

BOARD of Ethics

Open Session Minutes

June 15, 2018, 12:09 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Nancy C. Andrade
Dr. Stephanie Cox-Batson
David L. Daskal

STAFF PRESENT

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

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem
Stephen W. Beard
Dr. Daisy S. Lezama

GUESTS PRESENT

Chris Norborg, Office of Inspector General
Eric Carlson (Intern), Office of Inspector General

Guests, Board and staff introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of May 23, 2018.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 94 employees and officials attended classes here on May 24 and June 5 and 14, and specially scheduled classes on May 24 and June 11 for personnel from the Mayor's Washington, D.C. office, the incoming group of Mayoral Fellows, and for the 30th Ward. 64 are scheduled for classes on June 26 and July 10 and 19. All courses now cover sexual harassment.

On June 7, at the request of the State Department, we hosted a delegation of 21 journalists and anti-corruption and government ethics officials from the five (5) Lusophone countries in Africa: Angola, Guinea-Bissau, Mozambique, and Sao Tome and Principe.

On June 18, also at the request of the State Department, we will host a delegation of 30 legislators, anti-corruption officials, and journalists from the following countries: Afghanistan, Argentina, Bahrain, Brazil, Burma (Myanmar), Cameroon, Czech Republic, Egypt, Ethiopia, Ghana, Greece, India, Israel, Jamaica, Kuwait, Macedonia, Malaysia, Montenegro, Nepal, Thailand, Vietnam and Zambia.

On June 21, staff will present a class for the 48th Ward, and on July 10, for all Ward Superintendents at the City's Department of Streets & Sanitation, and on July 9 for the 5th Ward.

On June 25, staff will present a class to a vendor who was de-barred based on a report by the Office of Inspector General ("IG") but who wishes to re-apply for City contracts, as part of a settlement with City.

Classes are being scheduled for all personnel in the Office of the City Treasurer, at his request, and for all hearing officers at the City's Department of Administrative Hearings, at the Director's request.

The Executive Director will serve as a panelist on "State and Local Campaign Finance Laws" and "State and Local Lobbying, Ethics and Gift Laws" for the Practicing Law Institute in two programs: in Washington, D.C. on September 7, and in San Francisco on October 5. Other panelists will be from the law firms of Skadden, Arps, Slate, Meagher & Flom, and Nielsen Merksamer, Parrinello, Gross and Leoni, and the Executive Director of the Massachusetts Office of Campaign and Political Finance.

On-line Training

For Lobbyists

495 lobbyists (62% of those required) have completed the annual mandatory lobbyists' ethics training. The deadline is before July 3, 2018. We send out reminders every other week. The training includes a unit on sexual harassment – where to report it, what it is, according to City law, and ways to prevent it. Please note also: there have been stories and opinion pieces coming out of various state capitals in which female lobbyists have alleged that male legislators have harassed them, sometimes "in exchange" for support. Although the Ethics Ordinance does not require that annual lobbyist training cover sexual harassment, the Board's annual training will do so. It is as important to educate potential victims of sexual harassment about their rights as it is to reinforce what constitutes sexual harassment (and applicable penalties) to potential harassers.

For All City Employees and Officials

To date, 12,112 employees have completed the annual 2018 on-line training program, which also includes a unit on sexual harassment (drafted by our colleagues in the City's Department of Human Resources). This is about 40% of the total scheduled.

We anticipate that the training for elected officials, which includes a full unit on sexual harassment, will be posted by the end of the month.

City Council Educational Initiative

In conjunction with the Law Department, IG, and members of the City Council, including representatives from its various caucuses, the Board met on January 16 and February 27, March 27, April 16, and May 21 to work on a "handbook" that will address and provide

guidance on certain issues common to aldermen and their staff; these include some ethics ordinance issues. The Board, Law Department, and IG are acting under the guidance of the City Council on this project, in an effort to identify and promote various best practices. We anticipate producing a document by early Fall.

