

MEL

January 22, 1991

C O N F I D E N T I A L

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Suite 530
205 West Randolph Street
Chicago, Illinois 60606
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**RE: Case No. 90060.A
ADVISORY OPINION**

Dear

This advisory opinion is rendered in response to your questions regarding the \$1,500.00 contribution limitations of the Campaign Financing Ordinance as it relates to partners of a partnership that has done or is seeking to do business with the City (hereinafter "does business with the City"), and the spouses of those partners.

After analyzing the relevant provisions of the Ordinance, which include §2-164-030 and §2-164-040, subparagraphs (a) and (b), the Board makes the following determinations:

1. A partnership that does business with the City shall not make contributions in an aggregate amount exceeding \$1,500.00 as described in §2-164-040(a) of the Campaign Financing Ordinance.
2. Each partner of a partnership that does business with the City may make an unlimited political contribution that is made from personal funds, provided he or she is not reimbursed by the partnership.
3. A contribution of a partner for which the partner is reimbursed by the partnership is aggregated with contributions of the partnership, which may not exceed the \$1,500.00 limitation.
4. The spouse of an individual who is a partner of a partnership that does business with the City may not make a contribution for which the spouse is reimbursed by the partnership.



5. Each spouse of a partner of a partnership that does business with the City may make an unlimited political contribution provided there is no reimbursement from the partnership and the contribution is made from personal funds.

FACTS: The facts presented are that your client and his spouse would like to make a campaign contribution to a candidate for election to City office. This client is one of approximately partners in a partnership that does business with the City. You reported that the spouse does not have an income independent from that of her husband and she has no connection with her husband's firm.

LAW: The relevant provisions of the Ordinance are § 2-164-030, §2-164-040 (a), and §2-164-040(b).

Section 2-164-030 states:

No person shall offer or make, and no candidate, candidate's committee or person acting in behalf of either of them shall solicit or accept, any contribution that is (a) anonymously given; or (b) made or to be made other than in the name of the true donor. (prior code §26.3-3).

Section 2-164-040(a) states:

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 \$1500 (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. For purposes of this section, (i) candidacy in primary and general elections shall be considered separate and distinct candidacies; and (ii) all contributions to a candidate's authorized political committees shall be considered contributions to the candidate. (prior code §26.3-4(a)).

Section 2-164-040(b) states:

For purposes of subsection (a) above, an entity and its subsidiaries, parent company

or otherwise affiliated companies, and any of their employees, officers, directors and partners who make a political contribution for which they are reimbursed by the entity or its affiliates shall be considered a single person. However, nothing in this provision shall be construed to prohibit such an employee, officer, director or a partner from making a political contribution for which he is not reimbursed by a person with whom he or she is affiliated, even if that person has made the maximum contribution allowed under subsection (a). (prior code §26.3-4(b)).

QUESTIONS PRESENTED: The questions presented to the Board in this case are as follows:

1. May the partner of a partnership that does business with the City make a contribution of more than \$1,500.00?
2. May the spouse of a partner of a partnership that does business with the City contribute more than \$1,500.00?

ANALYSIS OF THE BOARD'S DETERMINATION: In an earlier case decided prior to the 1989 amendments to the Campaign Financing Ordinance, the Board of Ethics determined that a partnership that does business with the City could make a contribution of up to \$1,500.00, and each individual partner of that partnership could contribute up to \$1,500.00, provided the donating partner was not reimbursed by the partnership. (See Case No. 89063.A). That decision was based on the language of the Ordinance in effect at that time. The language of §26.3-4 which limited political contributions at that time applied to a "person who has had a financial interest in or has been awarded any City contract. . ." On May 10, 1989, that provision was amended by City Council. Section 2-164-040(a), as amended, now applies to a "person who has done business with the City . . . or is seeking to do business with the City"

The Board first looks to the meaning of the word "person." "Person" is not defined in the Campaign Financing Ordinance; therefore it uses the definition provided in the Governmental Ethics Ordinance at §2-156-010(r). That section states: "'person' means any individual, entity, corporation, partnership" It is therefore clear that a partnership that does business with the City is by definition a "person" and therefore subject to the contribution limitations stated in §2-164-040 of the Campaign Financing Ordinance. This provision prohibits contributions in an aggregate amount exceeding \$1,500.00.

Ordinance §2-164-040(b) was newly enacted in May 1989. It specifically states that a partner's contribution for which he or she is not reimbursed by the partnership is not aggregated with the contributions of the partnership. It further states that "nothing in this provision shall be construed to prohibit such . . . a partner from making a political contribution for which he is not reimbursed" This provision clearly indicates that partners of a partnership that does business with the City can contribute from their personal funds, provided they are not reimbursed by the partnership.

