



CITY OF CHICAGO



BOARD OF ETHICS

CONFIDENTIAL

[Date]

City Official
City of Chicago
Chicago, IL 606__

Re: Case No. 21025.A / Gifts

Dear [Name],

On [date], you spoke with our Deputy Director and inquired whether the City's Governmental Ethics Ordinance (the "Ethics Ordinance") would allow individuals and/or entities to donate or contribute money to attorneys you have retained to represent you in legal matters arising out of your public duties. The money would be used to defray your legal expenses.

As explained in this advisory opinion, the Board has determined that such monetary donations or contributions, in any amount, whether made to a legal defense fund you establish, or another established for your benefit, or through other means, such as directly to your attorneys, would constitute gifts to you for purposes of the Ethics Ordinance. Thus, you are prohibited from accepting them, unless they come from your relatives or personal friends.¹

I. Relevant Governmental Ethics Ordinance Provision. In this opinion, we will discuss and interpret the following Ordinance section, set forth in relevant part:

2-156-142. Offering, receiving and soliciting of gifts or favors.

(a) (1) Except as otherwise provided in this chapter, no city official, candidate for city office, or employee, and, subject to subsection (h) no covered relative, shall

- (i) solicit any gift for himself or any covered relative;**
- (ii) accept any anonymous gift; or**
- (iii) accept any gift of cash, gift card or cash equivalent...**

(d) The restriction in subsection (a) shall not apply to the following: ...

¹ As discussed below, the Board does not address whether persons may contribute to any of your political fundraising committees for this purpose, nor whether you may use such funds for this purpose, as those questions are governed by the Illinois Election Code, 10 ILCS 5/1-1, et seq. We advise you to seek competent counsel to help you address those questions. However, any such contributors or contributions would be subject to the annual limitations imposed by Article VI of the Ethics Ordinance, as they would be political contributions for purposes of the Ethics Ordinance.

(4) Any gift from a relative² ...

(6) Any gift from a personal friend,³ unless the official, candidate for city office, or employee has reason to believe that, under the circumstances, the gift was given because of the official position, candidacy or employment of the official, candidate for city office, or employee.

II. Analysis. In applying the law to the facts before it, the Board concludes that contributions made to an established legal defense fund, or directly to attorneys representing a City employee or official, for the purpose of defraying legal expenses incurred by that employee or official, are no different from gifts made directly to that employee or official and thus are subject to the gift restrictions in §2-156-142 of the Ethics Ordinance.⁴

With a few important exceptions, the Ethics Ordinance prohibits City employees, officials, or candidates for office from accepting *any* gift of cash, gift card or cash equivalent, regardless of amount. The Ordinance makes exceptions to this rule for gifts given by relatives and personal friends. *See* §§2-156-142(d) (4) and (6). A City official or employee *may* accept gifts in *any* amount from relatives and

² Section 2-156-010(w) of the Ethics Ordinance provides: "'Relative' means a person who is related to an official, candidate for city office, or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister."

³ The Ethics Ordinance does not define the term "personal friend." However, the Board here cautions, as it has long taught, that this personal friend exception is a *narrow* one. In order for a City employee or official to rely on it, their "personal friend" must be a *bona fide* personal friend, *not* a "business friend" that the employee or official has met through their City position. In determining whether a *bona fide* "personal" friendship exists, the Board would consider "the circumstances under which the gift was offered, such as (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the ... officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other ... officers or employees." *See* the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/10-15(7), which also has this "personal friend" exception, and Board Case No. 18023.IG, <https://www.chicago.gov/content/dam/city/depts/ethics/general/SettlementAgreements/18023.IG-Olvera.pdf>.

⁴ We note here that our colleagues at the New York City Conflicts of Interests Board ("COIB") came to *exactly* the same conclusion. In Advisory Opinion No. 2017-2, the COIB addressed requests from New York City public servants who proposed to establish legal defense funds that would help defray their legal expenses. It stated:

"The Board recognizes that legal expenses can burden public servants. However, neither Chapter 68 [that City's analog to the Ethics Ordinance] nor any other City law distinguishes contributions to legal defense funds from other gifts. In the absence of specific legislation that distinguishes gifts made to public servants through legal defense funds from other gifts to public servants, there is no legal basis for the Board to treat gifts made through legal defense funds differently... when legal expense are to be paid by neither the City nor regulated campaign committees, but instead by legal defense funds established to receive contributions for this purpose, the Board considers contributions to such legal defense funds as it would any gifts to the public servant personally."

See https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2017/AO2017_2.pdf.

We further note that our colleagues at the Philadelphia Board of Ethics also consider donations or contributions made to a City official's "legal defense fund" to be subject to that City's gift laws. *See* <https://billypenn.com/2021/07/16/bobby-henon-kenyatta-johnson-indictment-legal-fund-attorney-gift-ban-lobbyist/>

personal friends as long as there is no implicit or explicit understanding between the giver and the recipient that any of the giver's matters involving the City would be influenced by the gift, and, in narrowly delineated circumstances, from subordinate City officials or employees.⁵ See Case No. 20012.Q.

