

Board of Ethics

Open Session Minutes

December 19, 2016, 3:06 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Nancy C. Andrade
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
Pually Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem
Stephen W. Beard

MEMBER OF THE PUBLIC PRESENT

Chris Norborg, Office of City's Inspector
General

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent) to approve the Open Session Minutes of the November 16, 2016 meeting.

II. CHAIR'S REPORT

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the last Board meeting, 103 employees and officials attended classes held on November 29, and December 1, 8, and 15. There are 25 scheduled for December 20, and a total of 75 scheduled for the first three classes in January, on the 5th, 12th and 17th. The class schedule for 2017 was posted on the website and tweeted out.

On November 17 and December 1, the Executive Director conducted two 90 minute seminars for the Police Superintendent and all Deputy Superintendents of the Chicago Police Department, at Police Headquarters.

On January 6, staff will conduct a class for 22nd Ward Alderman Munoz and his staff.

On February 23, staff will conduct two seminars for SSA Commissioners and Service Provider representatives.

Classes are being scheduled for Mayor's Office personnel subject to the 4 year training deadline at the end of February.

On-line Training

To date, 31,926 employees and 35 aldermen have completed the 2016 version of the on-line mandatory ethics training course, and 216 employees and officials are in progress. There are currently 34,022 scheduled, putting us at 94% compliance. The deadline is December 31, 2016, at 11:59:59 pm. Violators are subject to fines of \$250 per day. Staff is working intensely with ethics officers in every City department and aldermanic office to ensure that we reach as close to 100% compliance as possible.

New Educational Materials

We have fully revised all of our educational materials: the two PowerPoints on our website (the first is for new employees, which the Department of Human Resources places in the packets of newly hired City employees, with a certification for them to submit when they have completed it), and the materials used for face-to-face training. 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 256 have completed the new employee program, and 91 have completed the departing employee program.

B. Advisory Opinions

Since the last Board meeting on November 16, staff has issued 301 informal and one (1) formal confidential advisory opinions. During this time, the leading categories have been, in descending order: gifts, travel, use of City property/authority*, post-employment, and outside employment. The leading City departments from which requests came in this period were (in descending order): Chicago Police Department; City Council; Mayor's Office; Department of Public Health; Chicago Public Library; and Department of Finance.

51% of these were from City employees in administrative or management positions, 21% from non-administrative/managerial employees, 15% from department heads, 7% from City elected officials, and the rest from lobbyists, City appointed officials, ethics officials at City "sister" agencies, and members of the public, vendors, and the media (these last are not actually advisory opinions). 50% came via email; 49% via telephone; the remainder via walk-ins. Informal opinions of note will be discussed in closed session.

*At the recent COGEL (Council on Governmental Ethics Laws) conference, we learned that this topic was the leading topic of investigations reported by state, county and municipal ethics commissions with investigative authority between November 2015 and November 2016.

C. Website Modifications/Advisory Opinions

On November 18, staff posted the Board's new advisory opinion search engine, containing summaries of the 856 *formal* advisory opinions issued by the Board since 1986, as well as keywords; the engine describes how users can easily read the text of every opinion. 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 there are others who issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement procedure.

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 publish summary reports of its investigations, findings and recommendations (and has done so in the past). There are approximately 45 of these.

Staff has fully revised all of its 21 educational brochures posted on our website.

D. Gift Reminder

On December 7, the agency's 2016 (annual) Guide to Ethical Holiday Gifting was sent via blast City email to all City employees and officials on the City's email system, and was posted on our website.

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 as appropriate, consistent with the Ordinance's confidentiality provisions. However, as there have been no completed investigative reports sent to the Board in nearly one full year, there has been little to update.

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. There was one (1) such instance since the last Board meeting, and it will be discussed in Executive Session.

Since the time this provision (§2-156-070(b)) 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 former department head, the Board concluded that the apparent violations were *not* minor or technical, and the individuals self-reported to the then-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, the Board sent confidential letters of admonition, as required by Ordinance.

