

ADVISORY OPINION
CASE NO. 00028.A
Interest in City Business

To: [John]
Date: May 23, 2001

You are an assistant commissioner in the Department of []. On December 19, 2000, you requested an advisory opinion from the Board of Ethics on whether certain members of the [] Group, a non-compensated advisory committee to the Department of [] that had assisted the Department in applying for two grants from the State of Illinois, would be prohibited under the Governmental Ethics Ordinance from seeking professional service contracts funded through these grants.

After careful consideration of the facts presented and the relevant law, the Board concludes that the Ordinance does not prohibit the non-City employee members of the [] Group from seeking contracts under the grants. However, because of the appearance of impropriety that may result from these members of the [] Group receiving contracts, the Board advises you to be very cautious in the exercise of this discretion. This advisory opinion reviews the facts and sets forth the Board's analysis and determinations.

FACTS: In 2000 the Department of [] applied to [a State Department] for two grants (totaling \$250,000) to develop a training program for the implementation of the [Regulations]. The grants provide funds for the City to develop training curricula and materials and a code certification program; conduct training for [individuals and groups] about the [Regulations]. The grants authorize the City to employ or contract with all technical, clerical, and other personnel necessary to perform its obligations under the grant agreements. The Department of [] lacked the requisite expertise to prepare the grant proposals by itself. Therefore, the Department formed the [] Group, a non-compensated advisory committee selected by the Department of [], consisting of environmental professionals from private industry and two City employees. This group assisted the City in preparing the grant proposals submitted to the State. The [] Group will remain in existence for the foreseeable future, acting as the advisory committee for the City's implementation of the [Regulations], and providing technical assistance as necessary. The [] Group would not exercise responsibility in the review and approval of contracts awarded under

the grant; this responsibility would be undertaken by the Department of [] [other] divisions. Some of the non-City employee members of the [] Group are among the persons who have expressed interest in seeking professional contracts to be awarded under the grant. The question this opinion addresses is whether these same individuals would be prohibited under the Governmental Ethics Ordinance from seeking professional service contracts funded by the grants.

LAW AND ANALYSIS: While several sections of the Governmental Ethics Ordinance are relevant to this issue, the most relevant is Sec. 2-156-110 (Interest in City Business), which provides, in pertinent part, that:

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...No *appointed official* shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities. (Emphasis added.)

The Board first must determine whether the non-employee members of the [] Group are “appointed officials” of the City within the meaning of the Ethics Ordinance. Sec. 2-156-010(q) of the Ordinance defines an “official” as “any person holding any elected office of the City or any appointed, non-employee member of any City agency.” Clearly, the members of the [] Group do not hold elected office. The question, therefore, is whether they can be considered to be appointed, non-employee members of a City agency.

Previous Board cases have addressed the issue of what constitutes a City agency. In Case No. 87083.E, the Board stated that:

The term “agency” as defined in Sec. 2.2-1(b) of the Ordinance means “the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.”¹ In order for an agency to qualify as a unit or division of City government, it must either be financed primarily through the City budget, or created by City ordinance, or its members must be subject to confirmation by the City council.

¹The current Ordinance’s definition of “agency” is identical to this version. (See Sec. 2-156-010(b).)

In that case, the Board determined that the [body] was not a City agency because it was funded through State and Federal sources, that it was not created by City ordinance, and that its appointed members were not subject to confirmation by the Chicago City Council. In Case No. 96041.E, the Board again used this reasoning to determine that the successor organization of the [body] was not a City agency. In Case No. 95008.E, the Board found that the [other body] was a City agency, stating that “boards and commissions created by executive order of the Mayor are considered City agencies.”

Board precedent, therefore, has established four scenarios under which an entity may be considered a City agency: 1) if it is financed primarily through the City budget; 2) if it is created by City ordinance; 3) if its members are subject to approval by City Council; or 4) if it is created by executive order. The [] Group meets none of these criteria. The members of the group were selected by Department of [] staff, and approved by the Commissioner of that department. The members of the [] Group are uncompensated, and the group itself is not financed through the City budget. Finally, the [] Group was not created by City Ordinance or by Executive Order; it was created by the Department of [] to assist in the revision of the [] Code. Based on this analysis, the [] Group is not a City agency, and its non-employee members are not, therefore, City appointed officials subject to the Ethics Ordinance.

DETERMINATION AND RECOMMENDATION: The Board of Ethics determines that the Ethics Ordinance does not prohibit the non-City employee members of the [] Group from seeking contracts under the grants. However, because of the appearance of impropriety that may result from these members of the [] Group receiving contracts, the Board advises you to be very cautious in the exercise of this discretion.

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. As noted below, other laws or rules also apply to this situation.²

²Prior to analyzing this issue under the Ethics Ordinance, the Board noted that Section 5.B of the grant agreement itself contains the following provision, entitled “Interest of Public Officials/Employees.”

If the Grantee is a local government, the Grantee certifies that no officer or employee of the Grantee and no member of its governing body and no other public official of the locality in which the program objectives will be carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such objectives shall participate in any decision relating to any contract

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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.

[signature]
Darryl L. DePriest
Chair

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negotiated under a program grant which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested, or has any financial interest, direct or indirect, in such contract or in the work to be performed under such contract.

Because the aforementioned provision could be dispositive of the question you have posed, without regard to any prohibitions in the Ethics Ordinance, with your permission, on February 22, 2001, Board staff requested an opinion from the City's Law Department as to whether this provision would prohibit the City from awarding contracts to the non-City employee members of the [] Group.

On May 2, 2001, the Board received a response from the Law Department. (Exhibit A.) The Law Department's analysis stated, in relevant part, that "...it is possible that the State of Illinois could find that the non-City employees who participated in the preparation of the [] grant application were not covered by the prohibition in Section 5.B of the grant agreement."