CITY OF CHICAGO

BOARD OF ETHICS

FEBRUARY 14, 2022

CONFIDENTIAL

ADVISORY OPINION
CASE NO. 22005.A, Limitation of Contributing to Candidates and Elected Officials

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Executive Summary

In September 2021, our Executive Director received a complaint alleging that an entity that was "seeking to do business" with the City contributed more than $1,500 in two (2) consecutive calendar years to a political action committee ("PAC"),[1] and that this PAC constituted one of the "authorized political committees" and a "political fund-raising committee of a candidate for City office or City elected official." Thus, the complaint alleged, both the contributing entity and the PAC had violated the City's Governmental Ethics Ordinance (the "Ordinance") with these two contributions. §2-156-445(a) of the Ordinance limits certain contributors, including those "seeking to do business with the City,"[2] to $1,500 in political contributions per calendar year to a candidate or the "candidate's authorized political committees," and §2-156-445-445(c) of the Ordinance provides that, "for purposes of subsection (a) above, a contribution to (i) any political fund-raising committee of a candidate for City office or elected official … shall be considered a contribution to that candidate or elected official."

The Board opened these cases as 21033.CF.1 and -CF.2 and found probable cause to conclude that the contributor and the PAC had each violated the Ordinance. Attorneys for the PAC and the contributor then argued, before the Board, that the PAC was *not* one of the "authorized political committees" or a "political fund-raising committee of a candidate for City office or City elected official." Before the Board could rule on this issue—that is, whether the PAC indeed *was* one of the "authorized political committees" or a "political fund-raising committee of a candidate for City office or City elected official"—the PAC refunded the excess amount contribute. The Board then dismissed Cases 21033.CF.1 and .2 at its January 2022 meeting.

The Board, in the past, has not been called on to explain the circumstances under which a PAC or political committee other than a candidate's "official candidate committee" for the particular elected office the candidate seeks *can* in fact constitute one of the "candidate's authorized political committees" or a "political

[1] Under 10 ILCS 5/9-2 of the Illinois Election Code, a political committee may be either: (i) a candidate political committee; (ii) a political party committee; (iii) a political action committee; or (iv) an independent expenditure committee. Per ILCS 5/9-8.5(d), a PAC may not accept contributions with an aggregate value over the following: (i) $10,000 from any individual; (ii) $20,000 from any corporation, labor organization, political party committee, or association; or (iii) $50,000 from a political action committee or candidate political committee, and there are other prohibitions as well. However, note that a home rule unit of government in Illinois, such as the City of Chicago, is not prohibited from having contribution limitations that are stricter than those in the Illinois Election Code, as the Code does not pre-empt home rule units of government in this area. *See* Illinois Constitution, Article VII, Section 6(a); *Berrios v. Cook County Board of Commissioners*, 435 Ill. Dec. 81, 128 N.E.2d 695, at 714 (1st App. Dist. 2018).

[2] The term "seeking to do business" is defined in §§2-156-445(a) and -010(x) of the Ordinance. The Ordinance also limits other persons to $1,500 in contributions to a candidate's "authorized political committees" or "any political fund-raising committee of a candidate for City office or elected," namely registered lobbyists or persons or firms that have "done business with the City or with the Chicago Transit Authority, Board of Education, Chicago Park District, Chicago City Colleges, or Metropolitan Pier and Exposition authority within the preceding four 'reporting' [i.e. calendar] years." It defines "doing business" in §2-156-010(h).

fund-raising committee of a candidate for City office or City elected official" such that its contributors are subject to the applicable monetary limitations in the Ordinance. That is the purpose of this advisory opinion.

Given that PACs and committees other than candidates' "official candidate committees" are common, and that Chicago's Consolidated Municipal Election are one year hence, the Board issues this advisory opinion to enable candidates, political fundraisers, and others to understand when the Board will deem a PAC or other political fundraising committee to constitute one of the "authorized political committees" or a "political fund-raising committee of a candidate for City office," such that contributors to it would be subject to the contribution limitations in §2-156-445 of the Ordinance.

Legal Background and Analysis

Several provisions of the Ordinance apply here. They are:

§2-156-445. Limitation of contributing to candidates and elected officials.

