

NOTE ON CASE NO. 09058.q

The Board of Ethics adopted this following Memorandum as its Advisory Opinion in the matter. The Board's opinion is based on the facts set out in the Memorandum.

As with all Board opinions, the Board's opinion in this case is confidential in accordance with the provisions of the City's Campaign Financing and Governmental Ethics Ordinances—this means that the Board and its staff will not discuss this opinion or its underlying request for it unless it has the requestor's express waiver of this confidentiality.

This opinion does not necessarily dispose of all the issues relevant to this case, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in the opinion. If the facts presented are inaccurate, please notify us, as a change in facts may change our conclusions and opinions. We also note that other rules, regulations or policies may apply to this case, including the Illinois Election Code, as amended, 10 ILCS 5/1-1 et seq.

Reliance: The opinion in the enclosed Memorandum may be relied upon by any person involved in the specific transaction or activity with respect to which it is rendered.

MEMORANDUM/CONFIDENTIAL

To: Board of Ethics

From: _____
Steven I. Berlin, Executive Director

Richard J. Superfine, Legal Counsel

Date: [REDACTED]

Re: Case No. 09058.A/City official seeking election to any other office

FACTS: [REDACTED] [City official A] is a candidate for [non-City elected office O] [REDACTED]. She has established a separate political committee for this [O] candidacy, even as she maintains her current [A] [REDACTED] committee. During the current reporting year, each committee has received a \$1,500 contribution from the same person/business entity. [REDACTED] [A] has [REDACTED] asked us to assume that the person does business with the City, and thus is subject to the per candidate/per reporting year

contribution limitations in §2-164-040(a) of the Campaign Financing Ordinance (CFO). Her question is whether, under §040(a) of the CFO, both of these committees may retain their respective \$1,500 contributions without there being a violation of this provision of the Ordinance by the contributor. Staff recommends that the Board conclude and direct staff to advise her that each of these committees may retain these respective contributions, and that, if she wins the primary, her [O] ██████████ committee may accept up to another \$1,500 from this contributor for her candidacy in the general election. Our analysis follows.

RELEVANT LAW: §2-164-040(a) of the CFO provides, in pertinent part:

“No person who has done business with the City ... within the preceding four reporting years ... shall make contributions in an aggregate amount exceeding \$1500.00 (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 (iii) 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 ...”

ANALYSIS:

1. Grammatical/literal reading of the CFO. Read plainly, §2-164-040(a) states that none of the restricted categories of contributors (including the one that includes the contributor here, as a person doing business with the City) shall “make contributions in an aggregate amount exceeding \$1,500.00 (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** (iii) to any official or employee of the City who is seeking election to any other office.” (Emphasis added.) Clauses (i) through (iii) are written in the disjunctive—(i) **or** (ii) **or** (iii)—so that the use of the word “aggregate” can mean only an aggregation **within** or **per each** of the enumerated contributee categories, (i) or (ii) or (iii), and **not** the conjunctive, which would mean an aggregate of \$1,500.00 **across** (i) and (ii) and (iii), adding them all together per contributor per reporting year. If it had been worded (i) **and** (ii) **and** (iii), its meaning would be clear: persons subject to the CFO’s contribution limitations would be limited to contributions totaling no more than \$1,500 per reporting year to all three categories of contributees, combined. In other words, staff believes that the plain reading of this provision is that a person subject to the CFO’s limitations may, in the same reporting year, make a \$1,500 contribution to an elected City official’s City committee, and a separate \$1,500 contribution per candidacy to that same official’s committee established to accept contributions for the official’s election to another (non-City) office—but that the contributor is still subject to the CFO’s limitations and may not during the reporting year contribute more than \$1,500 to the City committee **and** more

