

# **BOARD OF ETHICS**

## **OPEN SESSION MINUTES**

April 13, 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

### **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 MEMBERS ABSENT**

Dr. Daisy S. Lezama  
Frances R. Grossman

## **I. APPROVAL OF MINUTES**

The Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) to approve the Open Session Minutes of the February 17, 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, 312 employees and officials have attended classes, that were held on February 18 and 23, March 10, 22, and 31, and April 12 in our offices, and for City Council members and Chiefs of Staff on March 8 and 9 (at the invitation of Aldermen Harris and Laurino); for the City Clerk's Office and City Treasurer on February 18 and 19 and March 24; for the 33<sup>rd</sup> Ward on February 18, and the 48<sup>th</sup> Ward on March 23; and for incoming SSA Commissioners and service providers on February 24.

Classes are scheduled here on April 21 and 26, and May 12 and 19. 98 employees are scheduled to attend. The Board is working to ensure that all 126 Battalion Chiefs and 46 or

so EMT Chiefs of the Chicago Fire Department receive ethics training. A series of 4 classes for all employees of the City Council's Committees on Finance and other Committees will be conducted in May.

### **Other Presentations**

On February 23, the Executive Director made a presentation on the history of governmental ethics reform in Chicago to the Government Lawyers Committee of the Chicago Bar Association, and on March 8, made a presentation to a visiting delegation of anti-corruption officials from Kosovo; and on April 8, made a presentation to a group of visiting government corruption prosecutors from Serbia. (These international presentations were made at the request of the U.S. State Dept.). On April 4, the Executive Director met with a group of business major undergraduates from Ohio Northern University to talk about ethics and leadership.

### **On-line Training**

To date, 199 lobbyists have completed the annual mandatory ethics training for lobbyists. Their deadline is 11:59:59 pm, June 30, 2016.

To date, 1,025 employees and one alderman have completed the 2016 version of the on-line mandatory ethics training course, and 74 are in progress. There are currently 34,215 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 will assist 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 February 17, staff has issued 467 informal and two (2) formal confidential advisory opinions, with the leading categories being, (in descending order): gifts, Statements of Financial Interests, political activity, campaign financing, post-employment, travel, conflicts of interests, and outside board service. The leading City departments from which requesters came in this period were (in descending order): City Council; 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. "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 to 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 working with DPD to determine this list of programs.

**D. Low Income Housing Trust Fund**

Staff is working with representatives from the City’s LIHTF (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.

**E. 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 Office of the Inspector General (a total of two (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, 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. Until today, however, there have been no changes to the data reported on it since January 2016.

In addition, as required by the Ordinance, in December 2014 and November 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 reports of concluded investigations by the Inspector General (this includes one (1) complaint the Board filed with the Inspector General in February 2015 regarding an apparent violation disclosed by a registered lobbyist on his quarterly report). The Board also never received any such report(s) from the former Office of the Legislative Inspector General, to which the Board referred 1,401 such matters.

**F. 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, under current 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 5 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 Inspector General. To date, we have received no reports of commenced investigations (in the case of the former LIG) or completed investigations (from either the IG or LIG) of any of these matters. In the other cases, the Board sent confidential letters of admonition, as required by Ordinance.

**G. 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, 1,598 have filed. We are working closely with ethics liaisons in every department and office to strive toward our goal of no late filers. We are considering making "e-filing" mandatory, depending on the numbers of paper filings we get in 2016.

**H. Lobbyists-Regulation and Enforcement**

As of today, there are 575 lobbyists registered, and the agency had collected \$279,775 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 are due from lobbyists on April 20, 2016. 190 have already filed. A first reminder notice was sent on March 31, and a second will go out on April 15.

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.

