

Board of Ethics

Open Session Minutes

February 15, 2017, 3:13 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Stephen W. Beard
Mary T. Carr
Frances R. Grossman, by telephone

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
Pually Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Nancy C. Andrade
Dr. Daisy S. Lezama

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to approve the Open Session Minutes of the regularly scheduled January 18, 2017 meeting and the Open Session Minutes of the special meeting on January 25, 2017.

II. CHAIR'S REPORT

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the last regularly scheduled Board meeting, 101 employees and officials attended classes held on January 19 and 26, and February 2 and 7. There are 99 scheduled for classes on February 16, 23 and 28, and on March 9.

On January 19, the Executive Director conducted a class for members of the Commission on Animal Care and Control, as well as the Department's senior management team, at the request of the Commission's Chair.

On February 14, staff made a 60 minute presentation to a delegation of anti-corruption officials from Egypt, Algeria, Saudi Arabia and the Palestinian Territories, at the request of World Chicago and the Mayor's Office.

On February 22, staff will conduct two classes for members of the Mayor's management team.

On February 23, staff will conduct two classes for SSA Commissioners and Service Provider representatives.

Classes are being scheduled for the spring for employees of the newly-formed Civilian Office of Police Accountability (COPA).

On-line Training

Staff is in the process of developing the annual 2017 on-line training, and expects to have it posted by mid-March.

Owing to a current City policy regarding an IT vendor, the 2016-2017 mandatory lobbyists training has not yet been posted, but we expect this issue to be resolved quickly.

New Educational Materials

All Board educational materials have been fully revised, though, as will be discussed in closed session, there are further revisions to be made to the "Plain English Guide to Being Lobbied," for City employees and officials.

B. Advisory Opinions

Since the last regularly scheduled Board meeting on January 18, 2017, staff has issued 249 informal opinions and three (3) formal opinions (these 3 will be presented today). During this time, the leading categories were, in descending order: travel, gifts, campaign financing, use of City property/authority; post-employment and outside volunteer service. The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; Mayor's Office; City Council; Department of Aviation; Chicago Public Library; Department of Public Health; and Department of Finance.

134 of these were from City employees in administrative or management positions; 29 from non-administrative/managerial employees; 14 from six (6) individual department heads; 12 from City elected officials (including eight (8) different aldermen); 12 from aldermanic Chiefs of Staff or staffers calling on behalf of the alderman; four (4) from ethics officials in other agencies; and the remaining 36 from: 21 lobbyists, four (4) City appointed officials, nine (9) from contractors or vendors; the rest came from the public and the media (these last are not actually advisory opinions). 50% came via email; 49% via telephone; the remainder via walk-ins.

Several informal opinions of note will be discussed in closed session.

C. Website Modifications/Advisory Opinions

All formal Board opinions are now posted on the Board's website, in accordance with the Ordinance's confidentiality provisions. 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.

Staff is nearing the completion of the next phase: to publish reports of the investigations and other enforcement proceedings conducted by the Board of alleged violations of the Governmental Ethics Ordinance (not of the former Campaign Financing Ordinance) from 1987 to the present, including all lobbying enforcement matters. Investigations concluded prior to July 2013 are themselves confidential, by law, but the Board is authorized to publish summary reports of its investigations, findings and recommendations (and has done so in the past). There are approximately 45 of these. Investigations concluded after July 1, 2013, shall, by law, include the names of persons involved and the penalties assessed.

D. 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) 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 as appropriate, consistent with the Ordinance's confidentiality provisions. However, as there have been no completed investigative reports sent to the Board in nearly one full year, there has been little to update, though the IG has begun to report on closed campaign financing investigations which were not brought to the Board for adjudication.

Note that adjudicated or settled matters (on or after July 1, 2013) shall include the names and penalties assessed, where authorized by law.

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, 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 former department head, the Board concluded that the apparent violations were not minor or technical, and the individuals self-reported to the respective 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. 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 are 580 lobbyists registered, and the Board had collected \$390,600 in registration fees. This figure represents about 35.5% of our operating budget.

The annual registration (or re-registration) deadline for lobbyists was the close of business, Friday, January 20. All lobbyists' filings were completed on-line, using the Board's ELF system. As of this writing, there is one (1) lobbyist registered in 2016 who neither re-registered nor terminated for 2017, and two (2) who failed to file activity reports as required.

