

BOARD OF ETHICS
OPEN SESSION MINUTES

July 27, 2016, 3:10 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

Stephen W. Beard, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Russell F. Carlson
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
Pauilly Casillas, Staff Assistant

The Board members appointed Russell F. Carlson as Chair *pro tem*, pending the arrival of the Chair.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Stephen W. Beard, Nancy C. Andrade and Frances R. Grossman, absent) to approve the Open Session Minutes of the May 18, 2016, 2016 meeting.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes

Since the last Board meeting, 193 employees and officials have attended classes that were held on May 19, 24, and June 9, 16, and 23, and July 12, 21, and 26.

In addition, training for all 126 Battalion Chiefs and 42 EMT Chiefs in the Chicago Fire Department, done via computer, was completed. On June 10 and May 17, the Executive Director gave two classes for new Senior Staff in the Mayor's Office; 4 attended.

On June 17, the first of two classes was held for all employees of the City Council's Committee on Finance; 22 attended. The second class is will be on August 15.

On June 28, the Executive Director gave a 90 minute presentation for 69 attorneys in the Law Department – CLE was offered.

On July 13, the Executive Director gave a class for the new alderman and members of her staff in the 4th Ward.

Staff will make a presentation to Senior Staff of the Department of Buildings, on September 16, at the request of the Commissioner, made in response to an Inspector General investigation.

Other Presentations

On June 28, the Executive Director made a presentation to 21 attorneys and managers from the law firm of Linebarger, Goggan, a vendor of the Law Department specializing in debt collection work.

On-line Training

As of July 1, all but 24 lobbyists had completed the annual mandatory ethics training for lobbyists. Their deadline is 11:59:59 pm, June 30, 2016. All presented credible reasons as to why they were unable to complete the training, and completed it, so that the Board achieved 100% compliance with the Ordinance.

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 147 have completed the new employee program, and 49 have completed the departing employee program.

B. Advisory Opinions

Since the last Board meeting on May 18, staff has issued 762 informal and four (4) formal confidential advisory opinions, with the leading categories being, (in descending order): gifts, travel, prohibited conduct, post-employment, conflicts of interests, political activity, lobbying, 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; Department of Cultural Affairs and Special Events; Department of Planning & Development (DPD); Chicago Police Department; Chicago Public Library; Department of Public Health; Department of Law; Department of Aviation.

C. 2017 Budget Request

On July 8, the Board submitted its budget request for 2017. It included no significant changes from our 2016 budget appropriation, and was for \$813,047. This is a .0022% increase over our 2016 appropriation. The agency officially relinquished the position of Executive Administrative Assistant, which had been placed in our budget, as a matter of

convenience, at the direction of the Budget Director so that the former Legislative Inspector General could have a full-time assistant.

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. This is a total of about 1,000 distinct opinions, covering many different rubrics under the Ordinance (many covering more than one).

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.

As will be discussed later, staff is creating a search engine and database, by keyword for each of these cases, which will include a link to the case's text, a brief 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.

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.

On May 13, 2016, staff met with representatives from the IG to discuss the status of matters that the IG "inherited" from the LIG and received an update on many, some of which were closed by the LIG but not reported to us as closed, others of which were closed by the IG, and ten (10) of which are still ongoing. The public record has been officially updated. There will be more on this in Executive Session. This information is reflected in the pending case list, to be discussed in Executive Session.

F. Campaign Financing Referral and Investigations

In addition, as required by the Ordinance, in December 2014 and November 2015, the Board referred to the Inspector General (in December 2014, referrals were made to the then existing Legislative Inspector General) as complaints a total of 1,552 potential violations of the campaign finance provisions of the Ordinance, based on its review of 2013

and 2014 political contributions reported to the Illinois State Board of Elections. Despite a report published by the “watchdog group” Project Six on July 18, the Board has, to date, has received no status reports, nor reports of concluded investigations from the IG (nor from the former Office of the LIG, to which the Board had referred 1,401 such matters). This includes one complaint filed by the Executive Director with the IG in February 2015 regarding an apparent violation disclosed by a registered lobbyist on a quarterly report that the lobbyist filed.

