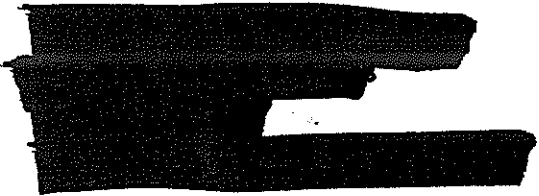




January 19, 1989

City of Chicago  
Eugene Sawyer, Mayor



Board of Ethics  
Harriet McCullough  
Executive Director

**CONFIDENTIAL**

Sol Brandzel  
Chair

Re: Case No. 89005.A

Mary Milano  
Vice Chair

Dear

Margaret Carter  
Angeles Eames  
Rev. A. Patterson Jackson  
Marlene O. Rankin  
Suite 530  
205 West Randolph Street  
Chicago, Illinois 60606  
(312) 744-9660

The Board of Ethics has considered your request of January 6, 1989, for an advisory opinion on the following two hypothetical situations involving the Campaign Financing Ordinance of the City of Chicago ("CFO"):

1. Does the \$1500 campaign contribution limitation imposed by Section 26.3-4 of the Chicago Municipal Code apply to a corporation that leases property from the City of Chicago?
2. Does the \$1500 limitation of Section 26.3-4 extend to contributions made in the name of and from the personal finances of senior executives in the corporation that is the named contractor with the city?

The Board considered your questions at its meeting on January 17, 1989, and issued the advisory opinion contained in this letter. This advisory opinion is based on the hypothetical facts presented in your request, and its application is limited to those facts.

Chapter 26 of the Municipal Code of Chicago is the Campaign Financing Ordinance ("CFO"). Section 26.3-4 limits contributions to candidates for City office and elected City officials. The pertinent parts provide:

"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 reporting year of his term; or to any official or employee of the



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City who is seeking election to any other office....A reporting year is from July 1 to June 30...."

#### ISSUE 1

Is a corporation that leases property from the City a "person who...has been awarded...[a] City contract" and, therefore, subject to the contribution limitation of Section 26.3-4?

#### OPINION

A corporation that leases property from the City is a "person who...has been awarded...[a] City contract" and is subject to the contribution limitation of Section 26.3-4.

#### DISCUSSION

"Person" is not defined in the CFO. Therefore, the definition of "person" provided in Section 1-9 of the Municipal Code must be used: "any natural individual, firm, trust, partnership, association, or corporation...." The corporation in question is a person for purposes of Section 26.3-4.

"City" is defined as "the City of Chicago." The City of Chicago acts through governmental entities, including the Office of the Mayor, the City Council, committees or subdivisions of the Council, City departments, administrative units, commissions, and boards. "City" can be understood to be synonymous with any entity through which it acts.

"Contract" is not defined in the CFO. The common, ordinary meaning of the word is "a legally enforceable agreement between two or more parties." Webster's II, New Riverside University Dictionary (1984). A "City contract" is a legally enforceable agreement between the City and one or more parties.

A "lease" is "a contract granting occupation or use of property during a certain period in exchange for a specified rent." Webster's II, New Riverside University Dictionary (1984). When the City enters into an agreement to rent property to a corporation for a specified amount, it enters into a legally enforceable agreement, a contract. Such a lease is a "City contract" under Section 26.3-4.<sup>1</sup>

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<sup>1</sup> Staff, in answering queries regarding City contracts under Section 26.3-4, have stated that City contracts include agreements between the City and persons for payment from the City

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The application of the contribution cap to lessees of the City fulfils the legislative intent of Section 26.3-4. The cap should minimize the possibility that the award or terms of any City contract be influenced by or conditioned upon the size of a prospective contractor's political contribution. A lease is as susceptible to manipulation for political gain as any contract for goods or services. There is no basis for treating a lease differently from any other contract under Section 26.3-4.

## ISSUE 2

May a senior executive of a corporation that is the named contractor in a lease agreement with the City make contributions exceeding the limitation of Section 26.3-4 if those contributions are made in the name of the executive and from his personal finances?

## OPINION

The political contributions from the personal assets of a senior executive of a corporation that has been awarded a City contract are not limited by Section 26.3-4 if (1) the executive is not a party to the City contract, and (2) the executive does not have a financial interest in the contract. Section 26.3-3 of the CFO also requires that political contributions be made only in the name of the true donor.

## DISCUSSION

Section 26.3-4 limits contributions from a person in two situations: first, the person has been awarded a City contract; or, second, the person has a financial interest in such a contract. In the hypothetical, the corporation is the "named contractor" with the City under the lease agreement. Assuming that means that the corporation, not the senior executive, is a party to the contract with the City, then the corporation, not the senior executive, has been awarded a City contract, and the corporation's contributions would be subject to the limitation for that reason.

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Treasury or pursuant to City ordinance for the delivery of services or goods to any City entity, as well as agreements for the payment of funds administered by the City in exchange for services, goods, property or the leasing of property.

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The hypothetical does not specify whether the senior executive might have a financial interest in the City contract. "Financial interest" is defined as

- (i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 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 corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.
- Municipal Code of Chicago, Sections 26.2-1(k) and 26.3-1(i)

Pertinent exclusions from the definition of "financial interest" are:

- (i) any ownership through purchase at fair market value or inheritance of less than 1% of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended;
  - (ii) any economic benefit provided equally to all residents of the City;
  - (iii) a time or demand deposit in a financial institution;
- or
- (iv) an endowment or insurance policy or annuity contract purchased from an insurance company.
- Municipal Code of Chicago, Sections 26.2-1(k) and 26.3-1(i)

If the senior executive held such an interest in the corporation's City contract, the executive's contributions would be subject to the contribution cap of Section 26.3-4.

If the senior executive of the corporation were not a party to the lease in his personal capacity and if he had no financial interest in the lease, the contributions of the senior executive that were given in his own name and from his personal assets would not be subject to the limitation of Section 26.3-4. If the corporation reimbursed the executive for his political contribution, the source of the contribution would be the corporation, not the executive. Such a contribution might violate Section 26.3-3 which prohibits contributions that are made other than in the name of the true donor.

The Board of Ethics hopes that this advisory opinion has

been helpful to you. If you have any other questions regarding this matter, please feel free to call the Board at 744-9660.

Sincerely,

  
Sol Brandzel  
Chairman