As required by law, on January 26, 2017, staff sent out 152 notices of probable cause to determine that the Ordinance was violated, to late filing or non-paying lobbyists with respect to their registration. All but one (1) then timely filed or provided a valid reason for not doing so (the latter were permitted to file late and did so). Accordingly, except for those few who were excused for their lateness, the remaining are considered in violation of the lobbyists' registration requirement and their names will be published on our website. Ten (10) of these lobbyists filed after the due date in the notice of probable cause and, therefore, have been fined \$1,000 per day until filing. All but one (1) filed promptly. Thus, the amount of their fines were specifically determined and imposed: a total of \$13,000. One was assessed a \$3,000 fine. Two were assessed a \$2,000 fine. Six (6) were assessed \$1,000 fines. On February 9 and 10, 2017, staff sent nine (9) 21-day demand letters to the lobbyists to pay those determined fines.

As required by law, on February 16, staff will send out notices of probable cause to the two (2) remaining lobbyists who have not filed activity reports as required.

G. 2017 Statements of Financial Interests

Staff is making preparations to send out the 2017 form to all employees and officials who will be required to file them by the close of business on May 31, 2017. We anticipate about 3,550 filers for 2017. This requires sending spreadsheets to each department, aldermanic office and City Council Committee and to the Office of Legislative Counsel and Government Affairs with lists of 2016 filers instructing them to update the lists according to the criteria set by the Board and Ordinance for who must file the form. As in past years, the Board's EFIS system will send out email notices to all filers on or about March 1, 2017. All "City council employees," as defined in the Ordinance, will be filing in 2017 as well.

H. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has no new requests under the Freedom of Information Act.

IV. OLD BUSINESS

1. Staff reported that there is a recent change in status with respect to Case No. 13039.OLIG, currently awaiting a merits hearing. In that case, the attorney for the subject has withdrawn; the subject must obtain a new attorney; and the nearing hearing date will be postponed, accordingly.

V. NEW BUSINESS

2. Staff reported that it requested that the Department of Innovation and Technology modify the lobbyists' online activity report to accommodate reporting a lobbyist's expenditures totaling less than \$250.00 properly made to City employees and officials pursuant to the Ordinance.

VI. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

The Board will review the Executive Session Minutes of the regularly scheduled meeting of January 18, 2017, and in the special meeting of January 25, 2017.

VII. CASEWORK

A. Summary of Formal Advisory Opinions Issued by Staff Based on Clear Board Precedent

3. Case No. 17008.Q, Post-Employment
4. Case No. 17009.Q, Outside Employment
5. Case No. 17010.Q, Outside Employment

The Board will review staff's summary report in executive session.

B. Other Cases

6. Case No. 17003.A, Money for Advice
7. Case No. 17004.A, Gifts
8. Case No. 17005.LOB, Lobbying
9. Case Nos. 17011.01.LOB et seq.

The Board will discuss matters presented by staff in executive session.

VIII. OTHER BUSINESS

10. Review of the Pending Case List

This matter was deferred for consideration in executive session.

The Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to adjourn into Executive Session at 3:20 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; (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; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes 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 5:02 p.m., the Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to reconvene into open session.

IX. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

The Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to approve the Executive Session Minutes of the regularly scheduled January 18, 2017 meeting and the Executive Session Minutes of the special meeting held on January 25, 2017.

II. CASEWORK

A. SUMMARY OF FORMAL ADVISORY OPINIONS ISSUED BY STAFF BASED ON CLEAR BOARD PRECEDENT

1. Case No. 17008.Q, Post-Employment

Staff reported that, on January 17, 2017, a former City employee requested an opinion regarding the applicability of the post-employment restrictions in the City's Governmental Ethics Ordinance ("Ordinance") to his contemplated activities as a lobbyist and a permit expediter for commercial or business clients.

Based on the information provided, staff reported advising him that none of the post-employment restrictions would prohibit the work he contemplated. More specifically, he was advised that the two-year lobbying restriction was inapplicable because aldermanic or City Council employees are not subject to this lobbying ban. He was also advised that he was permanently restricted from handling any matter related to an administrative hearing he participated in during 2011, should any issues arise related to that matter. And, although the one-year subject matter prohibition would apply to his contemplated work as a permit expediter, that restriction expired in 2016.

