

Board of Ethics

Open Session Minutes

October 25, 2017, 3:24 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
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
Ana Collazo, Attorney Investigator
Pauilly Casillas, Staff Assistant
Edward Primer, Program Director

Mariia Savina, Visiting Professional Fellow

BOARD MEMBERS ABSENT

Nancy C. Andrade
Zaid Abdul-Aleem
Mary T. Carr

MEMBER OF THE PUBLIC PRESENT

Frank Bedtke, HBK Engineering
Eric Bergstrom, HBK Engineering

The Board members, Board staff, and the Board's guests introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to approve the open session minutes of the Board's meeting of September 20, 2017.

II. CHAIR'S REPORT

None

The Board members, Board staff, and the Board's guests introduced themselves.

III. EXECUTIVE DIRECTOR'S REPORT

A. Professional Fellow from Ukraine

It's my pleasure to introduce Mariia Savina, from Kiev, Ukraine, who will be with our office for four (4) weeks, as a Professional Fellow in a program sponsored by the U.S. State Department. Mariia is the Executive Director of the Interns' League (an NGO), an internship program for the Ukrainian parliament that teaches young professionals about democracy and the legislative process. She earned her M.A. in Law from the Yaroslav Mudryi National Law Academy in 2009.

B. Education

Classes and other presentations

Since the Board's last regularly scheduled meeting on September 20, 41 employees and officials attended regularly scheduled classes here on September 28 and October 12. There are currently 100 scheduled for classes on October 19 and 26, and November 7 and 16.

At the request of the Department of Streets & Sanitation, staff conducted a 90-minute seminar for all Ward Superintendents on October 18.

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.

On-line Training

To date, 25,885 employees and elected officials have completed the 2017 mandatory on-line ethics training program, and 296 are in progress. This represents about 82% of the expected total by year's end. Departments and aldermanic offices have sent in their training plans. Employees and officials have until the end of the calendar year to complete the training. Violators have their names made public, and are subject to a \$250 per day fine after the grace period provided by law. Approximately 90% of the City's workforce completes the training via a secure internet site; the remaining personnel complete it by viewing a DVD (they do not have regular computer access). Staff distributed copies of the dvd to those departments requesting them.

Department-wide guidance

At the request of the new Civilian Office of Police Accountability (COPA), we put together a FAQ guide for all COPA personnel as to issues that might arise relating the political activity, due to the announcement of its recently-departed Chief Administrator of her candidacy for Illinois Attorney General. The guide was distributed to all COPA personnel.

C. Advisory Opinions

Since the last regularly scheduled Board meeting on September 20, 2017, staff has issued 432 informal opinions. During this time, the leading categories were, in descending order: gifts; travel; lobbying; City property; political activity; outside 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; and Department of Public Health.

222 of these were from City employees in administrative or management positions; 85 from non-administrative/managerial employees; 24 from individual department heads or former department heads; 17 from 16 different City elected officials; nine (9) from aldermanic Chiefs of Staff; four (4) from ethics officials in other government agencies; the remaining were from: 24 lobbyists or persons calling to inquire whether they need to register as lobbyists; 4 City appointed officials, and the remainder from contractors or vendors.

50% came via email; 49% via telephone; the remainder via walk-ins.

Time permitting, several informal opinions of note will be discussed in closed session.

D. Proposed Amendments to the Ethics Ordinance

Aldermen Cardenas and Munoz have each proposed amendments to the Governmental Ethics Ordinance. Alderman Cardenas's would require all City contractors to complete annual ethics education. Alderman Munoz's, submitted at the September 6 City Council meeting, would effectively define "City council employees" who are "independent contractors" as those who are compensated \$100,000 or more per year from the City for City-related work or who work in excess of 500 hours per year on such work. The Board was asked to comment on these proposals by the Office of Legislative Counsel and Government Affairs, and turned in its comments on September 13.

