



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

Case No 19023.A

June 14, 2019

Re: "Candidate" (or "candidate for City office"), Governmental Ethics Ordinance §2-156-010 (c-2)

FACTS:

In the past election cycle, some candidate committees filed D1's¹ as "exploratory committees" – there is no such thing² – and each of these candidates evidenced a belief that, as long as they or their committees did not actually accept contributions, the person aided by the committee would still not legally occupy the status of a candidate. (And still others thought the pivotal moment evidencing their status as a candidate was when their filing petitions were accepted by the Chicago Board of Election Commissioners.) This opinion clarifies when a person seeking election to City office becomes a candidate for office in the City of Chicago pursuant to the Governmental Ethics Ordinance (the "Ordinance").

LAW:

§2-156-010 (c-2) of the Ordinance defines "candidate" or "candidate for City office" as follows:

(c-2) "Candidate for City office" means any person who seeks nomination for election, election to or retention in any elected office of the government of the City, whether or not such person is elected. A person seeks nomination for election, election or retention if he or she (1) takes the action necessary under the laws of the State of Illinois to attempt to qualify for nomination for election, election to or retention in public office, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his or her nomination for election or election to or retention in such office. For purposes of this definition, the term "expenditure" has the meaning ascribed to that term in Article 9 of the Illinois Election Code, codified at 10 ILCS 5/9-1 et seq.

The Illinois Election Code, §10 ILCS 5/9-3 states in relevant part:

Political committee statement of organization. ("State Organization")

(a) Every political committee shall file with the State Board of Elections a statement of organization within 10 business days of the creation of such committee, except any political committee created

¹ The State of Illinois's Election Code ("Code"), designates the "statement of organization" that a committee for a candidate must file, pursuant to the Code, §10 ILCS 5/9-3, as "Form D-1."

² There are no "exploratory committees" denoted in the Code's listing of "Political Committees." 10 ILCS 5/9-1.8.

within the 30 days before an election shall file a statement of organization within 2 business days in person, by facsimile transmission, or by electronic mail.

The "statement of organization" shall include, among other things:

(b)(7) a listing of all banks or other financial institutions, safety deposit boxes, and any other repositories or custodians of funds used by the committee

ANALYSIS AND DETERMINATION

The question is, under the Ordinance, when does a person who has filed a Form D-1 occupy the status of candidate? The answer is contained in the language of the definition of "candidate" in the Ordinance: "[A candidate is one who] gives consent for any other person to receive contributions or make expenditures with a view to bringing about his or her nomination for election or election to or retention in such office." (Bracketed materials added)

In order for a person to establish a political committee, that person must follow the Illinois Election Code, which requires that the person file a Form D-1. That form requires that a person state:

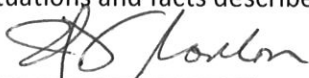
a listing of all banks or other financial institutions, safety deposit boxes, and any other repositories or custodians of funds used by the committee

By so filing, the person has proactively, officially, and publicly "give[n] consent for any other person [e.g., a 'custodian of funds used by the committee'] to *receive contributions or make expenditures* with a view to bringing about his or her nomination for election or election to or retention in such office." (emphasis supplied). Whether there have actually been funds deposited into a bank account established pursuant to this State law is not the relevant question or fact. Instead, the action triggering a person's status as a "candidate" under the Ordinance is the public statement through the Form D-1 that the person *has* a bank or other repository designated to deal with committee funds and that the person is ready to accept donations and gives others the right to receive contributions or make campaign expenditures on his or her behalf.

THEREFORE, THE BOARD DETERMINES that a person who files a Form D-1 for a candidacy for any of the City's 53 elected offices thereby becomes a candidate for elected office in the City of Chicago, subject to the restrictions and obligations imposed upon candidates for City elected office, regardless of whether any funds have yet been deposited into an associated bank account, and regardless of the status of any petitions they must file with the Chicago Board of Election Commissioner as required by the Illinois Election Code

CONCLUSION

The Board's conclusions and advice are based solely on the application of the Ordinance to the situations and facts described herein. Other laws and/or regulations may apply.



William F. Conlon, Chair