## CONFIDENTIAL

## **ADVISORY OPINION**

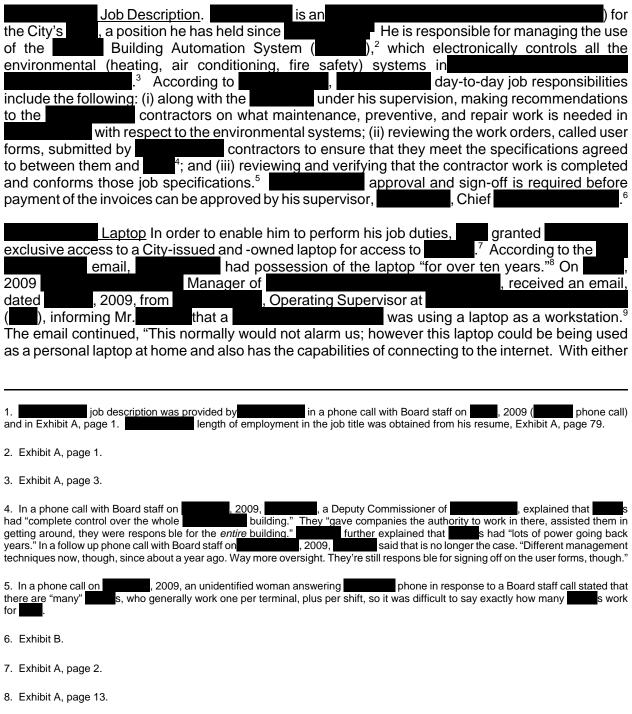
## Case No. 09034.A, Money for Advice 2009

INTRODUCTION: On , 2009, , an Assistant Commissioner in the Department of informed Board of Ethics staff via telephone of facts showing that with , may have violated the City's Governmental Ethics Ordinance. In an email dated that had been placed on paid administrative leave, pending an internal investigation. On , sent Board staff records and interview notes that compiled during its internal investigation. That same day, Board staff spoke with , Chief Assistant
same day, Board staff spoke with period of the City's period of the City per
As fully explained in this opinion, the Board has determined, based on the facts presented and summarized in this opinion, that (i) violated his fiduciary duty to the City by using his City position to solicit vendors in order to gain a private benefit; and (ii) engaged in the unauthorized use of City-owned property by using his City-issued and owned laptop for personal, union, and political activities, including such use while on City time.
The facts upon which the Board's determinations are based and the Board's analysis follow.
<b>FACTS:</b> Except where indicated, the facts in this advisory opinion are solely the pertinent portions of the records provided by the and/or Departments. Except where indicated, the Board has done no independent fact-gathering or verification on its own. These materials, containing the facts, are attached hereto and made a part hereof as:
(i) Exhibit A: Memo dated , 2009 and relevant attachments thereto; (ii) Exhibit B: Email from Ms. (attachment), dated , 2009;
il to Board staff from, dated, 2009; te to Employees-Ethics Rules acknowledgment, signed by and

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9. Exhibit A, page 11.

as follows.



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of these 2 scenarios a person could jeopardize the entire Building Automation System via viruses that are spread from the internet or other hardware when used without proper protection." <sup>10</sup>
that the access to the Building Automation System via laptop "should be disable[d]" and that a permanent PC workstation be installed for the laptop user. According to was the only with a laptop. In an email to Board staff on stated that he "spoke with was ever given specific instructions that the laptop could not be used for personal business. The laptop was issued by as part of the building system. The laptop is owned by the City of Chicago, but since the laptop and other related hardware associated with the system were originally installed by the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended to only be used with the laptop was intended by an Acknowledgment of Receipt is laptop was of City-owned property."
On , 2009, emailed , Assistant Commissioner, informing her that he had asked to return the laptop "several times verbally" during the month of 2009. The email states that on , 2009, came to came to office and told him that he "would not return the laptop as why he would not return the laptop, a teaching tool for staff. If told that had provided him with a new PC and handheld computer plus an extra handheld PC for was also told that "through the contract there is a line item to train employees."  According to email, "became extremely irate and started yelling that nobody knows his building better than him, even in his building without his direction and that if I take the laptop away he would inform all the and the union that I am taking away his tool to teach employees."
Also on, 2009, emailed and asked him, "Who's (sic) possession has
10. Exhibit A, page 11.
11. Exhibit A, page 10.
12. Exhibit A, page 3.
13. Exhibit C.

