

# Board of Ethics

## Open Session Minutes

September 20, 2017, 3:08 p.m.  
740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Zaid Abdul-Aleem  
Mary T. Carr  
Frances R. Grossman

### **STAFF PRESENT**

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

### **BOARD MEMBERS ABSENT**

Nancy C. Andrade  
Stephen W. Beard  
Dr. Daisy S. Lezama

### **MEMBER OF THE PUBLIC PRESENT**

Kevin Beese, Cook County Chronicle

The Board members, Board staff, and the Board's guest introduced themselves.

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

The Board VOTED 4-0 (Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of August 16, 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 August 16, 85 employees and officials attended regularly scheduled classes on August 17 and 29 and September 7 and 19. There are 44 scheduled for classes here on September 28 and October 12.

On September 1, the Executive Director met with a visiting delegation of federal prosecutors from Brazil, at the request of the U.S. State Department and Mayor's Office.

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 the basic ethical obligations to which OEMC personnel are subject.

On-line Training

To date, 21,650 employees and elected officials have completed the all-new 2017 mandatory on-line ethics training program, and 341 are in progress. This represents about 72% of the expected total by year's end. Departments and aldermanic offices have sent in their training plans. 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.

**B. Advisory Opinions**

Since the last regularly scheduled Board meeting on August 16, 2017, staff has issued 381 informal opinions. During this time, the leading categories were, in descending order: gifts; travel; lobbying; City property; financial interest in City business; political activity; outside employment. 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 Finance; Department of Law; Office of the City Clerk.

254 of these were from City employees in administrative or management positions; 53 from non-administrative/managerial employees; 10 from individual department heads or former department heads; 11 from 11 different City elected officials; four (4) from aldermanic Chiefs of Staff; two (2) from ethics officials in other government agencies; the remaining were from: 27 lobbyists or persons calling to inquire whether they need to register as lobbyists; 3 City appointed officials, and 17 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 Muñoz have each proposed amendments to the Governmental Ethics Ordinance. Alderman Cardenas's would require all City contractors to complete annual ethics education. Alderman Muñoz's, submitted at the September 6 City Council meeting, would effectively define "City council employees" who are "independent contractors" as those who are compensated \$100,000 or more per year from the City for City-related work or who work in excess of 500 hours per year on such 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 September 13.

The proposal is loosely based on discussions held at a meeting convened by the Inspector General in July, at which 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." The goal was to preserve the common law distinction between employees and independent contractors, and still foster maximum transparency from persons paid by City Council to do certain types of work by requiring them to file annual Statements of Financial Interests. However, the proposal

submitted reflected the figure of \$100,000 per year in compensation, not \$50,000, as had been discussed. The comments submitted to Legislative Counsel and Government Affairs strongly recommended that the Administration oppose that aspect of the proposal, which would effectively shield many of these individuals from appropriate restrictions in the Governmental Ethics Ordinance, including the requirement to file annual Statements of Financial Interests.

**D. Website Modifications**

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

All formal Board opinions issued since 1986 are now posted on the Board's website (more than 890 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 (not including one on the agenda for today's meeting). 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 Office of the Legislative Inspector General. 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 (4) days in mid-July. The case was settled for a \$5,000 fine with the subject, (Alderman Howard Brookins of the 21<sup>st</sup> Ward), for failing to keep timesheets for five (5) aldermanic employees. In Case No. 17024.IG, following an investigation by the Office of Inspector General (based on the Board's advice to the subject that she committed a past violation of the Ordinance and could self-report to the IG) the Board settled the matter with the subject, former Commissioner of the Department of

Family and Support Services Evelyn Diaz, for a \$1,500 fine, for interviewing with her post-City employer at the same time that organization had multiple contract extensions and modifications before her without recusing herself.

Another IG matter is on the agenda for today's meeting and will be discussed in Executive Session regarding whether the IG's investigation, which was completed more than two (2) years after it was commenced, can be the subject of a probable cause finding – that is, whether the IG can show that the person under investigation took affirmative action to delay the investigation or conceal evidence.

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**

The Board has 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 IG 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 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 aldermen 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 a report or the settlement agreement.

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, the all-time record of registered lobbyists continues to grow – we have 781. This represents a 3% increase in the number of registered lobbyists since the August 16 meeting, and a 7% increase over July’s number. The Board has collected \$422,795 in registration fees, which is 50% of the agency’s operating budget for 2017 and 51% of our submitted budget request for 2018.