B. Council on Governmental Ethics Laws (“COGEL”)

The 2018 annual conference will be in Philadelphia in December, but the 2019 annual conference will be here in Chicago, at the Michigan Avenue Marriott in early December of that year. We will work closely with the Mayor’s Office, City Council, and Budget Office to ensure a successful conference. We expect about 450 ethics, campaign financing, lobbying, freedom of information, and election administration officials from across the U.S. and Canada to attend, plus private practitioners and academics. We will serve on the conference’s program committee, and will be reaching out to various local officials and media personnel to serve on panel discussions.

C. Executive Editorship – Public Integrity

I am pleased to report that I have been named to the (~ 60 member) Executive Editorial Board of the journal Public Integrity, which is affiliated with the American Society for Public Administration. It is published by Taylor & Francis six (6) times a year. We are working on a joint project between this journal and the COGEL Guardian, to bridge gaps between academics and practitioners.

D. Sister Agency Ethics Officers

Our next meeting with our ethics counterparts at other local governmental agencies is scheduled for June 19: this includes the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, and Chicago Housing Authority. Topics to be discussed will include our respective roles in investigating or adjudicating claims of sexual harassment, political activity (given that we are in election season) and contracting with government entities.

E. 2018 Statements of Financial Interests

On March 1, notices to 3,719 City employees and officials went out via email and U.S. first class mail advising them of the requirement to file 2018 Statements of Financial Interests before June 1. This includes 47 identified individuals who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors.

To date, all but 14 have filed. On June 5, as required by law, we notified 57 non-filers (via certified and first class mail) that there is probable cause to conclude that they violated the Ordinance by failing to file before June 1, and that, unless they provide a valid reason for their lateness, they will be found to have violated the law, their names and violations will be made public, and they will be subject to fines of \$250 per day beginning on June 15 if they do not file by that date. The Executive Director has dismissed 11 of these matters. There will be more on this in Executive Session.

Forms are posted on our website as soon as they are processed by staff – our goal is to have all filed forms posted within 24 hours of when they are filed. Once posted, they reside on the Board’s website for seven (7) years from the date of filing, after which they are removed and destroyed, pursuant to the Board’s Document Retention Schedule kept with the Illinois Secretary of State and Local Records Commission of Cook County.

F. Candidates’ Statements of Financial Interests

Pursuant to §2-156-150(d)(iii), each person who qualifies as a candidate for elected City office must file a Statement of Financial Interests with the Board within five (5) days after so qualifying. By following media reports – particularly those by thedailyline.com – Board staff tracks and notifies each candidate in writing of the filing requirement. To date, 61 known qualified candidates for the February 2019 Consolidated Municipal Election have been notified to file. We post all filed Statements on our website.

Note: incumbents also must file, but their forms are posted and searchable through a different web page, and their deadline was before June 1, 2018.

G. Advisory Opinions

Since the Board’s last meeting on May 23, we have issued 267 informal advisory opinions and one (1) formal opinion. The leading categories were, in descending order: travel; gifts; campaign financing; political activity; lobbying; City property; Statements of Financial Interests; and financial interest in City business. The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; City Council; Department of Public Health; Mayor’s Office; Chicago Public Library; IG; Department of Law; and City Clerk.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. They form the basis for much of our annual and periodic educational programs. Formal opinions are made public, in full text, with names and other identifying information redacted out.

H. Revised Educational Brochures

We have revised all of our 24 “Plain English” and other educational brochures, and published a new one explaining the “trade skill exception” to the post-employment prohibitions.

I. 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 (nearly 900 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. Only a handful of other ethics agencies 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.

J. Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post the summary index of all 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, including one resolved at the Board's April 2018 meeting, and a second the Board will take up at its June meeting.