As this Board has stated publicly, we view our mandate as one in which we review records of campaign contributions filed publicly with the Illinois State Board of Elections, and lobbyists’ activity reports filed with us, to identify all contributors who have contributed in excess of \$1,500 to any single candidate for elected City office (or, more accurately, to their candidate committees), and refer this raw list of potential violations to the IG (and previously to the LIG for City Council positions). We interpret §2-156-380(n-1) of the Ordinance, enacted September 10, 2014, as prohibit us from culling any contributors from that list, as that would constitute an investigation, which, by Ordinance, we cannot undertake. This agency did in fact initiate and conduct these investigations, up until July 1, 2013, when investigative authority was transferred to the respective inspectors general.

G. 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 department head, the Board concluded that the apparent violations were *not* minor, and the individuals self-reported themselves to the appropriate 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, where the Board there had been minor violations, the Board sent confidential letters of admonition, as required by Ordinance.

H. 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 10 who have not yet filed, and to date, the Board has collected \$325 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. As required by Ordinance, on June 23, 2016 the names of every violator was published on the Board's website, and those who accrued a fine were noted as well.

Departments are in the process of reporting back on what disciplinary measures they are taking with respect to each violator.

I. Lobbyists-Regulation and Enforcement

As of today, there are 595 lobbyists registered, and the agency had collected \$313,175 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 letless 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.

J. New Board Member

I am pleased to report that Nancy Andrade, an attorney, and employee of the American Bar Association, was confirmed as a member of the Board by the City Council on July 20, 2016, and we welcome her. She assumes the position formerly held by The Hon. Julia Nowicki. Her term of which expires on July 31, 2017.

K. Summer Intern

We are pleased to be hosting as our Summer intern Tatiana Graziano, who is a rising Senior at North Grand High School. Tatiana is interested in exploring becoming an attorney and/or a career in politics. We are giving her a taste of what each entails! She is with us for 5 weeks.

L. Freedom of Information Act

Since the last regularly scheduled Board meeting, the agency has received five (5) new requests under the Freedom of Information Act. Two were for records not kept by this agency and the requestor was so advised. Two (2) were for aldermanic disclosures: one (1) for all such records for a specific alderman and the other for all records for all aldermen from 2011-present. For the former, the requestor was advised we had no such records, and, for the latter, the requestor was, pursuant to the FOIA statute, provided with a link on the Board's website where all such records are posted. The last request was for all records in our agency with respect to 13 names on a list. As provided by the FOIA statute, staff and the requestor agreed to narrow the search to the Board's most comprehensive list of cases.

After completing the search, we advised the requestor that none of the names on the list appeared in this index.

IV. OLD BUSINESS

1. Case No. 13039.OLIG, Report on Status of Administrative Hearing Procedure
2. Case No. 16017.A, Report on Status

The Board deferred discussion of these matters until the Executive Session.

VI. NEW BUSINESS

3. Report on the status of the comprehensive search index for Board advisory opinions.

Staff reported that it has worked diligently to ensure that every formal advisory opinion ever issued by the Board of Ethics is posted on our website, by category. That was achieved several months ago – there are approximately 1,000 of them, covering nearly every conceivable topic. They date back to 1986, when this Board was an Executive Order Board, created by Mayor Harold Washington.

Staff is now creating a searchable index of every opinion, which is divided into several columns. The format is an amalgam of the engines posted recently by the City of New York's Conflicts of Interests Board and the Philadelphia Board of Ethics. The left hand column will give the number of the opinion and a link to its full text (nearly all opinions that date from 2005 and before are in pdf format; more recent cases are in word). The middle-left column will list the major topic(s) covered. The middle-right column will provide a short summary of the case and determination or advice (typically 1-4 sentences); the far right column will provide searchable keywords. This is a monumental undertaking. Note that, as required by Ordinance, every opinion is "redacted," meaning that all confidential information, such as names and other identifying information, is removed. This does not guarantee that all opinions cannot be "reverse engineered," but we are taking every possible precaution to ensure that they are not.

Staff attached a sample of our working draft. The Board and staff briefly discussed which other jurisdictions have similar search functions, and who the likely audience would be, and whether staff can track the number of hits per opinion.

At 3:14 p.m., new Board member Nancy C. Andrade, joined the meeting. Board members present and staff introduced themselves to her and she introduced herself to all of them. At 3:22, member Frances. R. Grossman joined the meeting.

