CONFIDENTIAL
ADVISORY OPINION
October 21, 2015

Re: Case No. 15041.A, Campaign Financing

Dear

INTRODUCTION. This opinion addresses whether labor unions that enter into collective bargaining agreements with the City are subject to the yearly political contribution limitations in the City's campaign financing law.[1] This law limits certain persons or entities to $1,500 in political contributions per year to any candidate for elected City office, or to any of the 53 City elected officials, or to any City official or employee running for any other office. As explained in the body of this opinion, we have determined that, by entering into collective bargaining agreements, labor organizations are not "doing" or "seeking to do business with the City" within the meaning of this law, and thus neither these labor organizations nor their affiliated committees are persons or entities are subject to its yearly campaign contribution limits (though they remain subject to the law's other contribution restrictions).

EXECUTIVE SUMMARY. On July 6, 2015, you sent our Executive Director a request for:

> "[A] formal opinion … [addressing] whether or not unions and their affiliated organizations, including political action committees and education committees, are subject to the campaign contribution limits established in Section 2-156-445 of the Municipal Code of Chicago."

We appreciate this timely and important request. The Board is keenly aware that the issue of money in politics is (and has long been) of intense national interest.[2] The recent upsurge in interest is due in large part to the U.S. Supreme Court's decision in the 2010 C*itizens United* case and that decision's reception in American political culture.[3] *Citizens United* has, in turn, generated interest in re-visiting "pay-to-play" laws restricting political

[1] This City law is §2-156-445 of the Municipal Code of Chicago (the "Municipal Code"). It is part of the City's Governmental Ethics Ordinance (the "Ordinance"), which is chapter 2-156 of the Municipal Code. Through October 31, 2012, it was part of the City's Campaign Financing Ordinance (the "CFO"), formerly chapter 2-164 of the Municipal Code. The CFO is posted on our website at http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/CFO2010.pdf.

[2] It's even the basis for a 2016 Democratic Party presidential campaign. *See* https://lessigforpresident.com/one-mission/. *See also* "Hillary Clinton Announces Campaign Finance Overhaul Plan," New York Times, September 8, 2015.

[3] *See Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). *Citizens United* addressed "independent expenditures." In this case, however, we discuss *direct* political contributions to candidates' official political committees. "Independent expenditures" are, by contrast, contributions made to influence the outcome of elections, but are not made to or in concert with candidates or their official political fundraising committees. They are now often made to so-called "Super PACs" or to media outlets. For background on the history of government regulation of corporate and labor union money in politics going back to the first "Gilded Age" (1890-1907), including both direct contributions and independent expenditures, *see* Robert E. Mutch, *Buying the Vote: A History of Campaign Finance Reform* (Oxford U. Press, 2014).

contributions made directly to candidates or their official committees, and in laws regulating independent expenditures.[4]

We note here that labor unions representing City employees are active campaign contributors in City elections. In the 2015 City election cycle, for example, two (2) of the top five (5) "industries" in total contributions to candidates for elected City office were "public sector labor unions" (ranked #3) and "general trade unions" (ranked #4). They were surpassed only by "uncoded" (the leading category), and securities and investment (the second leading category), but ranked ahead of "big pharma" and health care products (ranked #5).[5]

Your question is whether labor unions or their political or other affiliated committees are subject to the political contribution limits in chapter 2-156-445 of the Municipal Code. That section imposes a contribution limit of $1,500

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[4] "Pay-to-play" is the generally accepted term for the problem of money in politics and elections generally, especially when donated as political contributions by firms in the public finance sector, and for the laws restricting and requiring the reporting of such money. A less prevalent use of the term is as a synonym for general political corruption and graft. For examples of the first, most prevalent sense, that is, "[a] form of influence buying whereby businesses donate money to…political parties and candidates in exchange for favorable consideration in the awarding of public contracts," *see* Jackson, *"Blowing the Whistle on the Pay-to-Play Game: Campaign Financing Reform in New Jersey, 1998-2012,"* p. 1 (2012), www.princeton.edu/successfulsocieties; and Securities and Exchange Commission Rule 206(4)-5, which uses the term to describe the practice of making political contributions in order to influence the choice of advisers to pension funds https://www.sec.gov/rules/final/2010/ia-3043.pdf; http://thehill.com/blogs/congress-blog/politics/317237-little-understood-pay-to-play-laws-pose-big-challenges-for-some-candidates; Cotton, *Pay-to-Play Politics: Informational lobbying and contributional limits when money buys access*, Journal of Public Economics, 2010, http://184.72.107.21/_assets/files/faculty-and-research/academic-departments/eco/eco-working-papers/2010/wp-2010-22-Pay-to-Play-Politics.pdf; Municipal Securities Rulemaking Board ("MSRB") Rule G-37, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-37.aspx; and a blog administered by the Dentons law firm: http://www.paytoplaylawblog.com/. For examples of the term as used in the second, broader sense—synonymous with bribery and graft—see a recent article on a reported federal investigation of loans-for-jobs practices by the Cook County Circuit Court Clerk, http://chicago.suntimes.com/news/7/71/1024780/hiring-pay-play-focuses-dorothy-brown-probe, and a recent book by Dick Simpson. He and Thomas Gradel write:

> "Almost all—26 of 33 convicted aldermen—were guilty of bribery, extortion, conspiracy, or tax fraud involving schemes to extract bribes from builders, developers, or business owners. That has been the main pattern of aldermanic corruption going back to the days of the famous Council of the Gray Wolves. Businesspeople often have been willing accomplices and abettors. The bribe payers either were told or assumed that payment was necessary to receive zoning changes, building permits, or similar city action. Usually the tax-evasion or tax-fraud charges on which they were technically convicted stemmed from the failure to report income from these bribes. In current parlance, such bribery-extortion schemes are labeled "pay-to-play," but it's an old game. Sometimes an envelope stuffed with cash is handed directly to an alderman, and sometimes it's picked up by an aide. These days, the payment often comes in the form of a campaign contribution. But regardless of how payment is made, there usually are no willing witnesses and no hard evidence that the payment was made in exchange for specific official actions. The bribe payer and the recipient have reasons to keep quiet and to hide any evidence of the transaction. It is extremely difficult to prove the 'quid pro quo.'" *See* Gradel and Simpson, *Corrupt Illinois: Patronage, Cronyism and Criminality*, chapter 4 (U. of Illinois Press, 2015).

