

Board of Ethics

Open Session Minutes

May 23, 2018, 9:17 a.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Stephen W. Beard
David L. Daskal
Dr. Daisy S. Lezama

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Counsel
Ana Collazo, Attorney/Investigator
Pauilly Casillas, Staff Administrator

GUESTS PRESENT

Carrie Shepherd, WBEZ Radio
A.D. Quig, The Daily Line
Reid Schar, Jenner & Block
LaRue Robinson, Jenner & Block
Daniel Wolk, City Bureau

Guests, Board and staff introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 6-0 to approve the open session minutes of the Board's meeting of April 18, 2018.

II. CHAIR'S REPORT

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 60 employees and officials attended classes here on April 24 and May 3 and 15. 70 are scheduled for classes on May 24 and June 5 and 14. All courses now cover sexual harassment.

Staff also conducted the following specially scheduled classes: on May 15 and 16, for the entire Special Services Unit of the Chicago Police Department [at the Department's request, in response to an Inspector General ("IG") report]; and on April 27, for Laborer's Local 1001. A total of 35 attended these.

Staff is in the process of scheduling training sessions for about 12 aldermen and their staff at their ward offices. These aldermen have quadrennial training deadlines this year, and this affords them the opportunity to discuss ethics issues in-depth with our staff.

On April 20, the Executive Director served as a panelist at the Spring meeting of the American Bar Association's Public Contracts and State & Local Government Sections, in Detroit, and spoke on pay-to-play, lobbying, and gift laws.

On May 16, at the request of former Attorney General ("AG") Candidate Sharon Fairley, the Executive Director made a presentation to students at the University of Chicago Law School on special ethics problems faced by attorneys in government. Also presenting were former AG candidates Nancy Rotering (Mayor of Highland Park), and Jesse Ruiz, an attorney at the Drinker, Biddle firm and President of the Board of Commissioners of the Chicago Park District.

On June 7, at the request of the State Department, we will host a delegation of 21 anti-corruption and government ethics officials from the five Lusophone countries in Africa: Angola, Guinea-Bissau, Mozambique, and Sao Tome and Principe.

In June 18, also at the request of the State Department, we will host a delegation of 30 legislators, anti-corruption officials, and journalists from the following countries: Afghanistan, Argentina, Bahrain, Brazil, Burma (Myanmar), Cameroon, Czech Republic, Egypt, Ethiopia, Ghana, Greece, India, Israel, Jamaica, Kuwait, Macedonia, Malaysia, Montenegro, Nepal, Thailand, Vietnam and Zambia.

On July 10, staff will conduct a class for all Ward Superintendents at the City's Department of Streets & Sanitation.

Classes are being scheduled for all personnel in the Office of the City Treasurer, at his request, and for all hearing officers at the City's Department of Administrative Hearings, at the Director's request.

The Executive Director will serve as a panelist on "State and Local Campaign Finance Laws" and "State and Local Lobbying, Ethics and Gift Laws" for the Practising Law Institute in two programs: in Washington, D.C. on September 7, and in San Francisco on October 5. The other panelists will be from the law firms of Skadden, Arps, Slate, Meagher & Flom, and Nielsen Merksamer, Parrinello, Gross and Leoni, and the Executive Director of the Massachusetts Office of Campaign and Political Finance.

On-line Training

For Lobbyists. 378 lobbyists (48% of those required) have completed the annual mandatory lobbyists' ethics training. The deadline is before July 3, 2018. We send out reminders every other week. The training includes a unit on sexual harassment – where to report it, what it is, according to City law, and ways to prevent it. Please note also: there have been stories and opinion pieces coming out of various state capitals in which female lobbyists have alleged that male legislators have harassed them, sometimes "in exchange" for support. Although the Ethics Ordinance does not require that annual

lobbyist training cover sexual harassment, the Board's annual training will. It is as important to educate potential victims of sexual harassment about their rights as it is to reinforce what constitutes sexual harassment (and applicable penalties) to potential harassers.

For All City Employees and Officials. To date, 2,905 employees have completed the annual 2018 on-line training program, which also includes a unit on sexual harassment (drafted by our colleagues in the City's Department of Human Resources). Pending the issuance of a formal opinion by the Board on the agenda for today's meeting, we will finalize and post the training for elected officials, which will also include a full unit on sexual harassment.