The Board VOTED 6-0 (Stephen W. Beard, absent) to adjourn into Executive Session at 3:22 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 3:26 p.m., Chair Stephen W. Beard joined the meeting, and requested that Mr. Carlson continue as pro tem (which he did until 3:45 p.m. at which time the Chair completed the business of the meeting).

At 4:49 p.m., the Board VOTED 7-0 to reconvene into open session.

VI. 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 May 18, 2016 meeting by a VOTE of 7-0.

II. CASES

A. Query Consult Summaries

In the following cases, the Board confirmed that it had heard staff's summary reports.

1. Case No. 16019.Q, Prohibited Conduct

Staff reported that an employee requested an opinion addressing unpaid board service for a non-profit organization. The employee's department may enter into a partnership with the organization to spur economic development in the City. Should this partnership be undertaken, it would include a conveyance of funds from the department along with matching funds from private corporations to create a prize for certain business owners located in Chicago's neighborhoods to receive consulting help in building their businesses. The department's awareness of the organization's role in the small business and entrepreneurial community predates the employee's employment with it.

Staff advised as follows:

1. The fact that the employee was a non-compensated board member does not preclude the department from entering into this partnership with the organization. The only restrictions would be imposed upon the employee personally.
2. Section 2-156-111(d)(1), entitled "Prohibited Conduct," prohibits new City employees from making or participating in the making of City governmental decisions for their first two (2) years of City service in matters that benefit their "immediate former employer" or an "immediate former client" who they

represented or for whom they acted as a consultant or lobbyist, unless they have completely severed any ties with that former employer or client that would confer a monetary benefit. This employee began her City service in August 2015. On its face, this prohibition does not apply to the employee, because the employee never had a monetary relationship with the organization.

3. Section 2-156-111(d)(2) would prohibit the employee for the employee's entire City service from "personal[ly] participat[ing] in any capacity in a City matter if she "participated personally and substantially in that matter" for her immediate pre-City employer or pre-city "client" on whose behalf the employee acted as a consultant, prior to beginning City service. Staff advised, consistently, that this does not strictly apply, given that she did not have the organization "as a client." Nonetheless, staff advised that, if, during the employee's service as a board member, this same partnership with the department had been discussed, and she participated in those discussions, to recuse herself from any City discussions or decisions in the department pertaining to this partnership, for as long as she works for the department, thus avoiding even the appearance of impropriety. Again, though — even if this were the case, it would not preclude the department from entering into this partnership.
4. Assuming that the employee was not "personally and substantially" involved as a board member in discussions about this same partnership, and has resigned the board membership, the employee would not be prohibited on a going-forward basis from becoming involved in decisions about this partnership for the department. The only "restriction" left would be the employee's fiduciary duty, under §2-156-020. Staff advised that, as the Board has construed this duty in similar circumstances (citing Case No. 04009.A), it would require the employee to ask whether the employee can, in good faith, put the City's interests before any feelings regarding the organization, or any particular award recipient under consideration. That is a subjective test. Assuming the employee could do that, then there is nothing in the Ordinance that would prohibit the employee from becoming involved in the administration of this partnership with the organization. However, staff also advised that, even if all these conditions are met, it does not guarantee that an organization that is "in competition" with it, or that might wish to enter into a similar kind of partnership with the department, won't protest or claim favoritism—but assuming the conditions above are met, there is no reason under the Ethics Ordinance why the employee could not participate. Nonetheless, that decision is obviously up to the department.

2. Case No. 16020.Q, Conflicts/Improper Influence

Over the past few months, an alderman requested informal opinions regarding the restrictions imposed under the Ordinance in light of the fact that a late relative of the alderman started and owned a business, now owned by a Trust; the business is an agent of an industrial services broker, which has no ownership interest in this business. The alderman wishes to continue the business, as its employee, but

would retain no ownership in it. As its employee, the alderman would be responsible for continuing to service various clients who have purchased services through providers represented by the broker, and attempting to sell services to new clients. The alderman estimates that the business currently has about 55 clients, some of which are located within the ward.

