

BOARD OF ETHICS
OPEN SESSION MINUTES

January 22, 2014 - 3:14 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

Stephen W. Beard, Chair
Russell F. Carlson
Mary T. Carr
Hon. Michael J. Gallagher
Frances R. Grossman
Hon. Julia M. Nowicki

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard J. Superfine, Legal Counsel
Ana Collazo, Attorney Investigator
Edward Primer, Program Director
Pauilly Casillas, Staff Assistant

BOARD MEMBER ABSENT

Daisy S. Lezama

ATTENDEES

Faisal Khan, Legislative Inspector General
Thomas P. Needham, Esq.

I. MATTERS PRESENTED BY THE ATTENDEES FOR BOARD'S CONSIDERATION

The Chair welcomed and recognized Mr. Thomas Needham, an attorney for a respondent in a matter based on a concluded investigation from the Office of Legislative General. Mr. Needham explained that he wished to present the Board with a motion to issue two subpoenas for witnesses to appear. The Chair explained that the motion would be taken up in Executive Session.

The Chair then welcomed and recognized Mr. Faisal Khan, the Legislative Inspector General ("LIG"). Mr. Khan explained that he wished to present three matters for the Board's consideration.

The first was with respect to hearings that will be based on his office's concluded investigations. He said that he needs clarity as to what the Board would require of his office in terms of presenting the City's case, and what would be expected of his office in terms of discovery. He said he had received Mr. Needham's motion, and had communicated with Mr. Needham about making other records available. He explained that he had originally intended to present only his office's concluded investigative reports as its cases in chief, with no witnesses, but now wished to have clarity from the Board as to whether that would suffice, especially in that, as the investigator, he believed he would be in a potentially conflicting situation were he to act as his office's attorney, and that none of the staff who work for his office are attorneys. The Chair and several Board members explained that due process requires that the accused be able to confront witnesses, and that it would best for adjudicative purposes if the LIG or his representative were to present an opening summary of the case. The Chair then said that further details about discovery and other procedural matters would be sent.

The second matter was his request that the Board publicly support before the City Council and the Mayor the passage of a version of an ordinance submitted to the City Council in October 2013 that would enable his office to initiate investigations into violations of the campaign contribution limitations in the Governmental Ethics Ordinance. He explained that, at his request, Alderman

Patrick O'Connor had introduced two Ordinances, their intent being that the Office of the Legislative Inspector General ('OLIG') would be authorized to initiate campaign financing investigations without a signed and sworn complaint. He also stated that Alderman O'Connor had recently advised him that a meeting was held that was attended by representatives from the senior executive staff of the Board and Mayoral advisers and representatives from the Law Department, and that, after his conversation with the Alderman regarding that meeting, he had become concerned that, as a result of that meeting, the authority to initiate campaign contribution investigations would be returned to the Board of Ethics, thereby in effect doing an "end run" around his office. He stressed that such a result would be contrary to the Mayor's Ethics Reform Task Force's recommendations, which were to vest the authority to investigate all potential ethics violations with the Offices of the Inspector General and Legislative Inspector General. He said that is aware that the Board of Ethics had that authority through June 30, 2013, but that he thought no such investigations have been commenced or concluded since 2008. He said that he believes that there may be 300 such cases that could be brought by his office. He also emphasized that the Office of the Inspector General, unlike his, need not wait to receive a signed and sworn complaint in order to investigate campaign financing violations regarding the Mayor, City Clerk and City Treasurer, and there should be parity in enforcement as to the City Council, over which his office has jurisdiction.

The third matter was his request that the Board publicly support his position that the OLIG's budget and staffing be commensurate with its responsibilities. He explained that, unlike the Office of the Inspector General, which has approximately 70 full-time employees, his office has no full-time employees (other than his administrative assistant) and his staff investigators are all part-time, though he considers his own position to be a full-time occupation. Without adequate funding, his office cannot complete the investigations it has commenced, or even begin work on the many signed and sworn complaints that come in—a result that is inconsistent with the City's stated goals. He further said that, in the first 18 months of his office's existence, staff of the Board of Ethics, particularly Executive Director Steve Berlin, had been very helpful, gracious and accommodating in terms of providing technical support, but that support is no longer available and it is now difficult for his office to fulfill its statutory mission.

At 3:51 p.m., the Board voted to adjourn into Executive Session.

The Board VOTED 6-0 (Daisy S. Lezama, absent) to adjourn into Executive Session at 3:51 p.m. under 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.

In addition, the Board voted to adjourn into Executive Session under 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Section 2-156-395 (the Ordinance applicable to this matter) and the Board's Rules and Regulations, 4A-2, "Hearings on Complaints Against Aldermen" as amended, effective February 26, 2010, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 5:36 p.m., the Board voted to reconvene into open session and proceeded with open session matters and considered matters by the Board in Executive Session.

