

ADVISORY OPINION
Case No. 01015.A, Employment of Relatives

To: [John Smith]

Date: April 11, 2001

You are the Deputy Commissioner in the [Y Bureau] in the City's [A] Department . On March 26, you asked the Board whether the City's Governmental Ethics Ordinance would restrict you in the exercise of your City responsibilities if [HQ] Inc., the company that employs your wife, and of which she is a ten percent owner, were to obtain City contracts or serve as a subcontractor or consultant to another company on its City contract. This Board previously rendered an advisory opinion to you (Case No. 00021.A), on November 15, 2000. In that opinion, we determined that, under the relevant Ordinance provisions, your wife's acceptance of her position and ownership interest in [HQ] would not restrict you from exercising contract management authority over City work with persons who contract with [HQ] on non-City contracts. However, at that time, you said that [HQ] did not have or intend to seek any City work or contracts. Thus, the earlier opinion does not address your March 26 question. The Board has analyzed the facts underlying your current question in light of previously issued advisory opinions. We conclude that you are prohibited from exercising contract management authority over any City contract that involves work performed by [HQ]

–the “person” that employs and has contracts with your wife. A brief statement of the relevant facts, and our analysis, follow.

FACTS: You state in a letter faxed to the Board on March 26 (and you confirmed with Board staff that day) that your wife, [Mary Smith] , is employed by [HQ] as its Chief Operating Officer, and has a ten percent ownership interest in [HQ]. You also state that [HQ] is awaiting formal certification from the Illinois Department of [X] to perform work with governmental units within the state. [HQ] then plans on submitting appropriate forms to the City to obtain WBE certification and to be considered for work in all City departments—with the exception of the [Y] Bureau [A] Department , the bureau in which you serve as Deputy Commissioner. Finally, your letter states that, in your opinion, you “have contract administration authority over [the] [Y] Bureau 's contracts only.” Your City duties are described more fully in the opinion in Case No. 00021.A, and we will not restate them here. You also confirmed that you do not personally take any part in the operation or management of [HQ] , , and are not an owner or a paid or unpaid employee or consultant of the company.

LAW AND ANALYSIS:

A. Employment of Relatives. The Ordinance provision most relevant to your situation is §2-156-130, "Employment of Relatives." Subsections (b) and (c) of this provision state:

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter. (Prior Code §26.2-13)

Section 2-156-010, "Definitions," provides the following relevant definitions:

(g) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(r) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, whether or not operated for profit.

(w) "Relative" means a person who is related to an ... employee as spouse ...

Under these provisions, you are, as a City employee, prohibited from exercising contract management authority (as defined above) over City work if the person doing that work employs or contracts with your relative—in this case, your wife. You are also prohibited from using your City position to help your wife gain employment or contracts with persons over whom you exercise contract management authority. Further, were your wife to become employed by, or contract with, a person over whom you exercise contract management authority, either during the pendency of that person's City contract or within six months before or after the contract's term, that would be evidence that you used your position to assist your wife, in violation of the Ordinance. See Case 00021.A, p. 4.

The Board notes that, in Case No. 00021.A, we concluded that: 1) [HQ] is a person that, of course, "employs" your wife; and 2) another person that contracts with [HQ] does not thereby "contract

with” (or employ) your wife, even though she is employed by [HQ] and has a ten percent ownership interest in it. Following this, we reasoned that, if [HQ] enters into a contract with a person over whom you have or exercise contract management authority, and that contract is *unrelated to City work* (e.g., [HQ] subcontracts with an[other] firm on its contract with a private company), then your wife would not have a contract with a person over whom you exercise contract management authority (emphasis added). Therefore, we determined, your wife’s acceptance of employment with and ten percent ownership interest in [HQ] would not restrict you, in your City position, from exercising contract management authority over persons who contract with [HQ] on *non-City contracts*.

The issue you raise now is whether the Ordinance would restrict you, in performing your City position, if [HQ] enters into an agreement *to do City work* (emphasis added). There are three ways this may occur: a) [HQ] enters into a contract or subcontract to do work for the [Y] Bureau ; b) [HQ] enters into a contract or subcontract to do work for any other bureau or department of the City; or c) a person other than [HQ] retains [HQ] as a consultant or subcontractor on a contract with another City bureau or department, but that same person also has a different contract (not involving [HQ]), with the [Y] Bureau . We address each situation in turn.

1. Contracts or subcontracts between [HQ] and the [Y] Bureau . We note that your letter states that [HQ] does not intend to be considered for any work with the [Y] Bureau . Nonetheless, we remind you that, in Case No. 00021.A, we determined that [HQ] is a person that employs (and, coincidentally, also contracts with) your wife. Therefore, we conclude and advise you that, under § 2-156-130(b), you would be prohibited from exercising contract management authority on any City contract or work in which [HQ] seeks to or contracts directly with, or seeks to or subcontracts to work for another person on its contract with, the [Y] Bureau . See Case No. 93032.A, pp. 4-5.

2. Contracts or subcontracts between [HQ] and other City departments or bureaus. We here note your statement that the only contracts over which you exercise management authority are those with the [Y] Bureau , where you serve as Deputy Commissioner. The Board finds it unnecessary to examine whether you actually do exercise that authority over the contracts or work of this or any other bureau within either your own or any other City department. Rather, we conclude and advise you that—regardless of which City department or bureau has the contract or work—§ 2-156-130(b) of the Ordinance prohibits you from exercising management authority over: i) *any* City contracts or subcontracts that [HQ] seeks or enters; or ii) *any* City contracts with persons other than [HQ] under which [HQ] performs work in any capacity. We also remind you that “contract management authority,” as defined in the Ordinance, includes personal involvement in both the formulation and the performance of City contracts.

