

Board of Ethics

Open Session Minutes

March 14, 2018, 3:22 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Nancy C. Andrade
Stephen W. Beard
David L. Daskal

STAFF PRESENT

Steven I. Berlin, Executive
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Council
Edward Primer, Program Director
Pually Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem
Dr. Daisy S. Lezama

MEMBER OF THE PUBLIC PRESENT

Vaishalee Yeldandi, Jenner and Block

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of January 17, 2018. The February meeting had been cancelled due to lack of a quorum.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and other presentations

Since the Board's last regularly scheduled meeting on January 17, 2018, 144 employees and officials attended regularly scheduled classes here on January 18 and 25 and February 6, 22, and 27, and March 6. 103 are scheduled for classes on March 15 and 27 and April 5 and 12. The courses now cover sexual harassment.

Staff also conducted the following specially scheduled classes: for all Mayor's Office personnel on February 1 (78 attended), for the Civilian Office of Police Accountability (COPA) on February 16 (68 employees attended), on February 23, for all liaisons to the Department of Procurement Services, City-wide (75 employees attended), March 2 to the Chicagoland Laborers' District Council, Local 1001, for laborers hired by the Departments of Streets and Sanitation, Water Management, Transportation and Aviation (20 attended), and on March 14 two 90 minute sessions for Commissioners of SSAs (Special Services Areas) and employees of SSA service providers, at the request of the Commissioner of Planning & Development (120 attended).

On March 19, staff will conduct a special class for employees in the Office of Budget & Management, at the request of the Budget Director, and on March 16 and 30, will make the remaining presentations to the Chicagoland Laborers' District Council, Local 1001, for laborers hired by various departments.

On Friday, March 2, the Executive Director served on a panel on "Ethics and Government: Contemporary Issues and Questions" at the annual meeting of the Association of Practical and Professional Ethics (APPE) at the Palmer House Hotel, at the request of APPE's Board of Directors. Other panelists were the Honorable Kimberly M. Foxx, Cook County State's Attorney, Mark G. Kuczewski, PhD, Professor of Medical Ethics and Director of the Nieswanger Institute for Bioethics at the Loyola University Stritch School of Medicine, Dick W. Simpson, Professor and Director of Undergraduate Studies Department of Political Science University of Illinois at Chicago, and Andrea Zopp, President and CEO of World Business Chicago.

On April 20, the Executive Director will serve as a panelist at the Spring meeting of the American Bar Association's Government Contracts Section in Detroit, and will speak on pay-to-play, lobbying, and gift laws. Also serving on the panel will be Jared DeMarinis, Executive Director of the Maryland State Board of Elections, Candidate and Campaign Finance Division, and two attorneys from the private sector. The request comes from the panel's moderator, an attorney with the Washington, D.C. firm Wiley Rein LLP.

On-line Training

The Board will post the annual lobbyist training by week's end. It includes a unit on sexual harassment – where to report it, what it according to City law, and ways to prevent it. Please note: 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. It is, in my judgment, 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.

Sexual Harassment Training

At the December 2017 City Council meeting, amendments (sponsored by Alderman Laurino) were passed to the Ordinance that will require all employees and elected officials to take, as part of their mandated ethics training classes and on-line sessions, a unit covering sexual harassment. The Board will coordinate this with the City's Department of Human Resources (DHR), who are the "subject matter experts," and will prepare the material, although for face to face classes, the Board will present the materials. Those amendments take effect today. The Board is in the process of incorporating materials prepared by DHR for the 2018 annual training.

On Friday, February 23, I testified before the City Council's Committee on Workforce Development and Audit in proud support of amendments sponsored by Alderman Margaret Laurino et al. that would extend the jurisdiction of the Office of Inspector General (IG) to investigate and of the Board to adjudicate allegations of sexual harassment made against any City elected official by any other person who experiences it in the course of seeking City action. This would include lobbyists, constituents, employees or agents of businesses seeking permits or recommendations, etc. My Opening Statement is attached to this Report and made a part of it.

On March 13, I testified before the Illinois House's Task Force on Sexual Discrimination and Harassment, together with the Director of the City's Commission on Human Relations, Mona Noriega, at the request of the Speaker's Office. My Opening Statement is attached to this Report and made a part of it.

