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**COOK COUNTY BOARD OF ETHICS**

69 W. WASHINGTON STREET, SUITE 3040  
CHICAGO, ILLINOIS 60602  
OFFICE 312/603-4304 - FAX 312/603-9988

September 23, 2015

**VIA U.S. MAIL**

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: 15A001

Request for Advisory Opinion Regarding Contracting with a Current County Employee  
for Public Information to Facilitate Marketing Goods and Services to the Cook County  
Department of Transportation

[REDACTED]:

On September 8, 2015, the Cook County Board of Ethics (“Board”) received a request for an advisory opinion with respect to the following hypothetical scenario:

Company A proposes to enter into a fixed price consulting agreement with Company B. Under the proposed agreement between Company A and Company B, Company B will provide information to assist Company A to market its services to the Cook County Department of Transportation among other transportation agencies. The information to be provide by Company B is to include profiles of board members and key contract personnel, contractors, MBE and DBE subcontractors, proposed projects and capital expenditure budgets. All of the information to be provided is publicly available or obtainable by FOIA requests.

Company B has informed Company A that Company B plans to use the services of a current employee of the Cook County Department of Transportation (Person C) to assist Company B to prepare the information for Company A. Person C would not be an employee of Company B but would be a paid part-time consultant to Company B. Again the information expected to be provided by Person C is publicly available or obtainable by FOIA request. Person C as a consultant would not participate in the negotiation of any contract involving Company A, would provide only publicly available information, would not attempt to influence any contract awards,

prepare any contract specifications, solicit on behalf of or otherwise represent either Company A or Company B with respect to any dealings with Cook County.

The scenario presents a number of interesting issues under the Cook County Ethics Ordinance. The Ethics Ordinance is most immediately applicable to County officials and employees (Cook County Code of Ordinances (“County Code”), § 2-562) so our analysis will begin with Person C, the hypothetical employee of the Cook County Department of Transportation (“DOT”).

The stylized facts assume away some of the problems that typically arise when current County employees engage in direct or indirect business transactions with County vendors. For instance, the hypothetical assumes that Person C “would not attempt to influence any contract awards.” This partially alleviates issues that would arise from the explicit prohibition in the Ethics Ordinance against County employees making, participating in making, or attempting to influence governmental decisions when the employee’s economic interest in the decision is distinguishable from the general public.<sup>1</sup> *Id.* at §§ 2-572(a), 2-578(a). But contract awards are not the only government decision from which a conflict of interest for Person C could arise. The proposed business relationship between Person C, Company B and Company A would prohibit Person C from being involved in contract management for Company A if Company A were to successfully market its good or services to DOT. To the extent that such contract management (or otherwise working with DOT’s vendors) is part of Person C’s duties as a County employee, outside employment that impairs his or her ability to do that job would be prohibited by the dual employment provisions of the Ethics Ordinance. *Id.* at § 2-573 (“No official or employee shall accept other employment which will impair his or her independence of judgment in the exercise of official duties . . . [or] which will impair his or her ability to perform County duties and responsibilities.”).

Even if one could identify a hypothetical County employee whose duties were entirely isolated from vendor selection and relations, the scenario would remain problematic under the Ethics Ordinance for Person C because of the nature of the service he or she is selling to Company B. The Ethics Ordinance clearly prohibits current County employees from using County resources – including information obtained through the course of County employment – for non-County purposes such as outside employment. *See id.* at §§ 2-576; 2-577. Even under the facts presented where the information is not confidential in nature or otherwise outside of the public domain, Person C’s business arrangement with Company B remains ethically fraught. Procuring FOIA-able information for requesters such as Company B is not a costless activity for governments. Under the Illinois Freedom of Information Act, governments are entitled to recoup those costs from commercial requesters under a broad range of circumstances, including by charging an hourly fee for time spent by public employees searching for and retrieving requested records. *See* 5 ILCS 140/3.1; 5 ILCS 140/6. A County employee whose outside business is to retrieve these same records and sell them

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<sup>1</sup> Note that if Person C does not attempt to influence another County official, appointee or employee with respect to a County matter, then he or she would not be “[a] person who lobbies” and would not have an obligation to register as a lobbyist under the County’s Lobbying Ordinance, also enforced by this Board. County Code, §§ 2-622, 631(a).

for personal profit and without compensation to the County is engaged in the theft of services. Such activity would not only violate the employee's fiduciary duty to the County under the Ethics Ordinance (County Code, § 2-571), but may further expose Person C to criminal prosecution.<sup>2</sup>

The analysis with respect to Company B and Company A follows from the foregoing. Although the Ethics Ordinance is not directly applicable to County vendors, "[a]ny contract negotiated, entered into, or performed in violation" of the Ethics Ordinance is voidable by the County. *Id.* at § 2-603. In the hypothetical presented, Company A is aware that Company B has retained the services of a current County employee, but such knowledge is not a prerequisite to cancellation of Company A's County business if Person C is found to have violated the Ethics Ordinance. Company A can avoid this risk by obtaining advice about marketing its goods or services to DOT from a company that obtains the desired information from open source research and FOIA requests, or even knowledgeable former County employees outside of their one-year post-employment restrictions.

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Please note the Board's determination herein is based solely on the application of the Ethics Ordinance to the general question posed by the Requestor. Other laws or rules may also govern the purchases County offices, bureaus and departments and the Board's determination is not binding with respect to their application.

We trust this advisory opinion addresses your concerns. We thank you for your inquiry and commend you for seeking to uphold the guiding principles of the Cook County Ethics Ordinance. Under the rules and regulations of the Cook County Board of Ethics, all requests for reconsideration of an advisory opinion must be filed within twenty days of receipt of this opinion. Please do not hesitate to contact our office if you have questions or require additional information.

Sincerely,  
THE COOK COUNTY BOARD OF ETHICS

By delegation:



Ranjit Hakim,  
Executive Director

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<sup>2</sup> Further decisions about what information is obtainable through a FOIA request are typically subject to legal review. The scenario presented exposes the County to added risk by circumventing this internal review, leaving the entire decision about what information can be shared with the public in the sole discretion of Person C.