

# Board of Ethics

## Open Session Minutes

August 16, 2017, 3:10 p.m.  
740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Zaid Abdul-Aleem  
Nancy C. Andrade  
Stephen W. Beard  
Mary T. Carr  
Frances R. Grossman  
Dr. Daisy S. Lezama

### **STAFF PRESENT**

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

### **MEMBERS OF THE PUBLIC PRESENT**

Brian Dunn, Office of Inspector General  
Rebecca Riddick-Ostrovsky, Office of Inspector General

The Board members, Board staff, and Board's guests introduced themselves.

#### **I. APPROVAL OF MINUTES**

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Frances R. Grossman, absent) to approve the open session minutes of the Board's meeting of July 19, 2017, as amended.

#### **II. CHAIR'S REPORT**

None

#### **III. EXECUTIVE DIRECTOR'S REPORT**

##### **A. Education**

##### *Classes and other presentations*

Since the Board's last regularly scheduled Board meeting on July 19, 42 employees and officials attended regularly scheduled classes on July 27 and August 8. There are 84 scheduled for classes on August 17 and 29, and September 7 and 19.

On July 24, staff presented the third and last pre-scheduled seminar for managers in the newly-formed Civilian Office of Police Accountability.

On July 31, staff made another presentation to a group of incoming laborers in the Department of Streets & Sanitation, at the request of the Commissioner and the Laborers' Local Union #1001.

As was reported in the media, as a result of the Inspector General investigation, staff will conduct a series of training classes for all supervisors in the Office of Emergency Management and Communications (OEMC), at the request of the department's director. The Executive Director has already assisted in drafting a department-wide letter that spells out basic ethical obligations to which OEMC personnel are subject.

On-line Training

The annual, all-new mandatory on-line training was posted. To date, 16,400 employees and elected officials have completed it, and 204 are in progress. This represents about 52% of the expected total by year's end. Departments and aldermanic offices have sent in their training plans. All employees and officials have until the end of the calendar year to complete the training. Violators have their names made public, and are subject to a \$250 per day fine after the grace period provided by law. Approximately 90% of the City's workforce completes the training via a secure internet site; the remaining personnel complete it by viewing a DVD (they do not have regular computer access). Staff distributed copies of the DVD to those departments requesting them.

Lobbyist Training

All registered lobbyists were required to complete their annual training before July 1, 2017. 24 were determined to have violated the Ordinance, and their names were posted on the Board's website on July 24. The fine period began on July 19, and the Board fined two (2) lobbyists \$200 each; these fines were paid.

**B. Advisory Opinions**

Since the last regularly scheduled Board meeting on July 19, 2017, staff has issued 369 informal opinions and one formal opinion, on campaign financing. That opinion is posted on the Board's website as Case No. 17017.CF-Request for Reconsideration.

During this time, the leading categories were, in descending order: gifts; travel; lobbying; campaign financing; Financial interest in City business; post-employment; political activity. The leading City departments from which requesters came in this period were (in descending order): City Council; Chicago Police Department; Mayor's Office; Department of Public Health; Chicago Public Library; Department of Animal Care and Control; and Department of Law.

220 of these were from City employees in administrative or management positions; 67 from non-administrative/managerial employees; nine (9) from nine (9) individual department heads or former department heads; 14 from 14 different City elected officials; 11 from aldermanic Chiefs of Staff; one (1) from ethics officials in other government agencies; the remaining were from: 30 lobbyists or persons calling to inquire whether they need to register as lobbyists; 8 City appointed officials, and 9 from contractors or vendors.

50% came via email; 49% via telephone; the remainder via walk-ins.

Time permitting, several informal opinions of note will be discussed in closed session.

C. **Proposed Amendments to the Ethics Ordinance**

Aldermen Cardenas and Munoz have each proposed amendments to the Governmental Ethics Ordinance. Alderman Cardenas's proposal would require all City contractors to complete annual ethics education. Alderman Munoz's would effectively define "City council employees" who are "independent contractors" as those who are compensated \$50,000 or more per year from the City for City-related work. The Board was asked to comment on these proposals by the Office of Legislative Counsel and Government Affairs, and turned in its comments on June 5.