The topic of sexual harassment is, of course, in the news regularly. We and our colleagues in the private sector and in other government ethics agencies and the research arm of the Illinois General Assembly are closely following how laws unfold across the United States in states and municipalities, particularly with respect to the role of ethics commissions in investigating and/or adjudicating these cases.

I am now the editor of the Guardian, a tri-annual publication of the Council on Governmental Ethics Laws (COGEL). Our first issue of 2018 will feature reporting on this topic.

B. City Council Educational Initiative

In conjunction with the Law Department, the IG and members of the City Council, including representatives from its various caucuses, the Board met January 16 and February 27 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 next meeting is scheduled for March 27. The Board, Law Department, and IG will be acting under the guidance of the City Council on this project, in an effort to identify and promote various best practices.

C. Sister Agency Ethics Officers

Staff met with our counterpart from the Chicago Public Schools regarding various reporting arrangements in municipal ethics agencies, as part of our sister agency's consideration of possible structural revisions in light of its ethics officer being part of its Law Department. On March 13, we met with our ethics counterparts at other local governmental agencies to discuss issues of common concern: 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.

D. 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 to advising them of the requirement file 2018 Statements of Financial Interests. This includes 47 identified individuals who fall into definition in the Ordinance of "City Council employee" even though they are paid as independent contractors. 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. To date, approximately 30% of those required to file have done so. This is standard for mid-March.

E. Advisory Opinions

Since the Board's last meeting on January 17, we have issued 571 informal advisory opinions and 1 formal opinions (two (2) more will be discussed, per today's agenda). The leading categories were, in descending order: travel; gifts; political activity; lobbying; conflicts of interest; post-employment; and campaign financing. The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; City Council; Mayor's Office; Chicago Public Library; Department of Law; Department of Public Health; and Department of Aviation.

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.

F. Amendments to the Ethics Ordinance

As has been widely reported, the Board has several important roles with respect to the City's new approach to prevent and punish sexual harassment. Three (3) amendments to the Ordinance have been passed by City Council covering sexual harassment. These took or will take effect on January 17, February 19 and March 28, 2018. Together these amendments (sponsored by Aldermen Burke and Laurino) give authority to the IG to investigate complaints of sexual harassment filed against any City elected official, and give the Board authority to find probable cause after such investigations and adjudicate the cases in the way the Board has adjudicated the other four (4) completed investigations submitted to the Board by the IG since July 1, 2013. They also now require annual training for all City employees and officials on sexual harassment.

G. Continuing Website Modifications

Revised Educational Brochures

We are near the end of the process of revising all of our 24 "Plain English" and other educational brochures.

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. 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. 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 an 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 (including one on the agenda for today's meeting, but the Board has not yet determined whether there is probable cause; once that determination is made, the matter will be summarized in accordance with the Ordinance's confidentiality provisions). 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. In one 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.

Summary Index of Ongoing Investigations/Adjudications

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

At the Board's September 2017 meeting, it made two preliminary findings of probable cause. The first, following an IG investigation, involves potential violations of the Financial Interest in City Business and Statements of Financial Interests provisions arising out of a City employee's family business's City contract. A meeting with the subject and the subject's legal representative was held on February 26, 2018, and the matter is on today's agenda. The second involves an employee with potential violations of the Financial Interest in City Business provision for having contracts with a City department worth in excess of \$1,000 per year. This matter is based not on an IG investigation, but on information provided directly to the Board by another City department. A meeting with the subject and the subject's legal representative is scheduled for the Board's April meeting.

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.

H. 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 (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 aldermen and aldermanic staffer 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 staffer 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, then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated, and confirming 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.

I. IG Draft Rules and Regulations

On January 5, 2018 the IG posted on its website a draft version of its revised Rules and Regulations, asking for public comment. On January 22, staff posted its comments and forwarded them to the IG. The comments pertain to the IG's relationship and possible coordination with the Board on topics such as minor violations of the Governmental Ethics Ordinance. Staff had a productive meeting with representatives from the IG on February 9 regarding the comments. The IG posted its final Rules and Regulations on March 12, incorporating staff's suggestions.

J. Lobbyists-Regulation and Enforcement

There are currently 772 lobbyists registered with the Board. We have collected \$358,175 in fees for 2018. January 20, 2018 was the deadline for lobbyists to file their fourth quarter activity reports and annual re-registrations for 2018 – since it fell on a Saturday, the deadline

was, by Rule, extended to the end of January 22. Those who did not were sent notice as required by Ordinance giving them a due date by which to file.

