



CITY OF CHICAGO



BOARD OF ETHICS

CONFIDENTIAL

NAME
ADDRESS

Re: Case No. 22026.A / City-owned Property

Dear [NAME]:

On [DATE], 2022, you requested a formal advisory opinion from the Board of Ethics addressing whether the following hypothetical set of facts presents any potential violations of the City’s Governmental Ethics Ordinance (the “Ordinance”):

The Mayor, the Treasurer, the Clerk, or an Alderperson of the City of Chicago (“elected official”), participates in or attends a campaign or otherwise political event – including, for example, but not limited to, a campaign fundraiser or the production of a campaign video, whether their own or that of another elected official or candidate. In doing so, the elected official:

- *is transported to/from the event in a City vehicle; and/or*
- *is accompanied by one or more City employees – e.g., assistants or aides – during on duty work hours for purposes of that employee’s City employment; and/or*
- *is accompanied by their official City security detail; and/or*
- *otherwise uses City property to facilitate the endeavor.*

I. Executive Summary.

The Board has never addressed this issue.¹ The Board limits its opinion to the elected position of Mayor and does not at this time address potential violations of the Ordinance as to the City’s other elected officials. Our legal analysis is fact-dependent, and we cannot address, in one opinion, the multitude of fact scenarios that might arise from all elected officials’ use of City property in the manner you set forth. Accordingly, the Board will address other specific fact scenarios if and when they might arise.

¹ We note here that, in 2010, the Board conducted an investigation of a signed and sworn complaint alleging that a City Council member was using City property (including a City-owned vehicle) improperly and in an unauthorized manner. The facts adduced in the Board’s investigation showed, however, that the member was in fact using the property in a way that was judicially authorized, so the Board dismissed the matter as unsubstantiated. See Case No. 10023.I, in this document:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.pdf>

For the reasons explained in this opinion, the Board has determined that the Ordinance does not prohibit a Mayor from making use of the City vehicle assigned to them, or of a Mayoral Assistant and the Mayoral security detail **at all times**, including when attending local campaign/political events.

This opinion summarizes the relevant facts and explains our determination.

II. Facts.

When being transported to **official City business events**, the Mayor is typically transported in an assigned City vehicle and is accompanied by an Assistant to the Mayor and a security detail, including a driver—all of whom are City employees. The Board has been asked whether the Mayor can also be transported to local **political/campaign related events** in a City vehicle, while accompanied by their assigned security detail and an Assistant.

III. Relevant Governmental Ethics Ordinance Provisions.

In this opinion, we discuss and interpret the following Ordinance sections:

§2-156-060. Unauthorized Use of Real or Personal City-owned property. 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.

§2-156-135. Prohibited Political Activities. (b) No official or employee shall intentionally misappropriate any city property or resources of the city in connection with any prohibited political activity; provided, however, any official or employee may reserve and rent a city-owned facility at a fair market value before any such activity or event connected therewith.

IV. Legal Analysis.

In applying the law to these facts, the Board takes notice of the fact that a Mayor's performance of official duties and responsibilities is required around the clock, and that a Mayor also requires security 24/7.

Our colleagues at the at the New York City Conflicts of Interest Board ("COIB") addressed the same question in Advisory Opinion No. 2009-1.² The COIB determined that certain elected officials may use City vehicles and security personnel, without the need to reimburse the City,³ "when they attend political events, such as campaign fundraisers." The COIB recognized that, with respect to an elected official who is assigned a government vehicle and security personnel, "the official's need for protection and security remains the same... whether attend[ing] a private social function [or] a public one." The COIB further explained that certain elected

² https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2004-2013/AO2009_1.pdf

³ Similarly, the Board also adopts the reasoning of the New York City Conflicts of Interests Board that reimbursement by [one of that City's high ranking elected officials or their] authorized political committees for such use is not required. Our New York City colleagues concluded that:

"The Board considered whether these ... Elected Officials must nevertheless reimburse the City for use not deemed 'official' and concluded that such reimbursement is not required. Since officials in this category are subject to security determinations by the NYPD requiring them to use City vehicles to the maximum extent possible for all local transportation, official or otherwise, it would be unfair to require them to pay for any use deemed unofficial. Moreover, given these officials' constant use of the required vehicles, an effort to determine what use must be reimbursed would require an almost limitless parsing and costing to determine how much of that use is 'official,' or incidental to official business, and how much is no way related to official business. Any such attempt, particular if applied to officials who, as recognized in Los Angeles, are on call essentially every hour of the day and night, seems both an impossible and unfair accounting burden on all involved... Of course ... Elected Officials are free to reimburse the City for non-City use of their vehicles for example, to reimburse with campaign funds for political use." *Id.* at 10-11.

officials “are effectively on call at all times, so that unrestricted local use of City vehicles [enables] them to respond most effectively to emergencies and otherwise discharge their 24/7 responsibilities.”

