

BOARD OF ETHICS
OPEN SESSION MINUTES

May 18, 2016, 3:15 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

Stephen W. Beard, Chair
Zaid Abdul-Aleem
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

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Zaid Abdul-Aleem, absent) to approve the Open Session Minutes of the April 13, 2016 meeting.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes

Staff finalized the script for all-new training videos, and is arranging for them to be produced through the Cable TV Office of the Department of Business Affairs and Consumer Protection.

Since the last Board meeting, 109 employees and officials have attended classes that were held on April 21 and 26, and May 12 and 17.

Classes are scheduled here on May 19 and 24, and June 9 and 16. 101 employees are scheduled to attend. By mutual arrangement, training for all 126 Battalion Chiefs and 42 EMT Chiefs in the Chicago Fire Department will be via computer. A series of classes for all employees of the City Council's Committee on Finance and other Committees will be conducted in June and staff will present a class to new Alderman Sophia King of the 4th ward.

Other Presentations

On June 28, the Executive Director will make a presentation to attorneys and staff from the law firm of Linebarger, Goggan, which has been a vendor of the Law Department from time to time, specializing in debt collection work.

On-line Training

To date, 251 lobbyists have completed the annual mandatory ethics training for lobbyists. Their deadline is 11:59:59 pm, June 30, 2016. We are sending email reminders on a weekly basis to all who have not completed their training requirement.

To date, 12,427 employees and 4 aldermen have completed the 2016 version of the on-line mandatory ethics training course, and 139 are in progress. There are currently 33,740 scheduled, but that number will decrease by about 10% over the year.

New Educational Materials

The Board posted two (2) new PowerPoint educational programs on its website, and the Department of Human Resources is placing the first one in the packets of newly hired City employees, with a certification that they have completed it. Departmental and Aldermanic ethics officers are assisting us in having departing employees and officials complete the second one, which covers the Ordinance's post-employment/revolving door restrictions.

B. Advisory Opinions

Since the last Board meeting on April 13, staff has issued 433 informal and four (4) formal confidential advisory opinions, with the leading categories being, (in descending order): gifts, Statements of Financial Interests, prohibited conduct, post-employment, travel, conflicts of interests, political activity and outside board service. The leading City departments from which requesters came in this period were (in descending order): City Council; Department of Law; Mayor's Office; Department of Cultural Affairs and Special Events; Department of Planning & Development (DPD); Chicago Police Department (concerning travel); Chicago Public Library; Department of Public Health.

C. Sister Agencies Ethics Officers' Meeting

On May 17, we hosted the quarterly meeting of ethics officers from our Board, and the Chicago Public Schools, Chicago Park District, Chicago City Colleges, Cook County Board of Ethics, Chicago Housing Authority, and Chicago Transit Authority.

D. "Eligible Programs"

City employees and officials are prohibited by §2-156-110 of the Ordinance from having a "financial interest" in any work, contract, or business of the City. This means an interest in

such programs that is worth more than \$1,000. Over the years, the Board has applied this prohibition to the participation of City employees and officials in programs administered by the Department of Planning & Development (“DPD”) (or its predecessors). The Ordinance does allow the Commissioner of DPD to designate certain programs as “eligible,” meaning that City employees and officials could participate in them to the same degree as members of the general public. Staff is meeting later this month with DPD officials to finalize this list of programs.

E. Website Modifications/Advisory Opinions

Staff is in the process of posting (in redacted form, per the Ordinance’s confidentiality requirements) and indexing on its website every formal written advisory opinion issued by the Board or issued by the staff and reported to or approved by the Board since the agency’s inception in 1986. This is a total of 996 distinct opinions, covering many different rubrics under the Ordinance (many covering more than one).

Staff is also creating a search engine, by keyword, using Boolean logic, with brief summaries of every opinion, and the keywords in them, and links to the cases themselves.

F. Low Income Housing Trust Fund

Staff is working with representatives from the City’s Low-Income Housing Trust Fund (a City agency, whose Board members file annual Statements of Financial Interests) to develop a conflict of interest policy for its members and clients that is stricter than the Ordinance.

G. Ongoing Investigative Record

We continue to post on the Board’s website an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the Inspector General (“IG”) (a total of 2 since July 1, 2013, including one on the agenda for the closed session of today’s meeting) and the former Office of the Legislative Inspector General (“LIG”), since January 1, 2012, and the status of all 50 petitions to commence investigations that were presented to the Board by the former Office of the Legislative Inspector General. It is updated monthly, consistent with the Ordinance’s confidentiality provisions.

On May 13, staff met with representatives from the IG to discuss the status of matters that the IG “inherited” from the LIG and received an update on many, some of which were closed by the LIG but not reported to us, others of which have been closed by the IG, and some of which are still ongoing. The public record has been officially updated, as we have received confirmation by the IG. There will be more on this in Executive Session.