At a meeting convened by the Inspector General, the Board's Executive and Deputy Director met with representatives from the City's Law and Human Resources Departments, City Council, and Inspector General to fashion revisions to the Ordinance's definition of "City Council employee" that preserves the common law distinction between employees and independent contractors, and still fosters maximum transparency from persons paid by City Council to do certain types of work by requiring them to file annual Statements of Financial Interests. Staff has worked on draft legislation that should emerge from this working group.

D. **Website Modifications**

**Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions**

All formal Board opinions issued since 1986 are posted on the Board's website (more than 880 of them), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Further, summaries and keywords for each of these opinions are available on the Board's searchable index of opinions. There are only a handful of other ethics agencies that have comparable research tools.

We are unaware of jurisdictions that make their informal opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement procedure.

**Summary Index of Board Investigations and Regulatory Actions**

We have posted the summary index of all Board investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board is currently pursuing. It names names and penalties assessed where authorized by law. There are, to date, 107 such matters. The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, not a "do-nothing" agency. This continues through the Board's ongoing regulatory actions with respect to lobbying and campaign financing, even though the Board no longer has investigative authority.

**Summary Index of Ongoing Investigations/Adjudications**

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 4 since July 1, 2013) 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 LIG. It is updated as appropriate, consistent with the Ordinance’s confidentiality provisions.

Note that, in Case No. 13039.OLIG, a confidential merits hearing was held before an Administrative Law Judge (ALJ) on four days in mid-July. The ALJ submitted written findings and recommendations to the Executive Director, as required by law, on August 4. Unless the matter is settled prior to September 12, 2017 (in a public settlement), the Board shall issue its final determination in the matter, and impose appropriate fines if it determines that the subject in that case – an alderman – violated the Ordinance, and to make public the name of the alderman and the fine imposed. The alderman then would have the right to have the Board’s decision reconsidered (on the basis of newly discovered evidence or an intervening change in the law). If that request is denied, the alderman may take the matter to Cook County Circuit Court.

Please note further that, on Friday, May 26, the IG submitted two (2) completed investigative reports and petitions for the Board to find probable cause. These are the first two (2) the Board has received from the IG since December 24, 2015. In the first of these, the Board found probable cause, notified the subject, and is presenting a draft settlement agreement for a fine (as the subject is no longer a City employee). The second of these on the agenda for today’s meeting and will be discussed in Executive Session. I note that the first of these – the discussion of a proposed settlement agreement, on today’s closed agenda – is a matter that the Board itself indirectly referred to the IG, per §2-156-070(b) of the Ordinance, after advising the subject that there was a past violation of the Ordinance.

Please note finally that all matters adjudicated or settled on or after July 1, 2013 include the names of violators and penalties assessed.

### **Lobbying Data**

On August 8, the Board posted, in conjunction with the Department of Innovation & Technology, an improved data portal. The improvement enables users to search lobbyists’ disclosed data by the name of the lobbyist, and view or print the data disclosed by each lobbyist in the annual registration form (and any amendments thereto) and all quarterly reports.

### **E. 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.

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, one (1) mid-level City employee in an operating department, and one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these six (6) cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former department head, the

Board concluded that the apparent violations were *not* minor or technical, and the alderman and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic staff was closed, apparently without further investigation by the LIG.

As noted above, the Board received two (2) completed investigative reports from the IG on May 26, 2017, with petitions for probable cause findings. One (1) of these matters is one in which the Board concluded that there was a past violation of the Ordinance that was not minor, then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. As also noted above, this matter is on the agenda in Executive Session for consideration of a proposed settlement agreement. The other matter is on the agenda in Executive Session as well—the Board must address a jurisdictional issued: whether the IG failed to complete its investigation within two (2) years of commencing it, or whether that two (2) year requirement was tolled or should be suspended because the subject took affirmative action to conceal evidence or delay the investigation, per §2-56-050(b)(3) of the municipal code.

