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March 22, 1988

[REDACTED]

CONFIDENTIAL

Case Number 88022.A

Dear [REDACTED]

You recently requested an advisory opinion concerning two matters; the first relating to requests you receive from persons seeking assistance in obtaining City business, the second relating to the participation of City employees in your election campaigns. Since each of these matters poses a distinct set of issues under the Ethics Ordinance, we will address them separately.

Section I.

With respect to the first of these matters you informed the Board that you are frequently asked to contact other City officials on behalf of persons seeking contracts or business relations with City agencies. You note that many of these requests come from persons who believe that they have been discriminated against in their dealings with the City or who believe that the Purchasing Department has deviated from established guidelines concerning Minority Business Entities (MBE).

[REDACTED]

many of the requests you receive, and are likely to receive in the future, come from persons who seek your assistance in obtaining contracts for concessions at City festivals.

After reviewing this information, the Board has determined that no provision of the Ethics Ordinance would prohibit you from contacting City officials and employees on behalf of persons who seek business relations with the City; provided that you have no economic interest in providing such assistance, and the circumstances are not



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such that your actions could reasonably be construed as an attempt to derive a personal benefit or advantage in return for your assistance.

There are three sections of the Ethics Ordinance which are potentially relevant to the circumstances you describe; Sections 26.2-3, 26.2-9(a), and 26.2-5.

Section 26.2-3 states that:

No official or employee shall make, or participate in making or in any way attempt to use his position to influence any City governmental decision or action in which he knows or has reason to know that he has any economic interest distinguishable from its effect of the public generally.

This Section would not prohibit you from contacting officials to advocate business with private parties unless you know or have reason to know that you would benefit economically from the decisions of those persons you seek to influence.

Section 26.2-9(a) states that:

No official or employee may represent or have an economic interest in the representation of any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official. (emphasis added)

This section explicitly allows an elected official to appear without compensation before any City agency on behalf of his constituents during the course of his duties as an elected official. Although the spectrum of activities allowed under this provision is not specified, the Board believes that such activities would include contacting officials on behalf of persons who seek your assistance in obtaining City business or who seek a

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remedy for what they perceive to be unfair treatment by a City agency. Therefore, under this section, such activities would be allowed provided that you do not accept compensation for performing these services.

Section 26.2-5 states that:

No official or employee... shall solicit or accept any money or other thing of value including, but not limited to, gifts, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee... from accepting compensation for services wholly unrelated to the official's or employee's City duties and responsibilities and rendered as part of his or her non-City employment, occupation or profession.

This section would not prohibit you from assisting persons in obtaining contracts with the City unless you provided this assistance in return for money or any other "thing of value". It is important to note that the language used in this section to refer to the benefits forbidden in exchange for assistance is broad and would clearly include financial support of political campaigns. This section would prohibit you from accepting any monetary benefit or service of any kind, including campaign funds or voluntary fundraising services, in return for the assistance you give to persons seeking City contracts. Moreover, this prohibition applies to gifts, favors or promises made either prior or subsequent to any assistance you offer the donor. In other words, the Ordinance would prohibit you from accepting any "thing of value" in exchange for assistance on a matter of City business, whether you accept such gifts prior to your assistance or in a deferred fashion.

In sum, the sections of the Ordinance relevant to the first issue you have raised in your request do not prohibit you from contacting other City officials or employees on behalf of persons who seek business with the City provided that (1) you have no economic interests which would be affected by the outcome of an official's decisions regarding the person you represent; and (2) you do not accept any "thing of value" (including any money, gift, service, favor, promise of political support, campaign

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contribution, or any other significant personal benefit) in return for providing this assistance.

Section II.

The second matter you raise in your letter concerns the participation of City employees in election campaigns. You asked the Board to determine (a) whether you violated the Ethics Ordinance by allowing a City employee [redacted] to participate in campaign fundraising efforts for your [redacted] election to the City Council; and (b) whether the Ethics Ordinance would prohibit any City official or employee from participating in your political campaigns in the future.

Before addressing these questions, we want to clarify that any opinion we issue with respect to these particular questions does not imply any judgment with respect to the specific activities [redacted] of your political interests. You have called our attention to an article [redacted]

[redacted] where it is suggested that the City employee [redacted] awarded contracts in return for political contributions to your election campaign. You state that you did not exercise any control over [redacted] the awarding of these contracts; that you never spoke with the City employee [redacted] regarding any of the contracts; and that you did not know that the persons receiving contracts had been contacted for contribution to your campaign.

In this opinion we will not attempt to determine whether the allegations against the City employee [redacted] are true or whether his actions as a City employee have violated certain provisions of the Ordinance. Rather we will restrict our comments to the issue of whether City employees and officials may participate in political fundraising activities and whether you violated any provision of the Ethics Ordinance by allowing the City employee [redacted] to undertake campaign fundraising activities in general.

It is our opinion that there is no provision of Chapter 26.2 (the Ethics Ordinance) or of Chapter 26.3 (the Campaign Finance Ordinance) which would prohibit a City employee from participating in fundraising activities for an aldermanic candidate's campaign provided that 1) the employee does not perform these political activities during City time or with the use of City property or other City resources; and 2) the City employee has not been coerced, intimidated, or in some sense compelled by another City employee to participate in these activities. Section 26.2-2 of the Ordinance requires that employees "shall at

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all times in the performance of their public duties owe a fiduciary duty to the City". Participating in campaign activities during hours normally used for the performance of one's City duties would violate this requirement of the Ordinance. Moreover, using City-owned materials for political fundraising activities would violate Section 26.2-6 of the Ordinance which prohibits the unauthorized use of City owned property.

As an official who is also a candidate for election, you would not be in violation of these sections unless you allowed, sanctioned, or in some way encouraged an employee to use his or her office as a means of benefitting your campaign. Any City official who allowed or encouraged an employee to operate in this manner would himself be misusing City resources and would therefore be in violation of Section 26.2-6 which prohibits the unauthorized use of City property; Furthermore, such an official would be in violation of Section 26.2-3 of the Ordinance which prohibits an official from attempting to use his position to influence governmental action in which he has an economic interest.

In addition to these provisions concerning the fiduciary duty of employees, the Ordinance contains provisions prohibiting the coercion of employees for political purposes. Section 26.2-14 states that:

No official or employee shall compel, coerce or intimidate any City official or employee to make or refrain from making any political contribution. Nothing in this section shall be construed to prevent any official or employee from voluntarily making a contribution or from receiving and voluntary contribution.

Note that this provision does not prohibit you from accepting the voluntary efforts of City employees in your election campaigns.

Taken together these provisions of the Ordinance relevant to the second matter you raise do not prohibit you from allowing employees [redacted] from participating in fundraising activities for your election campaigns, provided you do not knowingly allow or condone activities which involve a breach of fiduciary duty or an abuse of City office as prohibited under sections 26.2-2 and 26.2-6; and that you do not coerce, intimidate or in any way compel the employee or official to participate. [redacted]

[redacted]. The fact that he was a City employee does not

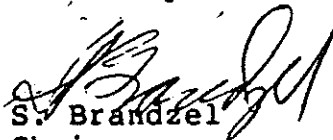
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prohibit him from engaging in, or you from allowing him to engage in, fundraising activities for your campaign. Again this does not imply that certain of his activities did not violate the Ordinance. Nor does it imply any judgment concerning your knowledge of or involvement in any of these activities.

We very much appreciate your inquiry and hope that this has sufficiently answered your questions. If you should have any further questions concerning these or related matters, please do not hesitate to contact the Board.

Sincerely,


S. Brandzel
Chairman

JH/jh/[REDACTED]