

Board of Ethics

Open Session Minutes

January 18, 2017, 3:18 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Stephen W. Beard
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

BOARD MEMBERS ABSENT

Nancy C. Andrade
Mary T. Carr

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Fran R. Grossman, absent) to approve the Open Session Minutes, as amended, of the December 19, 2017 meeting.

II. CHAIR'S REPORT

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the last Board meeting, 114 employees and officials attended classes held on December 20 and January 5, 12 and 17. Staff also conducted a class for the City Clerk appointee and her Senior Staff on January 12. There are 129 scheduled for upcoming classes on January 19 and 26, and February 2, 7 and 16.

On January 19, staff will conduct a class for members of the Commission on Animal Care and Control, at the request of its Chair.

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

On January 11, at the request of Chair Bill Conlon, the Executive Director and Legal Counsel made a 25 minute presentation to the Public Affairs Committee of the Union League Club; the Chair himself was unable to attend.

On February 14, staff will make a 60 minute presentation to a group 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-line Training

As will be reported in greater detail in closed session, on January 4, 2017 the Executive Director issued 12 probable cause notices to 11 employees and one (1) alderman who had not completed the 2016 annual mandatory ethics training course as required. Eight (8) of these have resulted in determinations that the individuals violated the Ordinance, but no fines will be assessed as they completed it prior to the fine period taking effect. As required by law, their names and violations will be posted on the Board's website.

A total of 31,159 officials and employees completed the training. The astoundingly low number of persons (12) who did not comply with the Ordinance's deadline is a testament to the dedication of Board staff, particularly Ed Primer, Doretha Jackson, and Ana Collazo, and the network of ethics liaisons we have in every department and aldermanic office.

The 2016-2017 mandatory lobbyist training will be posted, closely coinciding with the annual lobbyist registration deadline of January 20.

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 Board meeting on December 19, 2016, staff has issued 164 informal opinions (three (3) others are being presented today, pending Board approval). During this time, the leading categories were, in descending order: travel, gifts, travel, campaign financing, use of City property/authority*; post-employment, and 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 Aviation; Department of Public Health; Department of Cultural Affairs and Special Events; and Department of Finance.

75 of these were from City employees in administrative or management positions; 24 from non-administrative/managerial employees; 17 from eight (8) individual department heads; 24 from City elected officials (including 13 individual aldermen); four (4) from aldermanic Chiefs of Staff or staffers calling on behalf of the alderman; two (2) from ethics officials in other agencies; two (2) from former City department heads; and the remaining 16 from: five (5) lobbyists, two (2) City appointed officials, six (6) 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.

*At the recent COGEL (Council on Governmental Ethics Laws) conference, we learned that this topic was the leading topic of investigations reported by state, county and municipal ethics commissions with investigative authority between November 2015 and November 2016.

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 there are others who 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 conducted by the Board of alleged violations of the Governmental Ethics Ordinance (not of the former Campaign Financing Ordinance) between 1987 and 2013. The investigations themselves are confidential, 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.

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.

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. 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 3,600 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.

G. Lobbyists-Regulation and Enforcement

As of the close of 2016, there were 619 lobbyists registered, and the Board had collected \$346,350 in registration fees. This figure represents about 42% of our operating budget.

The annual registration (or re-registration) deadline for lobbyists is by the close of business, Friday, January 20. All lobbyists' filings must be completed on-line, using the Board's ELF system. As of this writing, approximately 175 lobbyists have registered for 2017, and approximately 216 have filed their quarterly reports for the final quarter of 2016, and the Board has collected \$72,250 in registration fees. All lobbyists who fail to register or terminate or file activity reports, as required, will be subject to the due process procedures and penalties for violating the Ordinance, including fines of up to \$1,000 per day, and a public announcement of their violations.

H. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received two (2) new requests under the Freedom of Information Act. One request was a statement about a Supreme Court case; the requestor was advised this agency had no responsive documents. The other request was for one filed statement of financial interests from an alderman, and a request for a list of all penalties for 5 years assessed against the alderman for late filing of those statements. The requestor was sent a .pdf of the one responsive record the agency had, and was advised that the Board has no record indicating any penalties imposed for late filing.

IV. OLD BUSINESS

1. Amendments to the Board's Rules and Regulations

Staff reported the new Rules became effective on January 5, 2017. In addition, staff reported no change in status with respect to Case No. 13039.OLIG.

2. Case No. 16032.A, Gifts

In this case, the Board VOTED 4-0 (Mary T. Carr, Fran R. Grossman and Nancy Andrade, absent) to approve the draft appendix to the opinion in this case, holding that a City employee or official who accepts an offer to purchase tickets to a high-demand event at face value or less, and who performs an official public function early on in the event, and then wishes to leave the event, is prohibited from giving his or her ticket (to use for the remainder of the event) to other City employees or officials or to members of the public. The Appendix will be posted on the Board's website as an appendix to the original opinion.

3. Case No. 16017.C, Lobbying/Post-Employment, Status Update

The Board deferred staff's report on the status of this matter until executive session.

4. Case No. 16044.CNS, Lobbying, Status Update

The Board deferred staff's report on the status of this matter until executive session.

5. Case No. 151690.A, Prohibited Conduct, Status Update

The Board deferred staff's report on the status of this matter until executive session.

