



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

Date: May 23, 2018

Re: **Case No. 18011.A: General Interpretation of the Governmental Ethics Ordinance's Sexual Harassment Provisions, §§2-156-149, -010(z)**

I. Introduction

In November 2017, the City Council approved provisions in the City's Governmental Ethics Ordinance prohibiting City elected officials¹ from engaging in sexual harassment. These provisions took effect on February 19, 2018. Then, at its February 2018 meeting, the City Council amended them, with an effective date of March 28, 2018. Since these provisions were enacted, Board staff has received inquiries about what they cover. Accordingly, the purpose of this Advisory Opinion is for the Board to clarify their scope.

II. Relevant Law

There are two applicable provisions. The first is §2-156-149, entitled "Sexual harassment by officials." It states:

No official holding any elected office of the city shall engage in, encourage, or permit - by action or inaction - behavior constituting sexual harassment. This requirement does not limit or replace any other applicable law, rule, regulation, process, or policy regarding such conduct.

That provision must be read in conjunction with the second, §2-156-010(z), which defines "sexual harassment" as:

[A]ny unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or of any governmental decision; or (ii) submission to or rejection of such conduct by an individual is used as the basis for any employment or other governmental decision affecting the individual or the individual's

¹ The City's sexual harassment policy as to City *employees* is found in the City's Diversity and Equal Opportunity Policy (attached), which is administered by the City's Department of Human Resources. *See*, http://my.cityofchicago.org/dam/intranet/documents/depts/dhr/POLICIES/EEO_NEW_POLICY_13.pdf

client or employer; or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

III. The Board's General Interpretation of these Provisions

Section 2-156-149 could be read to prohibit "sexual harassment" in nearly any aspect of an elected official's activities. However, as §2-156-010(z) makes clear, the purpose of these provisions was not to regulate an elected official's conduct at *any* time or place, but, rather, to make it a violation of the Ordinance if a City elected official engages in sexual harassment *while acting or being reasonably perceived to be acting as a City elected official*. Put another way, for a situation to fall under the purview of the Ordinance's sexual harassment provisions: (i) there must be a clear connection between the elected official's conduct (whether action or inaction) alleged to constitute sexual harassment and either a City decision or action, or the official's authority as a City elected official; or (ii) the action or inaction allegedly constituting sexual harassment – whether in a City governmental workplace or other setting – must have some clear connection to the City official's governmental actions, decisions, or actual or perceived authority as a City elected official; or (iii) the conduct allegedly constituting sexual harassment must affect the working environment of the person alleging *harassment while this person is working with the City elected official in the official's capacity as a City elected official*.

Below are examples of questions that have been presented to Board staff, and our analysis illustrating how these Ordinance provisions apply. We intend for these examples to establish general interpretative and guiding principles, not to be all-inclusive or illustrate every possible circumstance that could constitute a violation of these newly-enacted provisions.

Example 1: An elected City official is riding the CTA and witnesses one passenger sexually harassing another. Does the Ordinance impose upon this elected official a special duty to intervene? If the official does not intervene, could his/her inaction be found to have permitted sexual harassment by inaction, in violation of the Ordinance?

Response: No. This would *not* constitute a violation of the Ordinance by the witnessing, non-intervening City elected official. Section 2-156-010(z) makes clear that, for a City elected official's actions or non-actions to be covered within the ambit of the Ordinance and constitute potential sexual harassment: (i) he or she must be acting in the course of providing, or the person alleging harassment by the official must be seeking, some City governmental decision or action; or (ii) the action or non-action must occur in a City workplace or other setting in which the official's action or inaction has some clear connection to his or her City governmental authority, actions or decisions, that is, that the official must be acting or being reasonably perceived to be acting as a City elected official.

A situation in which an elected official is riding the CTA does not on its face involve City governmental action, or some kind of City governmental decision by the official. City governmental actions or decisions include, but are not limited to, approving permit applications, drafting recommendations, sponsoring, debating, or voting on legislation, contacting other City government personnel on behalf of constituents, etc. By contrast, in this situation, the City

elected official would be no different from any other CTA passenger, and would not be acting (or not acting) as an elected City official (that is, not acting *qua* City elected official).