In making a determination whether each individual partner, like the partnership, is limited to the \$1,500.00 maximum as set forth in §2-164-040(a), the Board looks to the language of the Ordinance, the intent of the drafters of the amendment, and to the law on partnerships. It concludes that a partner who makes a contribution from his or her personal assets for which he or she is not reimbursed is not subject to the contribution limitations of the Ordinance and may make such a contribution in any amount.

The Board bases its decision on the following. First, §2-164-040(b) which was newly enacted in May, 1989, specifically allows non-reimbursed contributions of partners when it states "nothing in this provision shall be construed to prohibit such . . . partner from making a contribution for which he is not reimbursed" There is no dollar limitation stated in the Ordinance that limits the amount of a partner's non-reimbursed contribution. Had the City Council desired to impose such a limitation, they would have done so.

The Board's analysis with regard to this language is confirmed by the drafters of this amended section. They stated that the amendment was intended to allow unlimited contributions by partners of a partnership that does business with the City so long as the partner is not reimbursed by the partnership.

Second, in coming to its decision, the Board considers whether the political contribution of a partner is made as an individual act or as an act of a partner representing the partnership. The consideration centers around the Illinois Uniform Partnership Act, which recognizes that a partner may act on his or her own behalf and that not all activities of a partner bind or affect the partnership. This reasoning finds confirmation and is consistent with the reasoning of the Federal Election Commission (See 11 C.F.R. §115.4). From this basic tenet of partnership law, the Board reasons that any contribution by a partner from his personal property or assets, for which he is not reimbursed by the partnership, is therefore a personal contribution of that individual and not a contribution of the partnership that does business with the City.

Third, the Board notes that when the Ordinance was amended in 1989, the City Council removed the old test of "financial interest" as a bar to contributions exceeding \$1,500.00 and substituted the new test of "doing business." When a partnership enters into a contract with the City, the contract is in the name of the partnership and it is the partnership that is the "person doing business with the City." Although the individual partner has an interest in the partnership, he or she is not the person doing business with the City.

Based on these considerations, the Board determines that a political contribution made in a partner's own name from the partner's personal assets, e.g. written from the partner's personal account, for which he or she is not reimbursed by the partnership in any manner is a personal act and such partners are not subject to the contribution limitations of the Ordinance.

The remaining issues for the Board to address concern the partner's spouse: whether the spouse of the partner whose partnership does business with the City may make a contribution for which he or she is reimbursed by the partnership, and whether the spouse is limited in the amount of a personal non-reimbursed contribution.

In analyzing the first of these issues, the Board looks to §2-164-030, entitled "Anonymous and Pseudonymous Contributions," which specifically prohibits political contributions made "other than in the name of the true donor." Accordingly, if a spouse of a partner made a political contribution for which the spouse was reimbursed by the partnership, that contribution would in reality be made "other than in the name of the true donor," the partnership. Therefore, such contribution would be in violation of §2-164-030. Based on this analysis, the Board concludes that a spouse of a partner whose partnership does business with the City may not make a contribution, regardless of the amount, if the spouse is reimbursed by the partnership.

As to the remaining issue, the Ordinance is silent with regard to spousal contributions. Therefore, the Board concludes that provided the spouse of the partner is not reimbursed by the partnership that does business with the City, the spouse is not subject to the contribution limitations of §2-163-040(a).

SUMMARY: In your request for an advisory opinion you asked two specific questions:

Question 1: May the partner of a partnership that does business with the City make a contribution of more than \$1,500.00?

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The Board concludes that each partner of a partnership that does business with the City may make an unlimited contribution from personal assets provided the partner is not reimbursed by the partnership.

Question 2: May the spouse of a partner of a partnership that does business with the City contribute more than \$1,500.00?

The Board concludes that a spouse of a partner whose partnership does business with the City may not make a contribution in any amount for which the spouse is reimbursed by the partnership. However, the spouse may make a contribution in any amount from personal assets for which the spouse is not reimbursed by the partnership.

RELIANCE: This advisory 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 which is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

We appreciate your inquiry and your client's willingness to comply with the ethics standards embodied in the Ordinance. For your convenience we have enclosed a sheet that sets forth the Board's procedural rules which we provide with every advisory opinion. If you have any questions regarding this matter, please contact the staff of the Board of Ethics at 744-9660.

Sincerely,



Albert Hofeld
Chairman

Enclosure

cc: Kelly Welsh, Corporation Counsel
City of Chicago

90060.L4:t15

Enclosure

RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in the accompanying letter. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.