

BOARD OF ETHICS

OPEN SESSION MINUTES

October 21, 2015, 3:33 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

Stephen W. Beard, Chair
Russell F. Carlson
Mary T. Carr
Frances R. Grossman
Dr. Daisy S. Lezama

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

Until Chair Stephen W. Beard could join the meeting, the Board members concurred that Russell F. Carlson should be Chair *pro tem*.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Stephen W. Beard, Chair, absent) to approve the Open Session Minutes of the July 15, 2015 meeting.

II. CHAIR'S REPORT

Deferred

III. EXECUTIVE DIRECTOR'S REPORT

A. Education-Classes

Staff's work with the Department of Innovation & Technology to replace the system for scheduling people for 4-year classes is entering the testing phase soon: We aim to have the new system running by the end of 2015. It will save time and money by utilizing emails for all correspondence, except with respect to enforcement matters.

Since the last Board meeting, 59 employees have attended classes held on July 23, August 6, 23 and 26, September 10 and 22, and October 6. Classes will next be held on October 22 and November 17.

On July 31, the Executive Director made a presentation to the 24 Mayoral Fellows.

On August 10, 11, and 24, and September 18, staff conducted classes for the 6th, 24th, 25th, and 50th Wards. We will conduct classes for the 36th Ward on October 22, for the 32nd Ward on October 29, for the Treasurer's Office on November 2, and for the 49th Ward on November 5.

On Sunday, August 9, the Executive Director was a panelist on organizational ethics at the Annual Meeting and Conference on Teaching and Learning of the American Accounting Association in Chicago.

On September 21, the office hosted a visitor from the European Parliament for a 60 minute presentation, at the request of the State Department and Mayor's Office.

On October 13, the Executive Director made a 45 minute presentation to the Hyde Park Chamber of Commerce (a delegate agency) and several SSA Commissioners.

On October 20, the Executive Director made a presentation to an undergraduate class in Chicago Politics, at Loyola University.

B. On-line Training

The Board imposed no penalties on lobbyists with respect to the training that they needed to complete by June 30, 2015, although, as required by the Ordinance, due process notices were sent to 26 lobbyists via certified and first class mail on July 1. The 2015-2016 program is being written and should be posted in November.

To date, 26,190 employees have completed the 2015 mandatory education program, out of 31,454 currently scheduled (that is, just more than 83% compliance), and 90 are in process. Their deadline is December 31, 2015. Staff released a DVD version of the training to those departments that have requested it, to enable them to ensure that their employees without computer access complete the training by the deadline. The aldermanic version was released in August, and, to date, 7 have completed it and 1 is in progress.

Staff is in weekly communication with ethics officers from every City department and Aldermanic Office, in a push to achieve 100% compliance prior to the year-end deadline.

C. Website Modifications, New Fact Sheet-Brochures

The link to brochures and information regarding the recently passed election cycle was replaced by a link and icon to all educational brochures, covering 17 different topics. Since the last Board meeting, we have added three: A Guide to Ethics Enforcement Procedures, A Guide to City Business Travel, and a Guide to Grassroots Lobbying. The 2015 Guide on Gifts will be published in the next few weeks.

D. 2015 Statements of Financial Interests

To date, all persons required to file their 2015 Statements of Financial Interests by June 1 have now filed. Six (6) did not file within the time period allowed before fines applied, and became subject to fines totaling \$1,500.

E. Ongoing Investigative Record

We continue to post on the Board's website the ongoing investigative record, showing the status of every completed investigative report brought to the Board by both inspectors general since January 1, 2012, and the status of every petition to commence an investigation brought to the Board by the Legislative Inspector General. We update it monthly. It is consistent with the Ordinance's confidentiality provisions.

F. Lobbyists-Regulation and Enforcement

Currently, there are 583 lobbyists registered for 2015, and the Board has collected \$325,951 in lobbyists' registration fees. All Second Quarter Activity Reports were due by July 20, and all lobbyists complied. On September 23, we sent notices reminding lobbyists of the upcoming October 20 deadline to file their Third Quarter Activity Reports. Approximately 515 of 589 have already filed them (this figure includes 6 terminations). Staff is processing them as soon as possible after they are received so that the data disclosed therein can become publicly available through the City's Data Portal.

