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

City of Chicago
Richard M. Daley, Mayor

January 22, 1990

ADVISORY OPINION

Board of Ethics

Case No. 90067.A

Dorothy J. Eng
Executive Director

On October 23, 1990, the staff of the Board of Ethics received a telephone call from

Albert F. Hofeld
Chair

to ask whether a corporation that does business with the City may contribute up to \$1,500 only once during the campaign or during each reporting year.

Angeles L. Eames
Vice Chair

Margaret Carter
Darryl L. DePriest
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LAW: Section 2-164-040(a) of the Campaign Financing Ordinance (prior code § 26.3-4(a)) states:

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(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 any 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. The combined effect of these provisions is intended to permit total contributions up to but not exceeding \$3,000 in a reporting year in which a candidacy occurs. A reporting year is from July 1 to June 30. The first filing date will be July 30, 1988 and annually thereafter.

The focus of this case is the time period for which the contribution limitation applies. The maximum amount allowed for campaign contributions from a corporation that does business with the



City is clearly \$1,500, unless there are general and primary elections in a given reporting year. However, while § 2-164-040 (a)(i), which refers to "candidates," applies the limit to a "single candidacy," the first part of § 2-164-040(a)(ii), which refers to "an elected official of the City," applies the limit to "any reporting year of his term." Moreover, the second part of § 2-164-040(a)(ii), which refers to City officials or employees who are seeking election to non-City public office, does not specify any time period for the \$1,500 limit on contributions. Therefore, one section permits a contribution only once during the campaign while another section allows a contribution during each reporting year.

ANALYSIS: The Ordinance defines candidate by referring to the definition of candidate in Article 9 of the Illinois Election Code, as amended, and applying that definition to any elected office of the government of the City. Section 2-164-010(b) (prior code § 26.3-1(b)) Section 9-1.3 of the Illinois Election Code states:

"Candidate" means any person who seeks nomination for election, election to or retention in public office, whether or not such person is elected. A person seeks nomination for election, election or retention if he (1) takes the action necessary under the laws of this State to attempt to qualify for nomination for election, election to or retention in public office, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination for election to or retention in such office.

Given this definition of "candidate," individuals become candidates as soon as they receive contributions with a view to bringing about their election or re-election to office even if they have not filed as a candidate. According to of the State Board of Elections, most elected officials have ongoing political funds that span elections, e.g., the Committee to Re-elect Alderman A. Under one reading of this definition, such an official is perpetually a candidate. However, in the past the Ordinance has been interpreted to allow elected officials to receive up to \$1,500 per reporting year until they file for candidacy. This money, collected prior to officially declaring a candidacy, can of course be used for the candidacy. The problem is that if, on the other hand, non-incumbent candidates are limited to \$1,500 per candidacy, this gives an unfair advantage to the incumbent.

According to an Assistant Corporation Counsel in the Law Department the reason for the different applications of the Ordinance to incumbents and non-incumbents is that the Board has no jurisdiction over what a non-incumbent does before he or she becomes a candidate. A non-incumbent can collect as much as possible from anyone before he or she becomes a candidate. But according to the definition, doesn't he or she become a candidate as soon as he or she collects money? If yes, then there does seem to be an unfair advantage to the incumbent. If no, then there is the possibility of an unfair advantage to the non-incumbent. For example, an individual who is not connected to the City might approach a company who does business with the City and ask for and receive a \$30,000 contribution for his or her political fund. The next day, the individual could announce his or her candidacy for mayor and use the previously collected funds for that campaign.

These are the difficulties that arise if the time span that is covered by the \$1,500 limit is read as candidacy for candidates and reporting year for elected officials. Given the definition of candidate and the fact that money may be transferred from one political fund to another, such a reading opens the way for inequitable practices.

The only consistent and fair way to understand the time span covered by the \$1,500 limitation is per reporting year for officials and per reporting year once a non-official becomes a candidate. In addition, the definition of candidate should be understood to include a person who collects or expends money for the purpose of gaining nomination for election or re-election to a particular City office, but not for a general political fund. Understood this way, an elected official could have a general political fund without being considered a candidate. We recognize that not all candidates are under our jurisdiction. However, once the candidate collects money for a particular City office, we do have the power to regulate pursuant to the Ordinance. This would not eliminate the possibility of a non-incumbent candidate receiving a large contribution for his or her general political fund from a person who does business with the City, and then declaring his or her candidacy for a particular office the next day. However, that is not a likely scenario. It would, however, lessen the advantage held by an incumbent in the alternative reading, which limits a non-incumbent candidate to \$1,500 per candidacy, and it would properly draw a non-incumbent under the jurisdiction of the Ordinance as soon as he or she begins to collect spend money for a particular City election.

This interpretation, though contrary to a literal reading of 2-164-040(a)(i), is permissible because an ambiguity exists in the

literal reading. An alderman running for any City office is both a candidate, limited to \$1,500 per candidacy, and an elected official, limited to \$1,500 per reporting year. The question arises: Can he receive only \$1,500 per candidacy (because he is a candidate) or per reporting year (because he is an elected official)?

While working on this issue, it occurred to the Board that an elected official may receive \$1,500 in October, and become a candidate, for City office, in November for election in April. The issue then arises whether the candidate/elected official can receive an additional \$1,500 when he or she becomes a candidate. The Board interprets the Campaign Financing Ordinance to limit the candidate/elected official to only \$1,500 in contributions during the reporting year. Again, any other interpretation would give a preference to an incumbent alderman for being both a candidate and an elected official. Therefore, if, in a given reporting year, an alderman receives \$1,500 from a person who does business with the City, and in the same reporting year, the alderman becomes a candidate for City office, he or she may not receive an additional \$1,500 contribution from that same person simply because he or she becomes a candidate.

CONCLUSION: The limit on contributions made by a corporation that does business with the City is \$1,500 per reporting year for elected officials of the City and \$1,500 per reporting year for candidates for City office. Any individual who is either an elected official, a candidate for City office, or both may not receive more than \$1,500 from any person doing business with the City in any given year. The only exception to this limit is when primary and general elections occur in a single reporting year, in which case a person doing business with the City may contribute \$1,500 to a candidate for each of these elections, for a total of \$3,000.