

BOARD OF ETHICS
OPEN SESSION MINUTES

October 19, 2016, 3:12 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Stephen W. Beard
Mary T. Carr
Frances R. Grossman
Dr. Daisy S. Lezama

STAFF PRESENT

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

MEMBERS OF THE PUBLIC PRESENT

Hal Dardick, Tribune
Sam Charles, Chicago Sun-Times
Sandra Torres, WBBM, CBS 2
Michael Graham, Project Six
Nathaniel Hamilton, Project Six
Mike Fourcher, thedailyline.com
Joseph Ferguson, City's Inspector General
Brian Dunn, General Counsel, Office of the
Inspector General

I. APPROVAL OF MINUTES

The Board VOTED 6-0 (Zaid Abdul-Aleem, absent) to approve the Open Session Minutes of the August 17, 2016 meeting.

II. CHAIR'S REPORT

The Chair welcomed the members of the public and media, and asked the Board members, staff and all public and media members present to introduce themselves. He then explained that he is proud to have been named by the Mayor as the Board's Chair, and that the agency and its staff have an outstanding reputation. He said that the Board would discuss certain matters in Open Session, and then move into Closed or Executive Session, but that it is important that, for one particular matter specifically, some discussion take place in Open Session, to enable members of the public and/or media present to ask questions of the Board and staff.

III. EXECUTIVE DIRECTOR'S REPORT

A. New Chair

On October 5, William Conlon, currently of counsel to the law firm of Sidley and Austin, was confirmed as the seventh member of the Board of Ethics, and outgoing Chair Stephen Beard

was reappointed for a four-year term ending July 31, 2020. On October 5, the Mayor named Mr. Conlon as the Board's ninth Chair (following, in reverse chronological order: Stephen Beard (2012-2016), Miguel Ruiz (2007-2012), Darryl DePriest (1996-2007), the Honorable Catherine Ryan (1992-1996), Albert Hofeld (1991-1992), the late Sol Brandzel (1987-1991), the late Robert Howard (1986-1987), and the late Rev. Donald Benedict (1986)).

On behalf of the entire staff, I wish to thank Stephen Beard for his tireless service these last four (4) years, and welcome and congratulate Bill Conlon. We look forward to serving under his leadership.

B. Education

Classes and Other Presentations

Since the last Board meeting, 151 employees have attended classes that were held on August 18, 23, September 8, 15, and 22, and October 6 and 11. There are 130 scheduled for classes on October 20, November 1 and November 15.

On August 24, the Executive Director held a class for the incoming Commissioner of Cultural Affairs and Special Events.

On September 2, staff conducted a class for the entire staff of the 23rd Ward, at Alderman Cardenas's request.

On September 23, staff met with a visiting delegation of government corruption attorneys and investigators from 5 cities in Israel, at the request of the Mayor's Office and World Chicago.

On November 17 (rescheduled from October), the Executive Director will conduct a 90 minute seminar for the Police Superintendent and all Deputy Superintendents of the Chicago Police Department, at Police Headquarters.

On November 18, staff will conduct a seminar for Senior Staff of the Department of Buildings, at the request of the Commissioner, made in response to an Inspector General investigation (this is also a rescheduled date).

On October 24, staff will meet with a visiting delegation of anti-corruption officials from Kazakhstan, at the request of the Mayor's Office and World Chicago.

On-line Training

To date, 25,102 employees and 6 aldermen have completed the 2016 version of the on-line mandatory ethics training course, and 98 employees and officials are in progress. There are currently 31,113 scheduled, but this number will continue to decrease over the rest of 2016.

New Educational Materials

The Board posted two (2) new PowerPoint educational programs on its website, and the Department of Human Resources is placing the first one in the packets of newly

hired City employees, with a certification that they have completed it. Departmental and Aldermanic ethics officers are assisting us in having departing employees and officials complete the second one, which covers the Ordinance's post-employment/revolving door restrictions. To date, our records show that 209 have completed the new employee program, and 81 have completed the departing employee program.