In the three (3) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

There is no legal requirement imposed on the IG to report back to the Board on any actions it takes on matters or persons referred to it by the Board, unless the IG completes an investigation and submits a petition for a finding of probable cause to the Board based on that investigation. This is unlike the arrangement in New York City between its Conflicts of Interests Board and Department of Investigation.

**F. Lobbyists-Regulation and Enforcement**

As of today, there is an all-time record of 760 lobbyists registered. This represents a 6% increase in the number of registered lobbyists since the June 13 meeting, and is also the largest number of lobbyists registered with the Board since early 2000, before the Ordinance was amended to remove the \$1,000 annual compensation/expenditure threshold. The Board has collected \$389,025 in registration fees for the 2017 calendar year.

Lobbyists' quarterly activity reports for the second quarter are due by 11:59:59 p.m. on July 20. As of this writing, 430 have filed them.

Recently, staff discovered apparent violations of the City's campaign contribution limitation provisions on several of these reports. That provision limits registered lobbyists to \$1,500 in contribution to any single elected City official in a calendar year. There will be more discussion in Executive Session on this matter.

**G. Lobbyists-regulation and Enforcement**

The deadline for filing Statement of Financial Interests for those given notice to file them was 11:59:59 pm on May 31. Individuals who filed after that time were afforded an opportunity to present valid reasons for their lateness, and to file prior to June 14, before the Board would impose a \$250 per day fine until they file. To date, all but four (4) have filed. The Board

assessed fines against nine (9), and collected \$400. Fines continue to accrue for those have not filed.

As required by §2-156-465(b)(2) of the Ordinance, the Board posted the names of all employees and officials who were found in violation for failure to timely file.

Filed forms are posted on the Board's website as soon as they are processed by staff. Typical processing time is 24 hours. Staff is still working on posting forms filed by "City council employees" who are independent contractors. These forms are not linked to the City's CHIPPS/HR database, and thus staff must build a new link for the public to search them.

Newly hired, appointed, or promoted employees or officials are flagged by ethics liaisons or the Mayor's Office as filers, and are then sent notices to file (with password information) by the Board's "EFIS" system.

#### **H. Freedom of Information Act**

Since the last regularly scheduled Board meeting, the office has received one (1) new request under the Freedom of Information Act. The request was for a list of late-training lobbyists, which posting had been taken down because of mistakes that were corrected; the corrected list was reposted the next day. We located the original list and sent it to the requestor.

#### **IV. OLD BUSINESS**

None

#### **V. NEW BUSINESS**

None

*The Board then excused its guests until the open session reconvened.*

*At 3:05 p.m. Board members Zaid Abdul-Aleem and Frances R. Grossman joined the meeting.*

At 3:06 p.m., the Board VOTED 6-0 (Stephen W. Beard, absent) to adjourn into Executive Session 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. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (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 January 5, 2017, 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; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

*At 3:15 p.m., Board member Stephen W. Beard joined the meeting.*

*At 4:25 p.m. Nancy C. Andrade left the meeting.*

At 4:54 p.m., the Board VOTED 6-0 (Nancy C. Andrade, absent) to reconvene into open session, its guests having left the Board's offices during the executive session.

**VI. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION**

**VII. APPROVAL OF THE EXECUTIVE SESSION MINUTES**

The Board confirmed its vote of 6-0 (Stephen W. Beard, absent) taken in executive session to approve the executive session minutes of July 19, 2017 meeting.

**VIII. CASEWORK**

**A. Cases to be Considered for Probable Cause Findings**

1. Case No. 17024.IG, Financial Interest in City Business, Statements of Financial Interests

In this case, the Board VOTED 6-0 (Nancy C. Andrade, absent) to defer making a finding of probable cause or no probable cause, pending further clarification from the Inspector General as to a jurisdictional issue: whether that office met the requirement in §2-56-050(b)(3) that investigations alleging violations of the Governmental Ethics Ordinance be concluded no later than two years from the date of the initiation of the investigation, unless the person under investigation has taken affirmative action to conceal evidence or delay the investigation.

