

Board of Ethics

Open Session Minutes

January 17, 2018, 3:13 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

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

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

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Zaid Abdul-Aleem, absent) to approve the open session minutes of the Board's meeting of December 13, 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 December 13, 2017, 39 employees and officials attended classes here on December 14 and 21 (and one class off-site on December 14). 24 are scheduled for class tomorrow, January 18, and 72 for the next three (3) classes on January 25, February 6, and February 25. We posted the schedule of classes for 2018 in mid-December.

On February 16, staff will conduct a 90 minute training seminar for new employees in the Civilian Office of Police Accountability (COPA), at the request of its Director.

On February 22, staff will conduct a 90 minute training seminar for all liaisons to the City's Department of Procurement Services, at the request of the Chief Procurement Officer.

On Saturday, March 2, the Executive Director will serve on a panel 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.

On March 14, staff will conduct two (2) 90 minute sessions for Commissioners of SSAs (Special Services Areas) at the request of the Commissioner of Planning & Development.

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. The request comes from the panel's moderator, an attorney with the Washington, D.C. firm Wiley Rein LLP.

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

As of the end of 2017, 24 City employees and officials had not completed the 2017 mandatory annual ethics training program. Staff sent out 24 probable cause letters on January 3, 2018, and withdrew six (6) of these cases after hearing from the individuals or their departments. On January 11, 2018 the Executive Director determined that 18 employees and one (1) alderman had violated the Ordinance for failure to complete the training without showing a valid reason for their failure. However, they all completed it before the statutory fine would begin accruing, on January 12. Their names and violations were made public on the Board's website, as provided by law. In all, 31,428 employees and officials completed the program; another 42 employees hired in December 2017 have been granted until January 31, 2018 to complete the program.

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, 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.

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. Sister Agency Ethics Officers

Staff will meet 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. A meeting with our ethics counterparts at other local governmental agencies will occur soon: this includes the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, Chicago Transit Authority, Chicago Park District, and Chicago Housing Authority.

C. Advisory Opinions

For 2017, we issued 3,891 informal advisory opinions and 10 formal opinions, and have issued 194 informal opinions since the last regularly scheduled Board meeting. In 2017, 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; City Council; Mayor's Office; Chicago Public Library; Department of Law; Department of Planning & Development; Department of Public Health; and Department of Cultural Affairs and Special Events.

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.

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 Office of Inspector General (IG) to investigate complaints of sexual harassment filed against any City elected official, and give the Board the authority to find probable cause after such investigations and adjudicate the cases in the way it 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.

Today, the training amendment sponsored by Alderman Laurino took effect, mandating that annual ethics training for all City employees and officials cover sexual harassment. The Board is

coordinating the production of substantive training materials with the Department of Human Resources, and I wish to thank that Department, the City Council and its various caucuses and their representatives for their insights and assistance in passing this ordinance.

At this time, this Board is the first and currently the only ethics commission with such authority, though indications from several other jurisdictions, including Broward County, Florida, is that they too will move in this direction.

As noted above, the Board will increase its training efforts to include sexual harassment in all trainings conducted for City employees and officials and lobbyists.

Proposed amendments that would enable persons who are not City employees or officials (such as lobbyists) to file complaints of sexual harassment against City elected officials and enable the IG to investigate and the Board to adjudicate the matters are still in Committee.

*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."

Additionally, staff forwarded to LCGA a "wish-list" of other amendments that the Board discussed at its November and December 2017 meetings, on the chance that they may have a chance of being put forth before the City Council for a vote at the March 2018 meeting.

E. Continuing Website Modifications

Revised Educational Brochures

We are in the process of revising all of our 24 "Plain English" and other educational brochures, and are 2/3 done with that initiative.

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 (more than 891 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 is scheduled for the February 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 directly to the Board by another City department. A meeting with the subject and the subject's legal representative is scheduled for March 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.

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 (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 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'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.

G. 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. Staff has prepared its comments, and will forward them to the IG and post them on our agency's website. 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.

H. Lobbyists-Regulation and Enforcement

As of December 31, 2017, the Board had an all-time record number of registered lobbyists: 812, and had collected \$455,900 in registration fees (58% of the Board's 2017 operating budget). This represented a 31% increase in the number of registered lobbyists since January 2017. 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.

January 22, 2018 is 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. As of today, we have 18 terminations, approximately 325 registered lobbyists, and approximately \$110,000 collected in fees, and

approximately 355 lobbyists who are in “not-yet-paid” mode. We anticipate the same number of registered lobbyists in 2018 as last year.

I. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received one (1) new request under the Freedom of Information Act. The request was for lobbying records for lobbyists and clients. The agency responded with the link to the ELF system so that the requestor could access all pertinent records. Please note also that I was contacted on January 8 by a representative from COPA, asking whether there was any reason for it not to turn over training materials we used in our ethics training sessions for its personnel. I responded that there is no reason to withhold that material.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

At 3:19 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem, 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 3:57 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem, 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 (Zaid Abdul-Aleem, absent) in open session, to approve the executive session minutes of the December 13, 2017 meeting.

VII. NEW BUSINESS

None

VIII. CASEWORK

A. Campaign Financing

1. Case No. 18002.C, Fiduciary Duty, Representation

Based on materials presented to it, the Board VOTED 5-0 (Zaid Abdul-Aleem, absent) to approve staff's recommendation that it determine there is probable cause to believe that an elected City 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 Board directed that the draft Notice of Probable Cause be sent to the individual, informing the subject of the right to present arguments, documents, or other materials to rebut the Board's finding, with an attorney present.

B. Query Summary

2. Case No. 18003.Q, Voluntary Position on Outside Board

The Board reviewed staff's summary of this matter in executive session. In it, an alderman was advised of the relevant restrictions on serving as President of a non-profit board, including fiduciary duty, representation, fundraising, and use of City title, resources, and property.

IX. OTHER BUSINESS

3. Discussion of recently-passed or proposed City Council legislation and possible future-proposed modifications to the Governmental Ethics Ordinance

The Board discussed these matters in executive session. The discussion included the status of proposed amendments to the Ordinance addressing sexual harassment and other clarificatory changes previously submitted by the Board itself.

At 4:03 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem, absent) to adjourn the meeting.