

Board of Ethics

Open Session Minutes

December 13, 2017, 3:18 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

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

STAFF PRESENT

Steven I. Berlin, Executive
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Council
Ana Collazo, Attorney Investigator
Edward Primer, Program Director

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem
Stephen W. Beard
Mary T. Carr

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, absent) to approve the open session minutes of the Board's meeting of October 25, 2017.

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 October 25, 102 employees and officials attended regularly scheduled classes here on October 26, November 7, 16 and 28, and December 14. There are currently 39 scheduled for classes on December 14, 18 and 21. We will post the schedule of classes for 2018 in the next few weeks.

On November 9 and 30, staff met with visiting delegations of public officials from Poland and Serbia and made hour-long presentations, at the request of the Mayor's Office and the Department of State.

Staff will also conduct a 90-minute seminar for all Administrative Hearing Officers hired by the Department of Administrative Hearings, on a date to be scheduled. There are approximately 100 of them, all attorneys who practice in or around Chicago. That class will offer CLE credit.

As was reported in the media, as a result of the Inspector General investigation, staff will conduct a series of training classes for all supervisors in the Office of Emergency Management and Communications (OEMC), at the request of the department's director. The Executive

Director has already assisted in drafting a department-wide letter that spells out basic ethical obligations to which OEMC personnel are subject. These classes are being scheduled.

On-line Training

To date, 31,012 employees and elected officials have completed the 2017 mandatory on-line ethics training program, and 47 are in progress. This represents 99% of the expected total by year's end. Employees and officials have until the end of the calendar year to complete the training. Violators have their names made public, and are subject to a \$250 per day fine after the grace period provided by law. Staff has been in regular communication with departmental and aldermanic training liaisons and has sent numerous reminders to non-trainers.

Sexual harassment training

At today's 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, who are the "subject matter experts," and will prepare the material, although for face to face classes, the Board will present the materials.

Please note also: there have been stories and opinion pieces coming out of Springfield, Santa Fe, and other places [reported in the New York Times et al.] 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.

City Council Educational Initiative

In conjunction with the Office of Inspector General (IG) and various members of the City Council, the Board will work on a "handbook" that will address and provide guidance on issues common to aldermen and their staff; these include some ethics ordinance issues. The Board and IG will be acting under the direction of the City Council on this project, in an effort to increase compliance with the relevant laws and promote various best practices.

B. Advisory Opinions

Since the last regularly scheduled Board meeting, staff has issued 649 informal opinions. During this time, the leading categories were, in descending order: gifts; travel; lobbying; City property; political activity; 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; Chicago Public Library; City Council; Department of Law; Department of Planning & Development; and Department of Public Health; and Department of Cultural Affairs and Special Events.

For the year to date, staff has issued 3,717 informal opinions. Informal opinions are not made public (formal opinions are, with names and other identifying information redacted out), 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.

C. COGEL (Council on Governmental Ethics Laws) Annual Conference

Deputy Director Lisa Eilers and I attended the 39th annual COGEL last week in Toronto. Among topics discussed were lobbyist regulation (including uncompensated and grassroots lobbying), enforcing gift restrictions against vendors or other members of the public who offer or give prohibited gifts to government officials or employees, and the role of ethics commissions in investigating, adjudicating or providing training on sexual harassment issues.

I am pleased personally to report that I was elected to the Steering Committee and will Chair the Publications Committee, and that Chicago will be the host City for the 2019 Conference. It will be from December 8-11, 2019, at the Marriott on Michigan Avenue. Because we will be members of the Program Committee for that conference, we will play a lead role in inviting plenary speakers and panelists. COGEL has about 500 members, including ethics, campaign financing, lobbying, FOIA and election administration commissions in all 50 states and Canadian provinces, as well as major American and Canadian cities and branches of the American and Canadian federal governments. It also has members in private law practice, in-house counsel for large corporations, and academics.

D. Amendments to the Ethics Ordinance

As has been widely reported, the Board will play several roles with respect to the City's new approach to prevent and punish sexual harassment. Specifically, on November 8, the Council passed amendments to the Ordinance (sponsored by Alderman Burke) that would give authority to the IG to investigate complaints of sexual harassment filed against any City elected officials, and give the Board authority to find probable cause after such investigations and adjudicate the cases in the way it has adjudicated the other four (4) completed investigations submitted to the Board by the IG since July 1, 2013. A definition of sexual harassment has been added to the Ordinance*, so that the Board would not need to analyze such cases under the Ordinance's fiduciary duty section. Note that complaints of sexual harassment filed by co-workers or subordinates may still be investigated by the federal EEOC; this amendment would cover both those complaints and those lodged by members of the public alleging sexual harassment by a City elected official. Complaints of sexual harassment by City employees from their co-workers or subordinates could continue to be investigated by the Department of Human Resources, EEOC, or Commission on Human Relations. (Also, note that the Executive Director suggested amendments to this law so that allegations of sexual harassment against an elected official brought by a lobbyist, constituent, or other member of the public will be covered as well; these were introduced at this morning's City Council meeting and we expect them to be enacted into law at the January 2018 City Council meeting).