C. Advisory Opinions

Since the last Board meeting on August 17, staff has issued 726 informal and two (2) formal confidential advisory opinions. During this time, the leading categories have been, in descending order: gifts; travel; post-employment; lobbying; political activity; campaign financing; and outside board service. The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor's Office; Chicago Police Department; Chicago Public Library; Department of Law; Department of Public Health; Department of Aviation; and the Office of Inspector General.

D. Website Modifications/Advisory Opinions

Staff has completed the posting (in redacted form, per the Ordinance's confidentiality requirements) and indexing on its website **every** formal written advisory opinion issued by the Board or issued by the staff and reported to or approved by the Board since the agency's inception in 1986.

The phase after this will be to publish reports of the investigations conducted by the Board of alleged violations of the Governmental Ethics Ordinance (not of the former Campaign Financing Ordinance) between 1987 and 2013. The investigations themselves are confidential, but the Board is authorized to (and has in the past) published summary reports of its investigations, findings and recommendations. There are approximately 45 of these.

Staff continues to work on the on-line search engine and database, searchable by keyword for each of these cases, which will include a link to the case's text, a summary of the holding of each case, and another column showing the keywords for that case. It is based on the programs used by the New York City Conflicts of Interests Board and the Philadelphia Board of Ethics. This is a total of nearly 1,000 distinct opinions, covering almost every topic under the Ordinance (many covering more than one). We anticipate that this comprehensive research tool will be ready for posting by mid-November.

E. Ongoing Investigative Record

We continue to post on the Board's website an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the Inspector General ("IG") (a total of 2 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 former Office of the

Legislative Inspector General. It is updated regularly, consistent with the Ordinance's confidentiality provisions.

F. 2017 Budget Appropriation and Hearing

Tomorrow, October 20, the Executive Director and other members of the staff will appear before the City Council's Committee on Budget and Government Operations for our annual budget hearing. The Mayor's recommendations for our 2017 budget were published on October 11, and totals \$825,807. This reflects a decrease of 7.5% in our non-personnel accounts.

G. Campaign Financing Matters

Since the last Board meeting, staff has met several times with representatives from the Law Department and the office of the Inspector General regarding the status of campaign financing investigations. There will be a more detailed discussion of these meetings in Executive Session, and of the referral of signed and sworn complaints alleging potential violations of the Ordinance based on political contributions made in 2015, pursuant to §2-156-380(n-1) of the Ordinance.

H. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the Inspector General or, if he or she fails to do so within two weeks, the Board must make that report. There were no such instances since the last Board meeting.

Since the time this provision became effective, the Board has advised three (3) aldermen, one (1) aldermanic staffer, and two (2) department heads or former department heads that their past conduct violated the Ordinance. In 3 of these 5 cases, one 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 individuals self-reported to the respective Inspector General. To date, we have received no reports of commenced investigations (in the case of the former LIG) or completed investigations (from either the IG or LIG) of any of these matters. In the other cases, the Board sent confidential letters of admonition, as required by Ordinance.

I. 2016 Statements of Financial Interests

On March 1, 2016, 3,575 employees and officials were notified via email of their requirement to file 2016 Statements of Financial Interests. The deadline for these employees and officials to file was May 31, 2016, at 11:59:59 pm. As of June 1, all but 130

had filed. 79 of these individuals were determined to have violated the Ordinance (they failed to rebut the finding of probable cause to conclude that they had violated the Ordinance), and 8 became subject to fines, per the Ordinance. There remain 6 who have not yet filed, and to date, the Board has collected \$1,025 in fines. On July 26, the Board referred four (4) cases of those who have not paid their fine to the Law Department for collection; one (1) of those has settled. As required by Ordinance, on June 23, 2016 the names of every violator were published on the Board's website, and those who accrued fines were noted as well.

Departments have reported back on what disciplinary measures they have taken with respect to each violator.