14. Exhibit D.

15. Exhibit A, page 16.

16. Exhibit A, page 16.

17. Exhibit A, page 16.

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the laptop been in for the last several years?" <sup>18</sup> then asked then asked to provide training?" <sup>20</sup> (another employee) when he was in responded "No" and also said that and had just picked up the laptop. <sup>21</sup> thanked for that information, but continued that he was "looking for records that would show that the laptop was used for the training and development of our staf (in the last two years) as you wrote in your email. Please advise if you have any such records. "However, responded, "Sorry, it, I have no official record—" <sup>22</sup>
Laptop Files. According to up on 2009, it had been completely cleared of any documentation, software, or information. In fact, every time had logged onto the laptop, the information that was on it had uploaded to 2009 of files that recovered: that scan found 235 personal pictures AOL internet software, 534 mixed documents, 3 excel spreadsheets, 17 Microsoft Word documents "documents which appeared to reflect political activities," and "documents which were found to be of a personal nature and appeared to reflect union activity." Moreover, the scar confirmed that accessed both his union and his personal files while at work. The program indicates the last dates and times each file was saved. These times and dates were cross-referenced with time and attendance records, and showed, according to a notation on the files, that "personal documents [were] modified when was working."
18. Exhibit A, page 13, 8:45 a.m.
19. Exhibit A, page 13, 8:51 a.m.
20. Exhibit A, page 13, 9:00 a.m.
21. Exhibit A, page 13, 10:02 a.m.
22. Exhibit A, page 13, 12:48 p.m.
23. phone call.
24. phone call.
25. Exh bit A, page 6. In addition to the personal photographs, other documents of a personal nature included an analysis of his personal finances, and an analysis of his monthly personal expenses. Documents which appeared to be of a political nature included a political message entitled "Resident of the Precinct of the Ward" and political voting records entitled "Land," election feb 2003" and "Land 2004." Documents which appeared to reflect union activity included "Promotional Fund Ads-2005, Invoices, "Land Documents which appeared to trustee," Add notice," "Contract Negotiations Issues," Lettere: zero days," Phone directory," contract notes," elections," and "Land Peb 2002." Exhibit ", pages 29-51, 53, 55-77.
26. Exhibit A, pages 104, 108, 121, and 130. The Exhibit A documents are: Ad Notice, modified 10/03/2004 8:14 a.m.; Add (sic)Notice, modified 12-19-2002 10:00 a.m.; and Promo ad2005 xls modified 04-20-2005 12:02 p.m.

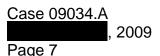
27. Exhibit A, page 4.

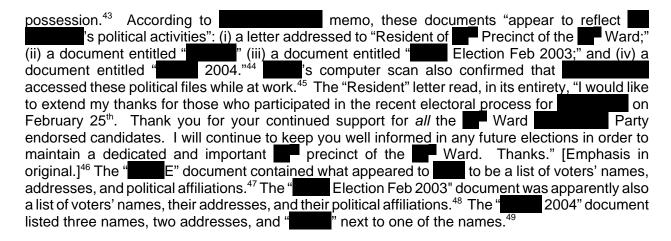
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Union and a union trustee. 28 stated in his memo that materials in to solicit funds for an ad book produced every two years. 29 The ad book is a fund raiser for In addition, the memo states that solicited vendors to contribute funds for a charity benefit. After consulting with solicited contractors on asked them the following questions:
<ol> <li>Have you ever been solicited by a union employee for fundraising?;</li> <li>Who?;</li> <li>When?; and</li> <li>What for?<sup>33</sup></li> </ol>
provided summaries of interviews with the following City contractor representatives:
Contact person with A. personally interviewed on 2009. Interview notes indicate that had solicited employees for union ad book fundraising "Before I ( ) was assigned here" and that statement. Swritten statement to swritten statement to would provide a written statement on 2009, you asked me if any Union employees employed by the City of Chicago and working for the Department employees for donations. I personally have not been solicited. However, I have spoken with my employees and they have informed me that a gentleman by the name of had solicited both current and former employees for [donations to the union and book]."
works for another contractor. personally interviewed on told that had solicited him in the of
28. Exhibit A, page 56.
29. Exhibit A, page 4.
30. Exhibit A, page 4.
31. Exhibit A, page 4.
32. Exhibit A, pages 19, 21, 23, 25, and 27. confirmed that these five were the only interviewed.
33. Exhibit A, page 25, document entitled "Notes from Interviews conducted by
34. Exhibit page 25.
35. Exhibit A, page 19.

