

Board of Ethics

Open Session Minutes

April 18, 2018, 3:00 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
David L. Daskal
Dr. Daisy S. Lezama

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

Stephen W. Beard

GUEST PRESENT

Louise Dereck, Northwestern Law Student

The guest, Board members present, and staff introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Stephen W. Beard and Zaid Abdul-Aleem, absent) to approve the open session minutes of the Board's meeting of March 14, 2018.

At 3:05 p.m. member Zaid Abdul-Aleem joined the meeting.

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 March 14, 2018, 100 employees and officials attended classes here on March 15 and 27 and April 5 and 12. 59 are scheduled to attend upcoming classes on April 24 and May 3 and 15. All courses now cover sexual harassment.

Staff also conducted the following specially scheduled classes: March 16 and 30 to the Chicagoland Laborers' District Council, Local 1001, for laborers hired by the Departments of Streets and Sanitation, Water Management, Transportation and

Aviation (9 attended); and March 19, for the entire Office of Budget & Management, at the request of the Budget Director.

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.

In response to a report by the Office of Inspector General ("IG"), we will conduct two classes for the entire unit of the Chicago Police Department that handles parking at sporting and other large-scale public events. The classes will be held at the request of the Superintendent, on May 15 and 16.

On April 20, the Executive Director will serve as a panelist at the Spring meeting of the American Bar Association's Public Contracts and State & Local Government Sections, in Detroit, and will speak on pay-to-play, lobbying, and gift laws. Also serving on the panel will be the Executive Director of the Maryland State Board of Elections, Candidate and Campaign Finance Division, and an attorney from the City of Shreveport, LA, and an attorney 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

To date, 130 lobbyists have completed the annual mandatory lobbyists' ethics training. The deadline is before July 3, 2018. We send out reminders to all lobbyists who haven't completed it 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 does. 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.

The all employee-official training has seen technical glitches, and we plan to have it up and running by the end of the month.

City Council Educational Initiative

In conjunction with the Law Department, the IG, and members of the City Council, including representatives from its various caucuses, Board staff met January 16 and February 27, March 27 and April 16 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.

B. New Board Member

I'm pleased to report that, at the March 2018 City Council meeting, the Mayor nominated Dr. Stephanie Cox-Batson to the Board, to fill the vacancy left by Dr. Mary Trout Carr. I am

hopeful she will be confirmed by the City Council in time for the Board's May meeting, or if not, the June meeting.

C. Sister Agency Ethics Officers

Our next meeting with our ethics counterparts at other local governmental agencies to discuss issues of common concern 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.

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 advising them of the requirement to 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 our 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 66% of those required to file before June 1 have done so. This is standard for mid-April. Reminder emails will go out to all filers on May 1. Staff is also in regular contact with our ethics liaisons in each department and Ward office.

E. 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 published regularly by thedailyline.com – Board staff tracks and notifies each candidate in writing of the filing requirement. To date, we have notified 27 candidates intending to run in the February 2019 Consolidated Municipal Election; 16 of them have filed. We post all filed Statements on our website. There will be more on this in Executive Session.

F. Advisory Opinions

Since the Board's last meeting on March 14, we have issued 375 informal advisory opinions; three (3) formal opinions 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; Mayor's Office; City Council; Chicago Public Library; Department of Law; Department of Public Health; Office of Inspector General; 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.

G. Revised Educational Brochures

We have revised all of our 24 “Plain English” and other educational brochures.

H. 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.

I. Summary Index of Board Investigations and Regulatory Actions/Adjudications

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 scheduled on today’s agenda, and another the Board will take up at its May or 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 due to an independent contract the employee had with a City Council member, paid with City funds. A meeting with the subject and the subject’s attorney is on today’s agenda. In the latter 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 official has been given an opportunity to respond to the finding in writing and/or in person with an attorney, and a meeting may be held in May 2018.

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 any 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.

J. Summary Index of Ongoing IG 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 five (5) 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 LIG. We update it 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. These sections provide that the Board shall review the IG’s report, recommendations, and evidence submitted in the completed ethics investigation. 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 does not provide for anyone from the City’s Law Department or IG to be present – it is *ex parte* in that sense. The Board may also 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.

In the most recently resolved case, 17024.IG, the IG presented the Board with a completed investigation and probable cause petition on May 26, 2017. The case involved 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. In June 2017, the Board notified the IG of its concerns regarding the IG’s failure to complete its investigation in this matter within two years after the investigation was commenced, as required by §2-56-050(b)(3) of the IG’s own enabling ordinance, and requested formal clarification. The IG submitted a letter explaining its position and then its representatives met with representatives from the Board and its legal staff in September 2017. The Board then made a finding of probable cause later that month. Then, a meeting with the subject and the subject’s legal representative was held on February 26, 2018, pursuant to §2-156-385. Members of the Board were present along with the Board’s legal staff.