In this opinion, we use the term in the first sense. As to the second, broad sense, we note here, and explain in footnote 9, *infra*, that this opinion is ***not*** intended to imply or hold that labor organizations, etc. are exempt from the Ordinance's other political contribution-related prohibitions, such as the rule against giving contributions or other valuable things to elected City officials or candidates for elected City office based on a mutual understanding that the recipient's judgments or actions as an elected City official would be influenced thereby, nor is it intended in any way to limit investigations of complaints involving such conduct.

[5] The Illinois State Board Elections is the official recorder of political contributions made to candidates for non-federal elected office in Illinois. *See* https://www.elections.il.gov/campaigndisclosure/contributionssearchbyallcontributions.aspx. Several fine privately run databases also track political contributions, such as http://www.illinoissunshine.org; and http://followthemoney.org/election-overview?s=IL-CHI&y= (this particular database shows that, for the 2015 Consolidated Municipal elections in Chicago, six (6) of the top ten contributors in the aggregate were labor unions: in order, they were: the SEIU Illinois State Council, the NEA (and its affiliates), the CFT Local 1, the United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United State and Canada, and the Chicagoland Operators Joint Labor Management); and open secrets.org: http://www.opensecrets.org/industries/indus.php?ind=p. For commentary, s*ee* the Wall Street Journal: http://www.wsj.com/articles/SB10001424052702304782404577488584031850026, and the Chicago Reporter: http://chicagoreporter.com/unions-and-pacs-battle-it-out-in-aldermanic-race/. One could do a much "deeper dive" into these databases to see which unions have given how much money to particular elected City officials and challengers who ran against them. Labor organizations, and, to a greater extent, for-profit corporations, are both criticized from various ends of the political ideological spectrum for their contributions. *See* Kennedy and McElwee, *Do Corporations & Unions Face the Same Rules for Political Spending?* Demos, July 23, 2014, http://www.demos.org/publication/do-corporations-unions-face-same; Rugy, *Fourteen of America's 25 Biggest Campaign Donors Are Unions*, National Review, March 5, 2014, http://www.nationalreveiew.com/node/372630/print; Edsall, "Can Anything Be Done About All the Money In Politics?" New York Times, September 16, 2015: http://www.nytimes.com/2015/09/16/opinion/can-anything-be-done-about-all-the-money-in-politics.html?smid=tw-share&_r=0

per contributor per year per elected official or candidate (or to their authorized committees), but this limit is imposed only on certain persons. To answer your question, we must determine whether unions fall into the category of those persons. We restate the precise legal question here:

> Are labor unions "doing business" or "seeking to do business" with the City under Article VI of chapter 2-156 of the Municipal Code?

If the answer to either is *yes*, then labor unions (and their political committees) *are* subject to the Ordinance's $1,500 limitation. If the answer to both is *no*, then labor unions (etc.) are *not*.

Section 2-156-445, entitled "Limitation of Contributions to Candidates and Elected Officials," provides:

> (a) No person who has done business with the city, or with the Chicago Transit Authority, Board of Education, Chicago Park District, Chicago City Colleges, or Metropolitan Pier and Exposition Authority within the preceding four reporting years or is seeking to do business with the city, or with any of the other aforementioned entities, and no lobbyist registered with the board of ethics 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. For purposes of this section all contributions to a candidate's authorized political committees shall be considered contributions to the candidate. A reporting year shall be from January 1st to December 31st. For purposes of this subsection only "seeking to do business" means: (i) the definition set forth in Section 2-156-010(x); and (ii) any matter that was pending before the city council or any city council committee in the six months prior to the date of the contribution if that matter involved the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification. [emphasis added]
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> (b) 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 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).
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> (c) For purposes of subsection (a) above, a contribution to (i) any political fund-raising committee of a candidate for city office or elected official; or (ii) any political fundraising committee which, during the reporting year in which the contribution is to be made, has itself made contributions or given financial support in excess of 50 percent of that committee's total receipts for the reporting year to a particular candidate for city office, elected official, or the authorized fundraising committee of that candidate or elected official, shall be considered a contribution to that candidate or elected official.
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> (d) Any person who solicits, accepts, offers or makes a financial contribution that violates the limits set forth in this section shall be subject to the penalty provided in Article VII of this Chapter; provided, however, such person shall not be deemed in violation of this section if such person returns or requests in writing the return of such financial contribution within 10 calendar days of the recipient's or contributor's knowledge of the violation.

To be subject to the $1,500 contribution limitations, then, any person or entity, including a labor union, must be "doing business" or "seeking to do business" with the City.[6] These terms are defined in §2-156-010(h) and (x), respectively (note: there is an additional meaning of the term "seeking to do business" in §2-156-445(a)(ii), above):

> "Doing business" means: "any one or any combination of sales, purchases, leases or contracts to, from or with the City or any City agency in an amount in excess of $10,000.00 in any 12 consecutive months.
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> "Seeking to do business" means: "(1) taking any action within the past six months to obtain a contract or business from the city when, if such action were successful, it would result in the person's doing business with the city; and (2) the contract or business sought has not been awarded to any person.

We will explain the significance of this below, but here we note that the definition of "doing business" uses the words "sales," "purchases," "leases," and "contracts."[7] The definition of "seeking to do business" incorporates these, and also includes various types of other matters presented to City Council, such as the award of loan or grant funds, zoning matters, bond inducement ordinances, concession agreements, or the establishment of Class 6(b) Cook County property tax classifications.

A labor union's relationship with the City is established by contract, that is, by a collective bargaining agreement ("CBA"). A CBA is not a "lease," a "purchase," or a "sale of goods or services" to or from the City. Neither is it a zoning matter, concession agreement, bond inducement ordinance, nor any of the other types of transactions listed in the definition of "seeking to do business." A CBA is an agreement, a contract, of course, but the relevant question here is not whether a CBA is a "contract," but whether, by entering into a CBA with the City, a labor union is "doing" or "seeking to do" business" within the meaning of §2-156-445.