**I. Lobbyists—Inspector General Audit**

After 18 months of auditing the Board's lobbyist registration program, staffed by 4 full-time auditors, the IG released its final report on March 17. The Board had already filed a 30-page response on January 22. Most of the IG's recommendations require amendments to the Ordinance, although we will follow its recommendation to make explicit reference to the City's False Claims Ordinance in the verification that lobbyists sign with their filings. However, one "finding," as predicted, garnered a bit of media attention, in Crain's. It involves interpretation of the late-filing fee provisions of the Ordinance (which are identical for lobbyist registration and late-training and late-ethics statement violations). The IG claims -- incorrectly -- that the Board misinterprets its own ordinance and undercharges lobbyists. The Ordinance is clear that the Board of Ethics cannot impose fines until 7 days after the Executive Director notifies the lobbyist of the violation for late filing. The IG argues, erroneously, that we should impose fines on day 1. The Board's response was posted on March 18, and was a rather gentle rebuttal of the IG's report and his comments to Crain's, which were not in the written report. In the Board's written response we pointed

out that the IG could just as easily have requested an advisory opinion asking the Board to consider its “alternative” “interpretation “ of the relevant language in the Ordinance, thereby saving time and the efforts of both our agencies’ staffs over a full 18 month period.

The Board will, however, move to all-electronic filing, and will clarify in its Rules and Regulations what constitutes a credible excuse or justification for late filings.

**J. Freedom of Information Act**

Since the last regularly scheduled Board meeting, the office has received four (4) new requests under the Freedom of Information Act. One (1) was for lobbyists’ filings related to three (3) lobbyist clients; one (1) request was for names and addresses of employees of the Board; one (1) request was for Statements of Financial Interests filed by a now-retired employee; and one (1) request was for lobbyists’ filings for 12 lobbyists. As to the first, we located and provided three (3) records for review and reproduction; as to the second, we provided a list of Board employees, using the Board’s office’s address; as to the third, we sent three (3) Statements of Financial Interests to the requestor; and as to the fourth, we located eight (8) file folders of responsive documents and presented them for review, and provided the URL for our website, explaining that available lobbyists’ records may be found there.

**IV. OLD BUSINESS**

1. Status Report on ongoing enforcement matter, Case No. 13039.OLIG.

This matter will be discussed in executive session.

**VI. NEW BUSINESS**

2. Status Report on ongoing litigation in which the Board provided advice, and in which its Executive Director will be deposed on April 14, 2016.

This matter will be discussed in executive session

The Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) to adjourn into Executive Session at 3:18 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 4:15 p.m., the Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) 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 January 20, 2016 meeting by a VOTE of 4-0 (Stephen W. Beard and Fran R. Grossman, absent).

**III. CASES**

**A. Advisory Opinion**

**1. Case No. 16006.A, Campaign Financing**

In this case, the Board considered a draft advisory opinion addressing whether “an entertainment management company” violated the campaign contribution limitation provisions of the City’s Governmental Ethics Ordinance by making a political contribution in an amount greater than \$1,500 in a single calendar year “to the political committee of a City elected official.” After carefully applying relevant law — including the Ordinance, prior Board advisory opinions, contract law, agency law, and entertainment law — to the facts, the Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) to approve and issue the draft advisory opinion, and that determined that: (i) the entertainment management company, by acting as a talent agent in the City transactions identified, was not a party to any of those contracts, and was not “doing business” with the City, as that phrase is defined in the Ordinance; (ii) therefore, this company was not subject to the Ordinance’s \$1,500 limitation on campaign contributions per year, per elected official, at the time it made its contribution to the official candidate committee of a City elected official; and, therefore (iii) neither this company nor the City elected official’s candidate or political committee violated §2-156-445 of the Ordinance by making or accepting this contribution.

**B. Query Consult Summaries**

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

**2. Case No. 16005.Q, Representation**

In this case, staff reported that it had advised a City elected official, who is also an attorney licensed to practice in Illinois, how the City’s Governmental Ethics Ordinance affects the compensation the official may receive for legal services rendered to a plaintiff-relator in a *qui tam* lawsuit pending in the Law Division of Cook County Circuit Court. Staff advised the official, in writing, that the official is prohibited, by §2-156-090(b) and §2-156-020 of the Ordinance, from: (i) receiving, on a contingency fee basis, compensation based on a percentage of the amount the plaintiff-relator recovers from any settlement or judgment as to the counts in the suit that allege violations of the City’s False Claims Ordinance; or (ii) being paid more than the reasonable value of the legal services the official provided to the plaintiff-relator in the lawsuit, **prior** to becoming a City elected official, as to the counts in the suit that allege violations of the City’s False Claims Ordinance. However, the Ordinance does not prohibit the official from being paid for the