Following that meeting, at the Board’s March 2018 meeting, the Board, by a unanimous 5-0 vote, dismissed the matter on jurisdictional grounds: the record showed that the IG failed to complete its investigation within two (2) years of commencing it, as required by §2-56-050(b)(3) of its enabling ordinance, and the evidence in the record was insufficient – despite what the IG had earlier claimed – to enable the Board to toll or extend the two-year time limit on the basis that the subject had taken affirmative action to conceal evidence. According to the case record, the IG initiated its investigation on July 24, 2014 and concluded it on April 19, 2017, nearly nine (9) months after the two-year period expired. The IG argued that its two-year time limit was tolled because the subject’s “no” responses on questions on his 2014, 2015 and 2016 Statements of Financial Interests constituted affirmative actions to conceal evidence.

However, the Board's in depth examination of the IG's investigative file showed that, well before its two-year time limit expired, the IG had in its possession all the evidence it relied on in concluding that the subject had a prohibited financial interest in a City contract through his relative's business, but nonetheless its investigation sat dormant for four (4) months between September 2015 and late January 2016, when there was an email exchange with a federal agency, whereupon the investigation *again* sat dormant until early July 2016, when a witness was interviewed. In fact, the subject was not even interviewed by the IG until September 2016, after the two-year period had expired. Additionally, the file showed, in that subject interview, the IG did not even ask about the subject's responses on his Statements of Financial Interests. On the record before it, the Board unanimously concluded, after reviewing the entire IG file extensively, and after the subject meeting, that there simply was insufficient evidence to conclude that the subject had knowingly filed false or misleading Statement of Financial Interests forms to begin with, or taken any affirmative action to conceal evidence. The result is unfortunate in this case, because the record otherwise was sufficient (and would likely have been sufficient had it been brought to the Board within the two-year period, as required by law) to conclude that the subject indeed violated the Ordinance by having a prohibited financial interest in City business. Nonetheless, §2-56-050(b)(3) is clear, and by law the Board loses jurisdiction when the IG does not conclude its investigation within the two-year time limit prescribed and provides insufficient evidence to conclude that the subject took affirmative action to conceal evidence, thereby tolling the two-year time limit. This two-year time limit was recommended by the Mayor's Ethics Reform Task Force in August 2012. The Board nonetheless referred the matter to other City departments to review whether this City contract should be a sole source contract.

On April 16, 2018, the IG presented the Board with a new completed investigation, the fifth such matter since July 1, 2013. It is Board Case No. 18012.IG, and involves an IG investigation into a former City official's post-City activities, in potential violation of the Ordinance's post-employment provisions. As required by law, the Board's designee will review the IG's report and supporting evidence and make a recommendation to the Board as to whether the evidence presented by the IG shows there is probable cause to believe that the subject violated the Ordinance. I anticipate this matter will be taken up at the Board's May 2018 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.

K. 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 (2) 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 seven (7) 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 alderman and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time 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 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.

Note: In one case the Board itself initiated, in which no IG factual investigation was necessary, the Board determined that a City employee violated the Ordinance by having a prohibited financial interest. The employee had a written contract with an alderman, paid with City funds. However the Board also determined that violation was minor and sent the employee a confidential letter of admonition, and will issue an educational memo to all aldermen and department heads. (Case 17044.C)

L. Lobbyists-Regulation and Enforcement

There are currently 786 lobbyists registered with the Board. We have collected \$383,775 in fees for 2018.

April 20 at midnight is the deadline for lobbyists to file their first quarter activity reports. All lobbyists were sent reminders of this deadline on March 31.

19 lobbyists did not re-register or file activity reports by the time fines of \$1,000 per day began accruing after the January 20th deadline for the last quarter of 2017 and the re-registration year. 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. 11 matters were turned over to the Law Department for collection. Three (3) have still not filed and continue to accrue \$1,000 per day until filing. Ten (10) of the other 16 paid.

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

M. Freedom of Information Act

Since the last Board meeting, the office has received one (1) new request under the Freedom of Information Act. It was a request for Statements of Financial Interests filed by a single alderman in five (5) years, all of which were located and provided to the requestor the same day.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

At 3:08 p.m., the Board VOTED 5-0 (Stephen W. Beard, 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 4:30 p.m., the Board VOTED 5-0 (Stephen W. Beard, 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 (Stephen W. Beard, absent) in open session, to approve the executive session minutes of the March 14, 2018 meeting.

VII. NEW BUSINESS

None

VIII. CASEWORK

A. Case Considered After Respondent's Meeting with the Board Pursuant to §2-156-385(3) of the Government Ethics Ordinance

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

The Board VOTED 5-0 (Stephen W. Beard, absent) to find that the subject violated the Ordinance's Financial Interest in City Business provision, §2-156-110, by working as both a City employee and an independent contractor to an alderman, paid with City funds. The Board concluded that the violation, under the circumstances in this case, was minor in nature and issued the subject a Letter of Admonition. The Board further VOTED 5-0 (Stephen W. Beard, absent) to direct staff to issue a memorandum to all City Council members and Department heads, addressing the restriction that a City employee cannot also work as a contractor for the City, being paid by City funds, if the contract is worth more than \$1,000 per calendar year.

At 4:33 p.m., member Zaid Abdul-Aleem left the meeting.

At 4:35 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem and Stephen W. Beard, absent) to adjourn the meeting.