for advice or assistance on matters concerning the operation or business of the City. As to your second question, in the absence of specific facts, the Board cannot determine whether § 2-156-080, "Conflicts of Interest," applies to your situation; however, if you abstain from voting in City Council or in any City Council committee on matters involving a current client, and publicly disclose the nature and extent of your interest on the records of the proceedings of City Council, you will clearly be in a position to avoid violating § 2-156-080 in City Council and committee decisions involving the client.

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Our determinations in this case are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this Advisory Opinion. If the facts are incomplete or incorrect, please notify the Board, as a change in the facts may alter our opinion. Please note that other rules or laws may also apply to this situation.

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



Angeles L. Eames
Vice Chair

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