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that said, "In accordance with your request of personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, ad pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, and pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, and pages, or fund raising requests— identified one instance going back to personnel or participated in any golf outings, and pages, or fund raising requests— identified one instance going back to personnel or page going back to personnel or p
contractor. He worked directly with an ad book you need to by (sic) an ad, if you want to get stuff done around here you need to buy a bigger ad. First ad that was bought was not enough [I] was told to spend more."
was the contact person for contractor. told that he had been solicited by ad book."  was the contact person for that he had been solicited by ad book."
An interview note prepared by stated that on 2009, General Manager at , and L. all met with , an employee , another contractor, to discuss an incident involving to verbal statement, "had solicited to sponsor a hole at an upcoming He said that handed him a flyer with the information, and then gave the flyer to his boss. Stated this was not the first occasion where monies from his company, and in fact had in past years purchased space in the Book."  An interview note prepared by stated that at least that at least the flyer with the information and then golf outing."  An interview note prepared by stated that at least that at least the flyer with the information and then gave the flyer to his boss. In the flyer with the information and then gave the flyer to his boss. In the flyer with the information and then gave the flyer to his boss. In the flyer with the information and the flyer with the information and then gave the flyer to his boss. In the flyer with the information and the f
Election-Related Activities. A scan conducted by Information Technology personnel on 2009 shows that several files were deleted from laptop during the time period in which confirmed that the laptop had at all times been in his sole
36. Exhibit A, page 25.
37. Exhibit A, page 23.
38. Exhibit A, page 23. In a phone call with Board staff on said that said t
39. Exhibit A, page 25.
40. Exhibit A, page 27.
41. Exhibit A, page 27.

42. Exhibit A, page 27.





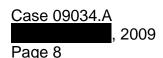
**LAW AND ANALYSIS:** This situation presents issues under two sections of the Governmental Ethics Ordinance. We address them in order.

1. Fiduciary Duty. The first section is Fiduciary Duty, §2-156-020, which states:

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

The Board has, over the years, said that a City employee or official violates his or her fiduciary duty to the City by using City time and City resources to obtain a personal benefit or to promote a purely private interest. See Case No. 92041.A. This section also obligates City employees and officials to use their City position responsibly and in the best interest of the City. See Case No. 92028.I. While there are no previous cases in which the Board has specifically addressed a situation in

- 43. Exhibit A, page 6.
- 43. Exhibit A, page 6.
- 44. Exhibit A, pages 85-90.
- 45. Exhibit A, pages 103, 122.
- 46. The "Resident" letter was modified on 2-26-04 at 12:26 p.m.; "Resident" letter was also modified on 4-01-03 at 1:51 p.m.
- 47. Exhibit A, 87-88.
- 48. Exhibit A, page 89.
- 49. Exhibit A, page 90.



which a City employee personally solicits City contractors in order to fill his union ad book, we conclude that, as analyzed below, this activity constitutes—in these circumstances—an act by a City employee in which he has employed his City position for "a purely private interest" in violation of his fiduciary duty. See Case No. 92028.I.

According to the clear and detailed factual record presented to the Board, contacted vendors responsible for services and materials in to solicit funds for an ad book produced every two years"<sup>50</sup> and "solicited vendors to contribute funds for a charity benefit."<sup>51</sup> Parsing his actions, and describing them bluntly, personally and directly approached specific City contractors with whom he regularly dealt—and over whom he exercised personal authority in his City position—to contribute to his union, and, at least in one instance, reasonably conveyed the impression that there would be consequences to the contractor's City business for contributing or failing to contribute. To aid in his success in filling his union ad book, took advantage of his enhanced access to these City contractors arising from his position as an which, but for his City position, he would not have possessed.