(a) No person who … is seeking to do business with the City … shall make contributions in an aggregate amount exceeding $1,500.00: (i) to any candidate for City office during a single candidacy; or (ii) to an elected official of the government of the City during any reporting year of his term … For purposes of this section all contributions to a candidate's authorized political *committees* shall be considered contributions to the candidate. …" [emphasis added]

(c) For purposes of subsection (a) above, a contribution to (i) *any* political fund-raising committee of a candidate for city office or elected official; or (ii) any political fundraising committee which, during the reporting year in which the contribution is to be made, has itself made contributions or given financial support in excess of 50 percent of that committee's total receipts for the reporting year to a particular candidate for City office, elected official, or the authorized fundraising committee of that candidate or elected official, shall be considered a contribution to that candidate or elected official. [emphasis added]

§2-156-010. Definitions.

(c-2) "Candidate for City office" means any person who seeks nomination for election, election to or retention in any elected office of the government of the City, whether or not such person is elected. A person seeks nomination for election, election or retention if he or she (1) takes the action necessary under the laws of the State of Illinois to attempt to qualify for nomination for election, election to or retention in public office, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his or her nomination for election or election to or retention in such office. For purposes of this definition, the term "expenditure" has the meaning ascribed to that term in Article 9 of the Illinois Election Code, codified at 10 ILCS 5/9-1 et seq.

(u) "Political fundraising committee" means any fund, organization, political action committee or other entity that, for purposes of influencing in any way the outcome of any election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity."

The highlighted language refers to a candidate's political "*committees*," [plural] or to "*any* political fundraising committee of a candidate for elected City office or City elected official. In other words, the contribution limitations can apply not only to a candidate's "official candidate" committee. The drafters of the Ordinance were concerned about imposing the same monetary restrictions on contributions to "non-official" or "non-candidate" fundraising committees, which might be organized under the Illinois Election

Code as PACs, but which in practical terms function as another committee "of" a candidate or elected official.[3] The language in the Ordinance is consistent with the general doctrine that, if a PAC or committee other than a candidate's "official" committee has sufficient contacts or connections with the candidate or the candidate's campaign or "official" political fundraising committee, then *it* should be deemed a committee that is coordinated with the "official" committee, and thus subject to contribution limits under the law.[4] The goal is that donors should not be allowed to contribute to both their preferred candidate's official committee *and* to that candidate's coordinated or connected committee(s), such as a PAC, while sidestepping contribution limits in the process.[5]

The Board has addressed contributions to these "other committees" in two previous advisory opinions.

First, in Case No. 09058.Q, we held that contributors subject to the Ordinance's $1,500 limitation may contribute up to $1,500 in a calendar year to the official candidate committee of a City elected official, *and*, if that elected official happens to be running for another elected office in the State, *e.g.* Ward Committeeperson, may contribute up to *another* $1,500 to the official's "official candidate committee" for that other office.[6]

Second, in Case No. 141280.A, we briefly addressed how the Ordinance's contribution limits would apply to "PACs reportedly set up by an elected official's associates," recognizing that these PACs are neither the official him- or herself, nor the official's "official candidate committee," because, per 10 ILCS 5/9-2(b) of the Illinois Election Code, candidates and elected officials may have only one official committee per elected office they hold or seek. We determined that there are two ways a contributor, like a registered lobbyist or person doing or seeking to do business with the City, would be so subject. Either:

> (i) the PAC or other committee turns out to have transferred more than 50% of its intake in a calendar to the candidate's official political fundraising committee; or
>
> (ii) "an investigation were to warrant a conclusion by the Board of Ethics that [the PAC or other committee] "is, *de facto*, 'a political fundraising committee of" this elected official, perhaps because this official personally exercises substantial control over its expenditures, and/or personally solicits for it."

We then noted that, as of December 2014, the date of that opinion, "The Board has never had occasion to address this potential issue. The analogy in federal law, under the Bipartisan Campaign Reform Act of 2002,

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[3] The highlighted language in §2-156-445(c)(i) was added to the Ordinance in May 1989. It followed a recommendation made in March 1987 to then-Mayor Washington by then-Special Assistant Corporation Counsel, the late Thomas P. Sullivan, in his Report entitled "Proposals for Reform" (the "Sullivan Report"). In the words of Proposal 21: "The ethics ordinance provisions limited political contributions by persons doing business with the City should be expanded to … contributions to campaign funds other than a candidate's authorized political committees… The City Council should carefully review the federal laws in this area and adopt monetary restrictions on contributions to fundraising committees, like PACs, which are not authorized by specific candidates." The relevant portion of the Sullivan Report is attached to this opinion as Exhibit 1.