The Munoz proposal is loosely based on discussions held at a meeting convened by the Inspector General in July, at which the Board's Executive and Deputy Director met with representatives from the City's Law and Human Resources Departments, City Council, and Inspector General to fashion revisions to the Ordinance's definition of "City Council employee." The goal was to preserve the common law distinction between employees and independent contractors, and still foster maximum transparency from persons paid by City Council to do certain types of work by requiring them to file annual Statements of Financial Interests. However, the proposal submitted reflected the figure of \$100,000 per year in compensation, not \$50,000, as had been discussed. The comments submitted to Legislative Counsel and Government Affairs strongly recommended that the Administration oppose that aspect of the proposal, which would effectively shield many of these individuals from appropriate restrictions in the Governmental Ethics Ordinance, including the requirement to file annual Statements of Financial Interests.

Other possible amendments will be discussed in Executive Session.

E. Website Modifications

New Brochure

We posted an updated pamphlet describing the restrictions that apply to City employees who wish to become involved in political campaigns, given that there are many Judicial, County and State-wide elections coming up in March and November 2018.

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

All formal Board opinions issued since 1986 are now posted on the Board's website (more than 890 of them), redacted in accordance with the Ordinance's confidentiality provisions.

Redacted opinions are posted once issued by or reported to the Board. Further, summaries and keywords for each of these opinions are available on the Board's searchable index of opinions. There are only a handful of other ethics agencies that have comparable research tools.

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

Summary Index of Board Investigations and Regulatory Actions

We have posted the summary index of all Board investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board is currently pursuing. These are matters in which the Board is able to make a finding of probable cause based solely on facts and materials available to it, without an investigation by the Office of Inspector General.

The Board names names and penalties it assesses where authorized by law. There are, to date, 108 such matters (not including three (3) on the agenda for today's meeting). 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 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 four (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 a preliminary finding of probable cause in an IG investigation, involving 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 December 2017 Board meeting.

Please note finally that all matters adjudicated or settled on or after July 1, 2013 include the names of violators and penalties assessed.

Lobbying Data

The Board has posted, in conjunction with the Department of Innovation & Technology, an improved data portal. The improvement enables users to search lobbyists' disclosed data

by the name of the lobbyist, and view or print the data disclosed by each lobbyist in the annual registration form (and any amendments thereto) and all quarterly reports.

F. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the inspector general or, if he or she fails to do so within two weeks, the Board must make that report.

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, one mid-level City employee in an operating department, and one (1) department head and one (1) or former department head that their past conduct violated the Ordinance. In three (3) of these six (6) cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former department head, the Board concluded that the apparent violations were not minor or technical, and the aldermen and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic staff was closed, apparently without further investigation by the LIG.

As noted above, the Board received two (2) completed investigative reports from the IG on May 26, 2017, with petitions for probable cause findings. In one (1) of these matters, the Board concluded that there was 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. This matter was settled for a \$1,500 fine, and 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. Budget

We will appear before the City Council's Committee on Budget and Government Operations for our annual budget hearing on October 26, 2017, tomorrow.

F. Lobbyists-Regulation and Enforcement

As of today, the all-time record of registered lobbyists continues to grow – we have 796. This represents a 28% increase in the number of registered lobbyists since January 2017. The Board

has collected \$444,700 in registration fees, which is 53% of the agency's operating budget for 2017 and 53% of our submitted budget request for 2018. These figures do not include the \$126,000 in penalties and fines collected from lobbyists' violations in 2017. When those figures are added in, the Board will have collected 69% of its operating budget for 2017.

October 20 was the deadline for lobbyists to file their Third Quarter Activity reports. All lobbyists were sent reminders to file around October 1. To date, approximately all but 42 lobbyists have filed their reports. The Board will send them certified notices of their requirements on the date prescribed by law no later than 15 days after October 20, i.e. November 8. Those who are found in violation for failure to timely file are subject to fines of \$1,000 per day until they file.

H. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received three (3) requests under the Freedom of Information Act. Two were for information not kept by the Board (the first for biometric information; the second for tickets issued to bicyclists). The third was for information disclosed by three lobbyists, which was provided, and for copies of correspondence between the lobbyists, which was denied on the basis of confidentiality.

IV. OLD BUSINESS

None

V. NEW BUSINESS

None

The Board entertained a presentation by Messrs. Bedtke and Bergstrom and exchanged questions and answers.

The Board then excused its guests until the open session reconvened.

At 3:35 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board's Rules and Regulations, 4., as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to

discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

At 4:59 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to reconvene into open session.

MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

VI. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its vote of 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) taken in executive session to approve the executive session minutes of the September 20, 2017 meeting.

VII. CASEWORK

A. Post-Employment

1. Case No. 17046.W, Request for Waiver

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to grant the request for waiver from the Ordinance's post-employment provisions, submitted on behalf of a former employee and make the waiver public in accordance with the Board's Rules & Regulations.

2. Case No. 17051.W, Request for Waiver

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to deny the request for waiver from the Ordinance's post-employment provisions submitted on behalf of a former employee

B. Cases to be Considered for Potential Settlement

3. Case No. 17011.06.LOB, Unregistered Lobbying

4. Case No. 17011.08.LOB, Unregistered Lobbying

(Chair William F. Conlon, having received a waiver regarding any conflict, no longer recused on this matter)

5. Case No. 17011.10.LOB, Unregistered Lobbying

In these cases, the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to approve the draft Settlement agreements with the three (3) subjects, and directed staff to make these agreements public.

C. Statement of Financial Interests

Review of Case Status

6. Case No. 17032.FIS, Non-filed Statement of Financial Interests

The Board acknowledged that it heard staff's report in Executive Session that the last remaining non-filer of 2017 Statements of Financial Interests had filed her form and paid the fine to which the Board agreed. The case is now closed.

D. Referred Complaints

7. Case No. 17047.C, Employment of Relatives or Domestic Partners

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to refer a request for factual investigation to the IG, so that the Board may determine whether the evidence adduced in that investigation warrants a finding of probable cause to believe that the subject violated the Ordinance.

E. Campaign Financing

8. Case No. 17048.CF, Campaign Financing

9. Case No. 17049.CF, Campaign Financing

10. Case No. 17050.CF, Campaign Financing

A third party gave these facts to Board staff on the above three cases: (i) in a certain year, the contributor made an excessive campaign contribution to the political fundraising committees of three individuals (who accepted them and properly posted them with the State Board of Elections); and (ii) in the contribution year, the contributor was doing business with the City through a contract posted on the Department of Procurement's website. Based on these facts, the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy Andrade and Mary T. Carr, absent) to make a finding of probable cause of a campaign financing violation, and send to the parties involved a probable cause letter.

11. Case No. 17052.Q, Campaign Financing

In this case, the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to approve staff's advice to a City elected official on the following facts, provided the official provides appropriate documentation: in late 2017, a City elected official's political committee received via first class mail a check in a damaged envelope for \$1,500 from a person doing business with the City (the contributor made no other contributions to the committee in 2016). However, the check was in a damaged envelope delivered by the U.S. Postal Service, postmarked in December 2016, and the check was dated December 2016, but never received and deposited. Because more than 180 days passed since the date of the check, it was no longer negotiable. Further, because the Illinois Election Code does not prohibit accepting this check in 2017 but crediting it as a donation received in the previous calendar year, the elected official was advised that his

political committee could accept this “second” \$1,500 political contribution in late 2017 if re-drawn by the contributor, even though the official’s committee had already accepted \$1,500 in contributions from this same contributor in 2017. The rationale is that the contributor intended to contribute \$1,500 in 2016, but, due to *force majeure* – factors beyond the parties’ control – that contribution was never received.

At 5:03 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem, and Mary T. Carr, absent) to adjourn the meeting.