G. 2017 Statements of Financial Interests

Staff is making preparations to send out the 2017 form to all employees and officials who will be required to file them by the close of business on May 31, 2017. This requires sending spreadsheets to each department, aldermanic office and City Council Committee and to the Office of Legislative Counsel and Government Affairs with lists of 2016 filers instructing them to update the lists according to the criteria set by the Board and Ordinance for who must file the form. As in past years, the Board's EFIS system will send out email notices to all filers on or about March 1, 2017.

Note that contract "employees" working for City Council members, committees, or agencies will be required to file in 2017.

H. Council on Governmental Ethics Laws (COGEL) Annual Conference

From December 10 through 14, the Executive Director and Staff Attorney Ana Collazo attended the 38th annual COGEL Conference in New Orleans. COGEL is the only organization of government ethics, lobbying, campaign financing and FOIA professionals of its type. As reported last month, Chicago will serve as the host City for the 2019 Conference, having previously hosted it in 2008.

I. Lobbyists-Regulation and Enforcement

As of today, there are 625 lobbyists registered, and the Board has collected \$346,275 in registration fees. This figure represents about 42% of our operating budget.

Two (2) lobbyists were sent due process letters on November 10, 2016 and found in violation for failing to file their third quarter activity reports on time. Their names were published on our website on or about November 22, 2016. As provided in the Ordinance, if either lobbyist had not filed or acceptably explained the late filing, they would be fined \$1,000 per day until filing. These two lobbyists properly filed their reports within the time limit in the due process letters sent to them, and were not fined.

The Board has notified all lobbyists that it is instituting mandatory electronic filing for all lobbyist registrations, reports, and terminations, beginning in January 2017, and reminder notices are scheduled to be sent all lobbyists on December 29. Lobbyist re-registrations and fourth quarter activity reports are due January 20, 2017.

J. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received two (2) new requests under the Freedom of Information Act. One request was for records regarding contracts with clients for one (1) lobbyist covering one year; the requestor was sent a .pdf of the located records. The other request for filed Statements of Financial Interests filed by

one (1) former employee from 1998-2011; the requestor was sent a .pdf of the four (4) located records.

(At 3:09 p.m. member Nancy C. Andrade joined the meeting.)

IV. OLD BUSINESS

1. Case No. 16032.A, Gifts, New Question
2. Case No. 16044.CNS, Representation, Status Report

These matters were deferred for consideration in executive session.

V. NEW BUSINESS

3. Interesting Informal Opinions.
 1. Campaign Financing
 2. Fiduciary Duty

These matters were deferred for consideration in executive session.

VI. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

The Board VOTED 5-0 (Zaid Abdul-Aleem and Stephen W. Beard, absent) to approve the Executive Session Minutes of the November 16, 2016 meeting.

VII. CASEWORK

A. Advisory Opinions

1. Case No. 16041.A, Travel/City Property

This matter was deferred for consideration in executive session.

B. Referred Complaint Report

2. Case No. 16042.C, No Jurisdiction
3. Case No. 16045.C, No Jurisdiction

These matters were deferred for consideration in executive session.

C. Query Report

4. Case No. 16043.Q, Interest in City Business

This matter was deferred for consideration in executive session.

VIII. OTHER BUSINESS

Review of the Pending Case List

This matter was deferred for consideration in executive session.

The Board VOTED 5-0 (Zaid Abdul-Aleem and Stephen W. Beard, absent) to adjourn into Executive Session at 3:15 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; (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; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes 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 4:50 member Nancy C. Andrade left the meeting.)

At 4:57 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent) to reconvene into open session.

A member brought up the matter of statistics regarding informal advisory opinions provided by staff over the telephone or by email or in person.