3. Contracts between the [Y] Bureau and persons who retain [HQ] as subcontractor or consultant on other City contracts. The third question we address is as follows: if [HQ] enters

into a subcontract on City work that is unrelated to the [Y] Bureau –and over which you would *not* have or exercise contract management authority—with prime contractors over whose *other* City contracts you *do* exercise contract management authority (because say, they are with the [Y] Bureau), could your wife then be said to “have a contract with” or be “employed by” that prime contractor (thereby precluding you, under § 130(b), from exercising contract management authority over that prime contractor’s work with the [Y] Bureau)? Consistent with our determination in Case No. 00021.A, for purposes of § 2-156-130, it is not those prime contractors that “employ” or “have contracts with” your wife, but, rather, [HQ] who does. Therefore, we conclude that the Ordinance would not prohibit you from exercising contract management authority over City contracts or work with those prime contractors—i.e. over City contracts or work with persons or firms who also retain [HQ] as a subcontractor, consultant, etc. on other City contracts or work over which you do not exercise contract management authority. See also Case 95027.A, p. 3.

We further advise you that, under § 2-156-130(c), you are prohibited from using or permitting the use of your City position to help your wife gain employment or contracts with any person or company over whom you exercise contract management authority. Under this provision, if any person doing City work over which you exercise contract management authority employs or contracts with your wife, for a period of time from six months before to six months after the duration of the City contract, that will be taken as evidence of a violation of the Ordinance. See Case Nos. 98007.A, p. 9; 95027.A, p. 3. We also again advise you, as we did in Case No. 00021.A, that your fiduciary duty to the City (see § 2-156-020 of the Ordinance) prohibits you from assisting [HQ] itself in any way, particularly with respect to actual or potential business opportunities with persons doing City work over which you exercise contract management authority.

B. Financial Interest in City Business. Section 2-156-110 of the Ordinance, “Interest in City Business,” prohibits you, as a City employee, from having a “financial interest” in your own name or in the name of another in any City contract, work or business. Section 2-156-010(l) defines “financial interest” in relevant part as:

any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more; or (iii) any interest representing more than 10 percent of a corporation, partnership ... or any legal entity organized for profit; provided, however, financial interest shall not include (a) any interest of the spouse of an ... employee which interest is related to the spouse’s independent occupation, profession or employment ...

You have stated that you personally have no ownership interest in, and do no work (paid or unpaid) for, [HQ]. Consistent with prior Board decisions, then, as long as this remains true, [HQ] would constitute your wife’s independent occupation and business and would satisfy the terms of the

exception contained in this provision of the Ordinance. Therefore, you would not have a prohibited financial interest in [HQ]'s name by virtue of any of its City contracts or work. See Case Nos. 91052.A; 98021.A. However, we advise you to seek the Board's advice if, in the future, you are asked to participate in any way in the operation or management of [HQ]'s business, because this provision may apply.

C. Disclosure Requirements. We again remind you that, because your wife has a ten percent ownership interest in [HQ], if [HQ] seeks and obtains one or more contracts with persons or firms that do business with the City, then you will be required to disclose her ownership interest in a form prescribed by the Board each year, pursuant to Mayoral Executive Order 97-1.¹ Additionally, if [HQ] obtains contracts with persons or firms that do business with the City or any of its "sister agencies" (as named in Section 2-156-160 (b) of the Ordinance), and [HQ] or your wife personally receive compensation exceeding \$5,000 under these contracts, then on your annual Statement of Financial Interests you will be required to disclose the names of the persons or firms, and the nature of the services your wife or [HQ] rendered to them.

D. Confidential Information. Finally, we again advise you that Section 2-156-070 of the Ethics Ordinance, "Use or Disclosure of Confidential Information," prohibits you from using or disclosing any confidential information gained in the course of your City employment, whether to aid your [HQ], or your wife personally or for any other reason. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act.

DETERMINATIONS:

Based on the facts you have presented and an analysis under relevant Ordinance provisions, the Board determines that: 1) if [HQ] contracts directly to do any City work, you would be prohibited, under § 2-156-130(b), from exercising contract management authority on that work or contract, regardless of which City department or bureau is involved; 2) if a person other than [HQ] obtains a City contract and then retains [HQ] to work on that contract as a consultant or subcontractor (or in any other capacity), you would likewise be prohibited, under § 2-156-130(b) of the Ordinance, from exercising contract management authority on that work or contract, regardless of which City department or bureau is involved; and 3) you would not be prohibited from exercising contract management authority over City contracts or work with persons or firms who retain also [HQ] as a subcontractor, consultant, etc. on other City contracts or work over which you do not exercise

¹ The Board notes that Section 2(b) of Mayoral Executive Order 97-1 prohibits you, as a City employee in an executive department, from having "any employment or business relationship with any person who is doing business with the City if [you] exercise contract management authority with respect to that person's business with the City." It also prohibits your wife from having "a financial interest in any contract when [you] exercise contract management authority with respect to that contractor's city business." We advise you to contact the Corporation Counsel's office at 744-3992 so that you can ensure your compliance with these requirements.

contract management authority. Finally, we determine that your fiduciary duty to the City prohibits you from aiding or assisting [HQ] in any way, particularly with respect to its actual or potential business opportunities with persons doing City work over which you exercise contract management authority.

Our determinations do not necessarily dispose of all issues relevant to this situation, but are 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 opinion. Other laws or rules, such as Executive Order 97-1, may also 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 Ordinance. Additionally, should the facts presented change, you should contact the Board for further review of the matter.

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