G. Lobbyists-Inspector General Audit

The auditing personnel in the IG's office met with staff on June 11, and are nearing completion of their tentative audit report. They presented their preliminary conclusions. Some included helpful suggestions, others would appear to require amendments to the Ordinance, and still others appear to be based upon a reading of the Ordinance with which Board staff simply disagrees. We believe the tentative report will be released in November; the Board will then be afforded 30 days to respond.

H. Summer Student Interns

We were pleased to host two (2) students for Summer internships: Francesca Guzman, a student at ASPIRA Early College, and Jazymyne Washington, a student at King College Preparatory High School.

I. International Fellow, U.S. State Department

From October 12 to November 6, through the U.S. Department of State's Professional Fellows Program, we are pleased to host Anar Mirzayev, a Senior Consultant with the Civil Service Commission under the President of the Republic of Azerbaijan. He is learning about on-line and face-to-face ethics education.

J. Amendments to the Ordinance

At the June 16 City Council meeting, a package of amendments to the Ordinance was submitted to the City Council. On July 27, the Executive Director testified before the City Council's Committee on Rules and Ethics to answer questions about the proposal, which was passed at the July 29 City Council meeting, and became effective on July 30. On July 29, the Board posted on its website the full text of the amendments and an explanatory sheet regarding the changes.

K. Advisory Opinions

Since the July 15, 2015 meeting, the agency has issued 1,407 confidential informal advisory opinions (in addition to those formal opinions issued or approved by the Board).

- The leading categories in this period (in descending order) were: travel, gifts, campaign financing, prohibited conduct, political activity, lobbying, and post-employment.
- 60% were from City employees in administrative or management positions, 10% from non-administrative or managerial employees, 8% from lobbyists, 4% from department heads, 4% from City elected officials (or aides calling on their behalf), 9% from City appointed officials, 1% from City "sister" agencies, and the remainder from members of the public, vendors, and the media.
- 50% came via email; 49% via telephone; the remainder via walk-ins.
- Requests came from employees or officials from every City department (including the City Council), with the most numerous ones, in descending order, coming from employees or officials in: City Council, Office of the Mayor, Chicago Public Library, Public Health, Police, and Planning & Development.

We are using a secure, searchable database for informal advisory opinions. This will enable Board staff to receive instantaneous reports of opinions issued by topic, department, title, date, etc. It was developed without additional cost to the City or the Board.

L. 2016 Budget

Staff members appeared before the City Council's Budget and Government Operations Committee on October 1, for our annual budget hearing. Our agency's 2016 appropriation request and the Mayor's submitted budget recommendation (City-wide) will be voted on as part of the entire budget package later this month. The agency's 2015 appropriation is \$800,697. The 2016 request as submitted to the City Council is \$812,587. [Note: in the budget book, as published, the amount shown is \$857,827, but this includes the salary for the Executive Assistant to the Legislative Inspector General, a City employee, whose position was included in our agency's budget nearly 4 years ago by the Budget Director for convenience purposes.]

Our request represents an 18.4% decrease from our 2015 appropriation in our non-personnel accounts, and when personnel accounts are considered, our overall budget request rose just .8%. We cut our professional and technical services account heavily, for two reasons: (i) the volume of completed investigations from both the Office of the Inspector General and the Legislative Inspector General has not been what we had anticipated, thus the volume of transcriptions we anticipated is down; and (ii) we can excerpt the relevant portion of the digitally recorded probable cause meetings and transfer it to CD-ROMs for both the prosecutors and respondents.

M. Participation in Integrity Monitoring RFQ

The Department of Procurement Services is in the process considering responses to a Request for Qualifications (“RFQ”) for Integrity Monitoring. Lisa Eilers, our Deputy, is a member of the RFQ evaluation committee. Proposals were due July 20, and are being evaluated now. An integrity monitor – also known as an Independent Private Sector Inspector General or IPSIG – is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization.

According to the documentation we received, “Integrity monitoring is typically used by a municipality to ensure that the contractor is operating its business in compliance with the law and that anti-fraud procedures are in place. Qualified Respondents will perform tasks to ensure contractors that are doing, or seeking to do business with the City, comply with laws, regulations, codes, programs and contractual requirements. These tasks may include, but are not limited to forensic audits, technical field reviews of services and activities required and performed under contract, the development of programs and procedures to prevent and deter fraud, corruption, conflicts of interest and illegal activity by City contractors, and background checks of businesses, principals, employees and associated entities or individuals. Integrity Monitoring Services may also be performed in advance of, or in conjunction with an internal or official investigation.” This RFQ was being issued at the behest of the Inspector General.

