

met



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.. August 14, 1991

CONFIDENTIAL

[REDACTED]

RE: [REDACTED]
Case No. 91059.A, ADVISORY OPINION

Dear [REDACTED]

On July 29, 1991, you requested an opinion from the Board of Ethics regarding the outside employment of Department A [REDACTED] employees. Specifically, you sought a ruling concerning Mr. X [REDACTED] an employee for the dept. [REDACTED]. Mr. X [REDACTED] works for a company called Co. B [REDACTED] a company that hires out guards [REDACTED] to various venues or businesses [REDACTED]. You also sought a ruling as to whether any Dept. A [REDACTED] employees may work as guards [REDACTED]. You were concerned that these situations might constitute a conflict of interests.

In both situations, the Board determines that the outside employment is in violation of the Governmental Ethics Ordinance. The Board recommends that the Dept. A [REDACTED] employees cease acting as guards [REDACTED] and that Mr. X [REDACTED] cease the services he performs for Co. B. We thank you for your concern in assuring that your employees abide by the ethical standards embodied in the Governmental Ethics Ordinance. The Board provides its analysis below.

FACTS: Mr. X [REDACTED] is employed by the City of Chicago as an employee in the Department A [REDACTED]. In this position, Mr. X [REDACTED] is assigned by a superior officer in the dept. [REDACTED] to inspect [REDACTED] buildings [REDACTED] to assure that they comply with the [REDACTED] code. On a typical day, [REDACTED] will report to the [REDACTED] and receive information on the buildings he is to inspect. On the site, [REDACTED] will be guided through the building by the owner or building engineer and will note any [REDACTED] code violations. Upon returning to the dept. [REDACTED], he will file reports on those buildings that he inspected, noting the violations. Final action in these



matters is undertaken by the [REDACTED] and the [REDACTED].
Outside of his City job, Mr. X [REDACTED] works with Co. B, a [REDACTED] company which, among other activities, hires out guards to various venues or businesses [REDACTED]. Guards [REDACTED] are required by Ordinance, Municipal Code § [REDACTED] and are licensed by [REDACTED]. Their duties, as described in the Municipal Code, are:

to see that all exit doors are unfastened and unobstructed, that the aisles, corridors, fire escapes and other means of egress are kept clear and free from all obstructions and, in the event of a fire, it shall be [their] duty to see that the fire department is notified and an orderly evacuation is started. [They] shall see to it that first aid fire appliances, including standpipe and hose connections, are in place, properly identified, unobstructed, and in working order and that the fire prevention provisions contained within this code are adhered to. (Municipal Code § 15-4-660)

According to the Municipal Code, any person may become a guard by obtaining a license. (Municipal Code § [REDACTED]) It is not required that the applicant have any [REDACTED] experience.

You explained that several of the guards that Co. B employs are also employees in Dept. A [REDACTED]. You were concerned that an employee would be placed in a conflict of interests situation if he or she was assigned to inspect a building for which he or she also worked as a guard. In your opinion, the dual employment of Dept. A employees as guards constituted a serious problem.

You requested a Board opinion on two issues:

ISSUE 1: Under the Governmental Ethics Ordinance, can Mr. X [REDACTED] a Dept. A employee [REDACTED], work outside his City job hiring guards [REDACTED] to various venues for Co. B?

ISSUE 2: Under the Governmental Ethics Ordinance, can Dept. A employees [REDACTED] work outside their City jobs as guards?

LAW AND ANALYSIS: Issue 1: Under the Governmental Ethics Ordinance, can Mr. X [REDACTED] a Dept. A employee [REDACTED], work outside his City job hiring guards [REDACTED] to

various venues for Co. B? The primary Ordinance sections involved are sections 2-156-030 and 2-156-080 (a), dealing with improper influence and conflict of interests respectively:

*** Section 2-156-030: 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): 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.

These sections would prohibit a City employee from participating in, or trying to use his or her position to influence, a governmental decision or action in which he or she has an economic interest. Therefore, if the employee would receive an economic interest by virtue of his or her outside employment, and that economic interest is affected by his or her government decision, then a conflict of interests arises.

It is the determination of the Board that any time Mr. X is called upon to inspect a building for which Co. B provides services, he will be involved in influencing a governmental decision in which he has an economic interest distinguishable from the general public. Co. B's income from providing guards depends upon certain venues being judged safe, under the City's codes, . Without the there is no need for guards under Municipal Code and no business for Co. B.

You explained that an inspector in your dept. may not turn down an assignment and that you will not institute a policy to allow inspectors to recuse themselves from an inspection. Since recusal is not an option, there is no way for Mr. X to avoid a conflict of interests if he continues to work for Co. B as at any time he may be assigned to inspect a building serviced by Co. B.

Given the current situation you describe at Dept. A it is the determination of the Board that Mr. X's dual employment with the dept. and with

Co. B is prohibited by the Governmental Ethics Ordinance.

Issue 2: Under the Governmental Ethics Ordinance, can Dept. A employees work outside their City jobs as guards? In the question of improper influence and conflict of interests, the above analysis regarding Mr. X's outside employment also applies to those Dept. A employees who are concurrently employed by Co. B as guards. If at any time such employees inspect a building for which they also work as a guard they will face the same conflict of interests as described in Mr. X's case.

CONCLUSION: In light of the above analysis, the Board rules that Mr. X should cease his activities with Co. B, as they are prohibited by sections 2-156-030 and 2-156-080(a) of the Governmental Ethics Ordinance. The Board further rules that the dual employment of Dept. A employees as guards is prohibited by the above sections and should therefore be discontinued.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. Other rules or laws may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those restrictions in this Ordinance.

Again, the Board appreciates your concern in assuring that your employees 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


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¹ If the facts presented in this opinion are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.

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.