Based upon information learned at the annual COGEL Conference last week, I can report that this Board is the first and currently the only ethics commission with such authority, though indications from several other jurisdictions is that they too will move in this direction.

As noted above, the Board will (in accordance with another amendment sponsored by Alderman Laurino) revise its training to include sexual harassment in all trainings conducted and required for City employees and officials, and registered lobbyists.

*This definition, codified in new §2-156-010(z), defines "sexual harassment" as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an

individual's employment; or (ii) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual: or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.”

The staff will also take the opportunity of the Ordinance being re-opened to submit other suggested amendments, based on its daily administration of this law. It is best practice –and the Executive Director makes a point of stressing this to colleagues in other City and state ethics commissions – to always have at the ready a “wish-list” of changes, because one needs to be ready in the event one’s ordinance or statute is re-opened by the legislature.

E. Continuing Website Modifications

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

All formal Board opinions issued since 1986 are now posted on the Board’s website (more than 890 of them), redacted in accordance with the Ordinance’s confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Further, summaries and keywords for each of these opinions are available on the Board’s searchable index of opinions. There are only a handful of other ethics agencies that have comparable research tools.

We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement procedure.

Summary Index of Board Investigations and Regulatory Actions

We have posted the summary index of all Board investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board is currently pursuing. 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, 111 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 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 is scheduled for the January 2018 Board meeting. 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 to the Board by another City department. A meeting with the subject and the subject’s legal representative is scheduled for February 2018.

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.

Lobbying Data

The Board has posted, in conjunction with the Department of Innovation & Technology, an improved data portal. The improvement enables users to search lobbyists’ disclosed data by the name of the lobbyist, and view or print each the data disclosed by each lobbyist in the annual registration form (and any amendments thereto) and all quarterly reports.

F. 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 six (6) cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former department head, the Board concluded that the apparent violations were *not* minor or technical, and the aldermen and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic 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 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.

G. Lobbyists-Regulation and Enforcement

As of today, the all-time record of registered lobbyists continues to grow – we have 810. This represents a 31% increase in the number of registered lobbyists since January 2017. The Board has collected \$455,200 in registration fees, which is 58% of the agency's operating budget for 2017 and 54% of our submitted budget request for 2018. These figures do not include the \$128,000 in penalties and fines collected from lobbyists' violations in 2017. When those figures are added in, the Board will have collected 72% of its operating budget for 2017.

On November 28, 2017, staff determined that three (3) lobbyists had violated the Ordinance for failing to timely file their Third Quarter Activity Reports. Two (2) filed before the fine period took effect, but the third has yet to file, and fines continue accruing at \$1,000 per day. Should the lobbyist file, the Board will attempt to settle the matter or turn it over to the Law Department for collection. Should the lobbyist's registration terminate as of January 22, 2018, then he will not be allowed to re-register unless his outstanding fine has been satisfied. This was posted on the Board's website.

January 22, 2018 will be the deadline for lobbyists to file their Fourth Quarter Activity reports and annual re-registrations for 2018. Those who are found in violation for failure to timely file are subject to fines of \$1,000 per day until they file.

H. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received two new requests under the Freedom of Information Act. The first request was for records addressing City employees' use of digital devices. The Department of Law provided a *pro forma* draft of a response for City agencies, which draft we used and sent to the requestor. The second request was for our form for our statement of financial interests (for which we provided a link) and for any of those filed (there were none) by a contractor of a City Council caucus.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

At 3:34 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, 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 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, 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 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, absent) in open session, to approve the executive session minutes of the October 25, 2017 meeting.

VII. NEW BUSINESS

1. Semi-Annual Review of the Confidentiality of Executive Session Minutes under the Illinois Open Meetings Act

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, absent) to approve staff's recommendation to retain the confidentiality of the Board's executive session minutes between and including August 1987 and September 20, 2017.

2. 2018 Board of Ethics Meeting Schedule

The Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, absent) to approve staff's recommendation to approve the proposed schedule of meetings of the Board for the year 2018, which shall be publicly posted.

- January 17, Wednesday
- February 14, Wednesday
- March 14, Wednesday
- April 18, Wednesday
- May 16, Wednesday
- June 13, Wednesday
- July 18, Wednesday
- August 15, Wednesday
- September 12, Wednesday
- October 17, Wednesday
- November 14, Wednesday
- December 12, Wednesday

VIII. CASEWORK

A. Campaign Financing

3. Case No. 17048.CF, Campaign Financing
4. Case No. 17049.CF, Campaign Financing
5. Case No. 17050.CF, Campaign Financing

On these cases, staff reported that all refunds of excess campaign contributions had been timely made pursuant to §2-156-445(d) of the Ordinance, and thus these cases were closed.

B. Referred Complaints

6. Case No. 17054.C, No Jurisdiction
7. Case No. 17055.C, No Jurisdiction

The Board reviewed staff's report on these cases.

At 4:31 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Stephen W. Beard, and Mary T. Carr, absent) to adjourn the meeting.