

BOARD OF ETHICS

Open Session Minutes

MAY 10, 2021, 3:13 P.M.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Dr. Stephanie Cox-Batson
David L. Daskal
Hon. Barbara McDonald

STAFF PRESENT

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

BOARD MEMBERS ABSENT

Dr. Daisy S. Lezama

GUESTS ATTENDING

Heather Cherone, WTTW
Alex Nitkin, The Daily Line
Fran Spielman, Chicago Sun-Times
Stephanie Snow, Office of Inspector General

The meeting was convened and conducted through the use of the Zoom remote video and audio meeting platform.

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of April 12, 2021.

II. CHAIR'S REPORT

The Chair once again thanked the staff for its work during the pandemic, including following and commenting on all the ethics and lobbying reform bills issuing from members of the General Assembly, and noted that our op-ed addressed to Springfield lawmakers appeared in this morning's Daily Line. He also asked how the process to fill the one staff vacancy is moving, and the Executive Director said the position has been posted and advertised, and the application period closes May 14, subject to extension.

III. MEMBERS' REPORTS

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. **Potential Amendments to the Ordinance and the Illinois Lobbyist Registration Act, Government Ethics Act, and State Officials and Employee Ethics Act**

The current thinking is that a package of amendments to the Governmental Ethics Ordinance regarding non-profit lobbying and, potentially, other topics will be submitted later in the year, pending the outcome of various legislative proposals that have been introduced in Springfield, some of which, if enacted, would supersede nearly all of Chicago's 34-year old lobbying law structure. With the assistance of the Office of Intergovernmental Affairs, we have been tracking and commenting on more than a dozen ethics/lobbying reform bills that have been proposed by various members of the General Assembly. On April 5, I testified before the Joint Committee on Ethics and Elections on one of them, SB 3071. The focus was on home-rule pre-emption, particularly as to lobbying registration requirements, as well as post-employment/revolving door restrictions and annual Statements of Economic Interests. We have commented extensively and particularly on SB 0004, which advanced through the Senate's Ethics Committee in late April. Our op-ed, cited below, specifically mentions this bill.

Alderman Michele Smith, Chair of City Council's Committee on Ethics and Government Oversight, Chair Bill Conlon, and I wrote an op-ed published this morning in the Daily Line, urging the General Assembly not to use the State's home rule pre-emption authority to supersede Chicago's 34-year old lobbying laws and regime. It is here: https://www.thedailyline.com/dear_springfield_colleagues_lobbying_laws_are_not_appropriate_for_home_rule_pre_emption?utm_campaign=chicago_first_report_05_10_21&utm_medium=email&utm_source=thedailyline

As to our own Governmental Ethics Ordinance, we have on our website a color-coded version of the Ordinance showing all changes made since January 2018. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Ordinances/GEO-2019-color%20through%20June%202020.pdf>

B. Education

On-line Training

For appointed officials

To date, all but 36 appointed officials have completed the annual training for appointed officials. We are not going to enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 17,256 employees and ten (10) aldermen have completed the program to date (putting us at about 54.3% compliance City-wide). 224 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists

To date, 698 lobbyists have completed the annual on-line training, putting us at 85% compliance. Lobbyists have until June 1, 2021 to complete it.

Classes and other presentations

We cancelled all in-person classes from March 2020 on. Of course, given the course of the pandemic, we are unsure when we will be able to resume, but are working to come up with a plan to move to

virtual classes. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment. We are hoping to resume classes in mid-July, pending further direction about the City's re-opening from the Mayor's Office and Department of Public Health.

We are currently scheduling a short Zoom presentation for members of the newly-constituted Board of Health, and for employees of the Treasurer's Office.

On May 6, I participated in a panel discussion on "The Perils and Pitfalls of Local Government Contracting," hosted by the Practicing Law Institute (PLI).

C. Advisory Opinions

Since the Board's last meeting on April 12, we have issued 389 informal advisory opinions. The leading categories for informal opinions were, in descending order: Statement of Financial Interests; Lobbying; Gifts; Travel; City Property; Campaign Financing; and Post-employment.

Note: it is a good sign that City business travel is picking up again.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Police Department/Civilian Office of Police Accountability (COPA); Department of Law; Department of Public Health; Office of the City Treasurer; Department of Business Affairs and Consumer Protection; and Mayor's Office for People with Disabilities.

In April, we again received a new record number of communications from members of the public.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions.) 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. 2021 Statements of Financial Interests

The filing deadline was before May 4 for the 3,603 City employees and officials who on February 28 were notified of the requirement to file their 2021 Statements. As required by law, our EFIS system sent initial notices and then reminders on April 1 and April 16. We also have sent listings of non-filers to all our department and Ward liaisons twice per month. As of May 4, 101 employees and appointed officials had not filed. By law we sent them written notice explaining that there is probable cause to determine that they violated the Ordinance, and that they have until May 11 to explain why they were late, and, if they have not filed by then, they will be fined \$250 per day until they file. We have dismissed three (3) cases; 29 of these individuals have filed since May 4, and thus are subject to a finding that they violated the law, but not to any fines. 69 have yet to file.

E. Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 831 registered lobbyists – an all-time high. We have collected \$375,575 in lobbying registration fees. Q1 activity reports were due by 11:59 p.m. Tuesday, April 20, 2021. As

of today, eight (8) lobbyists have yet to file them. On May 25, lobbyists who still have not filed them will be subject to fines of \$1,000 per day until they file.

F. Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we have been working on updating the City Personnel Rules, which were last revised in 2014. In particular, we assisted with revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

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

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 910), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Summaries and keywords for each of these opinions are available on the Board's searchable index of opinions. Only a handful of other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement. The opinion issued by Board staff that will be discussed in Executive Session will be added to these sites.

H. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website.

I. Sister Agency Ethics Officers

In March we met via Zoom with the ethics officers from the other local governmental agencies: the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, Cook County Assessor's Office, Cook County Inspector General's Office (who are responsible for the MWRD) and Chicago Housing Authority. Our next meeting will be in June.

J. Lobbying Assistance to CPS

We have modified our ELF program to include lobbyists who will eventually register with the Chicago Public Schools and have offered our assistance to them in drafting their lobbying policy. Once that policy becomes effective, CPS's lobbyists can begin registering with our office, and the public will know who they are and the information they disclose. Of course, this is contingent on what occurs in the General Assembly, as CPS is, like the City, a home rule unit of government.

K. Chicago Casino, the Board's Work per the Illinois Gambling Act

Last Fall, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. This has triggered reporting requirements to the Illinois Gaming Board, of City employees and officials who have "communications" with "applicants" regarding "gaming" under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Further, once a casino operator is identified, other requirements under the substantive ethics provisions of that state statute will take effect. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting the violator to fines up to \$25,000 and 1-3 years in jail.

Board staff worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There were multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements will occur in 2021, after responses to the City's recently issued RFP (request for proposals) are analyzed.

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

We post the summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 126 such matters, including one on today's agenda. But only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 54 such matters.

M. Summary Index of Ongoing IG/LIG Investigations/Adjudications

We post on our website and continually update an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (12 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. We update it as appropriate, consistent with the Ordinance's confidentiality provisions. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PulbicScorecard.pdf>

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

Then, if the Board finds that the evidence presented warrants a *prima facie* finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City’s Law Department or IG is present. Note that the Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding (and indeed has done so). 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.

If the subject is unable to rebut the Board’s *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by his or her attorney. At the conclusion of the hearing, the ALJ submits his or her findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Ethics Ordinance (or finds none) and impose appropriate fines.

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of former Mayor Emanuel’s Ethics Reform Task Force in Part II of its 2012 Report – the primary purposes being (i) to guarantee due process for all those investigated by the IG (or former LIG); (ii) to ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by the IG violated the Ordinance, given the Board’s extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public’s right to know of ethics violations.

On our website, we have a publication that describes this process in detail: <https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: the fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that.

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.

N. 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 (2) weeks, the Board must make that report.

In 11 matters, the Board has determined that minor violations occurred, and Board sent confidential letters of admonition, as required by Ordinance. These letters are posted on the Board's website, with confidential information redacted out. See https://www.chicago.gov/city/en/depts/ethics/supp_info/ao_-_apptoff1.html

O. Litigation

Lee v. City of Chicago. In June 2020, the City was sued in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association ("PBPA"). His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City moved to dismiss the enter matter. On February 25, Judge Demacopoulos granted the City's motion to dismiss concerning the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted plaintiff leave to amend the complaint for all of the dismissed counts. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b) of the Ordinance. As a reminder, this is the only claim that survived the motion to dismiss. While Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one-year ban that applied to the plaintiff, she left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damage. The City filed its answer and affirmative defenses to the amended complaint on April 26. There is a status call scheduled for June 2.

In addition, several members of the PBPA filed grievances under their collective bargaining agreement, alleging that their right "to counsel of their choice" was violated by COPA. These were settled on terms that do not affect the Governmental Ethics Ordinance's post-employment provisions.

Johnson v. City of Chicago. On October 14, 2020, an elected member of the Library Board of Wilmette (a "unit of local government" in Illinois), sued the City in U.S. District Court. The case is *Dan Johnson v. City of Chicago*, No. 1:20-cv-06119. The plaintiff has asked the court for a preliminary injunction preventing the City from enforcing the "cross-lobbying" ban, §2-156-309, on the basis that it violates his rights of free speech and association under the First Amendment of the U.S. Constitution. The City moved to dismiss the suit on the basis that the plaintiff has no standing and has filed its brief in response to the motion for a preliminary injunction. The case is assigned to Judge John Robert Blakey and Magistrate Judge Sheila Finnegan. The motion is still pending.