2. Case No. 17009.Q, Outside Employment

Staff reported that, on January 24, 2017, a City employee requested an opinion addressing whether the Ordinance would prohibit him from engaging in outside employment. Staff advised him that the Ordinance did not prohibit him from engaging in his contemplated outside employment, but imposes certain restrictions. Staff advised him that he cannot: (1) advise or assist his outside employer with anything that is related to his work with the City; (2) represent, advocate for, or act as a spokesperson in any formal transaction or even informal conversation(s) regarding City government business; (3) assist his outside employer with any bids for City contracts, nor help prepare, estimate or review any plans or specifications; or (4) access any City records for the benefit of that employer, or work on any projects directly related to his Department for his outside employer. In addition, he cannot use City resources for non-city purposes or disclose confidential or non-public information; he owes his fiduciary duty to the City; and, that he would be required to report this outside employment on his annual Statements of Financial Interests, should refile one.

3. Case No. 17010.Q, Outside Employment

Staff reported that, on January 19, 2017, a City employee requested an opinion on whether the Ordinance would prohibit him from engaging in outside employment. Staff advised him that the Ordinance did not prohibit him from engaging in his contemplated outside employment, but imposes certain restrictions. Staff advised him that he could not get involved directly or indirectly in any matters related to his outside employment that could arise before his Department, but that the Ordinance does not prohibit him from having an attorney act on his behalf. Staff further advised that the Ordinance does allow City employees to purchase City-owned property if: (i) it is sold pursuant to public notice followed by competitive bidding; or, (ii) the Commissioner of the City's Department of Planning & Development has specifically designated that City employees are eligible to participate in the specific City program by which the property would be sold. Staff urged him to contact us again with specific information about sales processes once it becomes available to him. Staff also advised him that he cannot use City resources for non-city purposes, or disclose confidential or non-public information, and owes his fiduciary duty to the City.

B. OTHER CASES

4. Case No. 17004.A, Gifts, Review of draft of Advisory Opinion

The Board VOTED 5-0 (Nancy Andrade and Dr. Daisy S. Lezama, absent) to approve the draft opinion determining that a City employee who had recently experienced the death of a close relative (leaving the employee and a minor child as survivors) was not prohibited from: (i) receiving anonymous cash (or cash equivalent) gifts from persons who are not personal friends or relatives, in amounts up to \$50; or (ii) could receive cash (or cash equivalent) gifts from personal friends, relatives, or other City employees and officials. The opinion explains that no gifts may be offered or accepted based on a mutual understanding the City decisions would be affected, and explains the reporting requirements on the Statement of Financial Interests.

The Board's reasoning is based on its authority to reach fundamentally fair and equitable results, in its cases. The opinion also discusses on-line funding mechanisms, such as GoFundMe and contains a detailed analysis of what constitutes a "personal friend."

5. Case No. 17005.LOB, Lobbying

In the case, the Board VOTED 4-0 (Zaid Abdul-Aleem, recusing; Nancy Andrade and Dr. Daisy S. Lezama, absent) to determine that:

(i) Having considered the responses provided by the lobbyist and the company that retained or hired him, the evidence before the Board shows that a lobbyist, David Plouffe, violated the Ordinance by lobbying City officials via email on November 20, 2015, explicitly on behalf of a company, but never reported that lobbying activity, and did not register as a lobbyist with the Board of Ethics with that company as his client until April 13, 2016 – leaving a total of 95 business days between the date of lobbying and the date of registration;

(ii) Having considered the responses provided by the lobbyist and the company that retained or hired him, the evidence before the Board shows that the company that hired or retained him violated the Ordinance, by hiring or retaining an individual who lobbies but fails to register as required;

(iii) The Board therefore is, pursuant to §2-156-245, and §2-156-465(b)(3) of the Ordinance, imposing a fine of \$90,000 on the unregistered lobbyist, and, pursuant to §2-156-305 and §2-156-465(b)(3), a fine of \$2,000 on the company that hired or retained him to lobby. In coming to this decision, the Board stressed that the Ordinance provides for a fine of \$1,000 per day, beginning on the sixth business day after a person first lobbies but fails to register, and continuing at \$1,000 per day until the person registers, regardless of whether the person lobbies on other days in the time period. That is, refraining from lobbying does not cure or mitigate the violation or the accruing penalty of \$1,000 per day until registration. The violation is based not on whether he engaged in any further lobbying activity without being registered at any time after November 20, 2015, or November 30, 2015 and prior to April 13, 2016, but in already having lobbied on November 20, 2015, and then failing to register. The lobbyist is hereby fined \$90,000, and the company that retained him violated is hereby fined \$2,000 for this violation as it engaged in only one act of hiring or retaining the lobbyist.

At 5:05 p.m., the Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to adjourn the meeting.