In the former matter, the Board found at its September 2017 meeting that there is probable cause to believe that a City employee has violated the Ordinance's Financial Interest in City Business and Statement of Financial Interests provisions of the law due to an independent contract the employee has had with a City Council member. A meeting with the subject and the subject's attorney was held in closed session at the Board's April 2018 meeting. The Board determined that the individual committed a minor violation by having a prohibited financial interest in City business through an independent contract with a City Council member, paid with City funds, which yielded to the employee more than \$1,000 in a calendar year. At the Board's direction, staff sent out a memorandum to all City Department heads and aldermen reminding them of this restriction and requesting that they review all their independent contracts to ensure that no City employees might be in violation of the Ordinance.

In the latter pending matter, the Board found at its January 2018 meeting that there is probable cause to believe that an elected official violated the City property, representation of other persons and fiduciary duty provisions of the Ordinance by repeatedly contacting a City department regarding a pending matter that did not involve a constituent of the official in an apparent attempt to influence the speed and outcome of the matter. The elected official has been given an opportunity to respond to the finding in writing and/or in person with an attorney, and this matter is on today's agenda.

These are matters in which the Board is able to make a finding of probable cause based solely on facts and materials available to it, without a factual investigation by the IG.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There are, to date, 112 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, described above, and with respect to lobbying and campaign financing, even though the Board no longer has investigative authority.

K. Summary Index of Ongoing IG Investigations/Adjudications

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of six (6) 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 presented to the Board by the LIG. It is updated as appropriate, consistent with the Ordinance's confidentiality provisions.

Whenever the IG presents the Board with a completed ethics investigation, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board shall review the IG's report, recommendations, and evidence submitted in the completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it complete ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that investigations are commenced within two (2) of the last alleged act of misconduct. Then, if the Board finds that the evidence presented shows that there is probable cause to believe the subject violated the Ordinance, it shall notify the subject of the allegations and afford the subject the opportunity to present written submissions and meet with the Board. The Ordinance provides that this meeting is *ex parte* - no one from the City's Law Department or IG is present. The Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding. The Board cannot administer oaths at this meeting, but can and does assess the subject's credibility and the validity and weight of any evidence the subject provides.

Two (2) of these six (6) IG matters remain pending.

On April 16, 2018, the IG presented the Board with a fifth completed investigation and petition for probable cause. In Case No. 18012.IG, at the Board's May 2018 meeting, it dismissed one part of the IG's petition but found probable cause in the other. The matter involves potential violations of the Ordinance's post-employment provision by a former alderman (the Ordinance prohibits former aldermen from engaging in lobbying the City for one year after leaving office). The part of the case dismissed by the Board pertained to the alderman's job interviews with a potential post-City employer while that potential employer had matters pending. The Board found that there was no evidence in the IG's investigative record to show that the alderman acted on any matters involving the potential employer and that the employer had no matters pending before the alderman. We anticipate a meeting with the subject and the subject's attorneys at our July meeting.

The sixth IG matter, Case No. 18018.IG, involves a petition for probable cause based on an IG investigation into whether a City employee had a prohibited financial interest in a City contract by virtue of owning 100% of a company that was named and paid as a subcontractor on a City contract for 6 years. As required by law, the Board's designee is reviewing the IG's report and supporting evidence and will make a recommendation to the Board as to whether the evidence warrants a finding of probable cause to believe that the subject violated the Ordinance.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement.

L. 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) or former department head that their past conduct violated the Ordinance. In three (3) of these eight (8) 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 a completed investigative report from the IG on May 26, 2017, with a petition for a probable cause finding. The case was based on the Board's earlier conclusion that the subject appeared to have committed a past violation of the Ordinance that was not minor, and then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated, and confirmed the Board's earlier conclusion, the matter was settled for a \$1,500 fine. The agreement is posted on our website.

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.

M. Lobbyists-regulation and enforcement

There are currently 794 lobbyists registered with the Board. We have collected \$408,925 in fees for 2018. Second quarter activity reports will be due on or before July 20. Our ELF system will send out reminders to every lobbyist on June 29.

