

Executive Director's Report **4/12/21**

Ana Collazo

Friday, April 9, was our Staff Attorney Ana Collazo's last day with our office. She today begins her new position as an Assistant Inspector for the City Colleges of Chicago, a "sister" agency. We thank Ana for nine (9) years of service as a trusted colleague and wish her all the best in her new position! We have begun the process of hiring her replacement—the first vacancy we have had since Ana joined us in April 2012.

Potential Amendments to the Ordinance

1. 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 in May. There will be more discussion of this in Executive Session, time permitting.
2. There will be more discussion in Executive Session of agreements relating to the procedures covering ethics investigations conducted and completed by the Office of Inspector General ("IG").

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>

Potential Amendments to the Illinois Lobbyist Registration Act, Government Ethics Act, and State Officials and Employee Ethics Act

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.

Education

On-line Training

For appointed officials. To date, all but 39 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, 12,320 employees and ten (10) aldermen have completed the program to date (putting us at about 40% compliance City-wide). 269 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists. To date, 648 lobbyists have completed the annual on-line training, putting us at 76% compliance. Lobbyists have until May 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.

On March 23, we taped a presentation for a seminar for the leadership of the City's Department of Aviation, at the request of the Commissioner. It will be presented the week of April 19.

We are currently scheduling a short Zoom presentation for members of the newly-constituted Board of Health.

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

Sister Agency Ethics Officers

On March 22, 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.

Lobbying Assistance to CPS

We continue to work with our colleagues from the Chicago Public Schools to assist them in implementing a lobbying policy. We have modified our ELF program to include lobbyists registered with the CPS 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.

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 has been working 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 have been 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.

Advisory Opinions

Since the Board’s last meeting on March 15, we have issued 359 informal advisory opinions. The leading categories for informal opinions were, in descending order: Statement of Financial Interests; Conflicts of Interests; Gifts; Lobbying; City Property; and Post-employment.

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

In March, we received a record number of communications from members of the public – many of these relate to one specific situation, which we had referred to the Office of Inspector General for action it deems appropriate.

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.

2021 Statements of Financial Interests

On February 28, as required by law, our EFIS system sent notices to 3,603 City employees and officials regarding their requirement to file Statements of Financial Interests by May 3. To date, approximately 2,075 have filed, putting us at ~ 57.5% compliance. Reminder emails and letters went out April 1 and another set will go out on April 16, and we are sending weekly reminders to our ethics liaisons in all departments, ward offices, and City Council committees.

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 are assisting on 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.

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

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.

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.

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.

Summary Index of Ongoing IG/LIG Investigations/Adjudications

There are no IG investigations currently awaiting adjudication by the Board.

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.

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_-_apptoffi1.html

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.

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. It is scheduled for arbitration on April 11.

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.

Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 818 registered lobbyists. We have collected \$357,725 in lobbying registration fees. Q1 activity reports are due by 11:59 p.m. Tuesday, April 20, 2021.

Freedom of Information Act

Since the last Board meeting, the Board has received seven (7) new requests for records.

The first was for records related to a department’s social media practices; we responded we had no records and referred the requestor to the Board’s social media opinion.

The second was for the Board’s recorded open sessions during Covid; we were required to convert those records to a different medium for the requestor, which we did and sent to the requestor.

The third was for a City contract; we advised the requestor we had no responsive records.

The fourth was for documents about ethical implications when an alderman “blocks 1st Amendment rights by blocking a person on social media.” We responded by providing the requestor with the Board’s social media opinion.

The fifth was for revolving door information between an SSA commission and its service provider; the requestor was advised that the Board cannot answer questions, but only provide records that it has.

The sixth was for an official’s statements of financial interests; as provided by the Freedom of Information Act, we provided the requestor with a link to our website to locate statements of financial interests.

The seventh was for records of all social media blocking for the City on official Twitter accounts. This was a multi-department request, and we are working with the Department of Law to draft and provide a response. Note that the Board maintains an official Twitter account, currently with 1,151 followers, but we have never blocked anyone.