B. City Council Educational Initiative

In conjunction with the Law Department, IG, and members of the City Council, including representatives from its various caucuses, the Board met January 16 and February 27, March 27, April 16, and May 21 to work on a "handbook" that will address and provide guidance on certain issues common to aldermen and their staff; these include some ethics ordinance issues. The Board, Law Department, and IG are acting under the guidance of the City Council on this project, in an effort to identify and promote various best practices. We anticipate producing a document by Summer's end.

C. New Board member

I'm pleased to report that, at the March 2018 City Council meeting, the Mayor nominated Dr. Stephanie Cox-Batson to the Board, to fill the vacancy left by Dr. Mary Trout Carr, and that Dr. Cox-Batson was confirmed by the City Council's Rules and Ethics Committee on May 9. I am hopeful she will be confirmed by the City Council *right about now*, and be here for the Board's June meeting.

D. Sister Agency Ethics Officers

Our next meeting with our ethics counterparts at other local governmental agencies to discuss issues of common concern is scheduled for June 19: this includes the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, and Chicago Housing Authority.

E. 2018 Statements of Financial Interests

On March 1, notices to 3,719 City employees and officials went out via email and U.S. first class mail advising them of the requirement to file 2018 Statements of Financial Interests. This includes 47 identified individuals who fall into the definition in the Ordinance of "City Council employee" even though they are paid as independent contractors. To date, 3,283, or approximately 88.5% of those required to file, have filed. Reminder emails or first class

letters went out to all non-filers on May 1. Staff is also in constant contact with our ethics liaisons in each department and Ward office.

Forms are posted on our website as soon as they are processed by staff – our goal is to have all filed forms posted within 24 hours of when they are filed. Once posted, they reside on the Board’s website for seven (7) years from the date of filing, after which they are removed and destroyed, pursuant to the Board’s Document Retention Schedule kept with the Illinois Secretary of State and Local Records Commission of Cook County.

F. Candidates’ Statements of Financial Interests

Pursuant to §2-156-150(d)(iii), each person who qualifies as a candidate for elected City office must file a Statement of Financial Interests with the Board within five (5) days after so qualifying. By following media reports – particularly those by thedailyline.com – Board staff tracks and notifies each candidate in writing of the filing requirement. To date, 43 known qualified candidates in the February 2019 Consolidated Municipal Election have filed, after being notified by Board staff. We post all filed Statements on our website.

Note: incumbents also must file, but their forms are posted and searchable through a different page, and their deadline is before June 1, 2018.

G. Advisory Opinions

Since the Board’s last meeting on April 18, we have issued 403 informal advisory opinions; three (3) formal opinions will be discussed, per today’s agenda. The leading categories were, in descending order: travel; gifts; political activity; lobbying; campaign financing; conflicts of interest; and post-employment. The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; Mayor’s Office; City Council; Chicago Public Library; Department of Law; Department of Public Health; and Department of Aviation.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. 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.

H. Revised Educational Brochures

We have revised all of our 24 “Plain English” and other educational brochures.

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

All formal Board opinions issued since 1986 are posted on the Board’s website (nearly 900 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.

J. Summary Index of Board-Initiated Regulatory Actions/Adjudication- /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 is currently pursuing, including one resolved at the Board's April 2018 meeting, and a second the Board will take up at its June meeting.

In the former 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. A meeting with the subject and the subject's attorney was held in closed session at the Board's April 2018 meeting. The Board determined that the individual had committed a minor violation by having a prohibited financial interest in City business through an independent contract with a City Council member, paid with City funds, that yielded to the employee more than \$1,000 in a calendar year. At the Board's direction, staff sent out a memorandum to all City Department heads and aldermen reminding them of this restriction and requesting that they review all their independent contracts to ensure that no City employees might be in violation of the Ordinance.

In the latter pending matter, the Board found at its January 2018 meeting that there is probable cause to believe that an elected official violated the City property, representation of other persons and fiduciary duty provisions of the Ordinance by repeatedly contacting a City department regarding a pending matter that did not involve a constituent of the official in an apparent attempt to influence the speed and outcome of the matter. The elected official has been given an opportunity to respond to the finding in writing and/or in person with an attorney, and a meeting may be held in June 2018.

