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ADVISORY OPINION  
CASE NO. 95058.A  
CAMPAIGN FINANCE

City of Chicago  
Richard M. Daley, Mayor

To: [REDACTED]

Board of Ethics

Date: [REDACTED]

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On [REDACTED], you wrote to our office with a question about how the City's Campaign Financing Ordinance campaign contribution limitations apply to campaign contributions by political action committees ("PACs"). In your letter, you state that [REDACTED] Corporation (" [REDACTED] B"), created by corporate merger, controls two PACs that disburse contributions to candidates for state and local offices. You ask whether contributions from these PACs should be aggregated toward the campaign contribution limit imposed by the City's Campaign Financing Ordinance on a person who does business with the City or is seeking to do business with the City. From the facts you presented, described here, the Board has concluded that contributions from the two PACs must be aggregated toward any campaign contribution limit the City's Campaign Financing Ordinance imposes on [REDACTED] B. Our analysis and precise determination follow.

FACTS:

[REDACTED] B [REDACTED] is a national bank holding company created from the merger [REDACTED] of [REDACTED] Corporation (" [REDACTED] C"), and [REDACTED] (" [REDACTED] D"). Federal law prohibits national banks and bank holding companies from making political contributions in connection with federal, state, or local elections. 2 U.S.C. § 441b(a); see also 11 CFR § 114.2(a). However, federal law permits banks and bank holding companies to establish and control "separate segregated funds," commonly called "PACs," which may make political contributions derived from sources other than the bank treasury. 2 U.S.C. § 441b(b)(2). See also 2 U.S.C. § 441b(b)(3) and (4), § 432(4), and 11 CFR § 114.5(d).

You told us that [REDACTED] B currently has two PACs that make contributions to state and local elections in Illinois. You provided the following information about the two PACs, which have been organized to conform to federal law and related federal regulations.

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[REDACTED] C [REDACTED] State PAC. The [REDACTED] C [REDACTED] Corporation State Political Action Committee (" [REDACTED] C [REDACTED] State PAC") was created by [REDACTED] C [REDACTED] in [REDACTED] to contribute only to state and local elections, primarily, but not solely, in Illinois. The PAC monies for political contributions are from [REDACTED] [REDACTED] Investment Group, a wholly-owned non-bank subsidiary of [REDACTED] C [REDACTED]. The PAC was created by the [REDACTED] C [REDACTED] Board of Directors with "authority pertaining to [it]" vested in the [REDACTED] C [REDACTED] Management Committee, which could, in turn, delegate that authority to an officer or group of officers of [REDACTED] C [REDACTED]. (Resolutions from Regular Meeting of the Board of Directors of [REDACTED] C [REDACTED] Corporation, [REDACTED].) You said the officers and directors of the [REDACTED] C [REDACTED] State PAC have always been drawn from officers of [REDACTED] C [REDACTED], at the level of Assistant Vice-President or higher. Although recommendations about what candidates to support may come from various sources, in practice, you said, the PAC has followed the recommendations of [REDACTED] C [REDACTED]'s government relations department.

[REDACTED] D PAC. The [REDACTED] D [REDACTED] Political Action Committee (" [REDACTED] D PAC") was established in [REDACTED], and has regularly made political contributions in connection with state and local elections, primarily in [REDACTED], its home base, but also in Chicago. You said it may also make contributions to federal elections. Because [REDACTED] and federal law prohibit corporate contributions (unlike Illinois law, which permits them), this PAC's funds for political contributions have come from voluntary donations from officers of [REDACTED] D. You stated that [REDACTED] D PAC's officers have always been drawn from high-level officers of [REDACTED] D. Currently, the three members of the Board of Directors consist of [REDACTED] D's General Counsel and two members of the former [REDACTED] D government relations department.

Your letter characterizes the relationship between [REDACTED] [REDACTED] B and the two PACs as one in which [REDACTED] B "controls [these] two affiliated political action committees...." You stated that the two banking companies that initially set up the two PACs have maintained and exercised control over the PACs in the ways permitted by federal law, and that [REDACTED] B will continue to do so (although the PACs may be reorganized or merged). You stated that each PAC's administrative expenses have been paid by the sponsoring corporation. You also stated that neither PAC is separately incorporated, neither has its own corporate by-laws, and both are managed by officers of the sponsoring corporation. According to your description, the PACs are organized to express the will of the corporate sponsor. You said that [REDACTED] B could reorganize or dissolve either PAC at will.

Case No. 95058.A

[REDACTED]

Page 3

**LAW AND ANALYSIS:** Section 2-164-040 of the Campaign Financing Ordinance (Chapter 2-164 of the Municipal Code of Chicago), "Limitation of Contributions to Candidates and Elected Officials," provides, in relevant part:

(a) No person who has done business with the City within the preceding four reporting years or is seeking to do business with the City 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 City who is seeking election to any other office....

This section places contribution limitations on a "person who has done business with the City within the preceding four reporting years or is seeking to do business with the City." "Doing business" is defined as:

...any one or any combination of sales, purchases, leases or contracts to, from or with the City or any City agency in an amount in excess of \$10,000 in any twelve consecutive months.

§ 2-156-010(h).

For purposes of this analysis we have adopted the assumption, implicit in your request, that [REDACTED] B is a person who has done business with the City within the last four reporting years, so that the campaign contribution limitation would apply to it, if it were permitted by federal law to make contributions.

However, the PACs, being constituted solely to make political contributions, would not themselves have done business or be seeking to do business with the City. Therefore the campaign contribution limit will apply to the PACs only if they are to be considered and treated as a single "person" with [REDACTED] B for purposes of the Ordinance's contribution limitation. If the PACs and [REDACTED] B are a single person under the Ordinance, then the PAC contributions will be aggregated toward the limitation placed upon a person who has done business with the City within the last four reporting years.

The Board concludes that the [REDACTED] C [REDACTED] State PAC, the [REDACTED] D PAC and [REDACTED] B are a single "person," for purposes of the Ordinance's campaign contribution limitation. The primary basis for this conclusion is the high degree of control

EMWS

Case No. 95058.A

Page 4

[REDACTED] B exercises over the PACs: According to information you provided, the PACs are not separately incorporated, do not have their own by-laws, are established by corporate authority, and continue to exist under and be controlled by corporate authority; the corporation can reorganize or dissolve its PACs at will; the governing boards of both PACs consist of high-level officers of [REDACTED] B; and, according to your description, contribution decisions made by the PAC boards reflect the will of [REDACTED] B itself.

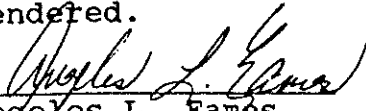
Moreover, under federal law, [REDACTED] B cannot itself make political contributions. It thus makes no sense to interpret § 2-164-040 as limiting the contributions of [REDACTED] B. Any limit § 2-164-040 imposes on [REDACTED] B can apply only to the PACs that [REDACTED] B operates.

Further, the purpose of the contribution limitations would not be served by treating these PACs as autonomous agents, not subject to the limitations, when they are controlled in the manner described here by a corporation that would itself be subject to the limitations.

**DETERMINATION:** On the particular facts presented, the Board determines that, for purposes of the campaign contribution limitations of § 2-164-040, the [REDACTED] C [REDACTED] State PAC, [REDACTED] D PAC and [REDACTED] B are a single person, and contributions from both PACs to City elected officials and candidates for City offices will be aggregated toward any limit that would apply to [REDACTED] B.

Our determination in this case is based on the application of the City's Campaign Financing Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board, as any change in the facts may alter our opinion.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

  
Angeles L. Eames  
Vice Chair