



EMUJ

June 2, 1994

CONFIDENTIAL

City of Chicago
Richard M. Daley, Mayor

Board of Ethics

Dorothy J. Eng
Executive Director

Catherine M. Ryan
Chair

Angeles L. Eames
Vice Chair

Darryl L. DePriest
Steve Lawrence
Emily Nicklin
Fr. Martin E. O'Donovan
Janice E. Rodgers

Room 303
320 North Clark Street
Chicago, Illinois 60610
(312) 744-9660
(312) 744-2793 (FAX)
(312) 744-5996 (TDD)

Re: 94015.Q, Gifts

Dear

On _____, you contacted our office and inquired whether the Ethics Ordinance would prohibit you from accepting a membership offer you received from the Health Club A. Staff has reviewed the terms of the offer, and concludes that, as long as you make no decisions or take no actions in your City position that substantially affect whatever City business--licenses or otherwise-- Health Club A has before your or any other City department, nothing in the Ethics Ordinance prohibits you from accepting the offer.

FACTS: You said you were contacted by a sales representative from the Health Club A. He told you that he was in the process of recruiting new members for the club through telemarketing. As you understood it, the offer was being extended to people who have offices in 4-6 buildings surrounding the building in which Health Club A is situated. The sales representative was in the process of contacting people with offices in several buildings,

The offer he extended to you was to visit the club as often as you wish for one week on a complimentary basis, and then have the option of purchasing a three-, six-, or twelve-month membership. If you purchase a twelve-month membership in advance for the two highest levels of service (the two highest monthly dues), you would receive six extra free months--acceptance of this offer would in effect give persons an eighteen-month membership at a twelve-month price. If you purchase a three-month membership at these levels, you would receive an extra two weeks, and for a six-month membership, an extra four weeks.

With your permission, we contacted the sales representative from Health Club A. He confirmed that he was responsible for



Case No. 94015.Q

May 27, 1994

Page 2

setting the terms of this and other offers, that he called you in the process of contacting approximately 1,000 persons in 6 nearby buildings.

He said that he received the list of these names from a computer printout, which included names compiled from different sources, including past leads (for example, people who have been contacted in the past, and names from guest registers and "lead boxes" placed in locations in the loop), and from some landlords. All names include the person's address, some include their employer also; the names listed

He was not sure of the source of each name, but said all names, including those in are listed on a uniform, "generic" computer printout.

said that, for a twelve month membership, the club's membership fees range from \$32-\$65 per month, depending on how many services a member wishes to purchase. Literature he sent us indicates that a prepaid yearly membership at the lowest levels of service would yield an extra month-and-a-half of membership. He also said that the club offers a reduced initiation fee of \$50 (regularly \$195) to all City, County, State, and federal employees. He confirmed that this six months' free offer is being extended only to people who pay in advance for a club membership. The incentive is, of course, extra use of facilities, and the potential lowering of the average cost per use. also said that he has not yet decided when to discontinue this offer, though he said he has several hundred names left to contact. Depending on the results of this current telemarketing effort, he may decide to extend the offer to more people, or begin a new telemarketing campaign. He also said that the club does no advertising other than these telemarketing campaigns and word-of-mouth. Given the club's location downtown, nearly all of its members have offices within a few block radius.

In your City position, you

You explained that you oversee certain of the Department's administrative adjudication or hearing functions, including those conducted for

You also have been asked to develop, enhance and coordinate the Department's

. You stated that you have no contact or input into any decisions the Department makes to grant or renew City licenses, which are handled in other divisions. New license applications are handled by the Bureau of Tax and License Administration, and the Compliance Enforcement Division handles enforcement regarding delinquent licensees.

stated that the Health Club A has been operated as a health club continuously since 1927, and that, to his knowledge,

the only business it has with the City is the renewal of its operating licenses.

LAW AND ANALYSIS: Section 2-156-040 of the Ethics Ordinance, prohibits a City official or employee from:

(b) accepting gifts or benefits of any kind on the basis of a mutual understanding, either explicit or implicit, that such gifts will influence an official's actions in government;

(c) accepting gifts from persons who have an economic interest in a specific business, service or regulatory transaction with the City if the official is in a position to substantially affect this transaction. (This includes cash gifts of any amount and items or services worth \$50 or more.)

The Ordinance also defines "gift" in §2-156-010(m) as "any thing of value given without consideration or expectation of return."

The question here is whether the offer you have received constitutes a sales promotion. The Board has held that the acceptance of an offer that is extended as part of a standard sales promotion is not a gift under the Ordinance. In Case nos. 93015.A, 87118.A, and 88039.A, the Board established the elements of a sales promotion: (1) an offer that is extended to the public or a market of similarly situated persons, and (2) the purpose of the offer to create a sale and/or to expand business, so that acceptance of the offer is an economic benefit to the offeror, for example as an incentive to future business. Acceptance of the offer benefits the offeror, so the sales promotion is an exchange transaction, not a gift.

The facts here show that Health Club A has extended the same offer to approximately 1,000 people, on the basis of where they are geographically situated. Only a small percentage of these persons work for or are officials of the City. Therefore it is extended to a market of similarly situated people. In addition, the Health Club A has made the offer to you, and to all offerees, to increase its membership through word-of-mouth, and to induce you to purchase a membership and other club services that you might not otherwise purchase. This factor indicates that the purpose of the offer to expand business. Under the cases cited above, staff believes that the offer extended to you by Health Club A is a sales promotion, not a gift.

The Ordinance does prevent City employees and officials from receiving anything of value, including sales promotions, if accepted or given with the mutual understanding that the recipient's official actions will be influenced. However, where the facts indicate that, as here, an offer is extended as part of a sales promotion, there is an inference that the offer does not

Case No. 94015.Q
May 27, 1994
Page 4

involve an attempt to influence a City decision. Case no. 93015.A.

CONCLUSION: This offer is part of a sales promotion. Thus, as long as you make no decisions or take no actions in your City position that substantially affect whatever City business--licenses or otherwise--that Health Club A has with the Department or any other City department, your acceptance of this offer is not prohibited under the Ethics Ordinance.

Staff's conclusion is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Other rules or laws may be applicable to this situation. If any of the facts presented are incorrect or incomplete, please notify us immediately, as a change in the facts may alter our conclusions.

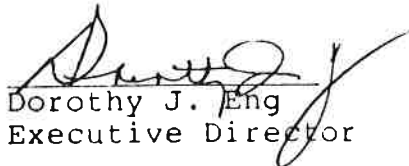
We appreciate your bringing this matter to our attention, and your willingness to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,



Steven I. Berlin
Deputy Director

approved:



Dorothy J. Eng
Executive Director

cc: Susan Sher, Department of Law

sib/94015.L