N. Freedom of Information Act

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

At 12:11 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, 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.

The guests were excused.

At 12:25 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to reconvene into open session, and the guests invited to return.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

IV. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) in open session, to approve the executive session minutes, of the May 23, 2018 meeting.

V. CASEWORK

A. Advisory Opinions

1. Case No. 18007.A, Conflicts of Interest, Improper Influence, Representation, Fiduciary Duty

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Daisy S. Lezama, absent) to approve the revised draft of this advisory opinion. The opinion is significant and precedential, and clarifies how the Ordinance applies to: (i) City Council members who practice law; (ii) Council member-attorneys whose outside law firms represent clients in matters pending before City Council or other City departments; and (iii) City Council members who themselves or whose firms represent clients in judicial or administrative proceedings before courts or administrative agencies, in which the City may be a party. Citing the Illinois Supreme Court's 1990 opinion in *In Re Vrdolyak*, the Board determined that the Ordinance does not prohibit City officials or employees from maintaining outside law practices and representing clients in suits or proceedings against government entities other than the unit of government to which they were elected: here, the City, including in tax abatement proceedings, until and unless the City intervenes and becomes a party.

The Board also concluded that the question of whether laws governing these representations by City employees and elected officials should be amended to

prohibit this kind of representation outright is a question for the City Council. Given that the fairness of Cook County property tax assessment processes has been publicly questioned, the Board recommended to the City Council that it consider what steps it can take to bolster confidence in those practices and processes.

B. Referred Complaint Report

2. Case No. 18017.C, No Jurisdiction

Staff reported that on May 17, 2018, the Executive Director received a 50 page facsimile from a private citizen, "Re: Follow-up to the State of Illinois Medical Auxiliary Network. Inc.'s Faxed in April & May 2018 to State and Federal Agencies, Departments, Offices and Authorities," which was also addressed to approximately 40 other oversight and enforcement agencies. After reviewing the fax, the Executive Director concluded that the concerns raised in it fell outside the purview of the Governmental Ethics Ordinance. Since there was no return address or phone number included in the fax, staff responded via fax to the same number to advise that we had no jurisdiction. However, staff received a reply fax that we faxed the wrong number, and that the person we were trying to reach was not at that number. Staff took no further action.

C. Consideration of Report Provided by Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance

3. Case No. 18018.IG, Financial Interest in City Business

Staff reported that on May 25, 2018, the Executive Director received a copy of an Inspector General's ("OIG") Report on a completed investigation and a CD containing its supporting evidence. The OIG's investigation substantiated an allegation that a City employee had a prohibited financial interest in City business through her ownership of a private company that had a subcontract on a City contract. Staff will review the evidence adduced by the OIG and prepare a Probable Cause Report for the Board's consideration at its next Board meeting. The Board directed staff to obtain clarification from the OIG regarding the dates it considers a case opened or closed.

At 12:28 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to adjourn into Executive Session under the provisions above recited from the Illinois Open Meetings Act and the guests were again excused.

At 1:29 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to reconvene into open session. The guests had departed.

VII. CASEWORK (cont.)

D. Meeting with the Respondent Pursuant to §2-156-385(3) of the Governmental Ethics Ordinance

4. Case No. 18002.C, Fiduciary Duty, Representation, City-owned Property

The Board met with the respondent and respondent's attorney in this matter to discuss the Board's findings of probable cause with respect to violations of the Governmental Ethics Ordinance.

VIII. OTHER BUSINESS

None

At 1:20 p.m., Nancy C. Andrade excused herself from the meeting.

At 1:30 p.m., the Board VOTED 3-0-0 [Nancy C. Andrade, absent at this point from the meeting] (Zaid Abdul-Aleem, Stephen W. Beard and Dr. Daisy S. Lezama, absent) to adjourn the meeting.