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COOK COUNTY BOARD OF ETHICS

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July 1, 2021



RE: **21 A 005**: Commissioner's Operation of a Cannabis Application Processing Businesses, in possible violation of the Cook County Ethics Ordinance §2-571 Fiduciary Duty, §2-573 Dual Employment and §2-578 Conflict of Interest.

Dear [REDACTED]:

Thank you for contacting the Cook County Board of Ethics ("Board"). You inquired as to whether [REDACTED] employment by and/or ownership interest in a company seeking a license to be a recreational cannabis dispensary violates the Cook County Ethics Ordinance ("Ethics Ordinance"). Based on the information provided, the Board has determined [REDACTED] secondary work assisting with the completion of a cannabis licensing application is not prohibited by the Ordinance.

I. Background:

In December 2019 [REDACTED] assisted with a State of Illinois recreational cannabis license application. At that time, [REDACTED] advised that the applicants were not yet licensed by the State of Illinois, and as such, not yet operational. [REDACTED] further advised that applicants had no business or other related matters before the Cook County Board of Commissioners. [REDACTED] also advised that she did not perform lobbying for the applicants, nor was she an employee for any of the applicants. [REDACTED] confirmed that she was paid more than \$5,000.00 for the work that she performed assisting with the completion of the cannabis license application. Further, [REDACTED] compensation her work included a future minority

ownership interest in the business should they become a licensed dispensary.

II. Issue:

Whether [REDACTED] s secondary employment assisting with the completion of an application for a recreational cannabis dispensary license constitutes a violation of the Ethics Ordinance. Further, does an employee or official's ownership in a private business result in a violation of the Ethics Ordinance?

III. Ethics Ordinance:

§2-571 (a) and (b)(1) Fiduciary Duty

Officials and employees shall at all times, in the performance of their public duties owe a fiduciary duty to the County. Board or commission appointees appointed under County Ordinance owe a fiduciary duty to the County in the performance of their public duties and appointed board or commission appointees appointed under State Statute owe a fiduciary duty to the members of the public for which they have been appointed to serve.

(b) The fiduciary duty owed by officials, Board or commission appointees and employees shall include the following duties:

(1) Avoid the appearance of impropriety.

§2-573 (a) Dual Employment

No official or employee shall accept other employment which will impair his or her independence of judgment in the exercise of official duties.

§2-578 (a) and (b) Conflicts of Interest

No official or employee shall make, or participate in making, any County governmental decision and no board or commission appointee shall make, or participate in making, any board or commission decision with respect to any matter in which the official, board or commission appointee or employee, or the spouse, or dependent, domestic partner or civil union partner of the official or employee, has any economic interest distinguishable from that of the general public. For purposes of this Section, the term "dependent" shall have the same meaning as provided in the U.S. Internal Revenue Code, as amended.

(b) Any employee who has a conflict of interest as described by Subsection (a) of this Section shall advise his or her supervisor of the conflict or potential conflict. The immediate supervisor shall either:

(1) Assign the matter to another employee; or

(2) Require the employee to eliminate the economic interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter.

§2-571 (a) Interest in County Business or Board or Commission Business

No elected official or employee shall have a financial interest in his or her own name

or in the name of any other person in any contract, work or business of the County, or in the case of a board of commission appointee in any contract, work of business of the board or commission to which they are appointed or that which the board or commission approves.

IV. Discussion:

A. Whether [REDACTED]'s secondary employment assisting in the completion of a license application for recreational cannabis dispensary constitutes a violation of the Ethics Ordinance.

Dual Employment §2-573

The Ethics Ordinance prohibits officials and employees from accepting other employment that impairs the independence of judgment in the exercise of County duties. *See* §2-573; *see also* 97A006 (finding that the employee's secondary employment would not impair his independence of judgment in his official County duties because the responsibilities for each position did not overlap). Here, [REDACTED] duties as a Cook County Commissioner do not overlap with her work assisting with a dispensary license application to the State of Illinois. Cook County has a Commission on Cannabis which focuses on the impact of State legislation and policies. However, the Commission has not sponsored any legislation at the County level, and [REDACTED] is not a member. Moreover, [REDACTED] advised Board Staff that the company she worked for does not have any business before the County Board. Based on the information provided, [REDACTED] secondary work is not related to her County duties and did not impair her independence of judgment. Therefore, there is not a violation of §2-573.