J. Lobbyists-Regulation and Enforcement

As of today, there are 618 lobbyists registered, and the Board has collected \$328,175 in registration fees. This figure represents about 40% of our operating budget.

Quarterly activity reports were due from lobbyists on July 20, 2016. Reminder notices were sent on June 30. 46 missed the filing deadline. Pursuant to §2-156-270, we sent letters on July 22, 2016 to those who had still not filed – 43 – giving them their legislative 10-day notice of late filing, thus giving them ten days in which to file or they would be considered in violation of the Ordinance and, thereafter, would be sent a due process letter stating that probable cause had been found that they were in violation of the Ordinance. One lobbyist was found in violation for failing to file a second quarter activity report on time, but filed before the fine period commenced. His name was published on our website.

Lobbyists' activity reports for the third quarter of 2016 are also due tomorrow, October 20, 2016. Reminder notices were sent on September 22, 2016 to all registered lobbyists. To date, approximately 387 of them have filed these reports.

The Board is, as recommended by the Inspector General in its audit of lobbyist registration procedures, instituting mandatory electronic filing for all lobbyist registrations, reports, and terminations, beginning in January 2017. A draft amendment to the Board's Rules and Regulations will be discussed in Executive Session.

K. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received six (6) new requests under the Freedom of Information Act. The first was a request for records regarding a specific parcel of real estate; the requestor was advised that the Board of Ethics does not maintain such records. There were two (2) requests for lobbyists' filings, and the requestor was provided with the link to our website where those records reside. There were three (3) for aldermanic recusal disclosures filed by aldermen pursuant to both the Conflicts of Interest/Appearance of Impropriety section of the Governmental Ethics Ordinance or City Council Rule 14, and the requestor was provided with the link on the Board's website where all such disclosure reside, and a .pdf packet of any such disclosures sent to this agency but not yet posted on our website.

L. Communications between Board/Staff, the Media and Others not Part of the Agency

The Executive Director indicated that it was his duty, to make a public statement about articles that appeared in the media over the past few weeks regarding an historic occasion: the appearance of our beloved National League Franchise in the 2016 Major League Baseball post-season, and whether, or under what conditions, City officials or employees may purchase tickets to home games thereto at prices set by the League.

Some of these articles contained internal non-FOIA-ble materials. That fact can undermine the confidence that persons subject to City's Governmental Ethics Ordinance have in the Board of Ethics, and in the advice we render, causing them to be less likely to seek it. That is not a good result for City government or taxpayers. Statements made to the media, or to anyone outside this agency, about matters the Board is or may be considering, matters that are by law confidential, need to be made by and through the agency itself, in accordance with the Ordinance's strictures.

At 3:25 p.m. Richard J. Superfine returned after excusing himself from the meeting. Approximately 3:30 p.m. Zaid Abdul-Aleem joined the meeting.

M. Discussion of Case No. 16032.A, Gifts, Offer of Sporting Event Tickets to City Officials and Employees

The Board members asked the staff to summarize the status of this matter, which involves the offer of a professional sports team to sell tickets for post-season baseball games played in Chicago to City elected officials and some employees at face value, it also being understood that the secondary market for these tickets would fetch prices amounting to more than \$50 greater than the face value. The face value is set by Major League Baseball itself. The Executive Director explained that, as was widely reported, the he was contacted on September 29 regarding this offer, and, on October 4, advised the City's elected officials and the team that, in Board staff's reading of the gift restrictions in the Governmental Ethics Ordinance, these officials could accept the team's offer to purchase up to two (2) tickets per post-season home game at face value provided that two critical conditions were met: (i) that each attendee be announced on the public address system, or otherwise publicly acknowledged by the team to the crowd in some way; and (ii) that each official must attend each game for which he or she has purchased tickets - they may not give all tickets purchased for any game to family, friends, supporters, constituents, etc.

