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Suite 530
205 West Randolph Street
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(312) 744-9660

February 16, 1989

[REDACTED]

Re: Case No. 89010.A

Dear [REDACTED]

This letter is to inform you of the opinion of the Board of Ethics regarding the question which you submitted for its consideration. This letter will set forth the facts of your inquiry, the issue raised, the Board's opinion and a discussion of the reasons for the opinion.

FACTS

You are the head of an investment management firm ("the management firm"). You requested an advisory opinion from the Board of Ethics on the applicability of Section 26.3-4 of the Campaign Financing Ordinance to the management firm's contributions to candidates for City office. Two of the Pension Fund Boards covering City employees, the

Fund and the Fund ("the Pension Fund[s]"), invest portions of their assets in investment funds managed by your company. You asked whether your current business relationship with the Pension Funds constituted a "City contract" and, thus, caused political contributions from your company to be subject to the contribution limitation of the Ordinance.

ISSUE

Whether a contract between an investment management firm and the Pension Funds covering City employees is a "City contract" under Section 26.3-4.

OPINION

A contract between an investment management firm and the Pension Funds are not "City contracts" for purposes of Section 26.3-4 of the Campaign Financing Ordinance. Therefore, the existence of those contracts would not subject contributions from the management firm to City candidates or elected City officials to the



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contribution limitation of Section 26.3-4.

DISCUSSION

Section 26.3-4 of the Campaign Financing Ordinance states:

No person who...has been awarded any City contract...shall make contributions in an aggregate amount exceeding \$1,500...to any candidate for City office during a single candidacy...or to an elected official of the government of the City during any reporting year of his term...."

Assuming that the business relationship between the Pension Funds and the management firm involves a contract, the issue is whether a "City contract" exists. In order for a City contract to exist, the Pension Funds would have to be an arm or agency of the City government.

The Pension Funds were created pursuant to state statute.¹ The Pension Code states explicitly the nature of all the pension funds created by the State legislature:

"Pension fund--body politic and corporate. Any annuity and benefit fund, annuity and retirement fund or retirement system, heretofore or hereafter created by the legislature of the State of Illinois for the benefit of employees of the State or of any county, city, town, municipal corporation or body politic and corporate, located in the State of Illinois and functioning pursuant to legislative enactment, to which the State or any such county, city, town, municipal corporation or body politic and corporate is required to contribute by way of tax levies, appropriations from the corporate fund, or otherwise, and by whatever name such annuity and benefit fund, annuity and retirement fund or retirement system may be called, is hereby declared to be a pension fund and to be a body politic and corporate under the title specified in the law creating such fund, limited to the performance of the duties set out in the law creating such fund. The trustees of each fund are hereby declared to be officials of such body politic and corporate,

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vested with the powers and duties set out in said law."
Ill.Rev. Stat. 1987, ch. 108 1/2. par. 22-401.

A "body politic" connotes "'a group or body of citizens organized for the purpose of exercising governmental functions.'" Uricich v. Kolesar, 132 Ohio St. 115, 5 N.E.2d 335 (1936), cited in Union County Regional Board of School Trustees v. Union County Historical Society, 52 Ill. App.3d 458, 460 (5th Dist. 1977). A body politic possesses "...attribute[s] of sovereignty and exercise[s] some sovereign power of the State, either through constitutional or legislative grant, which it exercises for the common benefit of all within its geographical boundaries." Union County, 52 Ill. App.3d 458, 461.

The Pension Funds, as bodies politic and corporate, are governmental entities, separate from any other. In the domain created for them by the General Assembly, the Pension Funds exercise powers granted by the State for the benefit of certain public employees and their beneficiaries.² The trustees of the Pension Funds, acting as the officials of the body politic and corporate, have the power to invest the assets of the Pension Funds. Ill.Rev.Stat. 1987, ch. 108 1/2, par. 8-201, Ill.Rev.Stat. 1987, ch. 108 1/2, par. 11-190. The Pension Funds exercised this power when they entered into their contracts with the management firm. These contracts were entered into by the Pension Funds, bodies politic and corporate, not by the City of Chicago or any arm or agency of the City.³

² The separateness from the City and the sovereignty of the Pension Funds are underscored in the statement of the purpose of the Funds:

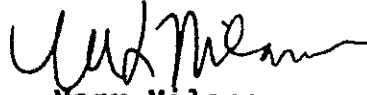
"Each...pension fund is hereby declared to be created in the public interest and for the general welfare of the State, and pursuant to the governmental powers of the State, separate and apart from the corporate purposes of the State, and of any...city...in the State, and in which such pension fund is empowered to operate by virtue of the terms and provisions of the law creating such pension fund." Ill.Rev.Stat. 1987, ch. 108 1/2, par. 22-402.

³ Further evidence that neither the City of Chicago nor any agency or division of City government is a party to the contracts with the management firm can be found in the provisions of the Pension Code regarding the allocation and delegation of fiduciary duties: "...the investment authority of boards of trustees of retirement systems and pension funds established under this Code is declared to be a subject of exclusive State jurisdiction, and the concurrent exercise of a home rule unit of any power affecting such investment authority is hereby specifically denied and preempted." Ill.Rev.Stat. 1987, ch. 108 1/2, par.1-109.1(3).

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This opinion is based on the facts as they were presented to the Board and set out in this letter. Any material change in the facts might change the Board's opinion. If there is any inaccuracy in the information which the Board considered, please let us know. If you have any other questions regarding the Campaign Financing Ordinance, please call us at 744-9660.

Sincerely,



Mary Milano
Vice Chair

It should be noted that this provision does not suggest that the application of the Campaign Financing Ordinance to the management firm is preempted.