§2-571 (a) and (b)(1) Fiduciary Duty

The Ethics Ordinance provides that all County officials and employees owe a fiduciary duty to the County. *See* Cook County Code §2-571(a). An employee's fiduciary duties, inter alia, require avoiding the appearance of impropriety and compliance with laws and regulations or the avoidance of such violations or the creation of the strong risk of their violation. *See* §2-571(b)(1) & (2)). Here there is no indication that [REDACTED] voted on Cook County matters involving her clients or other matters related to the cannabis industry. Further, the company does not do business with the County and the application was submitted to the State, not the County. [REDACTED] work assisting with the recreational cannabis license application does not constitute a violation of the Ordinance, as her work on the Board does not overlap with her secondary job duties. *See* 11 A 008 (finding no violation of the fiduciary duty provision of the Ordinance when official duties and secondary employment duties do not overlap).

Conflict of Interest §2-578:

The Ethics Ordinance also provides that no official or employee shall make, any County governmental decision with respect to any matter in which the employee has any economic interest distinguishable from that of the general-public. *See* §2-578. Licenses to dispense recreational cannabis are provided by the State. *See* 410 ILCS 705/15-5. [REDACTED] position as a Cook County Commissioner does not afford her an opportunity to make decisions related to cannabis licenses. Further, [REDACTED] does not serve on Cook County's Cannabis Commission and

there is no record of her voting on any related matters that may benefit her secondary employment. As such, Degnen's secondary employment did not violate §2-578 Conflict of Interest provisions of the Ethics Ordinance.

B. Does an employee or official's ownership interest in a private business result in a violation of the Ethics Ordinance?

The Ethics Ordinance prohibits County officials from having a financial interest in any contract, work, or business of the County. Cook County Code §2-581 (a). [REDACTED] does not currently have a financial interest in the company, but she has advised Board Staff that she may gain such an ownership interest. Financial interest is defined as any interest as a result of which the owner receives more than \$1,200 per year; (ii) any interest with a cost or present value of \$5,000 or more; or (iii) any interest representing more than 10% of a company. Cook County Code §2-562. Possession of ownership interest in a business alone does not constitute a violation of the Ethics Ordinance. *See* 08A008 (finding no violation of the Ordinance's dual employment provision when the company does no business with the County). However, failure to adhere to the other provisions of the Ethics Ordinance would result in a violation. For example, a violation would occur should the company do business with the County in violation of §2-581 (a), or [REDACTED] interest creates a conflict of interest with her responsibilities as a Cook County Commissioner. Based on the information provided, [REDACTED] ownership interest in the cannabis application processing business alone is not a violation of the Ordinance.

V. Conclusion:

For the reasons stated above there is no violation of the Ethics Ordinance. The Board's determination herein is based solely on the application of the Ethics Ordinance and other identified authority to the issues and facts as presented by the Clerk's Office. Additional laws, rules, regulations, and policies may also govern.

The Board notes that the recreational cannabis industry is relatively new and the laws and regulations governing it may well change in the future, including possible legislation suggested by the Cook County Cannabis Commission that may be voted on by the full Board of Commissioners. Moreover, while the particular recreational cannabis applicant that [REDACTED] assisted here does not currently do business before or lobby the County, that may change. Finally, as noted, [REDACTED] may gain an ownership stake in the entity that could create an economic interest for her within the meaning of the Ethics Ordinance. Therefore, while we find that the facts as described in this Advisory Opinion do not constitute a violation of the Ethics Ordinance, continued vigilance and attention to this new and changing industry and to the particular circumstances present here are warranted and recommended.

Thank you for your inquiry and request for guidance. The Board commends you for seeking to uphold the guiding principles of the Ethics Ordinance. We look forward to serving you in the future.

Sincerely,

THE COOK COUNTY BOARD OF ETHICS



Thomas Szromba, Chairperson

Date: 7/1/2021