Brookins v. Board of Ethics, et al. This matter has been assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board's and my attorneys are working on the matter. There will be more on this matter in closed session.

P. Freedom of Information Act

Since the last Board meeting, the Board has received nine (9) requests.

The first was for 2020 lobbyists representing a named client; we provided the information and the link to the information.

The second was for information on a Chicago police officer's partner; we advised that we have no records.

The third was for non-ethics training records for several Chicago police officers; we advised that we have no records.

The fourth was for records that show which beat a Chicago police officer was assigned to; we advised that we have no records.

The fifth was for records that show which district a Chicago police officer was assigned to; we advised that we have no records.

The sixth was for records that show bodycam videos for certain named events for a certain Chicago police officer; we advised we have no records.

The seventh was for records showing police officer photos for several Chicago police officers; we advised we have no records.

The eighth was the same as the seventh for different Chicago police officers; we advised we have no records.

The ninth was for non-ethics training for certain Chicago police officers; we advised we have no records.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

1. Status Reports on ongoing litigation

Staff explained that: (i) the City's motion to dismiss plaintiff's suit in Johnson v. Chicago on standing and mootness grounds is still pending, but we anticipate a ruling soon; (ii) the arbitration filed by Policeman's Benevolent & Protective Association (PBPA) members was settled on terms that do not affect the validity of the Ordinance's post-employment provisions; (iii) in Jason Lee v. Chicago there is a hearing on the City's motion to dismiss on June 2; and (iv) the City has moved to dismiss plaintiff's lawsuit in Brookins v. Board, and the Executive Director has moved to dismiss the complaint alleging defamation *per se* against him. Plaintiff's reply briefs are due May 21.

2. Report on Potential Ordinance Amendments: Proposed State Laws

Staff explained that it has commented on about six (6) different state laws ethics and lobbying reform bills, focusing on three (3) issues: (i) ensuring that the State does not use its home rule pre-emption authority to invalidate Chicago's long-standing lobbying laws; (ii) reforms to the Statement of Economic Interests filed by ~150,000 government personnel in Illinois, including ~3,100 City employees and officials; and (iii) ensuring that the State law adds a revolving door cooling off period of at least one (1) year barring former legislators from lobbying State government after they leave office.

VII. NEW BUSINESS

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

The Board and staff discussed continued confidentiality of the Board's executive session minutes, including researching laws, rules or practice in other jurisdictions.

VIII. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

Discussion regarding approval of the Executive Session Minutes of the April 12, 2021 meeting.

The Board will consider this matter in Executive Session.

At 3:32 p.m., the Board VOTED 5-0 (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, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

The members of the public were asked to leave the Executive Session of the meeting and advised that they would be invited into the reconvened Open Session of the meeting.

At 5:00 the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The members of the public were invited to rejoin the Open Session.

IX MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in Executive Session and VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the March 15, 2021 meeting.

II. NEW BUSINESS

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

The Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to approve retention of confidentiality of the Board's executive session minutes subject to research as to how other jurisdictions handle continuing confidentiality of minutes and older advisory opinions, and waivers by requestors and subjects of advisory opinions of their confidentiality.

III. CASEWORK

A. Status Report

1. Case No. 20026. CF.1, Campaign Financing

The Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to refer this matter to the Law Department for collection: specifically, the \$5,000 fine issued to the political committee, and to request that the Law Department bring an appropriate action to require the committee to disgorge the \$48,500 in illegal political contributions it received and pay that amount back to the contributor.

B. Query Summary

2. Case No. 21011.Q, Service on non-profit Boards

Staff reported that it advised an alderman that while nothing in the Ethics Ordinance prohibited the alderman from serving on the board of a non-profit in their ward, we recommended that the alderman refrain from doing so because of the limitations the Ordinance would place on the alderman's ability to best represent the non-profit before the City Council, City agencies and City Commissions.

C. Consult Summary

3. Case No. 21012.Q, Proper Duties of Personal Staff of Elected Officials

The Board deferred discussion and action on this matter until the June 2021 meeting, pending further research by staff.

X. OTHER BUSINESS

Report on Late- and Non-filers of 2021 Statements of Financial Interests

Staff reported that as of May 10 at 3:00 p.m., there are 92 employees and officials who failed to file their FIS forms (the deadline was May 3 at 11:59:59 p.m.). All were notified via first class and certified mail. Fines of \$250 per day will be imposed, by law, beginning May 12, 2021. We will post the names and fines of all violators on May 13, 2021.

At 5:08 p.m., the Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to adjourn the meeting.