



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION, Case No. 18036.A.1

USE OF THE CITY SEAL BY CANDIDATES FOR ELECTED CITY OFFICE IN ELECTIONEERING MATERIALS

It is not unusual that, during election season, the Board of Ethics receives inquiries about whether reproductions or facsimiles of the official seal of the City of Chicago may be used in campaign literature, stickers, signs or other printed, broadcast, or web-based materials or communications promoting a candidate for City elected office. The answer is "no," as we explain in this advisory opinion, which we issue pursuant to §§2-156-380(f) and (l) of the Governmental Ethics Ordinance ("Ordinance"). The relevant laws are in the Ordinance¹ and in another section of the City's Municipal Code.²

Use of the seal by a City employee or official in any printed,³ filmed, or web-based communications to support a candidate for elected office⁴ would constitute a *prima facie* violation of the "City-owned property" provision in the Ordinance. Were the Board to make a final determination of a violation, the user would be subject to fines of \$500-\$2,000 per violation. However, the Ordinance does not explicitly address such a political use of the City seal by a person who is not a City employee or official. Instead, for guidance, the Board looks to the Municipal Code section cited in footnote 2, below, which does prohibit use of the City seal by *anyone* unless they have due authorization.

¹ §2-156-060 of the Ordinance, "City-owned property," states: "No official or employee shall engage in or permit the unauthorized use of any real or personal property owned or leased by the City for City business."

² §1-8-100 of the Municipal Code, entitled "Private use of seal unlawful," states: "No person shall fraudulently forge, deface, corrupt, or counterfeit the seal of the city, nor shall any person, other than the duly authorized public official, make use of said seal. Any person violating the provision of this section shall be fined not less than \$25.00 nor more than \$200.00 for each offense."

³ Including but not limited to campaign literature, mailers, stickers, or signs, etc.

⁴ We refer here in part to "electioneering communications." While the Ordinance does not use or define this term, we find the definition of the term in 10 ILCS 5/9-1.14 of the Illinois Election Code useful and instructive. It provides, in relevant part:

(a) "Electioneering communication" means, for the purposes of this Article, any broadcast, cable, or satellite communication, including radio, television, or Internet communication, that (1) refers to (i) a clearly identified candidate or candidates who will appear on the ballot for nomination for election, election, or retention, ... [and] is targeted to the relevant electorate, and ... is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election ...

(b) "Electioneering communication" does not include:

- (1) A communication, other than an advertisement, appearing in a news story, commentary, or editorial distributed through the facilities of any legitimate news organization, unless the facilities are owned or controlled by any political party, political committee, or candidate.
- (2) A communication made solely to promote a candidate debate or forum that is made by or on behalf of the person sponsoring the debate or forum.
- (3) A communication made as part of a non-partisan activity designed to encourage individuals to vote or to register to vote.
- (4) A communication by an organization operating and remaining in good standing under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (5) A communication exclusively between a labor organization, as defined under federal or State law, and its members.
- (6) A communication exclusively between an or organization formed under Section 501(c)(6) of the Internal Revenue Code and its members.


To be clear, the Board concludes that the official seal of the City of Chicago may not be used by *anyone* in any printed, filmed, broadcast or web-based communication to support a candidate for elected City office [including but not limited to what would constitute "electioneering communications" as defined in the Illinois Election Code].

A Seventh Circuit federal appellate case explicitly recognized that:

"The corporate seal of a municipality is plainly under government control and is a clear symbol of government power ... and ... acts as the City's imprimatur for official correspondence, property and business."⁵

Allowing any person -- whether incumbent, challenger, City employee/official or not -- to use the City seal in printed, filmed, broadcast or web-based electioneering communications supporting a candidate for City office, *unless the City were to explicitly allow it in individual instances*, presents a clear risk of misleading voters into believing the communications are official and/or that the City supports the person's candidacy. The City has a compelling interest in ensuring that the electorate is *not* so misled. Unless *every* candidate was allowed to use the City seal in this fashion, the very real possibility of misleading voters exists. However, we conclude, the City has already decided *not* to allow every candidate to use the City seal in this fashion, as evidenced by the fact that the City has had §1-8-100 on the books since 1939. This does not mean that City could not decide to allow every candidate to use the official City seal in electioneering communications, or allow candidates or others to use it through license agreements -- but the City has not done so.

Following this reasoning, the Board determines that *no person* may use the City seal in any printed, filmed, broadcast or web-based electioneering communications supporting a candidate for City office, unless the appropriate City authorities authorize it, by ordinance or license agreement.⁶



William F. Conlon, Chair

November 20, 2018

⁵ See *Harris v. City of Zion v. City of Rolling Meadows*, 927 F.3d 1401, at 1412 (1991).

⁶ Our colleagues in the New York City Conflicts of Interest Board drew the same conclusion as to the official seal of New York City. See Advisory Opinion No. 2017-4, at p. 6 (August 17, 2017), <https://www1.nyc.gov/assets/coib/downloads/pdfs/aos/2017/A02017-4.pdf>