While some jurisdictions have enacted legislation that permits and regulates legal defense funds, neither the City of Chicago nor the State of Illinois⁶ have such legislation. Accordingly, there is no legal basis for the Board to distinguish gifts offered or made to City employees or officials through legal defense funds, or directly to their attorneys, from other gifts offered or made to them. The Board considers contributions or donations to a legal defense fund or to a third party collecting contributions to offset legal expenses as equivalent to gifts made directly to the City employee or official personally, regardless of the source of those gifts, whether from City contractors, vendors, residents, real estate developers, or other City employees or officials.⁷

As noted above, the Board does not, and cannot, address the appropriateness of a candidate or elected official using duly accepted and reported *campaign or political* funds to pay for legal defenses, as that is a matter of state law. We advise you to seek advice from competent legal counsel as to the appropriateness of using campaign or political funds for this purpose.⁸

While this opinion is addressed to you and your specific inquiry, it applies to all City officials, candidates for City office, and City employees.

III. Penalties for Violating the Ordinance's Offering, Receiving and Soliciting of Gifts or Favors Provision. There are severe penalties for violating this provision. Any person found to have violated the Ordinance's Gift provisions shall be subject to a fine of not less than \$1001 and not more than \$5000

⁵ As to subordinate City employees or officials, the Ethics Ordinance does allow City officials or employees to accept a gift, even a monetary gift, from their subordinates that is appropriate to a special occasion, such as the birth or adoption of a child, a wedding or retirement. The need to pay one's personal legal fees is not such an occasion. See §§ 2-156-142(d)(2)(i) and (ii).

⁶ Between January 1999 and November 2003, Illinois had legislation that exempted legal defense funds from the state's gift restrictions for non-home rule public officials and employees, state judges, and members of the General Assembly. Specifically, the law exempted from the gift restrictions "[a] contribution or other payment to a legal defense fund established for the benefit of a member officer employee or judge that is otherwise lawfully made" State Gift Ban Act, Public Act 90-0737. The State Gift Ban Act was repealed by the General Assembly in November 2003 and replaced with the State Officials and Employees Ethics Act, which does not include an exemption to the gift restrictions for legal defense funds. 5 ILCS 430/1-15.

In contrast, the City of San Diego, for example, *does* allow such funds, which its law calls "Professional Expense Funds," and carefully regulates contributions or donations made to such funds and public disclosure thereof. See San Diego Municipal Code, §§27.2965-.2969: <https://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division29.pdf>.

⁷ A GoFundMe fundraising account, for example, would serve as the functional and legal equivalent of a prohibited legal defense fund. In Case No. 17003.A, the Board determined that the Ordinance's gift restrictions apply to City officials or employees who would be beneficiaries of a "GoFundMe" or other on-line fundraising campaign and thus the compensation, if cash or cash equivalent, must be *solely* from personal friends or relatives. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Deck%20Chairs/6/17003A.docx>.

⁸ See e.g., <https://chicago.suntimes.com/2021/5/19/22444183/mike-madigan-ed-burke-danny-solis-campaign-cash-lawyers-legal-fees-comed-federal-investigations> and <https://www.chicagotribune.com/politics/ct-edward-burke-legal-fees-20191010-vkmht36fmzdnrajrbitia6c7pu-story.html>.

for *each* offense, pursuant to Ordinance §2-156-465(b)(4), or to removal from office, pursuant to §2-156-465(a). Moreover, the Board makes public any determination that there have been Ordinance violations, along with any penalties assessed.

IV. Determinations. For the reasons explained above, the Board determines that: i) while the Ethics Ordinance does not prohibit you from establishing a “legal defense fund”; ii) any monetary donations or contributions made to such a fund, or directly to your attorneys for the purpose of defraying your legal expenses, would constitute gifts to you for purposes of the Ethics Ordinance; thus iii) the Ethics Ordinance *does* prohibit you from accepting any cash or cash equivalent contributions made for the purposes of helping you to defray legal expenses arising from your official City duties, except contributions made by your relatives or personal friends. Finally, the Board cannot advise you as to whether you may use political or campaign funds for this purpose, so we advise you to seek the advice of competent legal counsel on that issue.

V. Reliance and Reconsideration. Our determinations and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this opinion. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter those determinations or advice. Please note, as well, that this opinion may be relied upon only by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

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 Section 3-8 of the Board’s Rules and Regulations, a request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by the Board within fourteen (14) City business days of the date of this opinion, that is, before the close of business on Friday, September 10, 2021. If there are additional facts you wish the Board to consider, as noted above, please contact Steve Berlin, our Executive Director, or Lisa Eilers, our Deputy Director.

Thank you for your thoughtfulness in requesting this opinion, and in advance for your compliance with it. If you have questions about this or any other matter, please contact us.

Sincerely,

William F. Conlon, Chair