The New York City COIB also concluded that “persons... who might appropriately accompany an elected official to official events [are] also permitted to ride as passengers” regardless of the purpose for which the vehicle is being used.⁴ In the question before us, an Assistant to the Mayor is an aide who accompanies the Mayor to all official events and on whom the Mayor would rely if they suddenly had to attend to official City business, no matter what type of event they were attending.

Similarly, in a case⁵ involving a claim that Minnesota’s Lt. Governor had violated state law by using a state provided vehicle to attend campaign related events, that State’s Campaign Finance and Public Disclosure Board found no probable cause to conclude that Minnesota’s law regarding the use of State vehicles had been violated, because an exception to that law provides that a state vehicle shall be provided to the Lt. Governor (and Governor) for transportation “regardless of the nature of the event the Lieutenant Governor may wish to attend.”⁶

This Board similarly recognizes the need for a Mayor’s prompt availability and security at all times. A Mayor’s full and varied schedule requires that they be readily available to attend the many meetings, functions, events and emergencies of all kinds that require attention and handling. As the highest ranking official in the City, a Mayor is on call every hour of the day and night. Accordingly, in response to the question before it, the Board determines that a Mayor may use their assigned City vehicle and their security detail, and be accompanied by an Assistant, regardless of whether their use is for official purposes, private purposes or political/campaign purposes in the local area.⁷

⁴ The New York COIB permitted this practice with the proviso that the elected official would have to be a passenger in the City issued vehicle at the same time.

⁵ https://cfb.mn.gov/pdf/bdactions/archive/findings/32205_GovPawlenty.pdf?t=1638489600

⁶ The Los Angeles Municipal Code also contains a provision that permits certain elected officials, including the Mayor, to use municipal vehicles for both official and personal purposes within Los Angeles County. See https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-160076

At the federal level, officials are generally prohibited from using government issued vehicles for any personal purposes. There are exceptions, however, for the President and Vice President, the Supreme Court Justices and other high-ranking members of the Executive Branch. See 31 U.S.C. Sections 1344(b)(c). *But see, Marrero v. Municipality of Morovis*, 115 D.P.R 643 (1984), where the Supreme Court of Puerto Rico nullified a law that authorized the unrestricted use of government vehicles for “politico-partisan” reasons. The Court stated, though, that its holding did “not extend to the use of this property for security reasons.”

⁷ Notably, our treatment of the use of City vehicles and security personnel under these circumstances does not extend to the use of other City resources for purposes of engaging in political activity, such as attending campaign events or rallies. Accordingly, and for example, the use of City personnel (with the exception of [the Assistant at issue here], under the circumstances addressed in this opinion), or a City computer or smartphone to engage in “political activity” or “prohibited political activity, as defined respectively in §§ 2-156-010(s) and (v-1), is not permissible, pursuant to §2-156-135(b) of the Ethics Ordinance, entitled **Prohibited Political Activities**:

(a) *No employee shall intentionally perform any prohibited political activity during any compensated time.*

(b) *No official or employee shall intentionally misappropriate any City property or resources of the City in connection with any prohibited political activity; provided, however, that any official or employee may reserve and rent a City-owned facility at a fair market value before any such activity or event connected therewith.*

V. Reliance.

Our determinations and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this opinion. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter those determinations or advice. This opinion may be relied upon only by any person involved in the specific transaction or activity with respect to which this opinion is rendered. Please note that, as required by Board Rule 3-7, a copy of this formal advisory opinion is being sent to the subject of this opinion, that is, the Mayor.

The Board cannot anticipate all possible scenarios involving the use of City vehicles and security personnel for non-City purposes. Accordingly, we urge that the Board be contacted with any questions regarding the use of City vehicles by any other elected official(s), and the use of City property in general, so that it may issue advice that is tailored to the circumstances.

The Board appreciates your request and the opportunity to interpret the Ordinance to address your question.

Sincerely,

William F. Conlon, Chair

cc: The Honorable Lori E. Lightfoot