[4] *See* https://campaignlegal.org/; https://www.elections.ny.gov/NYSBOE/download/finance/hndbk2019.pdf, pp.62-3; https://www.sos.state.co.us/pubs/elections/CampaignFinance/files/CPFManual.pdf, pp.149-50; https://www.brennancenter.org/sites/default/files/stock/2018_10_MiPToolkit_CoordinationLaw.pdf

[5] *See, e.g.* https://campaignlegal.org/democracyu/accountability/coordination-laws

[6] See https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_CampFinanacing/09058Q.pdf

is whether this committee has 'acted in concert' with the candidate, so that in effect these contributions to [the PAC] might be treated legally as direct political contributions to the candidate."[7]

Our opinion today expands on this language from Case No. 141280.A. We conclude that, in analyzing whether a PAC or other non-official candidate political committee is to be considered and properly and accurately treated as an additional political fundraising committee "of" a City elected official or candidate for City office, thereby subjecting its contributors to the same limitations the Ordinance imposes on contributors to the candidate's official candidate committee, the Board will consider but is not limited to considering the following factors, all tending to show that the PAC or other non-official committee is closely identified with a candidate:

(1) Does the candidate solicit contributions for the PAC, or appear as a featured guest at the PAC's fundraising events?

(2) Do the PAC's solicitation materials include the candidate's name, quotes, words, or photos?

(3) Do the PAC and the candidate's *official* committee share the same office space or officers, directors, employees or volunteers?

(4) Are solicitations from each committee sent from the same email or mailing address or from the same telephone number(s) or website?

(5) Does the PAC use the candidate's name or any reasonably recognizable portion thereof?

(6) Do the PAC and *official* committee have logos that are substantially similar?

(7) Do the PAC's solicitation materials explain that certain persons, such as persons doing or seeking to do business with the City or certain "sister agencies" like the Chicago Transit Authority, Chicago Park District, or Chicago Public Schools/Board of Education, or registered lobbyists, are limited to $1,500 in annual contributions to the PAC?

(8) Do the PAC and candidate's *official* political fundraising committee employ a common political or fundraising consultant during the election cycle?

(9) Do the PAC's expenditures go beyond the PAC's stated purpose and, for example, support the elected official as a City elected official, such as going to pay for City governmental-related operations or expenses?

(10) Does or did the candidate, a member of the candidate's immediate family, or any official of the candidate's *official* candidate committee have a role in establishing or managing the PAC, or appearing at PAC functions?

(11) Do the PAC and *official* candidate committees use strategic information or data from a common vendor of each?

(12) Have the PAC and candidate participated in strategic discussions together?

[7] For the full text of Case No. 141280.A, *see* https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_CampFinanacing/141280.A.pdf

(13) Does the candidate approve these materials?

(14) Does the candidate receive information from the PAC on who has contributed to the PAC, aside from what is publicly reported by the Illinois State Board of Elections ("ISBE")?

(15) Does the candidate approve, participate in deciding, or receive notice regarding (other than what is reported publicly by the ISBE) expenditures or transfers made by the PAC, or have the authority to veto any of them?

The Board has advised the PAC involved in Case Nos. 21033.CF.1 and 21033.CF.2 of these factors, and the Board's determination. The Board will confidentially advise any other PACs or non-candidate committees on complying with this opinion. The Board expects compliance by all.

Determination

For the reasons explained above, the Board determines that a PAC or other political committee that is not a candidate's or elected official's "official candidate committee" for that particular elected office (organized under 10 ILCS 5/9-1.8(b) of the Illinois Election Code), will be considered one of the candidate's or official's "authorized political committees" or a "political fund-raising committee" of that candidate or official for purposes of the contribution limitations in Article VI of the Ordinance if the totality of the circumstances show that a critical mass of the factors listed above are satisfied. The Board will analyze each situation on a case by case basis.