V. NEW BUSINESS

6. Interesting Informal Opinions.

The Board deferred consideration of this report until executive session.

VI. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

The Board will review the minutes in executive session

VII. CASEWORK

A. Referred Complaint Report

7. Case No. 16046.C, No Jurisdiction

8. Case No. 16047.C, Money for Advice

The Board deferred consideration of this report until executive session.

C. Other Cases

9. Case No. 17001.01.TR, et seq., Training
10. Case No. 17002.FIS, Statements of Financial Interests
11. Case No. 17003.A, Money for Advice
12. Case No. 17004.A, Gifts
13. Case No. 17005.LOB, Lobbying

The Board deferred consideration of these reports until executive session.

At 3:25 p.m. member Fran R. Grossman joined the meeting.

The Board VOTED 5-0 (Nancy C. Andrade and Mary T. Carr, absent) to adjourn into Executive Session at 3:26 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 5:45 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to reconvene into open session. Member Stephen W. Beard had left the meeting at 5:38 p.m.

I. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

IV. OLD BUSINESS

1. Case No. 16017.C, Lobbying/Post-Employment, Status Update

The Board heard the staff's status report on this matter in Executive Session. No Board vote was required.

2. Case No. 16044.CNS, Lobbying, Status Update

The Board heard the staff's status report on this matter in Executive Session. No Board vote was required.

3. Case No. 151690.A, Prohibited Conduct, Status Update

The Board heard the staff's status report on this matter in Executive Session. No Board vote was required.

VI. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

The Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to approve the Executive Session Minutes of the December 19, 2016 meeting.

VII. CASEWORK

A. Referred Complaint Report

4. Case No. 16046.C, No Jurisdiction

The Board heard staff's report on a citizen complaint received and referred to the Office of Inspector General for action it deems appropriate.

5. Case No. 16047.C, Money for Advice

The Board heard staff's report on a citizen complaint received and referred to the Office of Inspector General for action it deems appropriate.

Member Stephen W. Beard left the meeting at 5:38 p.m.

B. Other Cases

6. Case No. 17001.01.TR, et seq., Training

Staff reported that, pursuant to Governmental Ethics Ordinance §§2-156-145 through -148, and §2-156-465, all City employees and elected officials are required to complete an online ethics training each year no later than December 31. Failure to timely complete this training results in: (i) a finding of an ethics violation; (ii) the public release of the violator's name; and (iii) potential fines to the violator ranging from \$200-\$750 for each day until the training is completed. The Board's Executive Director imposes the daily fine following a seven (7) day grace period after notifying the subject of a probable cause violation.

On January 4, 2017, the Board's staff issued 12 Probable Cause Notices of Ethics Violations to individuals who had not completed the 2016 training. Of those cases, there were eight (8) ethics violations (seven (7) employees and one (1) alderman); one (1) case withdrawn (the employee terminated City service on 12/30/2016); three (3) cases waived (one (1) whose status was in progress, and one (1) new employee, and one (1) new part-time employee with technical issues). No fines were imposed.

Staff also reported that, on January 11, 2017, the Board's Executive Director received a letter from the alderman who had not timely completed the training, and the letter asserted defenses. However, the Board, having discussed the validity of these assertions in executive session, VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and

Stephen W. Beard, absent) to approve upholding the ethics violation and the public posting of the alderman's name.

7. Case No. 17002.FIS, Statements of Financial Interests

The Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to direct staff to notify each of candidates for the Special Election for 4th Ward alderman (to be held February 28, 2017) who had not yet filed Statements of Financial Interests that they have until a date certain to file, and that, if they fail to file, the Board will impose appropriate sanctions, including making public their names and violations for failure to file.

8. Case No. 17003.A, Money for Advice

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to direct staff to prepare an advisory opinion for the February meeting advising an alderman and a City council employee that: (i) "City council employees," meaning persons paid by contract to perform services for aldermen or their ward offices, are subject to the Ordinance's Substantive Code of Conduct (Article II) as though they are "employees"; (ii) discusses the restrictions the Ordinance places on City employees or officials who would be the beneficiaries of GoFundMe campaigns; and (iii) advises aldermen and department heads of best practices with respect to monitoring their employees' activities with respect to GoFundMe campaigns.

9. Case No. 17004.A, Gifts

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to direct staff to prepare a written advisory opinion addressing whether and under what conditions a City employee whose close family member passed away may receive money from a GoFundMe campaign for the employee and the employee's family's benefit, and whether the employee could receive cash from a neighborhood group, and under what conditions receipt of money might be acceptable.

10. Case No. 17005.LOB, Lobbying

In this case, the Board, having heard staff's extensive report on potential unregistered lobbying by an individual that took place for more than four (4) months, and the procedural posture of the case, as well as potential penalties that the Board could impose on the unregistered lobbyist as well as the client who retained that individual, the Chair directed the staff to prepare revised probable cause notices to be considered by the Board at a special meeting the following week so the Board could issue them, and directed that Board members ascertain whether they would need to recuse themselves due to a potential conflict, under Board Rule 2-5. (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard were absent from the meeting, and Zaid Abdul-Aleem recused himself from discussion of this matter.)

At 5:50 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Mary T. Carr and Stephen W. Beard, absent) to adjourn the meeting.