We determine that it is *not*,[8] for the following reasons:

First, our research shows that the City Council has not considered CBAs to be leases, purchases, or sales of goods or services to or from the City. In fact, in 2007, several aldermen introduced to the City Council an amendment to this section (actually, to its predecessor, §2-164-040(a) of the CFO) that would have added CBAs (and labor unions) into the category of "doing business," thereby subjecting labor unions to the law's political contribution limitations. The amendment was never enacted into law. Moreover, §2-145-445, read in its entirety, covers organizations with shareholders, employees, directors, officers and subsidiaries. Labor unions do not have these

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[6] "Registered lobbyists" and persons who are doing or have done business with the City's named "sister agencies" are *also* subject to this limitation. However, this opinion will not discuss either of these categories in any appreciable detail. That is because: (i) these unions have similar CBAs with the "sister agencies," so that, for purposes of the Ordinance, if a labor union is not doing business with the City, it also is not doing business with any sister agency; and (ii) labor unions themselves do not register as lobbyists (lobbyists can be only human beings, not bodies corporate or organizational), though unions may retain or employ individual lobbyists. If *that* is the case, then these *individual* lobbyists would themselves be subject to the Ordinance's contribution limitations. But that is not your question.

[7] "Sale" is defined as "the transfer of property or title for a price"; "purchase" as "the act or an instance of buying"; "lease" as "a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent"; "consideration" as "something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promise, or that which motivates a person to do something, especially to engage in a legal act"; and "contract" as "an agreement between two or more parties creating obligations that is enforceable or otherwise recognizable at law." *See* Black's Law Dictionary, 8th ed.

[8] In Case Nos. 14035.CFR.1, *et seq*., pursuant to §2-156-380(n-1) of the Ordinance, we referred to the City's two inspectors general more than 1,200 potential violations of the City's "pay-to-play" law on December 18, 2014, and in Case Nos. 15048.CFR, *et seq.*, referred more than 1,600 today, based on our review of 2014 contributions. Some of these referrals were based on political contributions by labor unions to elected City officials or their authorized political committees that exceeded $1,500 in 2013. These referrals are *not* meant to and do *not* imply that labor unions violated the Ordinance. Rather, as we explained at the time we made these referrals, this Board created a full, unedited list of *all* persons who contributed more than $1,500 to any single candidate or elected City official in the relevant time period, and we made no attempt to cull from that list persons we believe likely did not violate the Ordinance (to have done so would have constituted an investigation, and this Board is not authorized to conduct investigations). We therefore advise both inspectors general that, to the extent that labor unions are on that list (and will be on future referral lists for this purpose), they are not subject to the Ordinance's contribution limitations by virtue of having CBAs or associated side-letters or addenda with the City. *See* http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Press_Release_FINAL.pdf

(though they do have officers). And, we read the Ordinance's definition of "seeking to do business" as including a few additional kinds of regulatory transactions (such as zoning). We do *not* read these definitions to include contracts that set wages and working conditions of employees represented by organized labor unions. Hence, we conclude, labor unions were never intended to be subject to these contribution limitations.[9] Chicago's political contribution limitations law (specifically, the definitions of "doing" and "seeking to do" business") covers *only* those business/buyer/seller relationships with the City that are listed.

Second, our review of statutory and case law and scholarly commentary nationwide shows that this conclusion is consistent both with the policies undergirding "pay-to-play" laws generally, and with the way other jurisdictions have written and administered their own laws. More specifically, our review of the history of these laws (such as Chicago's), indicates that they are intended to curtail the influence that large sums of money possessed and donated to candidates by businesses can have on the political process, or with respect to government contracting, regulation-making, or in enacting "business-friendly" policies.[10] Our review also shows that, by contrast, CBAs are *not* the types of contracts with government authorities that give rise to such "pay-to-play" concerns, even though labor unions do enter into contracts with government authorities.[11] CBAs between labor unions and government authorities are not seen as the kinds of contracts that fall within the ambit of "pay-to-play" laws that apply to government contractors, and this includes Chicago's law.

We do recognize, as have other jurisdictions, that the "pay-to-play" problem (in either its more or less prevalent senses) could still occur with respect to labor unions or their affiliated committees. For this reason, federal and some state laws, including Illinois's, *do* limit political contributions from labor unions. However, those laws *specifically list labor unions as restricted sources of political contributions in their own right, in their own category, separate from and in addition to* the standard "procurement" category of corporate or business buyers, sellers or other persons seeking zoning permits, etc. Unlike those statutes, though, Chicago's does *not* list labor unions. In fact, *other* state, county and city laws—like Chicago's—restrict campaign contributions specifically by government contractors, including buyers, sellers and others, like those seeking zoning permits. But, none of *these* jurisdictions includes or interprets its laws to include labor unions as members of this category of persons subject to political contribution limitations. In fact, this is consistent with the way this Board has long informally interpreted the Ordinance and its predecessor, the CFO.

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[9] It is important to note here that we are *not* deciding or saying that labor organizations, unions or their affiliated committees are *not* subject to the Ordinance with respect to political contributions at all. Labor unions, etc. *remain* subject to the prohibitions on making: (i) any cash "contribution," in any amount, or any other contribution worth more than $50 in a year, to a City elected official or candidate for elected City office, unless these "contributions" are reported as political contributions to the Illinois State Board of Elections, as required by law; and (ii) any "contribution," or anything of value for that matter, if made based on a mutual understanding that the recipient candidate's or official's judgment would be influenced. These prohibitions are now found in §2-156-142-(a), -(d)(3), and -(e) of the Ordinance. They were formerly found in §2-164-020 of the CFO, although the prohibitions have become more stringent as a result of Mayor Emanuel's overhaul of the two ordinances—now, any "contribution" in cash or that is worth more than $50 from a single source in a calendar year constitutes a violation of the Ordinance *unless* it is recorded as a political contribution, in accordance with the Illinois Election Code.

[10] Mutch, *Buying the Vote*, *supra*, note 3, at 140: "The point of regulating campaign funds, however, had always been to protect the majority of citizens against the political advantage of wealth at the center." The difference in focus between attempting to curb "undue influence," "the corrupting influence of large contributions" versus attempting to curb *quid pro quo* corruption as the basis for making certain contributions, or contributions above a certain amount, illegal, is fascinating, but beyond the scope of this opinion. Mutch also points out that the Supreme Court, in *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982), wrote that Congress had passed the Tillman and Taft-Hartley acts to prevent corporations from corrupting candidates, and that, by singling out corporations for amassing their wealth through "special advantages," the Court was implying, no doubt unintentionally, that Congress had less justification for regulating unions. *Id.* at 290. He also argues that it was not until 1947 that "conservatives" in Congress attempted to restrict union contributions. To do so, they relied on that argument that, like corporations, "unions were simply aggregations of wealth … equally capable of exerting a disproportionate influence on elections and so had to be treated equally under campaign finance law." *Id*. at 183.

[11] *See Dallman v. Ritter*, 225 P.3d 610 (Colorado 2010). In that case, the Colorado Supreme Court determined that unions were not subject to a ban on making campaign contributions that was imposed on government contractors. It held that: "*The... attributes [of a collective bargaining agreement] make the potential of pay-to-play corruption in a collective bargaining agreement exceedingly remote, so the government lacks a sufficiently important interest to justify this sort of heavy-handed regulation." See also Communications Workers of America, AFL-CIO v. Christie*, 413 N.J. Super 229, 994 A.2d 545, 188 L.R.R.M. (BNA) 2664 (New Jersey Appellate Court 2010); and *Ognibene v. Parkes*, 671 F.3d 174 (2nd Cir. 2011).

Finally, we state here that we were not asked to address and have not addressed whether City law *should* subject labor unions (or their affiliated committees) to its political contribution limits. Rather, the scope of this advisory opinion is simply to advise City elected officials and candidates for elected office and their campaign staff, City employees, campaign financing investigators, and labor union members and representatives that, as enacted, City ordinance does not subject labor unions to the $1,500 yearly political contribution limitations per candidate, elected official or their authorized committees. Whether City law *ought* to be amended to limit political contributions from labor unions, in a way stricter than what is already imposed by Illinois law, is a different matter, one that entails research and policy recommendations that are beyond the scope of this opinion.

RELEVANT FACTS AND LAWS, AND ANALYSIS.

The CBAs. The City has entered into 45 collective bargaining agreements that are currently in effect. Rather than review each one, Board legal staff reviewed three major, representative agreements and their "side letters" in depth: (1) the agreement between the City and the American Federation of State, County and Municipal Employees Council 31, effective July 1, 2012-June 30, 2017 (the "AFSCME" contract); (2) the agreement between the City's Department of Police and the Fraternal Order of Police Chicago Lodge No. 7, effective July 1, 2012-June 30, 2017 (the "FOP" contract); and (3) the agreement between the City and the Northeast Illinois District Council United Brotherhood of Carpenters and Joiners of America (AFL-CIO), effective July 1, 2007-June 30, 2017 (the "Carpenters" contract).[12] Side letters, as you are aware, are attachments or exhibits to CBAs that typically modify them. An example is AFSCME Side Letter 41, which among other things, amends the City's annual payment to the AFSCME Personal Support Program, per member.[13]

Attorneys from the City's Law Department advised us that: (i) side letters to CBAs do not provide any benefits to the union organization itself or to the employer (the City), but only to the union's members; (ii) these benefits are provided under the Illinois Public Labor Relations Act, 5 ILCS 315/2, *et seq.*, and are subject to this state statute; (iii) these CBAs do not involve the purchase, sale or lease of goods, services or anything else to or from the City, although a labor union could enter into a *separate* contract with the City for such purchases or sales;[14] (iv) unions

[12] On June 29, 2015, you asked about "side letters," in an email to Board staff, advising us that these were attachments to CBAs between the State of Illinois (and its departments) and its employees' labor unions. Your question was whether a side letter might itself cause a labor union to be "doing business with" the City. Upon receiving your formal request for this opinion, Board staff then asked whether you were aware of such side letters or similar documents involving the City and its employees' labor unions. In response, you referred our staff to the City's website: http://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html. This link lists the 45 CBAs to which the City is a signatory. Of the three CBAs we reviewed: (1) the 249 page *AFSCME* agreement, with Articles 1–28, an appendix with exhibits and attachments, and 42 side letters; 2) the 158 page *FOP* agreement, with Articles 1–33, 22 appendices, and various attachments without title, Memoranda or Letters of Understanding, and Letters; and (3) the 130 page *Carpenters* agreement, with Articles 1–21; two appendices, and a Memorandum of Understanding, a Trust Agreement and one (1) side letter.

[13] In the *AFSCME* Articles, there were 11 instances of payment, and four (4) in the attachments. Five (5) of these involved payments to or from the City and the union (two (2) possible reimbursements for attorneys' fees, two (2) payments for programs after deducting those monies from employees' paychecks, and one (1) other unrelated payment. The remaining ten (10) were for payments to third parties (*e.g.*, arbitrators or mediators, a health trust fund, and employee reimbursements). In the *FOP* Articles, there were six (6) instances of payment, and in the attachments there were also six (6). Of these, three (3) involved payments or possible payments to or from the City and the union (one (1) for possible court fees, one (1) for a vocational training program for officers opting to take advantage of it, one (1) for health fairs; and nine (9) involving payments to third parties (*e.g.*, arbitrators or mediators, employee reimbursement). In the *Carpenters* Articles, there was only one (1) instance of payment to the Health Trust. However, City payments made pursuant to a side letter do not alter the CBA's character; rather, side letters *amend* or *modify* CBAs. They have no independent existence as enforceable contracts outside the CBAs themselves. *See* Kaboolian and Sutherland, *Win-Win Labor-Management Collaboration in Education Breakthrough Practices to Benefit Students, Teachers and Administrators* (2005); *United Steelworkers of America, AFL-CIO, CLC, et al. v. Cooper Tire & Rubber Company et al.*, 474 F.3d 271 (6th Cir. 2007). Accordingly, even a City payment made pursuant to a side letter is part and parcel of the underlying CBA itself, and does not transform the CBA into a procurement-type contract. *See also* 7 Americans for Effective Law Enforcement Monthly Law Journal 201, 204 (2008) (only if a side "agreement" is "*dissimilar* to the subject of the underlying CBA, courts may assume that the parties must have intended to create a wholly new and self-contained set of contractual obligations.") (emphasis supplied).

[14] It is important that we emphasize here that, should a labor union enter into a contract with the City for more than $10,000, say, to purchase a parcel of City-owned property, it w*ould* thereby be doing business with the City and *would* be subject to the Ordinance's $1,500 political contribution limitations. Moreover, in such a circumstance, contributions made by its affiliated political committees might be aggregated to its own contributions to a particular candidate, elected official, or committee, in accordance with the "control test" we have established for PACs, this test being based on the one established by the Federal Election Commission. *See* Case No. 95058.A.

do not file Economic Disclosure Statements ("EDS")[15] because CBAs are not considered "business/buyer/seller contracts, capable of being addressed in a request for 'City action,'" but instead are contracts arising under and subject to the Labor Act; and (v) CBAs are, however, presented to City Council for ratification. They also explained that union committees are considered as part of the union itself.

A senior official from the City's Department of Procurement Services ("DPS") further confirmed that, to his knowledge, there are no instances of labor organizations entering into any contracts with the City, other than CBAs.[16] He advised Board staff that the EDS is required for contracts or other "city action," such as regulatory matters like zoning.

The Governmental Ethics and Campaign Financing Ordinances: the Drafters' Intent. The City's CFO was first enacted in 1987 as chapter 2-164 of the Municipal Code, at the same time as the Ethics Ordinance. The CFO was amended several times, notably in 1989, 1997 and 2000. Then, in November 2012, as part of Mayor Emanuel's overhaul of these laws, the CFO's provisions were incorporated into Article VI of the Governmental Ethics Ordinance. Chapter 2-164 no longer exists. Throughout these 28 years, the persons subject to the $1,500 per candidate/committee/elected City official/per year have remained largely the same: persons who are "doing" or who "have done business" with the City (the named "sister agencies" were added in 1997), persons seeking to do business with the City, and registered lobbyists (lobbyists were added in 2000). The law, however, has never listed labor organizations or unions.

Although we found no *direct* evidence as to the intent of the drafters or the City Council regarding whether labor unions were to be treated as persons "doing [or seeking to do] business with the City" for purposes of these contribution limits, we have found two pieces of circumstantial evidence that shed light on the issue.

First, in March 1987, soon after the CFO's enactment, at Mayor Washington's request, Special Assistant Corporation Counsel Thomas Sullivan issued his "Proposals For Reform" (the "Sullivan Report"). The Sullivan Report recommended that the CFO "be amended to 'define the 'persons' prohibited from making contributions in excess of $1,500 to include business entities and their subsidiaries, parent companies, otherwise related companies, and employees" who are reimbursed. That is, its recommendation to strengthen the then-new CFO was to close perceived "loopholes" that *businesses* might exploit through their parent and subsidiary companies and employees. There was no mention of labor unions in the Sullivan Report.[17] Labor unions have no parents or subsidiaries.
Second, in April 2007, three aldermen introduced a bill to amend the two ordinances. But, it was never brought to a vote before the Council Rules & Ethics Committee or the full Council. Its purpose was:

> " … to amend Title 2, Chapter 156, Section 010 which would further define the term 'Doing Business' to include any collective bargaining agreement in place within the preceding four … years or in the process of being negotiated or renegotiated with the City … and the term 'Union' to be included [sic] in all of a union's local and national affiliates, state councils and political fund-raising committees, and further to amend Title 2, Chapter 2-164 … by inclusion of additional provisions concerning limitation of contributions to candidates and elected officials and sanctions and judicial penalties for violations thereof."[18]

[15] The City requires that persons seeking procurement or regulatory matters with or from it file this EDS. *See* http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/economic_disclosurestatementseds.html; s*ee also* §2-154-010 of the Municipal Code.

[16] Pursuant to the authority granted it by §§2-92-410, -412 and -405 of the Municipal Code, DPS has issued a Local Business/Manufacturer Bid Incentive Policy Statement that defines "contract" with the City. This definition *explicitly* excludes "a CBA." *See* "Chicago DPS Policy," revised 4/13/15.

[17] *See* The Sullivan Report, Proposal 21. We note here that, in her 1975 campaign, Mayor Byrne raised about $10 million in political contributions, and the principal source was government contractors. *See* Manikas, *Campaign Finance, Public Contracts and Equal Protection*, 59 Chi-Kent. L. Rev. 817 (1983), p. 859. However, we do not infer any direct causal relationship between this fact and either the Sullivan Report or the enactment of the original version of the CFO.

[18] *See* City Council Journal Proceedings, 4/11/2007 at 103894; Document no. PO2007-3425.

The Board takes both of these occurrences as evidence from which it can reasonably infer that the City Council had not intended to include labor unions (or their political action or other committees) in the rubric of "doing" or "seeking to do business" with the City, nor to subject unions to the Ordinance's political contribution limitations.

The Board has, of course, not previously issued a formal opinion addressing this issue. Union officials requested such an opinion in 1995, but later withdrew it. However, the Board and its staff have, in practice, always treated unions as entities that are *not* doing business or seeking to do business with the City by virtue of their CBAs.

Other Jurisdictions' Campaign Financing Laws. The Board has also found it instructive to examine the history of "pay-to-play" laws generally, as well as how other jurisdictions (federal, state, and other large cities) treat labor unions' political contributions. We will summarize our staff's research in the paragraphs that follow. In brief, our review of other "pay-to-play" laws at all levels shows that:

(i) historically, the primary foci of "pay-to-play" laws have been restricting the flow of money from business corporations into the political process, and reforming the way that businesses that buy and sell goods to or from or are regulated by government entities participate in the political process, *not* in reforming the way organized labor participates in the political process;

(ii) consistently, in those jurisdictions that do limit political contributions from labor unions, labor unions are specifically named as persons subject to contribution limits, in a category separate from and in addition to the category of persons doing business with the government; and

(iii) also consistently, in jurisdictions, like Chicago, that limit political contributions from persons "doing business" within the jurisdiction or with the government, labor unions have not been treated as belonging to this category, but rather, this terminology means and has been interpreted to mean persons or businesses engaged in the government procurement process or who seek permits or other regulatory actions from the government.

The Historical Focus of Laws Limiting Political Contributions. Legal historian Robert Mutch writes that:

"Keeping corporate money out of elections and preventing the inequality of wealth from undermining political equality among individual citizens have been the primary goals of campaign finance reform ever since [the Tillman Act of 1907]… The central issues of reform have also changed very little over all those years. From the late nineteenth to the early twenty-first century, the debate has always been about whether we should regard corporations as fellow citizens or keep them out of the democratic community."[19]

[19] Mutch, *Buying the Vote, supra, notes 4 and 10* at pp. 1, 11 (2014). *See also* Mendrala, *Citizens Divided by Citizens United: How the Recent Supreme Court Decision Affects Small Business in Politics*, 71 Ohio State Entrepreneurial Bus. L.J. 253 (2012): "Political influence by corporations has been 'long enduring.' In 1896, with the help of direct contributions from corporate treasuries, presidential candidate William McKinley outspent his Democrat-Populist opponent by nearly $15.5 million. In 1905, Theodore Roosevelt called upon Congress to curb the effect of big corporate money on elections. Congress continues to attempt to establish helpful laws [such as the Bipartisan Campaign Reform Act of 2002, ("McCain-Feingold"), 2 U.S.C. §441b; the Taft-Harley Act, 29 U.S.C. §186; and the Tillman Act, 34 Stat. 864]. *Citizens United* marked a great change in the campaign finance rules applicable to corporations by overturning precedent set a mere seven years earlier. In the name of free speech for all, the Supreme Court removed a sixty-three year old ban on corporate independent expenditures and reintroduced the United States to corporation-dominated political campaigns. The Tillman Act of 1907 prohibited corporate expenditures in connection with federal elections. In 1947, the Taft-Hartley Act prohibited independent expenditures by corporations and labor organizations, but allowed corporations (and labor organizations) to spend from a segregated account, or PAC. In 1971, the Federal Election Campaign Act required the reporting of contributions and formalized PACs. In 2002, McCain-Feingold further restricted outside spending and banned corporate and union spending from the organization's general treasury on electioneering communications. Notwithstanding court restrictions prior to *Citizens United*, the potential for election manipulation by large corporate spenders caused the ban on corporate independent expenditures to be generally upheld. *Citizens United* still upheld the ban on corporate general treasury funding. Now, there are Super PACs in which candidates "may not be spending the money raised by Super PACs themselves, but they are clearly receiving the benefit of corporations' new freedom to spend politically from their general treasuries…" [internal citations omitted]

Accordingly, federal laws that specifically banned labor unions from contributing directly to political campaigns were not passed until after World War II, in the Taft-Hartley Act, while federal laws enacting bans on corporate contributions date back to 1907.

In addition to keeping corporate money out of politics—a concern that does not involve unions—there is another concern, which is to ensure that government procurement processes are fair and competitive. Campaign contributions to elected officials by sellers and would-be sellers of goods and services to government are thought to degrade this process. "Throughout federal, state and local jurisdictions, it is widely believed that making campaign contributions to those responsible for issuing government contracts is a key factor in influencing who wins those contracts."[20]

Our own State's procurement laws, enacted in the past seven (7) years, demonstrate this concern as well. The basic policy undergirding Illinois's Procurement Code is that competitive bidding and economical procurement practices shall apply to all purchases and contracts by or with any State agency.[21] Since 2009, this Code has included a "pay-to-play" provision, to which labor unions are *not* subject.[22]

Modern courts have also recognized this focus. In *Communications Workers of America, AFL-CIO v. Christie*, 413 N.J. Super 229, 994 A.2d 545 (Superior Court, App. Div., 2010) ("*Christie*"), the New Jersey Appellate court held the Governor's attempt to extend the state's "pay-to-play" laws to labor unions via an executive order that would have modified the term "business entity" to include unions violated the state constitution. The court noted that:

> "[A] series of statues and executive orders have focused upon restricting the actual or perceived impact of political campaign contributions upon governmental procurement decisions… Consequently, pay-to-play provisions (perhaps more accurately described as '*anti*-pay-to-play' provisions) typically 'prohibit the participation in the public contracting field of campaign contributors whose donations exceed certain minimum levels.'"[23] [emphasis in original]

The court also stressed that the thread running through these enactments was "the nomenclature of procurement and of public bidding… [and] … [prior pay-to-play enactments] make [no] references to labor unions, labor organizations, or collective bargaining."[24] "The[se] measures," the court concluded, "are plainly targeted against undue influence by political contributors within the domain that is conventionally known as the procurement of government contracts."[25]

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[20] Holman and Lewis, *Pay-to-Play Laws in Government Contracting and the Scandals that Created Them*, Public Citizen, June 26, 2012, p. 1, http://www.citizen.org/documents/wagner-case-record.pdf

[21] 30 ILCS 500/5-1, *et seq*.

[22] Under the Procurement Code, any business entity wishing to bid on a contract with the State or any of its agencies or departments must register with the State Board of Elections. Business entities that are awarded such contracts are then prohibited from making contributions to the political committees of the "officeholder responsible for awarding the contract" or any other declared candidate for that office. CBAs are not considered "contracts" for purposes of this law and labor unions are explicitly exempt from this provision. Labor organizations are limited in the campaign communications they can make, however. See 30 ILCS 500/5-1, *et seq*.; 5 ILCS 5/9-35(a); and 26 Ill. Admin. Code, 100.180, 100.185.

[23] Here the court cited a 2008 New Jersey appellate case, *In re Earle Asphalt Co.* 401 N.J. Super. 310, 321, 950 A.2d 918 (App. Div. 2008), *aff'd*, 198 N.J. 143, 966 A.2d 460 (2009). It wrote that there is "strong governmental interest in limiting political contributions by businesses that contract with the State … [W]hen a person or business interest makes or solicits major contributions to obtain a contract awarded by a government agency or independent authority, this constitutes a violation of the public's trust in government…and it is essential that the public have trust in the processes by which taxpayers dollars are spent."

[24] *Christie*, p. 243.