N. Bar Committee Appointment

The Executive Director was recently nominated to be a member of the Chicago Bar Association’s Government Lawyers’ Committee for the 2015-2016 year.

O. 2015 Council on Government Ethics Laws Annual Conference

Staff members will attend the 37th Annual Conference of COGEL this year, in Boston, from December 6-9. The Executive Director will be a presenter at the annual “Ethics Update,” which summarizes key organizational and substantive legal developments in the past year (including structural changes, advisory opinions, enforcement actions, and statutory changes).

P. New Board Member Nominee(s)

New Board member nominees were announced by the Mayor on July 7, but one of them was subsequently nominated for a different Board. The nomination of the remaining proposed appointee was submitted to the City Council at its first October meeting, and we are hopeful that he will be confirmed by the Rules and Ethics Committee and then the full Council in time for the Board's November meeting. We will still have one vacancy, the filling of which the Executive Director has discussed with the Mayor's Office.

Q. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received 4 new requests under the Freedom of Information Act. Three requests were for records that we did not have as we were the wrong agency, and we so advised the requestors. For the remaining request, which was for waivers issued by the Board with respect to the Ordinance, we advised the requestor that we had no responsive records.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

The Board VOTED 4-0 (Stephen W. Beard, Chair, absent) to adjourn into Executive Session at 3:38 p.m. under: (i) 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; and (ii) 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 2-156-385 and the Board's Rules and Regulations, 4-1 and 4-5, as amended, effective October 23, 2014, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. At 4:33 p.m., the Board VOTED 5-0 to reconvene into open session.

VI. MATTERS CONSIDERED AND ACTED UPON BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF EXECUTIVE SESSION MINUTES IN OPEN SESSION

The Board approved the Executive Session minutes of the July 15, 2015 meeting by a VOTE of 4-0.

II. CASES

A. Query/Consult/Informal Advisory Opinion Summaries

In these cases, the Board confirmed that it had heard staff's reports.

1. Case No. 15042.Q. Interest in City Business

In this case, staff reported that it had advised an incoming employee about the relevant restrictions that would apply with respect to the employee's immediate pre-City employer, for whom the employee was registered as a lobbyist. The employee owns stock of the pre-City employer, and may receive more, in the next year, all as part of the employment compensation package. The shares are treated and taxed as ordinary income, with the basis being market price on the acquisition date. Staff advised the employee to terminate the lobbyist registration, and that the stock need not be sold, and future stock may be accepted, and that:

1. The employee may not participate in or try to influence government matters involving the pre-City employer, and we recommended that an ethical screening arrangement be instituted, delegating authority on such matters to another. Staff assisted in establishing that arrangement.
2. As the employee's common stock represents less than $\frac{1}{2}$ of 1% of the previous employer's outstanding stock, and was and will be acquired as part an authorized employment compensation, the employee does not have a "financial interest" in the company (as that term is defined in the Ordinance). If the company has City contracts, this ownership would not give rise to a prohibited financial interest in its City contracts thereby putting the employee potentially in violation of the Ordinance, though staff still recommended recusal from all government matters involving the company for as long as the stock is owned. Staff advised the employee to adhere to the ethical screening arrangement and delegate authority on such matters for as long as the stock is owned.
3. Personnel Rule XXIX also applies, but neither Board staff nor the Board itself has the authority to issue binding or authoritative guidance or opinions as to these rules. Nonetheless, as this Rule is based on an earlier version of the Ordinance, staff advised the employee that, in staff's view, the employee does not have a "financial interest" in the company (as that term is defined in the Rule, which definition is based on a definition of the term in a prior version of the Governmental Ethics Ordinance), but that the employee is prohibited by the Rule from acquiring a financial interest in any person during City employment, other than the stock of public companies.

2. Case No. 15043.Q, Interest in City Business

Staff reported that it advised a City appointed official in writing that the company he owns can bid and work on City contracts, and this would not give the official a prohibited financial interest in these City contracts, as the company does work that is wholly unrelated to the work of the City commission to which the official was appointed.

3. Case No. 15047.Q, Representation/Outside Board service

Staff reported that it advised a City employee in writing that the Ordinance does not prohibit the employee's appointment to a non-profit board, and also advised about the specific restrictions applicable to this volunteer board position.