The rationale was that this offer is acceptable, and not a prohibited gift, only under the conditions set forth in §2-156-142(d)(12), which allows City officials or employee to accept:

"Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with meetings, *appearances or public events or ceremonies related to official city business*, if furnished by the sponsor of such meeting or public event or ceremony, and further provided that such travel and expenses, entertainment, meals or refreshments have been approved in advance by the board

and are reported to the board within 10 days of acceptance thereof.” [emphasis added]

The advice rendered was given in the context that the team had contacted the agency for an opinion just days before the offer was to be extended, and the agency had to render advice quickly, before the ticket offer was made, without the luxury of having the Board members consider the topic, and was based in part on an advisory opinion rendered by the Board in 2010 in Case No. 10021.A. The other key factor in the advice was that it is reasonable to assume that, but for the offer made to the elected officials, they would have had to pay more than \$50 above the tickets’ face value to be able to attend these games, and that therefore this greater-than-\$50-differential could constitute a prohibited gift to these officials, if it did not fall under the exception to the gift provisions. The Executive Director’s guidance was provisional, “interlocutory,” and not intended to constitute the final word of the Board of Ethics on the matter.

The Executive Director then explained that the Board’s staff has since conducted research into how other jurisdictions treat the issue, and copies of that research were made available. He also explained that, in staff’s opinion, its provisional, interlocutory opinion should be narrowed both after today’s discussion, and then in a formal opinion issued by the full Board at its November 2016 meeting: that City elected officials (or other officials and employees) may accept face value or free tickets (one for the official and one for a guest, such as a spouse or domestic partner) to sports or other entertainment events at which a reasonable person could expect to be required to pay more than \$50 above face value to gain admission, provided that: (i) the officials’ personal attendance is to enable the officials to perform an official, appropriate, ceremonial duty or action, such as publicly welcoming the crowd or making a speech, throwing out the first pitch, marching with the color guard or with other elected officials on the field, etc.; and (ii) there is a clear and direct connection between the official’s attendance and performance of such a ceremonial duty or action and the nature and location of the event itself.

This opinion would: (i) not impact the ability of City officials or employees to purchase season tickets to professional sports teams and thereby gain the ability to purchase coveted post-season tickets on the same terms as other season ticket-holders, or limit them from procuring tickets to high-demand events in the same manner as other members of the general public; (ii) not address whether City elected officials could use funds collected by their political committees to purchase such tickets, as that question goes beyond the purview of the City’s Governmental Ethics Ordinance. The opinion would advise officials to seek legal advice from either the City’s Law Department, the Illinois State Board of Elections, or private counsel as to the applicability of other provisions in the City’s Municipal Code (specifically § 2-8-050, which governs aldermanic expense accounts), or the Illinois Election Code, or other applicable laws; or (iii) not affect those City officials who complied in good faith with the provisional, interlocutory advice rendered by the Board’s Executive Director on October 4, 2016; and (iv) supersede the Board’s advisory opinion in Case No. 10021.A, to the extent it is incompatible with this opinion.

IV. PARTICIPATION BY THE PUBLIC

Several members of the public asked questions, and wished to receive a copy of the staff’s recommendation (which was made available). In particular, one member asked whether this recommendation departs from Case No. 10021.A, and the Executive Director explained

that it would, though that case dealt not with post-season tickets for “high-demand” events, whereas this issue centers on that. The Inspector General stated that he was concerned that the Board’s staff had not provided his office with a copy of the Executive Director’s October 4 guidance, despite a request for it, even though the Board’s staff had given reasons under the Governmental Ethics Ordinance for its denial, and also that the Board staff had not provided his office with any advisory opinions rendered to an individual who was under investigation, also even though the Board’s staff had given reasons under the Governmental Ethics Ordinance for its denial. He presented a letter that had been sent to the Board members and Executive Director. He expressed that there seems to be a “propitious confluence” of events which could help the Board and the Office of the Inspector General work together work more effectively.

V. OLD BUSINESS

1. Case No. 141263.C, No Jurisdiction
2. Case No. 16017.C, Post-Employment, Status

These matters were deferred until executive session.

