**CONFIDENTIAL**

December 19, 2016

Chicago, IL 606

**Re: Advisory Opinion, Case No. 16041.A**

Dear :

Your Request

The Board received your letter dated November 18. In that letter, you requested a formal advisory opinion addressing whether the City’s Governmental Ethics Ordinance (the “Ethics Ordinance”) “permits” the “hypothetical” travel arrangement described in your letter between “Entity A” and “Official B” (and Official B’s wife or staff), “and if so, under what, if any, conditions.”[[1]](#footnote-1)

Board Opinion

As a jurisdictional matter, the Board has the authority to render advisory opinions with respect to the provisions of the Ethics Ordinance based upon a real or hypothetical set of circumstances, when requested by an official or employee, like you, or by a person who is personally and directly involved. *See* §2-156-380(l).[[2]](#footnote-2)

The Board has considered this matter, in light of the relevant provisions of the Ordinance and prior Board opinions.[[3]](#footnote-3) We determine that the Ordinance does not prohibit this travel arrangement, provided that it is reported publicly, as described below. The travel arrangement is permissible under either of two provisions in the Ordinance, both of which require public disclosure:

(i) as a gift accepted by Official B on behalf of the City, from Entity A, pursuant to §2-156-142(d)(8), provided it is reported “immediately” as required by that section; or

(ii) as “any travel expense for meetings related to a public … purpose, provided such expense has been approved in advance by the Board, and further provided that such expense is reported … within 10 days of completion thereof” pursuant to §2-156-142(d)(10).

Because either rationale applies, the public disclosure would need to occur within 10 days, not immediately.

Your letter posits other factors noted above, in footnote 1. In particular, however, even if Entity A does receive more than $1 million from the City, or Official B has incorrectly understood and stated that this trip is not being paid for by City money, or Official B serves as the *ex officio* Chairman of Entity A’s board of directors or appoints all of the members, Entity A’s providing the travel expenses for this event is not prohibited by the Ethics Ordinance, as long as the reporting requirements cited above are met.[[4]](#footnote-4)

In the “penumbra” of your request is the question of the propriety of the use of public or taxpayer funds for this travel by Official B and his fellow travelers. While it is unclear whether public funds were used, we will assume for purposes of this opinion that there were some public funds used to subsidize the trip. Without knowing the charter, by-laws, and governmental restrictions that apply to this 501(c) (3) organization, and leaving that for others, if any, who may want to examine that issue, it is our conclusion that the trip is related to official City business, or, “to a public purpose,” and thus the expenditure of public funds was neither unauthorized nor prohibited by the Ethics Ordinance, in the same way that it would be neither unauthorized nor prohibited if placed directly in the City’s budget. However, as discussed below, we recommend that there be transparency and disclosure as to the source of these funds.[[5]](#footnote-5)

Board Recommendation

The Board of Ethics has the authority to consult with City agencies, officials and employees on matters involving ethical conduct, and to recommend such legislative action as it may deem appropriate to effect the policy of the Ordinance. *See* §2-156-380(e) and (f). The Board takes notice that, where an entity, like Entity A here, is partially funded by the City, public confidence in the transparency of governmental operations would be enhanced if City officials and the City’s Law Department would work with Entity A so that it voluntarily and publicly discloses the precise source and legal provenance of the funds used to underwrite travel taken by City officials. We recommend that City officials consider working with Entity A (and others like it) to ensure such disclosure, which would help quell any claimed lack of transparency.[[6]](#footnote-6) As noted above, even if public funds were used, we find no violation of the Ethics Ordinance arising from the hypothetical given.

RELIANCE AND RECONSIDERATION

This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered. Please note that our opinion addresses only the application of the City’s Governmental Ethics Ordinance to the situation described and posited in your letter; other laws or statutes may apply. If the situation posited changes, such a change may alter our opinion. If there are additional material facts and circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. As provided in Section 3-9 of the Board’s Rules and Regulations, a request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by the Board within fourteen (14) days of the date of this opinion.

Yours very truly,

William F. Conlon, Chair

1. More specifically, your letter posits the following situation:  [↑](#footnote-ref-1)
2. It is rare that this Board is requested to and issues a formal advisory opinion addressing hypothetical circumstances. It has happened in two other instances prior to this opinion, in Case Nos. 92030.A and 16006.A . In the earlier case, the opinion was issued to an attorney who told the Board that he represented a person who was personally and directly involved the situations described in it, addressing a hypothetical alderman who owned a hypothetical real estate company. In the latter case, [the Board issued] an opinion [addressing] whether an “entertainment management company” violated the Ethics Ordinance’s political contribution limitations by contributing in excess of $1,500 to the authorized political/candidate committee of a sitting “elected official.” [↑](#footnote-ref-2)
3. See Case No. 12067.A, specifically part 1 of that 3-part advisory opinion. In that case, we determined that City elected officials were not prohibited from accepting travel expenses from 501(c) or 501(c) (4) organizations of which these officials were members, provided that these officials, in their official City capacities, were attending meetings or functions related to a public purpose or official City business, and that the acceptance of such expenses was duly reported as required by the Ordinance.

   [↑](#footnote-ref-3)
4. Similarly, whether Entity A is subject to the Illinois Freedom of Information Act, or whether it can or cannot be verified that the source of the funds used to cover Official B’s expenses are taxpayer funds, or whether private funds were used, and any private funders’ identities and business relationship with the City (if any) can or cannot be verified, are all beyond the purview of the Ethics Ordinance and extraneous to the question your letter asks, which is whether the Ordinance permits this arrangement, and if so, under what circumstances. [↑](#footnote-ref-4)
5. The Board considered other potentially relevant sections of the Ordinance: Fiduciary Duty and City-Owned Property (§§2-156-020 and -060, respectively), as well as the “aspirational” Code of Conduct in §2-156-005. However, there is nothing in the situation posited that would cause us to believe that these sections are implicated, or that “City-owned property” was used without due authorization by City officials or employees.

   [↑](#footnote-ref-5)
6. *Cf.* our opinion and recommendations in Case No. 12067.A, Part 2. In that case, we urged that a 501(c)(4) organization, whose directors were City elected officials, make public its donors and details of their donations, to lessen the possibility of creating a serious appearance of impropriety in which contributors might be seen to be giving indirect gifts or contributions to these elected officials. [↑](#footnote-ref-6)