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* a factual investigation by the IG. The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There are, to date, 112 such matters.

The index 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, described above, and with respect to lobbying and campaign financing, even though the Board no longer has investigative authority.

K. Summary Index of Ongoing IG Investigations/Adjudications

We post and continually update, on the Board's website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of five (5) 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.

Whenever the IG presents the Board with a completed ethics investigation, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance. These sections provide that the Board shall review the IG's report, recommendations, and evidence submitted in the completed ethics investigation. Then, if the Board finds that the evidence presented shows that there is probable cause to believe the subject violated the Ordinance, it shall notify the subject of the allegations and afford the subject the opportunity to present written submissions and meet with the Board. The Ordinance provides that this meeting is *ex parte* - no one from the City's Law Department or IG is present. The Board may also request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding. 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.

On April 16, 2018, the IG presented the Board with a new completed investigation, the fifth such matter since July 1, 2013. It is Board Case No. 18012.IG, which is on today's agenda for the Board to make a preliminary determination of probable cause. It involves an IG investigation into a former City official's post-City activities, in potential violation of the Ordinance's post-employment provisions. As required by law, the Board's designee has reviewed the IG's report and supporting evidence and made a recommendation to the Board as to whether the evidence shows there is probable cause to believe that the subject violated the Ordinance.

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.

L. 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 (1) mid-level City

employee in an operating department, and one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these eight (8) 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 staffer was closed, apparently without further investigation by the LIG.

As noted above, the Board received a completed investigative report from the IG on May 26, 2017, with a petition for a probable cause finding. The case was based on the Board earlier conclusion that the subject appeared to have committed a past violation of the Ordinance that was not minor, and then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated, and confirmed the Board's earlier conclusion, the matter was settled for a \$1,500 fine. 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.

M. Lobbyists-regulation and enforcement

There are currently 789 lobbyists registered with the Board. We have collected \$403,375 in fees for 2018.

April 20 was the deadline for lobbyists to file their first quarter activity reports. All lobbyists were sent reminders of this deadline on March 31. 54 lobbyists did not file activity reports before the deadline. Pursuant to the Ordinance, staff provided them notice that they were late and must file within 10 days. All but 3 filed by the relevant deadlines. These 3 did file, but before the fine period began. Although they did not owe fines, they were found in violation for late filing. Their names were posted on the Board's website, as required by law.

N. Freedom of Information Act

Since the last Board meeting, the office has received no new requests under the Freedom of Information Act.

At 9:18 a.m., the Board VOTED 6-0 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.

The guests were excused.

At 9:45 a.m., the Board VOTED 4-0 (Stephen W. Beard and Dr. Daisy S. Lezama, absent, each having recused) to reconvene into open session, and the guests invited to return.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

VII. CASEWORK

A. Consideration Whether to Issue a Finding of Probable Cause Pursuant to §2-156-385(3) of the Governmental Ethics Ordinance

1. Case No. 18012.IG, Prohibited Conduct-Negotiating Future Employment; Post-Employment

The Board VOTED 4-0 (Stephen W. Beard and Daisy Lezama abstaining) to find there was no probable cause to believe that the subject violated the Ordinance's Prohibited Conduct provision, §2-156-111 (c) when the subject negotiated future employment with an entity while still serving a City elected official, and dismissed this part of the case.

The Board further VOTED 4-0 (Stephen W. Beard and Daisy Lezama abstaining) to find there was probable cause to believe that the subject violated the Ordinance's Post-employment Restrictions on Lobbying provision, §2-156-105(a-1) when the subject engaged in lobbying on one or more occasions, within one (1) year of the subject's last day in City office, and to direct staff to notify the subject about the finding and possible meeting, pursuant to §2-156-385 of the Ordinance.

At 9:48 a.m., under the above-recited provisions of the Open Meetings Act, the Board VOTED 4-0 (Stephen W. Beard and Dr. Daisy S. Lezama, absent, each having recused) to adjourn into Executive Session, and the guests were again excused. Thereafter, Members Stephen W. Beard and Dr. Daisy S. Lezama rejoined the meeting and, at 10:00 a.m., Member Nancy C. Andrade excused herself from the meeting.