Example 2: An elected official who has a secondary, non-City job or law practice or other profession or business receives notice that one of his/her coworkers or employees at that other job is sexually harassing another employee. Do the Ordinance's sexual harassment provisions extend to that second job and impose upon this official any special duty to intervene?

Response: Not on its face. In order for the Ordinance's sexual harassment prohibitions to cover a City elected official's action or non-actions in his or her other, non-City job, there would have to be a showing that the elected official's secondary employment and the employees of that other workplace had a clear connection to City government, and that the elected official's alleged action or non-action in that non-City job was related to some City action or decision which this City elected official would or could take or could be reasonably perceived to take *as a City elected official*.

We point out, however, that other remedies may be available to an aggrieved person in these circumstances, from federal, state, or City laws, ordinances, regulations, *etc.* outside the Governmental Ethics Ordinance.

Example 3: In Example 2 above, would the nature of the other job/practice or location of the worksite have any effect on the analysis?

Response: Only if there were a clear connection between the elected official's non-City job, its employees, and City government that required some City action or decision by that City elected official, *acting as a City elected official*. The location where the conduct occurs is not dispositive.

Example 4: A City elected official is at a singles' bar one weekend night, and repeatedly asks another bar patron to go on a date and/or continue the evening at the elected official's home, despite the fact that the other patron has repeatedly declined these invitations. Could this constitute sexual harassment by the elected official?

Response: It depends. Were an investigation to show that the City elected official identified him- or herself to the other patron as a City elected official with the implication that acceptance of the invitation could have positive consequences to the other patron because of the elected official's elected City position or authority (or that declining the invitation could, similarly, have negative consequences), then this could constitute sexual harassment as defined in the Ordinance. In other words, there *still* must be some clear connection to the elected official's position and actual or perceived authority as a City elected official, which was part of the interpersonal exchange.

Example 5: A City elected official meets at a restaurant with a lobbyist registered with the Board of Ethics. During the meal, the official mentions that the lobbyist is attractive, and asks the lobbyist out for a drink the next weekend. The lobbyist declines. The following week, the lobbyist calls the official to ask whether the official will support the lobbyist's client's initiative. The official responds that no decision has been made yet, but again asks the lobbyist out for

dinner to discuss it – “my treat,” the official says. Could this conduct by the elected official constitute sexual harassment under the Ordinance?

Response: Yes, this could constitute sexual harassment were an investigation to show that: (i) these were sexual advances; and (ii) the lobbyist’s submission to the advances was explicitly or implicitly a term or condition of the elected official’s support of the lobbyist’s client’s initiative; or (iii) the elected official’s conduct had the purpose or effect of substantially interfering with the lobbyist’s work performance or creating an intimidating, hostile, or offensive working environment for this lobbyist as to this elected City official.

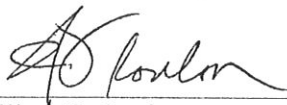
IV. Determination

As illustrated in the above examples, for an elected City’s official’s action or inaction to constitute sexual harassment in violation of the Governmental Ethics Ordinance, *there must be a City governmental decision or action involved, or the conduct allegedly constituting sexual harassment must affect explicitly or implicitly either the working environment of the person alleging harassment while this person is working with the City elected official in the official’s capacity as a City elected official.*

This advisory opinion interprets the City’s Governmental Ethics Ordinance only. In any given situation, other laws or policies may apply, whether federal, state or City.

The Board impresses that engaging in sexual harassment is a serious offense, and has profound negative consequences to the victim. The Board encourages those who believe they have been aggrieved by or witness sexual harassment to report it to the City’s Department of Human Resources, IG or Board so that their allegations can be investigated and perpetrators held accountable under relevant City or other laws or policies. This opinion’s purpose is to clarify the scope of the Governmental Ethics Ordinance’s sexual harassment provisions, not to condone conduct that would fall outside its purview.

The Board has directed that this opinion be made public in full, pursuant to §§2-156-380(e), (g), (l), and (o) of the Ordinance. No redactions are necessary in order to comply with §2-156-380(l). The Board also refers readers to our companion redacted opinion in Case No.18010.A, which addresses a specific set of circumstances.



William F. Conlon
Chair