In order to determine whether a City employee violates his fiduciary duty to the City under a set of facts in which the employee solicits City contractors, and, consistent with prior Board cases, the Board finds that it must review and apply, in each specific situation, the following four factors: (i) whether the employee's activity was in furtherance of, or a part of, an approved or official City initiative; (ii) whether the employee personally and directly solicited the City contractor; (iii) whether the employee was, in his or her City job, in a position of direct authority over the City contractor; and (iv) whether a reasonable person assessing these circumstances could infer that the contractor's relationship would be positively affected by agreeing to the solicitation, or negatively impacted by was soliciting on behalf of his union, not, for example, in the refusing it. In this case, course of soliciting for a City-approved charity; he approached the City contractors directly and personally; he had direct contractual authority with respect to each of them; and, taking into consideration all the circumstances and the above facts, including his statement to placed the City contractors in a position in which a reasonable person could infer that their compliance with or refusal of 's solicitations would have either a positive or negative effect vis-a-vis the City. Accordingly, the Board concludes that violated his fiduciary obligation to use his City position in the best interests of the City but, instead, used it in order to gain a private benefit. See Case No. 92014.A (police officer used his position to obtain expedited access to public records).

2. City-owned Property. This situation also presents an issue under §2-156-060, entitled "City-owned Property." It states:

No official or employee shall engage in or permit the unauthorized use of City-owned property.

City employees, such as violate this section if they engage in or permit the

<sup>50.</sup> Exhibit A, page 4.

<sup>51.</sup> Exhibit A, page 4.

. 2009 Page 9 unauthorized use of City-owned property. See Case No. 98025.I.06. A scan of issued and owned laptop revealed a very large number of personal and election-related documents: 235 personal pictures, AOL internet software, 534 mixed documents, 3 excel spreadsheets, 17 Microsoft Word documents, 4 "documents which reflect political activities,"52 and at least 12 "documents which were found to be of a personal nature and appeared to reflect union activity." Moreover, the scan revealed that many of these documents were accessed while was on City time. As the Board found in Case No. 88087.A, "Any attempt to use time designated for public service to obtain a personal or private advantage is a violation of this section." and said that they had "no record that Although given specific instructions that the laptop could not be used for personal business."53 on signed an Acknowledgment of Receipt of notification concerning the City's Ethics Rules, which has a clause on the unauthorized use of City-owned property. had sole control over the laptop "for over ten years,"54 had signed an acknowledgment regarding the unauthorized use of City-owned property, and returned the laptop completely clear of any documentation, software, or information.<sup>55</sup> Accordingly, the Board concludes that engaged in the unauthorized use of City-owned property by using his City-issued and owned laptop for personal, union, and political activities, including such use while on City time. **DETERMINATIONS AND RECOMMENDATIONS**: Based on the Board's analysis of the facts presented in this opinion under the City's Governmental Ethics Ordinance, the Board determines i) violated §2-156-020 of the City's Governmental Ethics Ordinance by soliciting vendors during his work hours and by using his City-owned and issued laptop to manage his union activities; and (ii) violated §2-156-060 by using his City-issued and owned laptop for personal, union, and political activities, while on City time. Accordingly, under §§ 2-156-410(a) and -380(e) of the City's Governmental Ethics Ordinance, the Board, having considered the nature of the determined violations, recommends to the Department that, in consultation with the Law Department, it consider pursuing any and all available sanctions for these violations, including discharge of from City employment. Further, the Board recommends that, pursuant to § 2-156-410(b) of the Ordinance, the Law Department review whether "intentionally violate[d] ... Sections 2-156-020 or 2-156-060 in a manner that would constitute a violation of Section 5-15 of the State Officials and Employees Ethics Act if the illegal action were committed by an employee or official of the state

government." If he did, then, under that provision, he is guilty of a Class A misdemeanor as defined

53. Exhibit C.

54. Exhibit A, page 13, 8:51 a.m.

55. phone call.

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<sup>52.</sup> We conclude that the documents referenced above in footnotes 44-49 constitute political activity as defined in § 2-156-010(s) (5), (7) and (10), which read, respectively: "Taking an active part in managing the political campaign of a candidate for public office in an election or a candidate for political party office"; "Soliciting votes in support of or in opposition to a candidate for public office in an election or a candidate for political party office"; and "Endorsing or opposing a candidate for public office in an election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material, or distr buting such material."

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in the Illinois Criminal Code.

The Board's 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. Other City rules or policies or laws may also apply.<sup>56</sup> If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter those determinations.

**RELIANCE:** This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz, Chair
cc: