**CONFIDENTIAL**

**ADVISORY OPINION**

[Date] 2016

**Re: Case No. 16006.A, Campaign Financing**

Dear [redacted]:

[You] have asked for an advisory opinion addressing whether “an entertainment management company” violated the campaign finance provisions of the City’s Governmental Ethics Ordinance (the “Ordinance”) by making a [greater than $1,500] political contribution on [date] “to the political committee of a City elected official.”[[1]](#footnote-1) We appreciate your request, and address your question in this opinion. Our answer, based on the facts and analysis explained below, is “no.”

**EXECUTIVE SUMMARY.** The Board has carefully applied relevant law — including the Ordinance, prior Board advisory opinions, contract law, agency law, and entertainment law — to the [facts presented],[[2]](#footnote-2) and to facts that are publicly available.

The Board has determined that: (i) the entertainment management company, by acting as a talent agent in the City transactions you identify, ***was not*** “doing business” with the City, as that phrase is defined in the Ordinance; (ii) therefore, this company was not subject to the Ordinance’s $1,500 limitation on campaign contributions per year, per elected official [or candidate for elected City office], at the time it made its [greater than $1,500] contribution to the official political committee of a candidate for City elected office; and, therefore (iii) neither this entertainment management company nor this elected official’s/candidate’s political committee violated §2-156-445 of the Ordinance by making or accepting this [greater than $1,500]contribution.

**FACTS.**  On [date] 2016, you [contacted] our Executive Director, Steve Berlin, and requested an advisory opinion addressing whether “an entertainment management company” violated the campaign finance provisions in the Ordinance. You did not name the company, referring to it only as “an entertainment management company,” or as “the Company.” For ease of discussion, we will also refer to it as “the Company” in this opinion.

You state, “as background,” that the Company made a [greater than $1,500] donation to the campaign fund for an candidate for City elected office [“CEE”] covered by the Ethics Ordinance. [And you] then state that:

“On [date 1] , [date 2] , [date 3] , [date 4] , [date 5] , and [date 6] , the City’s Department of [A] paid $XX,000, $YY,000, $ZZ,000, $DD,000, $YY000, and $QQ,000, respectively, in direct payment vouchers for services performed by entertainers that the Company represents as an agent.  The vouchers and voucher attachments are substantially similar.  For example, the [date 6] voucher names the Company’s address under ‘Remittance Address.’  It attaches the following:

• A [date] Performer Contract Review Form’ that states the ‘Full Amount to be Paid to Artist’ as $XX,000.  It specifies that $XX,000 will be paid to the Company and the final payment of $XX,000 will be paid to the entertainer’s ‘Producer.’

• A contract on the Company’s letterhead between the entertainer’s ‘Producer’ ‘furnishing the services of’ ‘the artist’ and the ‘Dept. of [A] .’  Under ‘Payment Terms,’ the contract states the $XX,000 deposit shall be paid by ‘City Warrant Check’ to the Company.”

As stated above, [redacted] you ask whether the Company’s receipt of the deposits on behalf of the entertainers, “as an agent,” constitutes “doing business with the City,” and, therefore, whether its [greater than $1,500] donation to the campaign committee of a City elected official or candidate for elected City office made on [date] violated the Ordinance.

Public records maintained by the Illinois State Board of Elections (“ISBE”) show that a company listed as [the Company] made a [greater than $1,500] political contribution to the “candidate” committee of [CEE] on that date.[[3]](#footnote-3)

[Redacted.]

For each of the six (6) payments, [Board staff reviewed] following three (3) documents[[4]](#footnote-4):

1. A Direct Payment Voucher (“Voucher”), on a form published by the Office of the City Comptroller, showing, among other things: Voucher number; Voucher total (in dollars); “vendor number” (this is the same for all six payments, # , each corresponding to [the Company] or another entity that appears to be a corporate affiliate of it); “remittance address”;[[5]](#footnote-5) and stating in the description “Deposit” for “musicians,” or for “[City Festival 1] Performer,” or for “[City Festival 2] Performer.”

2. A one-page “[A] Performer Contract Review Form,” that lists: (i) the City event (for example, [City Festival 1] ); (ii) the stage ; (iii) the name of the performer or group; (iv) the date, start and end time of the performance; (v) the “full amount to be paid to the artist,” which lists an amount that is double the amount of the “deposit” [redacted], and then under that, both a “deposit amount,” and a “final payment amount,” which are equal to each other (for example, the document you specifically cite [redacted] shows a full amount of $XX,000 to be paid to “Artist” [name] , with $XX,000 as a deposit, payable [date] to the Company, and [the same amount] as a “final payment amount” due and payable on to an entity called [B] for a performance on [date] ); (vi) the name and address of the person to whom the deposit is to be paid, which is either the [Company] or [another entity with a name similar to the Company’s] in [City] , or [another entity with a name similar to the Company’s] in [City] ; (vii) the name and address of the person to whom the final payment amount is to be paid, which is an LLC or other corporate entity that appears to be affiliated with the performer[[6]](#footnote-6); (viii) five (5) signatures from various individuals, all of whom appear to be [A] personnel; and finally, (ix) three (3) lines, respectively indicating performance budget, amount “used to date,” and “remaining funds.”

3. A three-page document, on the letterhead of [an affiliate of the Company] entitled “Artist Rider And Addenda Attached Hereto Hereby Made A Part Of This Contract.” For ease of discussion, we will refer to these documents as the “Agreements.” All six (6) Agreements begin with the following recital (for illustration purposes, we have added the specific wording from the document attached to the [date] Voucher [redacted]):

**Agreement made [date] between [B] INC. (hereinafter referred to as “PRODUCER”)[[7]](#footnote-7) furnishing the services of [singer name] (hereinafter referred to as “ARTIST”) and the City of Chicago Dept. of [A] (hereinafter referred to as “PURCHASER”).**

**It is mutually agreed between the parties as follows:**

**The PURCHASER hereby engages the PRODUCER to furnish the services of ARTIST for the Engagement (as described herein) upon all the terms and conditions herein set forth, including, without limitation, Addendum “A” (Additional Terms and Conditions, the Artist Rider, and any other PRODUCER addenda referenced herein (if any), all of which are attached hereto and fully incorporated herein by reference).**

The six (6) Agreements then continue with 15 numbered items. They are:

¶1. Engagement Venue(s)

¶2. Date(s) of Engagement, including a. Number of Shows; and b. Show Schedules

¶3. Billing (in all forms of advertising) (for example, “100% Sole Headline Billing”)

¶4. Compensation in dollars, “flat GUARANTEE.”[[8]](#footnote-8) In each document, the words “City warrant check” are hand-written here.

¶5. Production and Catering

¶6. Transportation and Accommodations

¶7. Special Provisions

¶8. Artist Rider

¶9. Currency and Exchange Rate

¶10. Payment Terms (The six (6) Agreements are virtually identical: each begins with the recital **“Deposit in the amount of $\_\_\_ USD shall be paid to and in the name of Producer’s agent, [The Company] ,** to be received not later than [date]. Purchaser requires fully executed contract to release deposit. All Deposit payments shall be paid via City warrant check … “) (emphasis added)

¶11. Scaling and Ticket Prices

¶12. Expenses

¶13. Merchandising

¶14. Visa and Work Permits

¶15. Taxes

Each Agreement[[9]](#footnote-9) then has signature lines preceded by the following recital:

**“In witness whereof, the parties hereto have hereunto set their names and seals on the day and year first written above.”**

Each Agreement is signed by a representative from [A] , and by a representative of the Producer. There is no signature provided for any representative of the agent, namely [The Company or another entity with a name similar to the Company’s name] under the signature lines on the oldest four of the Agreements, this statement appears:

**“Return all signed contracts to** [the Company or another entity with a name similar to the Company’s name]**at the address above.”**

As cited above, in ¶10, and as you recognize [redacted], all six (6) Agreements designate the Company as acting as the “Producer’s agent.” The City was obligated to make out a “warrant check”[[10]](#footnote-10) payable to the Company. The Vouchers provide evidence that the City was authorized to and then did pay the agreed-upon deposit to the agent (the Company) on behalf of these six (6) Producers.

These materials do not demonstrate (and Board staff found no evidence) that the Company has had any corporate ownership or similar affiliation with any of the six Producers.[[11]](#footnote-11)

[redacted.]

**LAW AND ANALYSIS.** Section 2-156-445(a) of the Ordinance, entitled “Limitation of contributing to candidates and elected officials,” is the provision relevant to your request. It states, in pertinent part:

**(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 … 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…**

The definition of the phrase “doing business” with the City is also critical to our analysis. It is found in §2-156-010(h) of the Ordinance, and states:

**"****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.**

The issue before the Board, then, is whether, by virtue of the Company’s role in these six (6) [redacted] transactions, it was “doing business” with the City during the relevant time period.[[12]](#footnote-12) If the Board determines that the Company was doing business with the City, then there would be a *prima facie* violation of §2-156-445(a) of the Ordinance.[[13]](#footnote-13)

In order for the Board to make that determination, two (2) elements must be present: (i) there must be a contribution or combination of contributions from a single person to an elected City official or the official’s authorized candidate committee (et al.) exceeding $1,500 in a reporting year; and (ii) that person must have been subject to that $1,500 limit at the time it contributed more than $1,500 in a reporting year. In other words, at the time of that contribution, the person must have been either doing or have done business with the City (or other named “sister agencies,” not at issue in this case) within the four (4) reporting years preceding the contribution, or be seeking to do business with the City or its named “sister agencies” (also not at issue here), or be a registered lobbyist with the Board (also not at issue here). *See* Case No. 13044.A (cited above, in footnote 1) for a fuller explanation of these terms.

Element (i) clearly is present here: the Company contributed [more than $1,500] to [CEE]’s political committee on [date] . Hence, the question in this case is, as you recognize, raised by element (ii): based on its role in the six (6) [A] transactions described above, was the Company “doing business” with the City, as defined in the Ordinance, from July 1, 20 to the date of its $ contribution? To answer this, we parse out the Company’s role in the transactions, then analyze whether that role constitutes “doing business” with the City. Although we have construed the term “doing business” with the City in past cases, this particular fact situation presents a case of first impression for the Board.

The Agreements. The operative instruments are the six (6) three-page documents, printed on the Company’s letterhead, entitled “Artist Rider And Addenda Attached Hereto Hereby Made A Part Of This Contract.” They are identical, except for modifications required by the unique circumstances or demands of the six (6) Artists. Each is an agreement signed by the City and an entity called a Producer (which furnishes the services of the Artist). Each has: a price or compensation term; a named performance venue; a date and time for the performance; payment terms, providing for remittance of the deposit to the Producer’s *agent* (in each case the Company, the person that made the campaign contribution); a payment method; special instructions or terms (such as special ticket holds for VIPs, the Artist’s right to approve supporting acts, special requirements covering sales of merchandise, like t-shirts, etc.); and signatures by representatives from the City and the Producers.

We conclude that each Agreement constitutes a contract with the City of Chicago for the sale (or purchase) of musical performance services by each Artist. However, we *also* conclude that the contracting parties are the City and these Artists’ Producers, *not* the Company. These agreements show that the Company, as the Producers’ agent, collected deposits (and, we assume, as required by the California Labor Code, disbursed payments to the Producers from these deposits pursuant to contracts the Company had with each Producer, *not* involving the City, which [we do not have] ). In sum, the material fact demonstrated by these six (6) agreements is that the “Company,” the entity that made the [more than $1,500] campaign contribution on [date] , acting in the capacity of the Producers’ agent, *did* *not* *enter* into these City contracts. Instead, the entities that entered into these contracts with the City were the six (6) Producers for the musicians, namely: [Q] ; [R] ; [B] ; [T] ; [P] ; and [O]

The Definition of “Doing Business.” As we have recognized in previous cases, and as clearly provided in the Ordinance, in order for the Board to conclude that a person was “doing business” with the City, the person must have “sales,” “purchases,” or “contracts” “*to, from or with* the City or any City agency.”[[14]](#footnote-14) The wording of the definition of “doing business” is important: it says, specifically, sales, purchases, or contracts “**to, from or with** the City.”[[15]](#footnote-15) It does ***not*** say transactions, contracts, or sales “involving the City” (that phrase is used in the Ordinance’s conflicts of interest and post-employment provisions, §§2-156-080(b)(2) and -110(b), respectively), or use the phrase “City contractor” (defined in §2-156-010(e)) in place of persons “doing business” with the City. The drafters could have used either of these other phrases when defining the term “doing business” with the City, or in the campaign contribution limitation provision itself, §2-156-445(a) or its predecessor, §2-164-040(a), when specifying which persons are subject to the Ordinance’s $1,500 annual political contribution limits. But they did not. The phrase “business transaction involving the City” is the broadest, as we have recognized in several advisory opinions construing other Ordinance provisions where it occurs, such as the post-employment and conflicts of interest restrictions. For example, it covers transactions in which a former City employee is assisting a new employer in a transaction in which his post-City employer is not a party to a City contract (or, transactions in which his new employer is not in “privity of contract” with the City), but in which the City will play a substantial role, or in which the City is acting as a regulatory body.[[16]](#footnote-16)

Were it meaningful, then, the Board might conclude, based on the facts presented, that the Company has a “business transaction involving the City,” or even is a “City contractor.” But, those points are not useful or relevant for resolving your question. What *is* relevant is whether the Company had “sales, purchases, or contracts to, from or with the City.” If, on the facts before us, it did *not*, then it was *not* subject to the Ordinance’s campaign contribution limitations.

We conclude that, in order for a person to fall within the definition of “doing business” with the City or a named sister agency, that person must have “privity of contract” with the City, etc. (or, pursuant to §2-156-445(b), be a subsidiary, parent company, or otherwise affiliated company of that person, or be an employee, officer, director or partner of that person whose contribution is reimbursed by that person). A person who does not have privity of contract with the City may still have a transaction “involving the City,” or be a “City contractor,” and that person, or a current or former City employee or official who has business dealings with or assists or represents that person, may then be subject to various other Ordinance provisions, but *not*, by that fact, to the limits on campaign contributions in §2-156-445(a).

The documents [redacted] show that all six (6) Producers had contracts with the City worth more than $10,000 over a single 12-month period during the relevant time period, but that the Company itself had *no* contracts or contractual relationship with or obligations to or with the City. During the relevant time period(s), the Company served as the Producers’ agent, per ¶10(a) of the Agreements, which states that the Company shall receive the City’s deposits as “the Producer’s agent.” For the City to perform its obligations under ¶10(a), it needed to make payments payable to the Company. However, as we note above, what the Company then did with those payments, and how and in what manner and how much of that money the Company transferred to the Producer, is not set forth in these City contracts.[[17]](#footnote-17) Of course, it could be argued that one should just “follow the money”: the Company was paid by the City, and likely retained or was paid some of that money as its fee, and, therefore, the Company “did business with the City.” However, that is *not* the correct question under the governing law here, §2-156-445(a) of the City’s Governmental Ethics Ordinance. Under this law, the correct question is: was the Company’s collection of these deposits, as the Producers’ agent, paid by the City as specified in the Agreements, the legal equivalent of the Company having a sale, purchase, or contract “*to, from or with the City*?” We conclude that it was not.

Contract, Entertainment and Agency Law. We rely on fundamental principles of contract, entertainment, and agency law in making this conclusion. The plain language of the Agreements demonstrates that the Producers obligated themselves to furnish a musical Artist on the dates specified, and the City obligated itself to pay money to the Producers, through their agent, at their explicit direction, in order to secure and compensate that Artist. These obligations were made by the City and the Producer “to,” “from” and “with” each other, *not* to, from or with the Company. The Company *was* specifically named as the Producers’ agent in these Agreements — as agent, it was the remittee to whom the City was obligated to pay a deposit. But the Company was not a party to the Agreements, and, critically for our purposes, made no obligations to the City in them (nor, for that matter, to the Producers in them, either). Accordingly, the Company had no sale, purchase, or any contracts to, from or with a City agency. This conclusion is reflected in the fact that the City’s own database of contractors and vendors lists five (5) of the six (6) Producers as doing business with the City, at times generally corresponding to the months reflected in the Vouchers, but does *not* list the Company at any time between [DATE] and [DATE + 4 YEARS] as doing business with or contracting with the City.[[18]](#footnote-18)

Under fundamental contract law, the “parties” “to” these Agreements were those who promised to each other to perform.[[19]](#footnote-19) The Producers and the City formed these agreements with terms demonstrating mutual assent to perform their respective obligations and exchange “consideration.” The Producer agreed to provide (or “furnish the services of”) a Performer; the City agreed to compensate the Producer. The Producers’ and City’s signatures on each Agreement bound these signatories as parties. The Company did not sign these contracts.[[20]](#footnote-20)

Fundamental entertainment law principles also support our conclusion. Provisions like these are common in entertainment industry contracts for personal performance by artists represented by agents, or “talent agents.”[[21]](#footnote-21) The Company’s responsibilities pursuant to ¶¶10(a) and (b) in these Agreements comported with entertainment industry standards. Agreements like these typically do generate commissions to talent agents, like the Company.[[22]](#footnote-22) Here, for example, [B’s] relationship with the Company was that the Company served as [B’s] talent and contracting agent.[[23]](#footnote-23) As such, all duties (both contractual and fiduciary) that the Company owed were to its principals or clients, the Producers, like [B] — not to the City.[[24]](#footnote-24) None of the monies paid by the City to the Company in these transactions belonged to the Company. These monies belonged to the Producers. Pursuant to ¶10 (a) of the [date] Agreement between [B] . and the City, a $XX,000 deposit was to be paid to the Company, via City warrant check. The payee was the agent, the Company, but the money was the Producer’s. Hence, the “remittance” block in the Voucher, and the relevant spaces in the “Performer Contract Review,” as completed by [A] , both listed the Company. [B] expressly stated to the City, in its Agreement, that it was authorizing the City to remit the payments to the Company, as its agent. Moreover, the balance of payment from the City to the Producer, due pursuant to ¶10 (b), was payable to [B] , but, as evidenced in the “Performer Contract Review,” was sent “c/o” the Company’s address, as [B’s] agent. The person owed this money by the City was, here, the Producer.

Moreover, a talent agent owes a fiduciary duty to its principal, typically the producer (the artist). If a presenter or employer (here the City), has engaged a producer to “produce” the artist, and the agent then breaches the agreement, the *producer* is liable to the presenter or employer.[[25]](#footnote-25)

Typically, talent agents are paid a contractual commission as a percentage of their clients’ gross earnings.[[26]](#footnote-26) Most States, notably California , regulate talent agents, and prohibit them from splitting their fees with the employers (like the City) who hire their clients.[[27]](#footnote-27)

Talent agents’ fees are regulated by the California Labor Commissioner.[[28]](#footnote-28) Talent agents must immediately deposit fees received on behalf of clients in a trust account (similar to those maintained by attorneys and real estate agents), and, unless the fees are in dispute, pay the agreed upon compensation to the artists or producers within 30 days.[[29]](#footnote-29)

The employer (the City) issues appropriate tax forms in the name of the artist, notwithstanding that its payment is to the agent; if the issuer insists on issuing them to the payee on the check, then the agent deducts its commission and remits the balance of the engagement fee to the artist and issues the tax forms for the full amount of the engagement fee.[[30]](#footnote-30)

Finally, under fundamental agency law, the Producers, as “principals,” expressly and in writing assented to having the Company act as their agent in these transactions by placing this provision in the Agreements, and the Company was granted the authority to act within the scope of its agency on the Producers’ behalf. The Company, as payee/remittee on the deposits, collected these monies in accordance with that agency.[[31]](#footnote-31) Nowhere in the record before us is there any evidence that the Company, the Producers, or the City understood or agreed that the Company was a party to these Agreements, even though, of course, its performance of its obligations to the Producers (not to the City, with which it was not in “privity”) was contemplated, and required by California statute.[[32]](#footnote-32)

In summary, we have before us six (6) Agreements in which the parties’ performance required the City to pay a deposit to the Producer’s named agent, the Company. Under agency law and California statute, the Company, as agent, was bound to collect and remit these funds to the Producers, to whom it owed a fiduciary duty. If the Company did *not* collect or remit these monies, or converted them, then it would be the Producers – the parties to the Agreements – who would be deemed not to have performed their part of the Agreements with the City, and it would be the Producers who would be in default of the Agreements, subject to liability to the City for breach of contract if the Artists did not perform. The Company might then be liable to *the Producers* under *their* agency agreement, but not liable to the City for breach of contract, because there was no privity between the Company and the City.[[33]](#footnote-33)

**CONCLUSIONS.** For the foregoing reasons, the Board concludes that these six (6) entertainment contracts were between the City (through [A] ) and the six Producers. Under these contracts, the City was obligated to remit payments to each Producer’s agent, that is, the Company, but the Company itself was not a signatory or party to these contracts. Under agency law, an agent does not become a contracting party, absent facts to the contrary, which do not appear in this case. Hence, the Company did not have contracts, sales or purchases to, from, or with the City, and, by acting as the Producers’ agent in these six (6) transactions, was not, therefore, doing business with the City within the meaning of §§2-156-010(h) and -445(a) of the Ordinance, and was not, therefore, subject to the Ordinance’s political contribution limitation of $1,500 per reporting year to a single candidate for elected City office, etc. Therefore, neither the Company nor the candidate committee that received the [more than $1,500] contribution on [date] violated §2-156-445(a) by making or accepting this contribution.[[34]](#footnote-34)

**DETERMINATION.** After carefully applying the relevant law to the facts [redacted] provided (and to facts that are publicly available, as gathered by Board staff), the Board has determined that the role of the Company in these six (6) business transactions involving the City ***does not*** constitute “doing business” with the City, as that phrase is defined in the Ordinance, and, therefore, that the Company’s[greater than $1,500] contribution, made on [date] to the official political or candidate committee [CEE] , ***did not*** violate §2-156-445(a) of the City’s Governmental Ethics Ordinance.

The Board appreciates your request for this opinion.

**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.

Sincerely,

[signed]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Stephen W. Beard, Chair

1. The relevant provisions you ask about are §§2-156-445 and -010(h) of the City’s Municipal Code, which are part of or incorporated by Article VI of the City’s Governmental Ordinance. Your email actually asks two (2) questions: (i) You “request … a written opinion regarding whether an entertainment management company … that made the contribution to the campaign committee of a City elected official on [date] ” “violated the campaign finance provisions in the Governmental Ethics Ordinance”; and (ii) “Does [the entertainment management company’s] receipt of the deposit from the City constitute ‘doing business’ as defined under the GEO?”  You pose two (2) separate but related inquiries – the first asks “the ultimate question.”  We address and answer both questions in this opinion.

We also remind you that accepted contributions in excess of the Ordinance’s $1,500 annual limit, which is imposed on political contributions to any elected City official [or candidate for elected City office] (or his or her official political committee) from persons “doing business” with the City (and others), would, if made by persons subject to that limit, constitute violations not only by the contributor, but by ***both*** the contributor ***and*** the person who accepts the contribution, thereby potentially subjecting ***both*** to monetary fines. *See* §2-156-465(b)(5), and our advisory opinion in Case No. 13044.A, at page 5, which explains this and other changes made to the Ordinance in 2012 and 2013.

<http://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_CampFinanacing/13044.A.pdf> [↑](#footnote-ref-1)
2. Board staff [reviewed various] records, including six (6) agreements made by the City’s Department of [A] for live musical entertainment at various City festivals. [↑](#footnote-ref-2)
3. On [date], 2016, Board staff accessed the ISBE’s public, online database. This database contains information on every reported campaign contribution made to the candidate committees of all elected officials or candidates for elected office covered by the Illinois Election Code, including City elected officials or candidates for elected City office. Their political or campaign committees (officially called “candidate committees”) report these contributions to the ISBE as required by state statute. *See*, in particular, Article 9, 10 ILCS 5/9-1, *et seq*. Board staff’s search for contributions made on [this specific date] showed that two (2) contributions [in this exact amount] were made that day to committees of elected officials or candidates covered by the Ordinance (or by its relevant predecessor law, the Campaign Financing Ordinance, formerly chapter 2-164 of the City’s Municipal Code, repealed on November 1, 2012, and merged into the Governmental Ethics Ordinance). Both were made to [CEE] . The first was made by [C] (the “[C] contribution”); the second by [G] (the “[G] contribution”).

Both the [C] and [G] contributions were listed as part of a complaint of [1,273] *potential* campaign financing violations this Board referred to the [appropriate investigating authority] on December 18, 2014, pursuant to §2-156-380(n-1) of the Ordinance, effective September 10, 2014. That provision authorizes the Board to review publicly filed reports of campaign and lobbyists’ filings and refer potential violations discovered by our review to the appropriate investigating authority (now the Inspector General) as complaints (we referred 828 potential violations to the Office of the Inspector General and 445 to the then-existing Office of the Legislative Inspector General). The December 2014 complaints covered potential violations arising from 2013 contributions. We listed the [C] and [G] contributions as Case Nos. 141072.CFr and 141254.CFr, respectively. [↑](#footnote-ref-3)
4. In the most recent three (3) transactions, there is also a one-page document, an “Exhibit A.” It is styled “Payment for Goods/Services Procured Outside of Department of Procurement Services or Other Formal Contracts—Pre-Approved Categories.” For these transactions, the box entitled “Festival, Exhibition and Performance Costs” was checked. [↑](#footnote-ref-4)
5. 5. [redacted] [↑](#footnote-ref-5)
6. In four (4) of the six (6) transactions, these entities are listed as “c/o” [The Company] , [B] Inc., or [T] ., or [P] ., each with the same address in [City 2] , namely Street, Suite and in the remaining two, entities that have the names of the performers listed and appear to have no relationship to [The Company] , or the address in [City 2] . [↑](#footnote-ref-6)
7. In each Agreement, this is the same entity listed in (vii) above in each Voucher — that is, the recipient of the final payment. [↑](#footnote-ref-7)
8. This amount equals the “full amount to be paid to the artist” listed in each Voucher. [↑](#footnote-ref-8)
9. [Y]ou refer to this document as “A contract on the Company’s letterhead between the entertainer’s “Producer” “furnishing the services of” “the artist” and the “Dept. of [A] .”” We agree that this (and the other five (5)) is (and are) the operative contract(s) for our analysis. [↑](#footnote-ref-9)
10. A “warrant check” is an instrument of payment (commercial paper) in which a government unit validates a payment instrument for a voucher or other evidence of indebtedness. *See* <http://www.ofm.wa.gov/policy/glossary.asp#warrant>. [↑](#footnote-ref-10)
11. To be as thorough as possible, we considered the possibility that the Company may have had some corporate affiliation or shared ownership with any of the Producers. If so, the provisions of section 2-156-445(b) would apply, and have the legal effect of aggregating contributions by corporate affiliates. But we could find no evidence of that after searching various public databases, thus we need not consider it further.

 [↑](#footnote-ref-11)
12. Because the contribution at issue was made on [date], the relevant time period is the four (4) “reporting years” preceding that date, that is, in any 12 month period from July 1, [year] to June 30, [year].

 [↑](#footnote-ref-12)
13. We say *prima facie* for a specific legal reason: §2-156-445(d) provides that a person who solicits, accepts or makes a contribution that “violates the limits set forth in” §2-156-445(a) “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.” As we explained in Case No. 13044.A, were this Board to determine that the contribution exceeds the allowable limits (that is, that the Company was subject to the limit when it made this $[greater than $1,500] contribution ), then the contributor and recipient candidate committee, in this case [the Company] and [CEE] , respectively, would be able to take advantage of this 10 day “safe harbor” provision, and the investigating authority (now the Office on the Inspector General IG) would need to administer it accordingly. *See* Case No. 13044.A, footnote 12,

<http://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_CampFinanacing/13044.A.pdf> [↑](#footnote-ref-13)
14. *See* Case Nos. 91026.A (construction company that performed work on a City-owned property for a non-profit foundation was not “doing business” with the City, as there was no contract for the improvements and no consideration was exchanged between the company and the foundation, or between the company and the City; thus the company was not subject to the contribution limitations); 11007.CF (company designated by a City board to “redevelop” a facility and receive City-appropriated funds was “seeking to do business” with the City by sending emails to City officials regarding the potential contract with the City, to which it would have been a party, and in which both the City and the company would pledge mutual obligations to each other, and thus was subject to the contribution limitations); and 15041.A (labor unions are not “doing business” with the City by virtue of their collective bargaining agreements). “To” is defined as “used as a function word to indicate movement or an action or condition suggestive of movement toward a place, person or thing reached…” “From” is defined as “used as a function word to indicate a physical movement or starting point in measuring or reckoning or in a statement of limits…” “With” is defined as “a function word to indicate a participant in an action, transaction, or arrangement…” *See* Random House Webster’s Unabridged Dictionary, 1998. “Sale” means “the transfer of property or title for a price”; “purchase” means “the act or an instance of buying.” *See* Black’s Law Dictionary, 8th Ed. [↑](#footnote-ref-14)
15. The phrase “doing business” with the City occurs in several other provisions in the Ordinance: (i) in §2-156-111(a), entitled “Prohibited Conduct,” which prohibits City employees, officials, their spouses or domestic partners, or businesses in which they have a financial interest, from applying for, soliciting, or receiving loans from persons doing business with the City (but allows for market-rate bank loans); (ii) in §2-156-140(b), entitled “Solicitation or acceptance of political contributions and memberships on political fundraising committees,” which prohibits City employees from knowingly soliciting or accepting political contributions from a person doing business with the City, but allows a candidate to do so for his or her own candidacy; and (iii) in §2-156-160(a)(2) and (12), entitled “Content of Statements,” which require filers of annual Statements of Financial Interests to disclose compensation received from or ownership interests in persons doing business with the City or with named sister agencies. We note that our opinion in this case will help clarify our jurisprudence as to those other Ordinance provisions as well. [↑](#footnote-ref-15)
16. *See* Case Nos. 90026.I; 93025.A; and 94014.A, all available on our website. [↑](#footnote-ref-16)
17. As we note above, the Company’s obligations, we assume, are set forth in any number of talent agency contracts between the Company and the Producers, required by California law, which would also establish that the Company owed the Producers, its clients, a fiduciary duty. *See* Restatement (Third) of Agency, American Law Institute (2006) (“Restatement of Agency”), §§1.01, 8.01; *and see also* *Johnson et al. v. Priceline.com, Inc.*, 711 F.3d 271 (2nd Cir. 2013) (agent as fiduciary). [↑](#footnote-ref-17)
18. *See* [http://www.cityofchicago.org/content/dam/city/depts/doit/general/contractor\_reports/2012/02\_February2012.pdf](http://www.cityofchicago.org/content/dam/city/depts/doit/general/contractor_reports/2012/02_February2012.pdfT). The Company is mentioned in this database, but only as being in a “c/o” relationship with each of the six Producers. But, c/o is simply an abbreviation for “care of” (*See* Black’s Law Dictionary, 8th ed., 2004). This notation does not indicate a contractual relationship with the City, but only a payment address. That is why, for example, the signature line on each Agreement designates the Producers’ names (even though the Board cannot read the actual names of the individuals signing in the Producer lines), not the Company.

Moreover, as to the Vouchers in all six (6) transactions: these documents were printed on forms issued by the City Comptroller. [A] generated them as internal documentation to justify and record payment to the Company by the City of each deposit, pursuant to ¶10(a) of the Agreements. The City paid its remittance to the Company, as the Producers’ agent. These Vouchers do not form part of these Agreements; rather, they evidence the fact that the City will (or did) carry out its contractual obligation to pay deposits to the Producers’ agent. A voucher is “confirmation of the payment or discharge of a debt; a receipt,” or “a written or printed authorization to disburse money.” Although the Company is named as remittee in each Voucher, properly reflecting a provision in each contract that the Company be the person to whom the deposits were remitted, these Vouchers are not agreements, and did not create any contract between the Company and [A] . *See* Black’s Law Dictionary; and

<http://www.businessdictionary.com/definition/voucher.html#ixzz42z26AltT>. [↑](#footnote-ref-18)
19. Restatement (Second) of Contracts, §1, American Law Institute (1981) found at

[http://www.lexinter.net/LOTWVers4/restatement\_(second)\_of\_contracts.htm](http://www.lexinter.net/LOTWVers4/restatement_%28second%29_of_contracts.htm) [↑](#footnote-ref-19)
20. As stated above, we can reasonably infer that the Company, as the recipient of the deposits paid by the City, and likely the negotiator with the City on behalf of each Producer, contracted with the Producers, its clients, to transfer the agreed-upon amount of these deposit monies to them, pursuant to *other* contract(s) not in the materials [redacted]. And, we can also reasonably infer that the City was not a party or signatory to those contracts. [↑](#footnote-ref-20)
21. *See* <http://www.google.com/url?url=http://des.wa.gov/SiteCollectionDocuments/ContractingPurchasing/StandardTermsAndConditions.doc&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiuieniicPLAhWCWCYKHaFLCEMQFggrMAQ&usg=AFQjCNETlHUJRWVzKdptchUx-7UpA-kkPw>; <http://www.google.com/url?url=http://www.seattle.gov/purchasing/VendorContracts/Docs/0000002195va2.doc&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiuieniicPLAhWCWCYKHaFLCEMQFggwMAU&usg=AFQjCNFtg7EeW4gJTHTS34ZIF2VyiNKJtQ>; <https://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/procurement/PRP-ATC-Contract_04Sep14.pdf>; <http://www.karengreermodels.com/Talent_contract.pdf>;

 [↑](#footnote-ref-21)
22. *See* David Zelenski, *Talent Agents, Personal Managers, and Their Conflicts in the New Hollywood*, 76 So. Cal. Law Review, 979, 981 (2003), (hereinafter “Zelenski”), <http://www-bcf.usc.edu/~usclrev/pdf/076405.pdf>; <http://www.karengreermodels.com/Talent_contract.pdf>; <https://www.studyblue.com/notes/note/n/business-managers-talent-agent-club-contracts-unions/deck/902156>;

<http://musicbusinessadvice-masterofdemons.blogspot.com/2010/11/understanding-artist-management-artist.html>;

<http://www.schlamstone.com/wp-content/uploads/2014/03/2014_50458-william-morris.pdf> [↑](#footnote-ref-22)
23. *See* <https://www.google.com/url?url=https://cases.primeclerk.com/ceoc/Home-DownloadPDF%3Fid1%3DOTE0ODc%3D%26id2%3D0&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwikrfzi2MXLAhUD3SYKHdTICsYQFggXMAE&usg=AFQjCNE5LwZRENb8VDpTuP_pyN5LV-txTQ> [↑](#footnote-ref-23)
24. *See* Restatement of Agency, §8.12. [↑](#footnote-ref-24)
25. “Who Have You Been Sleeping With? Understanding Legal Relationships in the Arts,” Goldstein & Guillimas PLC, [www.ggartslaw.com](http://www.ggartslaw.com), visited March 31, 2016; *see* also note 34, below. [↑](#footnote-ref-25)
26. *See* Zelenski, *supra*, note 23, at 981. [↑](#footnote-ref-26)
27. *See* Zelenski *at* 985; *see also* California Labor Code, §§1700.39. [↑](#footnote-ref-27)
28. California Labor Code, §1700.24. [↑](#footnote-ref-28)
29. California Labor Code, §1700.25(a); *see also* Kinney, C & Ryan, L, “Managers, Agents & Attorneys,” posted November 25, 2015 on the LEXIS PRACTICE ADVISOR, at <https://www.lexisnexis.com/lexis-practice-advisor/the-journal/b/lpa/archive/2015/11/25/managers-agents-amp-attorneys.aspx>. [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. *See* Restatement (Third) of Agency. American Law Institute (2006) (“Restatement of Agency”) §§1.01, 1.03, 2.01, 3.01, found at

[https://users.wfu.edu/palmitar/ICBCorporations-Companion/Conexus/UniformActs/Restatement(third)Agency.pdf](https://users.wfu.edu/palmitar/ICBCorporations-Companion/Conexus/UniformActs/Restatement%28third%29Agency.pdf) [↑](#footnote-ref-31)
32. *See* California Labor Code, §1700.25(a); Restatement of Agency, §6.01; *Levey Miller Maretz v. 595 Corporate Circle et al.*, 258 Conn. 121 (Conn. 2001) (addressing real estate listing agreement, citing Restatement (Second), Agency §320, “[a] person making…a contract with another as agent for a disclosed principal does not become a party to the contract”); *and see generally “Rights Duties and Liabilities Between Principal and Third Parties”* (and cases cited there) at <http://agency.uslegal.com/right-duties-and-liabilities-between-principal-and-third-parties/>;

 <http://www.querrey.com/images/LawManual/8A.pdf>; <http://www.garrettham.com/agent-liability-to-third-party/>;

[http://www.americanbar.org/publications/blt/2015/02/03\_keatinge.html;](http://www.americanbar.org/publications/blt/2015/02/03_keatinge.html;%20and) <http://cases.justia.com/connecticut/supreme-court/258cr138.pdf?ts=1396115176> . [↑](#footnote-ref-32)
33. See Restatement of Agency §§7.01, 7.01; *Queiroz v. Harvey*, 220 Ariz. 273 (Ariz. 2009) (party to real estate contract remained liable for its agent’s non-performance under the real estate contract); *cf. Dallaire v. Viking River Cruises*, 2014 WL 7920845, No. CV-13-45 (Superior Court of Maine 2014) (no liability of cruise company which had never authorized travel agent to accept deposits from prospective customers). [↑](#footnote-ref-33)
34. You did not present any facts or request an opinion addressing a potential violation of §2-156-142(e) of the Ordinance, so we did not address that. That provision prohibits any person from giving or offering to give to any City employee, official, or candidate for City office, and any of them from accepting, anything of value, including a campaign contribution, based upon any mutual understanding, either explicit or implicit, that the votes, officials actions, decisions or judgments of any City official or employee or candidate for elected City office concerning City business would be influenced thereby. [↑](#footnote-ref-34)