II. APPROVAL OF MINUTES

The Board VOTED 6-0 (Daisy S. Lezama, absent) to approve the Open Session Minutes of the November 25, 2013 meeting. The December 2013 meeting was cancelled.

III. CHAIR'S REPORT

Deferred

IV. EXECUTIVE DIRECTOR'S REPORT

A. EDUCATION-CLASSES

Since the last Board meeting, we have held 2 classes in our offices, on December 5 and 12. 22 employees attended. 19 are scheduled for class on January 23 and 12 on February 6.

On December 12, staff conducted a class for the members and staff of Affirmative Action Advisory Board, at the request of the Chief Procurement Officer.

On February 3, staff will present the first of numerous classes for aldermen and their staff members (City and campaign staff are welcome), with a focus on campaign contribution laws.

On February 10, staff will conduct a class for the Commissioners and service provider of SSA #51, the Chatham Small Business Association; at that time, classes for all remaining SSA Commissioners and Service Providers will be scheduled.

During 2013, the Board: (i) conducted 43 classes, that were attended by more than 1,000 City employees, officials and representatives of delegate agencies; (ii) produced or revised 12 educational guides, (all available on our website) covering a wide range of topics, including gifts, outside employment, contracting with the City, engaging in political activity, serving on outside boards, post-employment, lobbying and interacting with lobbyists, making campaign contributions, and general guides for City appointed officials, vendors and citizens; and (iii) produced a brief program for City vendors, as well as materials specifically for all newly hired and departing City employees.

B. ON-LINE TRAINING

Our records showed that, as of January 1, 2014, 13 City employees had not completed their required annual training for 2013. On January 6, staff had sent these 13 and 10 others each a notice that they would be considered by the Executive Director as having violated the Ordinance (the other 10, we were informed, are no longer employed by the City). Since that time, all but one (1) of them has completed it. Staff is considering the reasons for non-compliance raised by the others and will report on its dispositions at the February meeting.

C. LOBBYISTS

As of today, we have processed registrations of 495 lobbyists for 2014, and collected \$98,500 in fees. Registrations were due on January 21, 2014 (as were quarterly reports), thus this number is continuously growing. As required by law, staff is preparing to send out letters to all lobbyists who have not completed their registration or filings (or terminated properly): these will recite the fines that they can be assessed and afford them the opportunity to file activity reports within the statutory grace period but give them final notice of any failure to re-register or terminate.

For all of 2013, we processed registrations activity reports and terminations for 702 registered lobbyists, and collected \$379,000 in lobbyist registration fees. During 2013, the Board's enforcement with respect to lobbyists who failed to timely register or report yielded the following: 23 lobbyists were found in violation of the law and fined \$12,400, the registrations of 3 were terminated, and 144 were given a one-time admonition against future late filings.

Staff is drafting and will post the annual lobbying training soon. Earlier in 2013, the Board determined that 20 lobbyists had failed to complete their 2012-2013 annual training as required, and assessed them each fines of \$750.

D. STATEMENTS OF FINANCIAL INTERESTS

At the end of 2013, we had received and posted on our website 3,509 Statements of Financial Interests from those persons required to file them in 2013. All but 6 appointed officials have filed. These 6 were found to have violated the Ordinance, and their names were sent to the Mayor's Office for possible sanctions, including removal from office. Staff has been in frequent communication with the Mayor's Office on this matter. Earlier in the year, the Board found 44 employees and 19 appointed officials in violation of the law for failing to file their 2013 Statements of Financial Interests as required, and assessed fines totaling just over \$12,000.

On January 31, staff will send each department head, alderman and ethics officer and the Office of Legislative Counsel and Government Affairs a listing of all 2013 filers, and receive updated lists of filers for 2014 so that all such filers can receive their required notice to file on March 1, 2014. We anticipate about 3,550 filers in 2014.

E. LITIGATION AGAINST THE BOARD

On December 12 Cook County Circuit Court Judge Sheryl Pethers dismissed with prejudice the case brought originally by 40 Chicago Police Officers for a refund of their 2012 late filing fees (for their Statements of Financial Interests). She granted the Board's motion to dismiss on the basis that the single plaintiff in the amended complaint did not plead that the City had any duty to notify him of his filing requirements under the Ordinance in a manner other than e-mail. She also reasoned that the plaintiff could not bring an implied contract claim for unjust enrichment when his employment is governed by an express contract such as the collective bargaining agreement. She pointed out that the Municipal Code gives the Board the freedom to notify employees in a manner it deems appropriate, so plaintiff's issue with being notified by e-mail is not actionable. The Order was appealable for 30 days.