**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 the release of a City-impounded vehicle. We advised the requestor that ours was the wrong agency with respect to this request.

**IV. OLD BUSINESS**

None

**V. NEW BUSINESS**

None

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

At 3:12 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama , 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 4:54 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to reconvene into open session.

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

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

The Board confirmed its vote of 4-0 (Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama, absent) taken in executive session to approve the executive session minutes of the July 19, 2017 meeting.

**VII. CASEWORK**

**A. Cases to be Considered for Potential Settlement**

1. Case No. 17011.06.LOB, Unregistered Lobbying
2. Case No. 17011.08.LOB, Unregistered Lobbying  
(Chair William F. Conlon, recusing)
3. Case No. 17011.10.LOB, Unregistered Lobbying
4. Case No. 17011.01.LOB, Unregistered Lobbying
5. Case No. 17011.15.LOB, Unregistered Lobbying

The Board, having heard staff's report on the potential settlement of these matters, deferred action on them, pending receipt of signed settlement agreements from the subjects, with the Board's modifications.

**B. Report on Concluded Settlement Agreements**

6. Case No. 13039.OLIG [DAH 15 Ethics 0001]
7. Case No. 17023.IG, Prohibited Conduct

The Board heard staff's report on the status of these cases, which is that both of these settlement agreements were posted on the Board's website. The subject of Case No. 17023.IG, a former City department head, has already paid her \$1,500 fine, but the subject of Case No. 13039.OLIG, a sitting alderman, requested and was granted more time to pay his \$5,000 fine.

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

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

Staff reported on an August 31, 2017 meeting between the Board and the Office of Inspector General for the purpose of clarification. After providing the Board with a summary of the case and law and additional discussion, the Board VOTED 3-1 (Mary Carr dissenting; Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to determine there was probable cause that the subject violated the Financial Interest in City Business and Statements of Financial Interest provisions in the Ordinance, and to inform the subject of his right to a meeting with the Board.

9. Case No. 17044.C, Financial Interest in City Business

Staff reported that it received documentation showing that a full-time City employee is also working and being paid with City funds under contract as an independent consultant/contractor to an alderman/Ward Office. The documentation tendered was sufficient on its face to support a finding of probable cause that the subject has violated the Financial Interest in City Business, and is also required to file annual Statement of Financial Interests (but has not done so). In addition, the Board considered and interpreted the \$1000 limit on City contracts to City employees, in the Ordinance's definition of "financial interest, in §2-156-010(1), to mean \$1,000 *per year*, not \$1,000 per contract, or over the entire career or term of office of a City employee or official.

The Board VOTED 4-0 (Nancy C. Andrade, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to determine: (i) there is probable cause that the subject has violated the Ordinance, and to direct staff to notify the subject and the subject's rights to present evidence or documentation and meet with the Board to rebut the finding; and (ii) in §2-156-010(1), which is the definition of "financial interest," the phrase "an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000" means more than \$1,000 per year, not \$1,000 per contract, or over the entire career or term of office of a City employee or official.

**D. Report of Complaints Referred to the Office of Inspector General**

10. Case No. 17042.C, No Jurisdiction

Staff reported that the Board received a written complaint with documents from a citizen, in which he alleged, among other things, that he was discriminated against in hiring by the City of Chicago. The complainant indicated that he also filed several suits in federal court several years ago, but the court dismissed his multiple actions. Board staff forwarded his complaint and materials to the IG for action as that office deems appropriate.

11. Case No. 17043.C, Prohibited Political Activity

Staff reported that the Board's Executive Director received a call and an emailed written complaint with attachments (also emailed to the IG) alleging that a City employee used her personal social media accounts to engage in political activity or "non-City" business during City business hours, and that her superior both knew about the communications and

defended them. Staff concluded that there was insufficient evidence to issue a probable cause determination on its face. Staff spoke with the IG and requested that it inform the Board whether it opens an investigation; the IG later informed staff that it would not be investigating this matter.

12. Case No. 17045.C, Post-Employment

Staff reported that it referred a complaint to the IG from a company, alleging that improprieties in a contract bidding process caused another company to be awarded a City contract, even though the complainant's bid was lower, and that a former City employee violated the Ordinance's post-employment provision by assisting the company that was awarded the contract.

At 4:55 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Stephen W. Beard, and Dr. Daisy S. Lezama, absent) to adjourn the meeting.