reasonable value of the legal services the official provided in the matter as to the City's False Claims Ordinance **prior** to becoming a City elected official, based on a quantum meruit theory and valuation. Moreover, to the extent that such monies are segregable, the Ordinance does not prohibit the official from being paid the percentage of the plaintiff-relator's recovery for which the official contracted, on a contingent basis, from any settlement of or award solely from the counts in the lawsuit that allege violations of State law or the laws or rules of jurisdictions other than those of the City of Chicago.

3. Case No. 16009.Q, Post-Employment

In this case, Staff reported that it had advised a former high-ranking City employee how the Ordinance's post-employment restrictions affect her new job with a private health care institution. While with the City, she reviewed the first few drafts of a Request for Proposals ("RFP") her current employer will be responding to once it is released.

Staff advised her that, for purposes of §2-156-100(b) of the Ordinance, she is subject to a one year restriction on the "subject matter" in which she was "personally and substantially involved" while with the City.

She was further advised that she is permanently prohibited from assisting or representing any person in any City contract over which she exercised "contract management authority," and that, concordant with prior Board cases, she exercised contract management authority with respect to this particular RFP. Accordingly, the permanent prohibition in §100(b) will restrict her from representing or assisting her current employer in applying for funding by means of responding to the RFP in question, as well as working on any work or projects funded through this RFP, were her current employer to subsequently be awarded a grant agreement or contract from this RFP.

Last, staff advised her regarding the Ordinance's 2-year lobbying ban and confidentiality provisions.

**C. Referred Complaint Report**

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

4. Case No. 16003.C, No Jurisdiction
5. Case No. 16007.C, No Jurisdiction
6. Case No. 16008.C, Political Activity
7. Case No. 16010.C, Fiduciary Duty
8. Case No. 16012.C, Prohibited Conduct

Staff reported that it received and then referred the above-referenced complaints to the Inspector General's Office for action that office deems appropriate, as this agency does not have authority to investigate.

**D. Office of Inspector General**

Review of Proposed Settlement Agreement Regarding Ongoing Enforcement Matter from Inspector General

9. Case No. 151695.IG, Statement of Financial Interests

Staff reported that a settlement was reached with the respondent in this enforcement matter, that was based on a completed investigation report from the Office of the Inspector General. The Board had found probable cause to conclude that the respondent had knowingly filed a false and misleading Statement of Financial Interests in 2014. Pursuant to the terms of the Settlement Agreement, the respondent will file corrected Statement of Financial Interests forms from 2008-2014, and pay a fine of \$2,000, which would be the maximum amount that the Board could assess for a finding of a violation after a full adjudication. As required by law, the settlement agreement will be made public by posting on the Board's website. The Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) to approve the settlement agreement.

**III. OLD BUSINESS**

Status Report on ongoing enforcement matter, Case No. 13039.OLIG.

Staff reported that pre-hearing motion practice continues before the Administrative Hearing Officer with respect to this case.

**IV. NEW BUSINESS**

**Status Report on ongoing litigation in which the Board provided advice and its Executive Director deposed.**

Staff explained that, in April 2014, it had rendered advice to an alderman's Chief of Staff with respect to the potential termination of an aldermanic staff employee, and that, after that employee was terminated, a lawsuit against the City and the alderman was filed in Cook County Circuit Court, alleging wrongful termination, defamation and violation of §2-156-019 of the Governmental Ethics Ordinance, entitled "Whistleblower Protection." The Board's Executive Director is being deposed on April 14, 2016 by counsel for the plaintiff in the matter, regarding an advisory opinion rendered to the alderman's Chief of Staff.

**New Board Members**

The Executive Director reported on the search by the Office of Legislative Counsel and Governmental Affairs (LCGA) for a potential new Board member, explaining the restrictions placed on Board members by Article V of the Governmental Ethics Ordinance.

At 4:17 p.m., the Board VOTED 4-0 (Dr. Daisy S. Lezama and Fran R. Grossman, absent) to adjourn the meeting.