



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION, Case No. 18033.A

CONTRIBUTIONS TO CANDIDATES FOR MAYOR AND ALDERMAN IN THE FEBRUARY 2019 CONSOLIDATED MUNICIPAL ELECTION

In the past month, the Board of Ethics has received numerous inquiries about whether and which campaign contribution limitations to candidates for Mayor or candidates in several aldermanic races¹ apply to part- or full-owners of businesses subject to the \$1,500 per candidate/per calendar year contribution limitation imposed by City law. The Board expects this question to recur until the February 2019 election, and then until any April 2019 runoff elections. This advisory opinion will make the answer clear. The Board issues it pursuant to §§2-156-380(f) and (l) of the Governmental Ethics Ordinance (the "Ordinance").²

As background, under Article VI of the Ordinance, entitled "Campaign Financing," certain "persons"³ (including individuals or for-profit or non-profit entities) are limited to \$1,500 in political contributions per calendar year per candidate for elected City office, or to the candidates' authorized political committees registered with the Illinois State Board of Elections. These persons are: (i) lobbyists registered with the Board; or (ii) those who are doing or have "done business with"⁴ the City or its named sister agencies⁵ in the preceding four (4) years; or (iii) those who are "seeking to do business with" the City or its named sister agencies at the time of their political contribution.

Notably, unlike laws of some other large American cities,⁶ Chicago's does **not** automatically consider owners (or directors or key employees or officers) of entities subject to this \$1,500 annual limitation to be one and the same person as the entity itself or its affiliated persons (its subsidiaries or parent corporation, for example), such that all of them together would be subject to a **single** \$1,500 per year/per candidate limitation. Rather, following fundamental principles of corporation law, **Article VI provides that these individuals are not considered the**

¹ The races in the 26th 42nd and 44th Ward, as of this date, have also had their state law campaign contribution caps "blown," as explained below.

² The full Ordinance is posted on our website here:

<https://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/GEO-FebMarch2018.docx>

³ "Person" is defined in §2-156-010(r) of the Ordinance.

⁴ The terms "doing business with" and "seeking to do business with" are defined in §§2-156-010(h), (x), and -445(a) of the Ordinance.

⁵ These are the Chicago Transit Authority, Board of Education, Chicago Park District, Chicago City Colleges, or the Metropolitan Pier and Exposition Authority.

⁶ See, e.g., Los Angeles City Charter, Sec. 470 (c)(12); Los Angeles Municipal Code, §49.7.35, *et seq.* (contribution limitations also apply to "principals" of contract bidders, proposers, or subcontractors, namely their Board Chair, President, Chief Executive Officer, Chief Operating Officer, or the functional equivalent of any of these, or individuals holding ownership interest of 20% or more, or individuals authorized by the bid or proposal to represent the persons before the City); New York City Administrative Code, §§3-702(20) (contribution limitations imposed on persons with business dealings with the City also apply to their Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, others employed "in a senior managerial capacity," and owners of more than 10%).

same person as the entity *unless they are reimbursed for their contributions by the entity, or there is some reason to “pierce the corporate veil.”*⁷ See §2-156-445(b) and Board Case 13044.A, fn. 3:

https://www.cityofchicago.org/content/dam/city/depts/ethics/general/AO_CampFinancing/13044.A.pdf

Thus, **the question:** Company C does business with the City. C’s shares are 100% owned by one individual, O. C contributes the maximum annual amount, \$1,500,⁸ to Mayoral candidate M’s authorized candidate committee in October 2018. May O also contribute to M’s authorized candidate committee in 2018?

The answer: provided O: (i) is not a registered lobbyist; or (ii) has not *individually* done business with the City or its named sister agencies in the last four (4) years; or (iii) is not *individually* seeking to do business with the City or its named sister agencies; or (iv) is not reimbursed for the contribution by C or any of C’s affiliated entities nor has O treated C and its operating assets in such a way that the corporate veil could be pierced, then the only limits on O’s contributions to M or to any other candidate(s) for the February 2019 election are those imposed by the Illinois Election Code. The Board understands that those state law limits (which would otherwise be \$11,100 for C and \$5,600 for O during the current election cycle, subject to adjustment on January 1, 2019) were eliminated entirely from the 2019 Mayoral and several aldermanic races because one or more candidate(s) contributed in excess of \$100,000 to their own authorized candidate committees.⁹ Thus, in effect, O may make unlimited contributions to M and/or any other candidates for Mayor or aldermen in those races (see fn. 1, above) in the upcoming election, provided conditions (i)-(iv) listed above in this paragraph are satisfied.

Comment: While the law is clear, the Board is sensitive that these circumstances may be perceived as a “loophole” allowing unlimited funding and thus potentially undue influence on Mayoral and/or aldermanic candidates by wealthy individuals or other interests. Pursuant to the Board’s power and duty to recommend legislative action under §2-156-380(f) of the Ordinance, we will at the appropriate time present to the City’s policy-makers proposals to bring Chicago’s laws more in accord with those of other jurisdictions that have addressed this issue.

Reliance: This advisory opinion is not a substitute for legal advice in any particular circumstance. Persons with questions about whether a contemplated political contribution or other action complies with the City’s ethics laws and standards should request a confidential personalized advisory opinion from the Board of Ethics.



William F. Conlon, Chair
October 19, 2018

⁷ “Piercing the corporate veil” is an equitable remedy in which courts disregard the corporate form and hold owners or other individuals or entities responsible for a corporation’s debts or other liabilities. For a discussion of the factors Illinois courts consider before applying it, see *Fontana v. TLD Builders, Inc.*, 362 Ill.App.3d 491 (2005).

⁸ We note here that, although the state law contribution “caps have been blown” for these races, the application of the home rule principle provides that the City’s own contribution limitations, expressed in Article VI of the Ordinance, still apply to those persons subject to them. In fact, the Illinois Appellate Court recently upheld a decision by the Cook County Circuit Court rejecting an argument that the County’s campaign contribution limitations (which are similar but not identical to the City’s) would be effectively swept away by operation of the “self-funding candidates” provision of the Illinois Election Code that we cite in footnote 9, below. See *Berrios v. Cook County Board of Commissioners and Cook County Board of Ethics*, 2018 IL App. (1st) 1-8-0654, ¶¶56-73 (September 21, 2018), <http://www.illinoiscourts.gov/Opinions/AppellateCourt/2018/1stDistrict/1180654.pdf>.

⁹ This has occurred by operation of the provision of the Illinois Election Code entitled “Self-funding candidates.” See 10 ILCS 5/9-8.5(h).