The Board hereby advises all candidates for City elected office, City elected officials, and others who may wish to work for them, that: (i) the penalties for accepting or receiving contributions that violate the Ordinance can be severe: pursuant to §2-156-465(5), persons who knowingly make, solicit or accept a political contribution in violation of §2-156-445 shall be subject to a fine of not less than $1,000 and up to the higher of $5,000 or three times the amount of the improper contribution that was accepted for each violation of these sections; and (ii) there is a "safe harbor provision" in §2-156-445(d), which provides that persons who solicit, accept, offer, or make contributions that violate these limits shall not be deemed in violation if they return or request in writing the return of any excess amounts contributed within 10 calendar days of their knowledge of the violation.

Undoubtedly the Board's implementation of this opinion will engender future questions. We urge that candidates, elected officials, or their agents contact us with questions about PACs before those PACs solicit or accept contributions from persons or entities who are subject to the contribution limitations in the Ordinance.

Reliance

Our determination is based on the application of the Governmental Ethics Ordinance to the facts summarized in this opinion. All persons involved in fund-raising for candidates or elected City officials running for City office are strongly advised to abide by the guidance provided here and to contact the Board with any specific questions.

[signed]

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William F. Conlon
Board Chair

Exhibit 1

PROPOSALS FOR REFORM

REPORT OF SPECIAL ASSISTANT

CORPORATION COUNSEL THOMAS P. SULLIVAN

Thomas P. Sullivan
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March 16, 1987

III.

PROPOSAL AS TO LIMITATIONS ON POLITICAL CONTRIBUTIONS

1. Introduction

In 1983, Mayor Washington announced a self-imposed $1,500 per year limitation on political contributions made by individuals or corporate entitites doing business with the City. Section 26.3-4 of the ethics ordinance codifies a variation of this limitation:

> "26.3-4. No person who has had a financial interest in or has been awarded any City contract within the preceding four years shall make contributions in an aggregate amount exceeding $1,500 (i) to any candidate for City office during a single candidacy; or (ii) to an elected official of the government of the City during any calendar year of his term; or to any official or employee of the City who is seeking election to any other office. For purposes of this section, (i) candidacy in primary and general elections shall be considered separate and distince candidacies; and (ii) all contributions to a candidate's authorized political committees shall be considered contributions to the candidates. The combined effect of these provisions is intended to permit total contributions up to but not exceeding $3,000 in a calendar year in which a candidacy occurs."

2. Proposal

Proposal No. 21: The ethics ordinance provision limiting political contributions by persons doing business with the City of Chicago should be expanded to apply to business entities, their subsidiaries, parent companies, otherwise related companies and employees who are reimbursed for their contributions; and to contributions to campaign funds other than a candidate's authorized political committees.

We believe Mayor Washington was correct in adopting a limitation on political contributions from persons doing business with the City, and we endorse the ethics ordinance on this matter. During the course of the prior investigation, however, we discovered two mechanisms by which companies doing business with the City circumvented the Mayor's limitations on political contributions -- apparently without the knowledge of the Mayor or any of his campaign staff -- neither of which is addressed by the present ethics ordinance.

First, a company made a $1,500 contribution and, in the same year, subsidiaries of the company made additional $1,500 contributions. An employee of the same company which had made a $1,500 contribution made an individual contribution for which the company then reimbursed him.

The ethics ordinance fails to address this problem. The provision relating to limits on campaign contributions applies only to "person[s]" and contains no definition of this term. (§ 26.3-4.) In order to carry out the intent of the limitation on political contributions, it is necessary to define the "person" prohibited from making contributions in excess of $1,500 as including business entities and their subsidiaries, parent companies, otherwise related companies, and employees of the entity who are reimbursed for their contributions. We believe that officers, directors, partners and employees should not be prohibited from making their own non-reimbursed contributions.

Second, during the OMI investigation we discovered that a company made the maximum $1,500 contribution and then, in the same year, that company contributed money to a political fund which was closely identified with the Mayor, but was not one of the Mayor's "authorized political committees." This poses a difficult problem when one considers the proliferation of political action committees ("PACS") and other fundraising committees not authorized by specific candidates.

Several federal statutes and regulations address this issue in the context of federal elections. (2 U.S.C. §§ 431-42; 11 C.F.R. Parts 100-115.) The City Council should carefully review the federal laws in this area and adopt monetary restrictions on contributions to fundraising committees, like PACS, which are not authorized by specific candidates.