4. Case No. 151692.Q, Political Activity

Staff reported that an employee in a City elected official's office asked for a written opinion addressing whether the Ordinance restricts or prohibits the employee from hosting a "meet and greet" fundraising event for the elected official at the employee's home or at a restaurant. The employee said that he voluntarily asked the official whether he could do this. Staff advised the employee that, based on the facts he presented, the employee does not exercise contract management authority in his City job and thus the Ordinance does not prohibit him from "serving on a political fundraising committee" or hosting this event. However, the employee was also advised that: (i) he cannot plan this event on or with City property, or on compensated time; (ii) he may not receive any additional compensation, promotion, favorable treatment or other thing of value for this work; (iii) he may not compel or coerce any other City official or employee to work on this event or make a contribution; and (iv) he may not knowingly solicit or accept a political contribution from any person doing or seeking to do business with the City.

B. Formal Advisory Opinions

5. Case No. 15041.A, Campaign Financing

The Board VOTED 5-0 to approve the staff's draft advisory opinion addressing whether labor unions that enter into collective bargaining agreements with the City are subject to the yearly political contribution limitations in Article VI of the Governmental Ethics Ordinance. This law limits certain persons or entities to \$1,500 in political contributions per year to any candidate for elected City office, or to any of the 53 City elected officials, or to any City official or employee running for any other office. The opinion explains that, by entering into collective bargaining agreements, labor organizations are not "doing" or "seeking to do business with the City" within the meaning of this law, and thus neither these labor organizations nor their affiliated committees are persons or entities that are subject to its yearly campaign contribution limits (though they remain

subject to the Ordinance's other contribution restrictions). The opinion explains the history of regulation of political contributions by unions, the purpose of "pay-to-play" laws, the history of Chicago's campaign contribution law, and the laws of other jurisdictions. It explicitly does not address whether labor unions *should* be subject to these limitations.

6. Case No. 151690.A, Post-Employment/Prohibited Conduct

The Board VOTED 5-0 to approve staff's draft advisory opinion addressing the post-employment restrictions that apply to a former City employee and past violations of the Governmental Ethics Ordinance.

The opinion addresses the Ordinance's one year, two years, and permanent post-employment (or "revolving door") restrictions that apply to the former employee in work on behalf of the post-City employer on certain specific activities or transactions.

The opinion also explains that the facts in this matter show a past violation of the Ordinance. Accordingly, the opinion further indicates that pursuant to §2-156-070(b) of the Ordinance, the Board: (i) advised the former employee that the former employee may self-report this violation to the Inspector General ("IG") within fourteen (14) days for any action that office deems appropriate; (ii) requested that, should the former employee decide to self-report this violation to the IG within the allotted time, to please inform the Board; or (iii) requested that, should the former employee decide not to report this violation, to inform the Board of that decision by that date as well. Last, the opinion advises the former employee that should the Board or its staff not receive a confirmation of the report to the IG by that date, the Board would be required by Ordinance to make the report.

C. Referred Complaint Report

8. Case No. 15046.C, Anonymous, No Jurisdiction

Staff reported that the agency referred an anonymous written complaint, alleging that an another employee had misused City time and failed to obtain approval for secondary employment, to the City's Inspector General's office for action as that office deems appropriate.

(The Board confirmed that it had heard staff's report.)

9. Case No. 15048.CFr et seq., Campaign Financing Investigations

The Board VOTED 5-0 to direct staff to refer to the appropriate City inspector general for possible investigation all potential violations of the Governmental Ethics Ordinance's political contribution limitations provision in §2-156-445, that staff's review had disclosed, pursuant to §2-156-380(n-1) of the Ordinance. The matters referred cover contributions made in 2014 to elected City officials and candidates for elected City office.

10. Case No. 151691.C, Anonymous, No Jurisdiction

Staff reported that the office referred an anonymous written complaint, alleging various time-keeping improprieties and related potential violations of the Governmental Ethics Ordinance by two City employees, to the City's Inspector General's office for action as that office deems appropriate.

(The Board confirmed that it had heard staff's report.)

D. Office of Legislative Inspector General

Consideration of Petition to Approve Investigation Pursuant to §2-55-080(b(ii))

6. Case No. 151693.OLIG [2015OLIG0085]
7. Case No. 151689.OLIG [2015OLIG0016]

The Board VOTED 5-0 to approve the Legislative Inspector General's petitions to initiate investigations in these matters.

At 4:37 p.m., the Board VOTED 5-0 to adjourn the meeting.