F. PROPOSED AMENDMENTS TO THE ORDINANCE

The proposed changes to the Ordinance submitted at the November 20 City Council meeting that would require City contractors to report to the appropriate Inspector General conduct that the contractor knows or should reasonable know to involve corrupt or other unlawful activity by its employees or others concerning performance of City work or dealings with the City has been delayed. I will keep you apprised. The Ordinances introduced in October 2013 by Alderman Patrick O'Connor regarding enforcement of campaign contribution violations by the Legislative Inspector General are in the City Council's Rules Committee.

G. INFORMAL ADVISORY OPINIONS

In 2013, the agency issued more than 6,100 confidential advisory opinions (the exact count is still being tallied), including 12 formal opinions with precedential value, all posted on the agency's website. About 70% these have were for City employees and officials (10% of these to City Council members or their staff or their representatives, and to department heads). 16% were issued to lobbyists, with the remainder issued to attorneys, vendors, political committees and campaign contributors.

H. UPDATED WEBSITE

On our website, we posted detailed guides to filing ethics complaints with both Inspectors General, as well as summaries of the City's whistleblower and mandated reporting provisions in the Ordinance. The Board also posts on its website disclosures filed by City Council members as required by law (about 35 in 2013; we have posted these since 1998), as well as other required disclosures (such as business travel taken and gifts accepted on behalf of the City), and other disclosures that are not required by law (such as returned gifts). In 2013, more than 200 of these were posted.

I. RULES & REGULATIONS

Staff sent out the latest draft for public comment and to other departments, including both Inspectors General, Law, Administrative Hearings, and City Council. Our intention is to submit them to the City Council in March. The Rules & Regulations would become effective 45 days after submission to City Council, unless the City Council votes (by majority vote) to disapprove them.

J. FREEDOM OF INFORMATION ACT

Since the last Board meeting, the office has received 8 new requests under the Freedom of Information Act. 3 were for filings for 7 lobbyists between 2011 and 2013, 3 were for statements of financial interests for 3 employees filed between 2008-2011, 1 was a request for records disclosing the numbers of campaign finance investigations from 2004-2012, uncompleted investigations commenced prior to October 31, 2012, annual reports, and files for the campaign financing investigations, and 1 request for "any and all" information on file

with the Board for 3 employees. This agency produced all lobbyists' records; produced all 9 statements of financial interests; requested an extension of time to respond to the requestor asking for investigation files; and responded asking the requestor to narrow his request with respect to all information held by the Board involving 3 employees.

V. DEPUTY DIRECTOR'S REPORT

None

VI. OLD BUSINESS

1. Ordinances involving Campaign Financing introduced in October 2013
2. Amendments to Board Rules and Regulations
3. Case No. 13014.OLIG, Motion with Respect to Hearing Pursuant to Governmental Ethics Ordinance Section 2-156-395 (2012OLIG0040)

The Board deferred consideration in order to review the proposed motion in executive session.

VII. NEW BUSINESS

None

VIII. CONTINUED IN RECONVENED OPEN SESSION TO DISCUSS MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF EXECUTIVE SESSION MINUTES

The Board confirmed that in executive session it VOTED 6-0 (Daisy S. Lezama, absent) to approve the minutes of the November 25, 2013 meeting.

II. OLD BUSINESS

A. Other Matters

1. Case No. 13014.OLIG, Motion with Respect to Hearing Pursuant to Governmental Ethics Ordinance Section 2-156-395 (2012OLIG0040)

The Board VOTED 6-0 (Daisy S. Lezama, absent) to issue subpoenas in the above-listed case.

2. Matter Presented by the Attendee
Ordinances Involving Campaign Financing Introduced in October 2013

The Board directed the staff to communicate with the Legislative Inspector General and the attorneys for the subjects in each of the three upcoming hearings regarding expectations for lists of witnesses, discovery, and opening and closing statements.

The Board also confirmed the discussion it had in Executive session, namely: (i) directing that a draft letter be circulated expressing the Board's unanimous support of passage of the pending campaign financing ordinances; and (ii) that its involvement in budgetary challenges of another City office would be inappropriate.

3. Case No. 13053.A, Outside Employment

Staff reported that it received a request for an advisory opinion addressing whether a sworn law enforcement officer employed by the City can own, operate, and derive income from a private security business operating in Chicago without violating the Ordinance's "money for advice" provision, §2-156-142(f). The Board "tabled" the matter for further consideration at its February Board meeting.

At 5:38 p.m., the Board VOTED 6-0 (Daisy S. Lezama, absent) to adjourn the meeting.