2. Case No. 17029.C, Fiduciary Duty

In this case, the Board VOTED 6-0 (Nancy C. Andrade, absent) to dismiss the case.

**B. Case to be Considered for Potential Settlement**

3. Case No. 17023.IG, Prohibited Conduct

In this case the Board VOTED 6-0 (Nancy C. Andrade, absent) to modify the settlement agreement drafted by the subject's attorney and return it to the subject and her attorney and, if necessary, authorize staff to continue negotiations to reach a mutually agreed upon settlement agreement.

**C. Post-Merits Hearing Report and Recommendation from Administrative Hearing Officer pursuant to §2-156-392 of the Ordinance**

4. Case No. 13039.OLIG [15 Ethics 0001], Time Records for Aldermanic Staff

This case involves a confidential merits hearing that was held in July 2017, pursuant to §2-156-392, in which an alderman had been charged with violating §2-156-115, which requires aldermen to maintain, have certified, and make publicly available time records of their personal staff. The hearing concluded July 17, and the Administrative Law Judge delivered his final report and recommendations to the Board's Executive Director on August 4, 2017, as required by law. The Board, having reviewed the report and recommendations, VOTED 6-0 (Nancy C. Andrade, absent) to direct the staff to negotiate a settlement agreement, to be approved and then published by the Board, or, failing an agreed-upon settlement agreement, to publish staff's draft final opinion pursuant to §2-156-392(a)(7), on or before the date set by law in which the Board must issue its final opinion in the matter, which is September 12, 2017.

**D. Lobbying**

*Requests for Reconsideration*

5. Case No. 17011.06.LOB, Unregistered Lobbying
6. Case No. 17011.08.LOB, Unregistered Lobbying
7. Case No. 17011.10.LOB, Unregistered Lobbying

In these cases, the Board took the Requests for Reconsideration and staff's responses under advisement.

*Review of Case Status*

8. Case No. 17011.01.LOB, Unregistered Lobbying
9. Case No. 17011.12.LOB, Unregistered Lobbying
10. Case No. 17011.14.LOB, Unregistered Lobbying
11. Case No. 17011.15.LOB, Unregistered Lobbying

The Board reviewed the staff's reports and presentations on these matters. Staff reported that fines assessed and settled for have been paid in these cases.

**E. Campaign Financing**

12. Case No. 17017.CF, Campaign Financing
13. Case No. 17026.CF, Campaign Financing
14. Case No. 17027.CF, Campaign Financing
15. Case No. 17036.CF, Campaign Financing
16. Case No. 17037.CF, Campaign Financing
17. Case No. 17038.CF, Campaign Financing

The Board reviewed the staff's reports and presentations on these matters. Staff reported that, in the first three (3) cases, the political committees of three (3) City elected officials effected refunds of the contributions, pursuant to §2-156-445(d) of the Ordinance, and thus the cases have been closed.

In the last three (3) cases, staff reported that, based on its review of lobbyists' quarterly activity reports, it noticed that three (3) registered lobbyists disclosed political contributions in the calendar quarter in excess of \$1,500 to the political committees of three (3) (or more) separate City elected officials, in apparent violation of the Ordinance. The lobbyists were notified of the apparent violations, and the lobbyists confirmed that their quarterly reports were incorrect and that they had mistakenly double-reported these contributions, and that the actual amounts contributed were less than \$1,500 to each political committee. The lobbyists corrected their quarterly reports and the matters were dismissed.

**F. Referred Complaint Report**

18. Case No. 17039.C, No Jurisdiction

The Board was advised that the staff received a complaint alleging discrimination and that it was referred to the Chicago Police Department's Bureau of Internal Affairs and to the Office of Inspector General for action as either office deems appropriate. In addition, staff also sent a letter to the complainant advising him of the referrals since this office has no jurisdiction over the matter.

19. Case No. Case No. 17041.C, Lobbying

The Board was advised that staff referred this complaint to the Office of Inspector General for action as that office deems appropriate.

At 4:55 p.m., the Board VOTED 6-0 (Nancy C. Andrade, absent) to adjourn the meeting.