

September 12, 2008

To: Sandra Dennies, Director of Administration  
From: Burt Rosenberg, Asst. Corporation Counsel  
Re: McGladrey & Pullen Agreement  
Campaign Contributions by Employees to Mayor's  
Gubernatorial Campaign

It is my understanding that the Board of Finance has raised an issue as to whether contributions made by McGladrey & Pullen employees to the Mayor's gubernatorial campaign are in violation of the Agreement between the City and McGladrey made pursuant to Request for Proposals #449 for Professional Auditing Services. The provision of the Agreement is as follows:

**16. GIFTS.** During the term of this contract, including any extensions, the Consultant shall refrain from making gifts of money, property or services to any employee or appointed or elected official of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions Departments, Agencies of Authorities. All references to the Contractor shall include its officers, directors, employees and owners of more than 5% equity in the Contractor. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated

The foregoing provision is based upon Board of Representatives Ordinance No. 1031 Supplemental, which was passed on May 3, 2004.

At the outset, it should be noted that the contractual restriction quoted above applies to gifts made to City employees and officials; there is no mention of contributions to political campaigns. Therefore, strictly construed, the contractual provision cannot be said to limit campaign contributions, since the contribution is

made to the campaign and not to the employee or officer. However, for the purposes of this memorandum, we will assume that it was the intent of the Board of Representatives that the ordinance apply to campaign contributions. Please note that I reviewed the existing legislative history of the ordinance, which was minimal.

It is my opinion that the foregoing provision applies to campaign contributions for City office and not for State office because the comprehensive State law on the subject of election contributions to State office pre-empts municipal regulation of such conduct. C.G.S. Secs. 9-600 et seq., regarding campaign financing, represent comprehensive regulation of the subject matter. By way of example, C.G.S. Section 9-610 places limits on contributions made by individuals to candidates. Section 9-612 restricts contributions by principals of actual and prospective state contractors, the violation of which requires the voiding of contracts and contractor debarment for a period of one year after the election for which the contribution was made. Section 9-613 bars political contributions from business entities.

It is well established that no municipal ordinance can go beyond, be broader than, add to, subtract from, modify, affect, limit, amend or change a state statute. McQuillan, "Municipal Corporations", Sec. 15:20. Certainly, an ordinance cannot impose additional regulation in an area where, as here, under state law, there is no room for its operation in such field, even though the particular ordinance does not directly conflict with any express provision of state law. Ibid. In other words, whether or not the terms of a local ordinance actually conflict with a state statute, where the state has pre-empted the field with a comprehensive, detailed statutory scheme, the ordinance must be deemed to be inconsistent with the state's transcendent interest. Ibid.

Based upon the foregoing facts and analysis, it is my conclusion that Ordinance No. 1031 Supplemental is limited to contributions to campaign for City office, because the Board of Representatives does not have authority to regulate campaign contributions for State office. It additionally bears mention that an ordinance which proposes to prohibit individual employees of any firm which is party to a contract with the City may violate the First Amendment of the U.S. Constitution, since the Supreme Court has given exacting scrutiny to campaign finance limitations which restrict voluntary conduct.

If you have any other questions concerning this matter, I will be happy to address them.

C: Thomas M. Cassone, Director of Legal Affairs