than \$1,500 per candidacy to the non-City elected office committee.¹

2. Board Precedent. This reading is also consistent with prior Board cases—none of which address the precise issue raised by [A] [REDACTED]. In Case No. 90052.A, the Board recognized that, as the CFO states, contributors to an elected City official running for County office are subject to the CFO and, where applicable, its contribution limitations. The Board then established that the meaning of the phrase regarding City employees and officials “seeking election to any other office” refers to seeking election for non-City elected office (not, say, to an alderman seeking election to Mayor). The Board then explained that primary and general election candidacies of City officials running for non-City offices are considered separate and distinct candidacies, thus contributors to those candidacies could in effect contribute \$3,000 to the City official’s non-City election committee in the reporting year in which the election occurs. However, the Board addressed only whether primary and general candidacies for County (or other non-City) elections were separate and distinct from *each other*, not, as is the issue here, whether they are separate and distinct from the official’s incumbency as a City elected official (or as a candidate for elected City office). Nonetheless, it would serve no purpose if a contributor subject to the CFO’s limitations could contribute \$3,000 to [O’s Committee] in a reporting year (pursuant to Case No. 90052.A), but could not, alternatively, contribute \$1,500 to [O’s Committee] **and** \$1,500 to [A’s Committee] in that same reporting year. Staff recognizes that, under its reading, and under the holding of Case No. 90052.A, this contributor could, in the same reporting year, contribute \$1,500 to [A’s Committee] [REDACTED], and, if she wins the primary election for [REDACTED] [O], up to \$3,000 to [O’s Committee], for a total of \$4,500 in contributions in a calendar year, albeit to different political committees. But, Staff believes, this is the intention of the CFO.

In Case No. 90067.A, the Board determined that a person subject to the CFO’s limitations may **not** contribute \$1,500 during a reporting year to “an elected City official” “during any reporting year of his term,” then, in the same reporting year, contribute **another** \$1,500 (or any amount, for that matter) to the same official’s re-election committee for the **same** elected City office. In other words, during the same reporting year, an elected City official may not be an “elected official” (for purposes of (i) of § 2-164-040(a)), and also a candidate for (the same) City office during a single candidacy (for purposes of (ii) of § 2-164-040(a)). That, the Board said, would be unfair to non-incumbent challengers, whose contributors are also subject to these limitations. That case applies explicitly

1. Dictionary definitions of the words “or” in contradistinction to “and” support this reading. The dictionary defines “or,” “and,” “disjunctive” and “aggregate” as follows:

(i) **or**: “used as a function word **to indicate an alternative** <coffee ~ tea> <sink ~ swim>, the equivalent or substitutive character of two words or phrases <lessen ~ abate>, or approximation of uncertainty <in five ~ six days>” and “a logical operator that requires either of two for a statement to be executed” (emphasis added);

(ii) **and**: “used as a function word to indicate connection or addition esp. of items within the same class or type; used to join sentence elements of the same grammatical rank or function” and “a logical operator that requires both of two inputs to be present or two conditions to be met for an output to be made or a statement to be executed”;

(iii) **“disjunctive”**: “expressing an alternative or opposition between the meanings of the words connected <the ~ conjunction *or*>” “expressed by mutually exclusive alternatives joined by *or* <~ pleading>”. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY, 10th Ed., 1998, pp. 43, 817 and 334;

(iv) **“aggregate”**, particularly “monetary aggregate,” means “in the aggregate: considered as a whole: collectively <dividends for the year amounted *in the aggregate* to 25 million dollars>.” Webster’s p. 23 (emphasis in original).

to an elected City official who declares candidacy for **re-election** to his or her **City** office (its rationale might also apply were the City elected official to declare a candidacy for a different City elected office, e.g. Mayor; that issue is not before the Board in this case). But that case does **not** address a City elected official who is running for non-City elected office, with a separately established (under the Illinois Election Code) political committee for that **non-City** office, and who is thereby also subject to additional campaign financing laws (here, [redacted] jurisdiction U's).