As of March 13, 2018, two (2) lobbyists had not filed an activity report during the required notice period. As they did not file by the close of business on February 27, 2018, they were assessed fines of \$1,000 per day, the fine beginning to accrue February 28, 2018.

19 lobbyists did not re-register by the time fines of \$1,000 began accruing. After staff provided them with notice, 16 filed, but did not pay their fines, and, accordingly, were sent a demand letter requiring them to pay their exact fine based upon their filing dates. Four (4) have not filed and continue to accrue \$1,000 per day until filing. Seven (7) of the 16 paid.

Names of all lobbyists found in violation were posted on the Board's website, as required by law.

K. 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. The first request was for the City's social media policy and we responded by attaching policies from the Department of Information and Technology and the Chief of Staff. The second request was for lobbying records from 2003-08, which had been destroyed pursuant to authority of the Local Records Commission, but we provided a relevant archived list of lobbyists.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

At 3:26 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, 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 4:28 p.m., the Board VOTED 5-0 (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 discussion in executive session, VOTING 5-0 (Dr. Daisy S. Lezama, absent) in open session, to approve the executive session minutes of the January 17, 2018 meeting.

VII. NEW BUSINESS

None

VIII. CASEWORK

A. Determination Whether Probable Cause Sustained After Respondent's Meeting with some Members of the Board and the Staff Held February 26, 2018 Pursuant to §2-156-385(3) of the Government Ethics Ordinance

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

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to grant the subject's request to dismiss the case. The Board concluded that the Office of Inspector General's two-year statutory time period to complete any ethics investigation expired before its investigation was completed, and there was insufficient basis in the record from which this time limit could be extended or tolled. Once this two-year period expires, the Board loses its jurisdiction to issue a determination on the merits. However, after learning of recent activity potentially involving this subject, the Board directed staff to refer the matter to another City Department for review.

B. Case to be Considered for Issuance of Advisory Opinion

2. Case No. 18006.A, Conflicts of Interest, Improper Influence

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to approve and issue staff's draft opinion, determining that an alderman with an outside law practice did not violate the Ordinance's conflict of interests or improper influence provisions by stating, on the record of a City Council meeting, that an order proposed by other aldermen should be referred to a committee other than the one to which it was originally assigned. The Board's determination was based on an affidavit from the alderman that he did not know that appellants his law firm had represented were named in the order at the time he made the statement on the record, and discovered that only after the meeting, not having been informed of this by his colleagues, or anyone else until after the meeting.

In the opinion, the Board held that, as a matter of fundamental fairness, the provisions of the Ordinance's conflict of interests and improper influence require that a City employee or official have knowledge of a potential conflict before becoming involved in a City Council or other action in order to violate these provisions. The Board did not need to reach the issue of whether the sequence of events at the meeting constituted a "decision" or a "discussion," but did conclude that it constituted an "action." The Board also noted in the opinion that a media reporter does not have standing to receive an advisory opinion from the Board of Ethics unless the reporter is personally involved in the situation.

After the vote, the Chair commented that the Board finds it surprising and inefficient that the City Council does not have a rule requiring that written orders, resolutions and other matters be circulated to all Council members in advance of their introduction and consideration, and that to allow documents obviously prepared in advance not to be circulated to alderpersons and the administration undercuts the integrity of the process and diminishes public confidence in the operation of City government.

C. Discussion about Issuance of Advisory Opinion

3. Case No. 18007.A, Conflicts of Interest, Improper Influence

The Board deferred consideration of this opinion.

D. Lobbying

4. Case No. 18008.LOB, Unregistered Lobbying

A membership-based, not-for-profit organization wrote an advocacy letter to the City. After Board review, Board staff wrote the organization, outlining the law on unregistered lobbying by a not-for-profit organization and inquiring whether it had any for-profit entities as members. The organization responded that it did not. Accordingly, the staff wrote the organization that it had concluded that the persons drafting or sending the advocacy letter were not lobbyists.

IX. NEW BUSINESS

The Board determined that, beginning with the May 2018 Board Meeting, it would change the day, dates and time of its meetings to the third Friday of each month, at noon, following the procedure set forth in the Illinois Open Meetings Act. Accordingly, after publication in a local newspaper, the Board will post its revised meeting schedule for the remainder of 2018.

At 4:35 p.m., the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to adjourn the meeting.