VI. NEW BUSINESS

3. Campaign Financing Review and Campaign Financing Referral
4. Proposed Amendments to the Board’s Rules and Regulations

These matters were deferred until executive session.

The Board VOTED 7-0 to adjourn into Executive Session at 4:04 p.m. 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; and (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 October 23, 2014, 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.

At 5:25 p.m., the Board VOTED 7-0 to reconvene into open session.

VIII. MATTERS CONSIDERED AND ACTED UPON BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF EXECUTIVE SESSION MINUTES IN OPEN SESSION

The Board approved the Executive Session minutes of the August 17, 2016 meeting by a VOTE of 7-0.

II. CASES

A. Advisory Opinion

1. Case No. 16032.A, Gifts, Offer of Sporting Event Tickets to City Officials and Employees

The Board VOTED 7-0 to: (i) approve the staff's recommendation that the Board publicly issue revised guidance, by the end of the week (that is, before the close of business on October 21, 2016), announcing that City elected officials (or other officials and employees) may accept face value or free tickets (one for the official and one for a guest, such as a spouse or domestic partner) to sports or other entertainment events at which a reasonable person could expect to be required to pay more than \$50 above face value to gain admission, provided that: (a) the officials' personal attendance is to enable the officials to perform an official, appropriate, ceremonial duty or action, such as publicly welcoming the crowd or making a speech, throwing out the first pitch, marching with the color guard or with other elected officials on the field, etc.; and (b) there is a clear and direct connection between the official's attendance and performance of such a ceremonial duty or action and the nature and location of the event itself, and that this would apply in the event that the team reaches the World Series, and beyond; and

(ii) issue a formal opinion, expanding on this rationale and addressing questions that will have arisen, for issuance at the Board's November 2016 meeting.

B. Referred Complaints Report

The Board heard staff's report on these matters, involving complaints that were referred to either the Office of the Inspector General or the appropriate department.

2. Case No. 16028.C, Statement of Financial Interests

Staff reported that this office received an anonymous letter alleging that an employee filed misleading information on his 2016 Statement of Financial Interest form. Staff reported that pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, staff treated the matter as a complaint and referred it to the Office of Inspector General for action as it deems appropriate.

3. Case No. 16029.C, Prohibited Conduct

Staff reported that this office received an anonymous letter alleging violations by a department in its hiring of three employees. Staff reported that pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, staff treated the matter as a complaint and referred it to the Office of Inspector General for action as it deems appropriate.

4. Case No. 16030.C, Harassment

Staff reported that this office received a letter from a City employee alleging harassment in the workplace a department employee. Staff reported that pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, staff treated the matter as a complaint and referred it to the Office of Inspector General for action as it deems appropriate.

5. Case No. 16031.C, No Jurisdiction

Staff reported that this office received a letter and other documents from a former employee. It appeared from the materials that, years prior, the former employee filed a complaint against another departmental employee (who is now also retired). That complaint subsequently led to adverse actions against the former employee. The complainant included an article about the recent resignation of an employee of the same department for apparently the same substantive reason he complained of in his past complaint. Staff thought it prudent to forward the materials to the department's internal affairs division for any action it deems appropriate.

III. NEW BUSINESS

6. Campaign Financing Review and Campaign Financing Referral

The Board VOTED 7-0 to direct the staff to refer Case Nos. 16025.01.CFr, et seq., by complaint to the Office of Inspector General setting forth potential violations with respect to excessive political contributions under §2-156-445 of the Ordinance, as required pursuant to §2-156-380(n-1) of the Ordinance.

7. Proposed Amendments to the Board's Rules and Regulations

The Board VOTED 7-0 to direct the staff to submit amendments to the Board's Rules and Regulations with respect to mandatory online filing by City registered lobbyists and to become a City registered lobbyist.

IV. OTHER BUSINESS

8. Pending Case List

At 5:24 p.m., the Board VOTED 7-0 to adjourn the meeting.