On June 9, staff advised the alderman of the restrictions in the Ordinance, under §§2-156-080(b) and -030(b), entitled, respectively, "Conflicts of interest; appearance of impropriety," and "Improper influence", namely:

1. That the alderman disclose and abstain from discussing or voting on any matters introduced to or pending before City Council or committee in which any of the following entities is named: the business, the broker, the Trust, any current client of the business, or any potential client with whom or which the business is in negotiations to sell services (its "potential clients"), or any of the providers whose services the business and broker represent. This is a City-wide restriction, and applies even if the client is located in another ward. To avoid even an appearance of impropriety, the alderman was also advised to recuse from matters involving entities affiliated with current clients or potential clients – for example, if a client is a Dunkin' Donuts franchisee, then the alderman would disclose and abstain from any matters involving other Dunkin Donuts franchisees, or the franchisor, even if they are not current or potential clients.
2. As to clients or potential clients that are located within the ward, the alderman not only disclose and recuse from any and all discussions of, or votes upon, any matters introduced to or pending before the City Council or any committee in which any of the following entities is named: the business, the broker, the Trust, any current client of the business, or any potential client, or any of the providers whose services the business or broker represent, but also recuse entirely from personally providing aldermanic services to these persons or these entities, even though they would be or are constituents of the ward. In the event that a client requests aldermanic assistance with respect to, say, a zoning matter, the alderman should have a staffer handle the matter without his assistance or intervention, or, if necessary, request that an aldermanic colleagues handle the matter, including writing aldermanic recommendations, citing Case No. 151688.Q.
3. As to any matters that any of the parties listed above have matters that are pending in City departments other than the City Council, the alderman may not direct any other City employee or official to contact other City employees or officials on the matters.
4. The alderman also asked whether the Ordinance requires recusal from matters coming before the Aviation Committee if they pertain to concessions at the airport, given that a client with a store at the airport is a client of the business. Staff advised that it would need to examine the actual legislation to determine whether the alderman would need to disclose and recuse from the entire package, or just a portion of it.

5. The alderman was also advised what would need to be disclosed on the annual Statement of Financial Interests.

3. Case No. 16021.Q, Post-Employment

A City employee contacted staff on June 13, 2016 to ask how and whether the Ethics Ordinance would restrict him were he to leave city service and take a position with a vendor [Company A] doing work for the department of which he is an employee.

On June 16, 2016, staff advised the employee that the Ordinance would impose the following restrictions on him were he to accept employment with Company A:

- 1) For one (1) year after leaving city service, he will be prohibited from assisting or representing any person, such as Company A, in any transaction involving his former city department, or with respect to the subject matter in which he was personally and substantially involved while with the city; and
- 2) As Company A has a current contract with the employee's department, covering several projects over which he has contract management authority, the Ordinance permanently prohibits him from assisting or representing Company A, or any other person, on those projects.

B. Statement of Financial Interests

In the following cases, the Board confirmed that it had heard staff's report.

4. Case No. 16018.FIS, et seq., Late and non-filing Officials and Employees

Staff reported to the Board the number of ethics violations, fines imposed, and the number of those who still have not filed. Staff also reported offering settlements to those with fines and having referred the cases of those who did not accept settlement to the Law Department's Collections Division for action.

C. Referred Complaints

In the following case, the Board confirmed that it had heard staff's report.

5. Case No. 16023.C, No Jurisdiction

Staff reported receiving a complaint alleging wrongful termination but was unable to discern from the letter whether the complainant worked for a City contractor or subcontractor. Since the Board has no jurisdiction, we referred the complaint to the Office of Inspector General for action as it deems appropriate.

III. OLD BUSINESS

1. Case No. 13039.OLIG, Report on Status of Administrative Hearing Procedure

Staff reported that this matter remains before the administrative hearing officer and the parties are engaged in motion practice before the administrative hearing officer.

2. Case No. 16017.A, Report on Status

The status of this ongoing matter was discussed in detail in Closed Session.

IV. NEW BUSINESS

3. Report on the status of the comprehensive search index for Board advisory opinions.

The Board and staff noted that this had been discussed already.

V. OTHER BUSINESS

4. Pending Case List

Board and staff discussed the pending case list. The Executive Director pointed out that the current pending list reflects 19 fewer cases than the list from the May 2016 meeting, because the Inspector General's Office indicated that it had closed four (4) matters and determined that the Legislative Inspector General had closed 15.

At 4:51 p.m., the Board VOTED 7-0 to adjourn the meeting.