[25] *Christie*, p. 243. The court stated, "In construing the words of a statute or other legal provision, we routinely apply the ordinary meaning ascribed to those words. The widely-accepted understanding of the term 'procurement' does not encompass CBA between a public employer and a labor union representing public workers… Moreover, labor unions, unlike vendors of goods and services selected under the public bidding laws, never have to be selected based upon considerations of merit or cost." [internal citations omitted]

Moreover, the court discussed a key policy difference between government contracts with suppliers of goods and services and those with labor unions. The government may choose the former from competitive bids (or, as an example of the problem, through a process of no-bidding). But, the process is very different with respect to negotiations with labor representatives and matters of collective bargaining.[26] Once a representative is chosen for negotiating workers, "the State is required to negotiate in good faith with that representative."[27] The court wrote:

> "The negotiations are bilateral interactions between the employer and the union, and, unlike *many contracts for goods and services*, there can be no 'competitive bidding' or participation of third party competitors. When the terms of an agreement cannot be reached, issues may be referred to an arbitrator for resolution."[28]

Other Jurisdictions' Statutory Treatment of Political Contributions by Labor Unions. Our research also shows that all 50 states, the federal government, and various counties and other large cities limit political contributions from certain persons or entities, and many (unlike Chicago) specifically list and thereby include labor organizations as subject to these limits.[29] Seventeen (17) states prohibit direct contributions from union treasuries or dues.[30] The key point here is that all these statutes that subject labor organizations to these contributions limits include them *separately from and in addition to contractors or persons doing business with the government*.

Illinois. The Illinois Election Code, 10 ILCS 5/9-8.5(b) and (d), *specifically* lists "labor organizations" as one of the entities subject to the contribution limits.[31] Also, but distinctively and separately named in this statute, are individuals, corporations, and associations, which are all subject to limitations.[32] These limits apply to contributions to all candidates for state, municipal or county office in Illinois, including for the 53 elected City offices. *It is important that we stress here that this means that labor unions are subject to these State law limitations, even though we have determined that labor unions are not subject to the contribution limits in the City's campaign financing law by virtue of their CBAs.*

In addition to Illinois, 11 other states, two (2) counties (including Cook County) and several other major cities restrict or prohibit political contributions by government contractors or persons doing business with the government entity. But, none of *these* statutes mention or include labor unions in *this* prohibition (where these jurisdictions' laws do include labor unions, they are included in their own category).[33]

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[26] *Christie*, p. 252.

[27] *Christie*, p. 262, *citing* N.J.S.A 34:13A-5.3, *cf.* Illinois Labor Act.

[28] *Christie*, p. 264, *citing Mount Holly Twp. Bd. of Educ. v. Mounty Holly Twp. Educ. Ass'n*, 199 N.J. 319, 327-29, 972 A.2d 387 (2009); N.J.S.A. 34:13A-7.

[29] See table assembled by the National Conference of State Legislatures, dated May 28, 2015, entitled "State Limits on Contributions to Candidates, 2015-2016 Election Cycle: http://www.ncsl.org/Portals/1/documents/legismgt/elect/ContributionLimitstoCandidates2015-2016.pdf

[30] These states are Alaska, Arizona, Connecticut, Michigan, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Washington (prohibited only from unions that have fewer than 10 members residing in-state), Wisconsin and Wyoming. *Id*.

[31] In 2015, these limits are $10,800 for individuals and $20,600 for unions, per candidate, per election cycle; they will remain at these levels until at least January 1, 2017.

[32] Note that the Illinois Election Code also provides a savings clause, which also separately and distinctively mentions "corporations, associations and labor organizations established by or pursuant to federal law." *See* 10 ILCS 5/9-8.5(l).

[33] Holman and Lewis, fn. 20, *supra*, Appendix B. These are California, Hawaii, Indiana, Louisiana, New Mexico, Nebraska, New Jersey, Ohio, South Carolina, Virginia, and West Virginia. None mention unions or CBAs. *See also* Cook County, Illinois – Code of Ordinances, Part 1, Chapter 2, Article VII, Division 2, Subdivision II §2-585. *See also* Salt Lake County, Utah, Municipal Code, Revised Campaign Financing Disclosure §2.72A.104. That section limits contribution by county contractors with the county. A contractor may be a person, business, corporation or other entity, *Id.* §2.72A.101, including a labor organization. However**,** a "contractor" must have an agreement with the county that pertains to "the acquisition or management of goods, services, or property, or the disposal of surplus goods, whether personal, real, or intangible…" The list does not include CBAs.

Federal Government. In general, under federal campaign financing law "corporations and unions may not themselves make contributions or expenditures to federal candidates, political parties, and political committees that [in turn] make contributions in connection with federal elections."[34] However, corporations and unions may establish, administer and solicit funds for their own PACs, which can then make such contributions. Federal law also prohibits persons or entities that sign or negotiate for contracts to furnish personal services, material, supplies or equipment, or sell realty to the United States for payment from Congress, from making campaign political contributions, with the same exceptions for PACs that apply to corporations and labor unions.[35] Most significantly, in federal law, labor unions are explicitly mentioned as subject to the contribution prohibitions, *in their own right, separate from and in addition to contractors.*[36]

As stated above, Board staff also examined other major cities' laws. Each treats labor unions separately from persons or business entities that contract with the government or that have regulatory matters with it. For example:

New York City. New York City's campaign finance law imposes contribution limits upon labor unions, but includes them in their own category, separate from persons with "business dealings with the City."[37] Under this law, a person who has "business dealings with the city" may not make a campaign contribution that exceeds stated limits. "Business dealings with the city," as defined, includes: (i) contracts for the procurement of goods, services or construction; (ii) contracts for acquisition or disposition of real property; (iii) applications for regulatory approvals, including zoning; (iv) concession agreements; (v) grants; (vi) economic development agreements; or (vii) contracts for the investment of pension funds.[38] It does *not* include collective bargaining agreements, and labor organizations are defined separately.[39] As in federal and Illinois law, in New York City law, labor organizations are subject to these limits in their own right, separately and apart from persons with business dealings with the City.[40]

Philadelphia. Philadelphia's campaign financing law and procurement law do not mention labor organizations.[41] The procurement law requires that certain government contractors that have made excessive contributions are not

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[34] Potter and Sanderson, *Political Activity, Lobbying Laws and Gift Rules Guide* (3rd ed., 2014-15), §12:5, p. 345, *citing* 2 U.S.C.A. §441b(a) "the genesis for PACs ('a legal entity which is established by an interest group to raise and spend money in an attempt to influence elections') was the federal "prohibitions on the spending of general treasury funds for political contributions by unions and corporations."

[35] *See* 2 U.S.C. §441c. This prohibition applies only to federal contracts. It does not prohibit donations from personal assets. 11 C.F.R. §115.2.

[36] *See* 2 U.S.C. §441b(a): "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election … or for any candidate, political committee, or other person knowingly to accept or receive [such] contribution … or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section."