In addition, as required by the Ordinance, in 2014 and 2015, the Board referred to the Inspector General as complaints a total of 1,552 *potential* violations of the campaign finance provisions of the Ordinance, based on its review of 2013 and 2014 political contributions reported to the Illinois State Board of Elections. To date, the Board has received no status reports, nor reports of concluded investigations from the IG (nor from the former Office of the LIG, to which the Board referred 1,401 such matters in these years). This includes one

complaint filed with the IG in February 2015 regarding an apparent violation disclosed by a registered lobbyist on a quarterly report that the lobbyist filed.

H. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, by law, the person is advised that he or she may self-report to the Inspector General or, if he or she fails to do so within two weeks, the Board must make that report. There were no such instances since the last Board meeting.

Since the time this provision became effective, the Board has advised three (3) aldermen, one (1) aldermanic staffer, and two (2) department heads or former department heads that their past conduct violated the Ordinance. In 3 of these cases, one involving an alderman, the second an aldermanic staffer, and the third a department head, the Board concluded that the apparent violations were *not* minor, and the individuals self-reported themselves to the appropriate inspector general. To date, we have received no reports of commenced or completed investigations of any of these matters. In the other cases, the Board sent confidential letters of admonition, as required by Ordinance.

I. 2016 Statements of Financial Interests

On March 1, 2016, 3,575 employees and officials were notified via email of their requirement to file 2016 Statements of Financial Interests. To date, 2,885 have filed. As provided by Ordinance, we sent out 1,026 reminder notices to all persons required to file before June 1, but who have not done so. They were sent via email, and 54 via first class mail. We are working closely with ethics liaisons in every department and office to strive toward our goal of no late filers. We are still considering making "e-filing" mandatory, depending on the number of paper filings we get in 2016. To date, about 15% of filings are on paper. We will ascertain and report on the final tally in the next few months.

J. Lobbyists-Regulation and Enforcement

As of today, there are 587 lobbyists registered, and the agency has collected \$290,540 in registration fees. This figure represents about 30% of our operating budget. However, there is a technical problem with the payment engine of our Electronic Lobbyist System (ELF), and to date, the amount actually deposited with the Department of Finance is \$63,000. We are working to resolve the issue so that the remaining collected fees can be deposited and credited to the City.

Quarterly activity reports were due from lobbyists on April 20, 2016. A first reminder notice was sent on March 31, and a second notice went out on April 15. Four (4) missed the filing deadline, and we have found probable cause of a violation in these four (4) cases, and accordingly, sent out due-process letters on May 11, 2016. One (1) lobbyist filed his activity

report that day. The other three (3) have until May 20, 2016 to respond with a reason that overcomes the probable cause finding set forth in each of the letters. Any fines (\$1,000 per day) will be imposed on the earliest date possible--May 24, 2016. Staff will have a brief status update in Executive Session on lobbyists who were fined for failure to timely re-register.

Please also note that staff assisted the Office of the Chief Information Officer of Boston in establishing a lobbyist registration system, as that City's charter is being amended to require lobbyists to register.

K. New Board Member

I am pleased to report that, at today's City Council meeting, the Mayor introduced the appointment of Nancy Andrade, an attorney, to serve on the Board, replacing the position formerly held by The Hon. Julia Nowicki, the term of which expires on July 31, 2017. Copies of her resume are being handed out. If confirmed by the City Council on June 22, she might be able to attend the June 2016 Board meeting.

L. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received no new requests under the Freedom of Information Act. This happens about three (3) months each year.

IV. OLD BUSINESS

None

VI. NEW BUSINESS

Semi-Annual Review of the Confidentiality of Executive Session Minutes Pursuant to The Illinois Open Meetings Act

The Board considered staff's recommendation and VOTED 5-0 (Zaid Abdul-Aleem, absent) to adopt staff's recommendation to continue confidentiality of executive session minutes pursuant to the Illinois Open Meetings Act.

The Board VOTED 5-0 (Zaid Abdul-Aleem, absent) to adjourn into Executive Session at 3:12 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 Sections 2-156-385 and -392, and the Board's Rules and Regulations, 4., 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 5:10 p.m., the Board VOTED 6-0 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 April 13, 2016 meeting by a VOTE of 6-0.

III. CASES

A. Query Consult Summaries

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

1. Case No. 151688.Q, Conflicts of Interest

Staff reported that, in September 2015, a City elected official asked whether and how the Ethics Ordinance would affect his plans to have a secondary position as a salaried employee of, or consultant to Organization A. At that time, the city official did not have sufficient facts regarding the potential job for staff to provide advice.

On April 29, 2016, after the official provided staff with additional information, staff informed the official that the Ordinance does not prohibit him from working in a secondary position, but that he will be subject to the following restrictions:

- 1) Because he will be compensated by Organization A, he will be prohibited from representing the organization in any transaction involving the City; and
- 2) For one full year before he is compensated by Organization A, he will be prohibited from providing services to the organization in his official capacity, or from directing any other person to do so, or from participating in any discussions or decisions, or voting on any loans, grants, permits or other matters involving, Organization A. Any services that Organization A would need from the City would have to be provided without his involvement.