At 10:40 a.m., the Board VOTED 5-0 (Nancy C. Andrade, absent) to reconvene into open session, and the guests invited to return.

MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION (Cont.)

VII. CASEWORK

B. Advisory Opinions

2. Case No. 18010.A, Sexual Harassment

The Board VOTED 5-0 (Nancy C. Andrade, absent) to approve and issue the draft jurisdictional opinion, determining that the Board has no jurisdiction to consider allegations made to its Executive Director and the City's Inspector General that a City elected official violated the Ordinance's prohibition against sexual harassment (and its failure to report criminal or unlawful activity provision) because the allegations pertain to conduct that occurred in 2017, but the Ordinance's sexual harassment provisions did not become effective until February 2018 (and then were amended effective in March 2018). The Board also determined that it is unable at this time to issue an advisory opinion under any other potentially applicable Ordinance section unless and until the Inspector General completes a full factual investigation of the matter, should it so decide.

The Chair stressed – as the opinion does – that this Board vote is not intended to lessen nor should it be interpreted as lessening the seriousness of the allegations or condoning the conduct alleged. Instead, the Board's sole function in the matter has been to determine whether the Ordinance might apply to the allegations presented, and that the Board encourages those who, like this citizen, believe they have been aggrieved by or witness sexual harassment to report it to the City's Department of Human Resources and/or the Office of Inspector General, so that their allegations can be investigated and the perpetrators held accountable under relevant City or other laws and policies.

3. Case No. 18011.A, Sexual Harassment

The Board VOTED 5-0 (Nancy C. Andrade, absent) to approve and issue the staff's draft advisory opinion, determining that the purpose of the Ordinance's newly-enacted sexual harassment 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. 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.

The Chair again stressed – as the opinion does – that 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.

4. Case No. 18007.A, Conflicts of Interest, Improper Influence, Representation, Fiduciary Duty

The Board considered a draft opinion in this matter but deferred action on approving an opinion pending further changes.

C. Query Report

5. Case No. 18013.Q, Prohibited Conduct (Reverse Revolving Door)

Staff advised the Board that a City employee requested an opinion as to whether there was a conflict of interest or other issue under the Ordinance with respect to his dealings with his former, immediate pre-City service employment in his current position. Staff advised the employee that, on the facts presented, there was no violation of the Ordinance's Conflict of Interest (§2-156-080), or Prohibited Conduct (§2-156-111) provisions. However, the circumstances were such that there could be a charge of an appearance of impropriety issue or favoritism. Therefore, staff also advised and recommended, out of an abundance of caution, that the employee refrain from working with the pre-City employer for two (2) years.

D. Statements of Financial Interests

6. Case No. 18015.FIS et seq., Statements of Financial Interests

Staff advised the Board that, under the Ordinance, all candidates for elected office in the City of Chicago are required to file a Statement of Financial Interests after qualifying as a candidate. Staff informed that Board that, as of the date of the Board meeting, 46 candidates had been notified of the FIS filing requirement. Staff also stated that it would follow up and apply the standard procedure for the annual FIS filings in handling these candidate FIS cases.

E. Referred Complaint Report

7. Case No. 18016.C, No Jurisdiction

Staff reported that the Executive Director received a letter that raised consumer-related concerns against a car rental agency, over which the Board have no jurisdiction. Staff provided the complainant with referrals and contact information for the Consumer Protection Bureaus with the Office of the Illinois Attorney General, the City's Department of Business Affairs and Consumer Protection, and the Office of Indiana Attorney General for further guidance or assistance.

VI. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 5-0 (Nancy C. Andrade, absent) in open session, to approve the executive session minutes, as amended, of the April 18, 2018 meeting.

VII. NEW BUSINESS

Semi-Annual Review of the Confidentiality of Executive Session Minutes under the Illinois Open Meetings Act

The Board VOTING 5-0 (Nancy C. Andrade, absent) to approve staff's recommendation to retain the confidentiality of the Board's executive session minutes between and including August 1987 and March 14, 2018.

At 10:48 a.m., the Board VOTED 5-0 (Nancy C. Andrade, absent) to adjourn the meeting.