[37] *See* New York City Charter Chapter 46 §§1051 and 1052; New York City Administrative Code, Title 3, Chapter 7; Campaign Finance Act, Title 3, Chapter 7, §3-701.

[38] This Board addressed the applicability of the City's "pay-to-play" laws to investment advisers (and their executives) who seek contracts with the City's four pension funds to invest these funds' monies. Because these pension funds are not agencies of the City of Chicago, we determined that these advisers (and their executives) are not subject to the political contribution restrictions in City law. *See* Case No. 141820.A. If Chicago's law included the language that New York City's law has, that opinion would have been unnecessary.

[39] *See* §3-702(15). The New York City Campaign Finance Board's Executive Director confirmed that labor organizations are not (and are not intended to be) covered by this "business dealings with the City" provision. Labor organizations are treated as a limited or prohibited source of campaign contributions in other areas of New York City law. She also confirmed that, if a labor organization had a contract that does fall into one of the categories included in the definition of "business dealings with the City," then it would be treated like any other contractor. She knows of no such contracts, however. She also explained that the purpose of the provision is to curtail "pay-to-play" practices in the municipal procurement process. In fact, in 2010, the New York City Campaign Finance Board proposed that the lower "doing business" campaign contribution caps be extended to, among others, labor organizations. *See* Laufer, "Only in New York, New York," New York City Archives – Corporate Political Activity Blog, www.corporatepoliticalactaivity.com/new_york_city.

[40] *See* §3-703 (1)(f).

eligible for city contracts. This prohibition does not include CBAs. This law also defines "contract," but the definition does not include CBAs.[42]

San Francisco. Like Chicago's law, San Francisco's "Campaign Finance Reform Ordinance" prohibits "contractors" from making contributions to candidates for elected City office, but does not mention or cover labor organizations, and defines "contractor" similarly to the way our law defines "doing business" with the City.[43]

In summary, our review of other jurisdictions indicates that 54 jurisdictions of the 61 examined specifically address labor organizations. Some prohibit and others limit political contributions by unions or their affiliated committees. However, none include them in the rubric of "doing business" or "contracting." Chicago could have included labor unions within this rubric, or included labor organizations in their own category—but did neither.[44] To this Board, all of these factors taken together lead us to the conclusion that labor unions (and their affiliated political or educational committees) that make political contributions were not intended to be included in the rubric of persons doing business or seeking to do business with the City (or its sister agencies), nor to be subject to the Ordinance's contribution limitations, by virtue of their CBAs or attached side letters.

DETERMINATION. For the reasons explained in this opinion, the Board determines that labor unions that enter into collective bargaining agreements with the City of Chicago (and, by extension, their political committees) are neither doing nor seeking to do business with the City, and thus are not, by virtue of these agreements, subject to the political contribution limitations in §2-156-445 of the Municipal Code of $1,500 per candidate/per elected official (or their political committees) in a calendar year.

RECOMMENDATION. The scope of this advisory opinion is to advise City officials, campaign staff, City employees, campaign financing investigators, labor union members and representatives, and members of the public (including watchdog organizations, such as the Better Government Association and Illinois Campaign For Political Reform) that, as enacted, the political contribution limitations in Article VI of the City's Governmental Ethics Ordinance do not apply to labor unions (or their affiliated political or education committees) by virtue of collective bargaining agreements. The Board was not asked to make and makes no recommendation as to whether labor unions *should* be subject to these contribution limitations. Should this Board receive a request from the City Council and/or the Mayor's Office to research whether City law *ought* to be amended to limit political contributions from labor unions (in a way that is stricter than the limits already imposed by Illinois statute), we would undertake it and make our recommendations accordingly.

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[41] *See* chapter 20-1000, "Political Expenditures and Expenditures"; Philadelphia Board of Ethics Regulation No. 1; and Chapter 17-1400, "Non-Competitively Bid Contracts; Financial Assistance."

[42] *See* Philadelphia Code, §17-1401(7). "Contract" means: "[a] contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirement of Section 8-200 of the Charter…" An applicant for such a contract must disclose, among other things, campaign contributions ... made … during the two years prior to the date [of the contract application] … to any candidate for nomination or election to any public office…or to an individual who holds such office, or to any political committee…or to any group…organized in support of any such candidate, office holder, political committee…or certify no such contributions have been made." §§17-1404(1)(a) and (b). The Executive Director of the Philadelphia Board of Ethics confirmed that labor organizations are not mentioned this law. He also said that campaign financing reform was really procurement law reform, and that the provisions in this law governing the contractors do not cover CBAs.

[43] *See* §1.01 of the Charter of the City and County of San Francisco and §1.102, which establishes campaign contribution limits. There is no mention of labor organizations. There are contribution bans on campaign contributions by those "doing business with the city," §1.126 (b)(1)(A)-(C), pursuant to a "contract." §1.126(a)(2). "Contract" is defined as: "(A) the rendition of personal services; (B) the furnishing of any material, supplies or equipment; (C) the sale or lease of any land or building; or (D) a grant, loan or loan guarantee" if that transaction in the contract meets certain requirements, so long as the contract has a "total anticipated or actual value of $50,000.00 or more" or a combination of contracts in a year valued at $50,000.00 or more. The Deputy Director of the San Francisco Ethics Commission confirmed that labor organizations were not mentioned in the city's campaign contribution ordinance, and that unions do not provide services to the city, citing Rule §1.126-1(f). That Rule states: "Such services include but are not limited to tasks such as consulting, architecture, engineering, design, legal services, finance, accounting, janitorial services, medical treatment, transportation, underwriting, insurance, and security."

[44] We cite here the canon of statutory construction *expressio unius est exclusio alterius:* expression or inclusion of various things in a statute means that things *not* mentioned were *not* intended to be included. *Cf. Christie*, at 271: "the Legislature clearly knew how to define and include labor organizations when it wanted them encompassed by the campaign contribution laws."

RELIANCE. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

RECONSIDERATION. This advisory opinion is based on the facts set out in it. If there are additional material facts and circumstances not available to the Board when it considered this case, you may request reconsideration of this opinion. As provided in our Rules and Regulations, a request for reconsideration must: (i) be in writing; (ii) explain the material facts and circumstances that are the basis for the request; and (iii) be received by the Board within 14 days of the date of this opinion.

Sincerely,

[signed]

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Stephen W. Beard, Chair