2. Case No. 16011.Q, Post-Employment

A high ranking City employee met with staff on March 23, 2016 to discuss restrictions to which he would be subject under the Ethics Ordinance with respect to his imminent post-City employment plans. He advised staff that he would be accepting a job with Company A.

On April 20, 2016, staff advised him that the Ordinance does not prohibit him from taking a position with Company A, but does impose the following restrictions on him in his new position with Company A:

- 1) For one (1) year after leaving City service, he will be prohibited from assisting or representing any person, such as Company A, in any transaction involving his former City department, or with respect to any subject matter in which he was personally and substantially involved while with the City—which, in his case, means any transaction involving his former City department; and
- 2) As Company A has a current contract with the City employee's department, over which he has exercised contract management authority, the Ordinance prohibits him from assisting or representing Company A, or any other person, with respect to that contract, until that contract expires. Staff's review of his record indicates that he exercised contract management authority over other contracts, not at issue in this opinion, but that, if his post-City plans change, to seek advice from the Board regarding specific prohibitions that would apply to another post-City position.
- 3) Staff also advised the employee that he is subject to a City-wide lobbying ban, that lasts for two (2) years, as well as the penalties associated with violations of any of these provisions.

3. Case No. 16013.Q. Lobbying

Staff reported that the Chair of an organization ["A"] whose members are City elected officials [but which organization is not a City agency or department] asked whether the Governmental Ethics Ordinance applies if A receives pro bono legal advice from a law firm, given that personnel from the law firm are registered lobbyists who appear on behalf of lobbying clients before A's members from time to time. Staff advised that:

- 1) Nothing in the Ordinance prohibits A from accepting pro bono legal services from the firm, or from paying for those services, or prohibits attorneys in the firm, even if they are registered lobbyists, from providing services to A. Nor is there any prohibition in the Ordinance that would prohibit the firm from providing legal services to A's members individually (though, if such services were provided pro bono or at reduced rates to A members individually, they would be considered gifts to City officials or employees, and would need to be limited to \$50 in such services per year per recipient, or, if appropriate, need to be disclosed as gifts to the City, if the services pertain to official City business); but
- 2) An appearance of impropriety is created by A using the services of a law firm whose personnel may from time to time lobby before its members either individually or as a body. The appearance would be that:
 - i) the firm has special access to A members by virtue of appearing at its meetings and advising its members on A matters, and that that access could be perceived to be of unfair benefit to the firm's lobbying clients and practice; and

- ii) A members will be more apt to make City decisions in the firm's clients' favor, and this is exacerbated by the fact that his firm is providing services to the Caucus pro bono.

The only provision in the Ordinance that might apply is contained in the aspirational, non-enforceable Code of Conduct, §2-156-005(a)(5), which provides that all City officials and employees shall "act impartially in the performance of their duties, so that no private organization or individual is given preferential treatment." This provision, even read in its strictest sense, would not prohibit A members from making official City decisions on matters in which the firm has lobbied them (that is, require A members to recuse themselves from such decisions), but could easily lend credence to a charge or perception that the firm and its clients are being given preferential treatment by A members when such lobbying occurs; therefore

- 3) This perception would be somewhat mitigated if A paid for legal services from the firm at standard rates, but would be removed altogether if A received legal advice from an attorney or firm that has no other client matters pending before its individual members.

4. Case No. 16015.Q, Fiduciary Duty

Staff reported that on April 27, 2016, a City employee requested guidance on whether any provisions in the Ordinance applied to a situation involving a Department employee and whether we could provide guidance on the division establishing an internal conflicts of interest policy.

Staff reiterated the facts, which involved the child of an employee applying for benefits. The employee contacted the colleague handling her child's case and directed that colleague on how to proceed. The case had not yet been approved and was later denied twice by managers reviewing the application. Subsequently a Deputy indicated that he would handle the matter directly. Staff reported providing written advice and guidance detailing all the possible Ethics Ordinance provisions the employee parent's actions could have violated, including, for informational purposes only, sections from the City's Personnel Rules. The Board's staff also provided the employee with guidance on establishing an internal conflicts of interest policy and obtaining guidance from the Law Department. In addition, staff reported that it strongly recommended the employee file a complaint with the Inspector General's office.

B. Referred Complaint Report

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

5. Case No. 16014.C, No Jurisdiction

Staff reported that on May 2, 2016, the office received an anonymous letter alleging a misuse of City resources by three employees, one of whom has since resigned and is no longer a City employee. Staff referred the matter to the Office of the Inspector

General for action it deems appropriate, pursuant to §2-156-380(a) of the Ordinance.

At 5:11 p.m., the Board VOTED 6-0 to adjourn the meeting.

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