3. Fairness. Staff believes that it would be unfair to potential contributors and to elected City officials *qua* candidates for non-City office were § 2-164-040(a) interpreted to prohibit a person subject to the CFO's limitations from making the maximum \$1,500 contribution to an elected City official's committee during a reporting year of his term (or, which amounts to the same thing, to the committee of that same elected official *qua* candidate for elected City office), and, in the same reporting year, from making any contributions up to the maximum amount to that same elected City official (or his or her committee) *qua* candidate for a non-City elected office. This would disadvantage this contributor, and others like it: as far as the CFO is concerned, a competitor of this contributor who is not subject to the CFO's limitations could make allowable (i.e. subject to the County's campaign financing limitations) contributions to [redacted] [O's] opponents' committees, or to her [O] [redacted] committee, but **this contributor could not** make any contributions to [O's Committee] [redacted]. Moreover, it would also disadvantage [A] [redacted] (or any other City [redacted] official running for any non-City elected office), because she would lose the opportunity to receive contributions from persons subject to the CFO's limitations (if they had already contributed \$1,500 to her [A] [redacted] committee in the reporting year), while her opponents who were not sitting City [redacted] officials would not lose this opportunity. This inequitable result cannot be the intention or the correct application of the CFO, and is not dictated by or the logical consequence of any prior Board cases. Rather, the correct interpretation of this provision, in Staff's view, is that any person subject to the CFO's limitations may contribute up to \$1,500 to a City elected official during a reporting year of his term (or, what amounts to the same thing, to that official *qua* candidate for re-election to that same City office), but **also**, during that same reporting year, contribute up to the maximum amount per candidacy (\$1,500) to [a] [redacted] City official who is also seeking election to a non-City office (or to that official's "political fundraising committee" established for the purposes of election to that non-City elected office), provided that these contributions: 1) are made to the appropriately established committees²; and

2. Staff notes that the implication of this conclusion is that contributors to "political fundraising committees" established by a City elected official seeking election to another, non-City elected office, such as Ward Committeeman (or, as the CFO recognizes, to the City elected officials directly), are also limited to \$1,500 per candidacy per reporting year in contributions to any of these committees if the contributors fall into one of the categories of persons whose political contributions are limited. Staff also notes that a 2009 amendment to the Illinois election code, 10 ILCS 5/9-2(b), which applies to local officials, effective January 1, 2011, limits an elected official or a candidate to one political committee for each office he or she holds or seeks. But the question of whether a particular political committee is a "political fundraising committee" for purposes of the § 2-164-040 of the CFO is one the Board must address in each particular instance. See Case Nos. 04059.37CF;- .45 CF, n. 5 (Board first asks whether committee was authorized to solicit or receive contributions on behalf of official's candidacy; if yes, it is the "authorized political committee" for CFO purposes; if no, then D-2's are checked for purposes of the "50% transfer" rule in § 040(c)). That is because "political fundraising committee" is defined in § 2-164-010 and § 2-156-010(u) as any fund or committee or organization that receives, expends or transfers money or anything of value "for the purposes of influencing in any way the outcome of any election." Committees that receive contributions and register and file with the State Board of Elections are not all necessarily "political fundraising committees" by this definition. D-1 filings made with the State Board of Elections by all elected officials and candidates for elected offices established under Illinois law (including City, Ward, State, and County elected offices) will

2) comply with the campaign contribution laws of the relevant non-City jurisdiction

RECOMMENDATION: For the foregoing reasons, Staff recommends that the Board conclude and direct Staff to advise [A] that: 1) consistent with the CFO, both her [A] political committee and her [O] committee may retain their respective \$1,500 contributions from this contributor, and; 2) that, if she is successful in the primary, her [O] Committee may, under the CFO, accept up to an additional \$1,500 from this contributor.

disclose the stated purposes of such committees, and which candidate (or candidates , until 2011), they support. Moreover, Board staff confirmed, with a State Board of Elections staff member and General Counsel, that it can "track" a transfer of monies from, say, an alderman's campaign finance committee to a newly-established "candidacy" committee for a non-City public office, or vice-versa, since, under § 2-164-040(c), contributors to a committee that transfers in excess of 50% of its total receipts for a reporting year to a particular candidate, elected City official or to their authorized political fundraising committees are deemed to have contributed directly to that particular candidate or elected City official.