VI. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

IV. OLD BUSINESS

1. Case No. 16032.A, Gifts, New Question

Staff reported on a follow up question raised after the Board issued its face-value ticket opinion. Say that a high-ranking public official purchases (a) face value ticket(s) to a high-demand event, from the event's sponsor, on the condition (as set forth in the Board's opinion in Case No. 16032.A) that the official perform a public, ceremonial function, then performs that function, then decides to leave the event while it is still going on. May that official then offer the ticket(s) to bodyguards or others for the event's remainder, or even give the tickets away to a person outside of the venue to use for the event's remainder? The Board has VOTED 5-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent), that this would be prohibited, on the basis that the ticket(s) were offered solely to the official on the conditions set forth in the original advisory opinion, and are not transferrable, and that this is the spirit in which the Board issued its opinion in Case No. 16032.A, and directed the staff so advise

persons in the future and prepare an addendum to the opinion addressing this question.

2. Case No. 16044.CNS, Representation, Status Report

Staff reported that a person subject to various provisions in the Governmental Ethics Ordinance, who had sought the Board's advice, followed it, and also reported on follow-up inquiries received from another City agency regarding the matter.

V. NEW BUSINESS

3. Interesting Informal Opinions

1. Campaign Financing
2. Fiduciary Duty

The Board and staff discussed two informal opinions issued since the last meeting. In the first, City employees were advised that: (i) campaign or political contributions are not gifts, and should not be reported as gifts on the City's EDS (Economic Disclosure Statement); (ii) a check made out to an elected official, but not to the official's candidate committee registered with the Illinois State Board of Elections, could still be treated as a campaign contribution, provided it is deposited into the proper account and duly reported as required by the Illinois Election Code; and (iii) that, in fact, if it were not treated as a campaign or political contribution, it would constitute a violation of the Governmental Ethics Ordinance's gift provisions, which prohibits the giving or acceptance of any gift or cash or cash equivalent in any amount.

In the second, the Board and staff discussed advice given to a managerial City employee who has a friend who works for a company that has dealings before the employee's department; the employee has no monetary interest in the company, and this is a casual friend. The employee was advised that there is no requirement that employee recuse herself from matters involving the friend's company, unless the employee believes that she cannot make an objective decision in the City's best interests, citing Case No. 91090.A.

VII. CASEWORK

A. Advisory Opinion

1. Case No. 16041.A, Travel/City Property

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent) to approve and issue an advisory opinion draft opinion, written in response to a request posting a hypothetical situation. In the opinion, the Board determined the Ordinance did not prohibit a 501(c)(3) organization, which receives City funds, from underwriting the cost of a high-ranking City official (or the official's spouse or staff) to travel internationally to a ceremony at which a local religious leader was honored at a ceremony hosted by the leader of an international church, provided that acceptance of these travel expenses were publicly reported as required by the Ordinance. The facts

that the organization does not regard itself as subject to the Freedom of Information Act, or that City funds may have been used in part to fund the travel, or that the official is the *ex officio* Chair of the organization's board, would not affect this determination. In the opinion, the Board recommended that the City work with the organization so that it voluntarily and publicly discloses the precise source and legal provenance of the funds used to underwrite travel by City officials or employees, as that would help to quell any claimed lack of transparency.

B. Referred Complaint Report

The Board heard staff's report on these matters, involving complaints that were referred to either the Office of the Inspector General or the appropriate department.

2. Case No. 16042.C, No Jurisdiction

Staff reported that on November 30, 2016, the office received a letter from an anonymous complainant alleging that a City employee was misusing City Resources by doing personal work on City time. In addition, the complainant alleged that the employee's manager knew and allowed the City employee to do personal work on City time. Staff reported that pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, staff treated the matter as a complaint and referred it to the Office of Inspector General for action as it deems appropriate.

3. Case No. 16045.C, No Jurisdiction

Staff reported that on December 8, 2016, the office received a postcard from a private citizen alleging a "payoff" in a department that led to a "stop work order." Staff reported that pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, staff treated the matter as a complaint and referred it to the Office of Inspector General for action as it deems appropriate.

The Board heard staff's summary on this matter involving guidance given by staff to a requestor based upon clear Board precedent or other applicable laws or rules.

C. Query Report

4. Case No. 16043.Q, Interest in City Business

An elected official was advised, based on clear Board precedent, that the Ordinance did not prohibit the official's purchase of real estate through a scavenger sale or other tax-delinquency sale, but that the Ordinance prohibits the use of any confidential or non-public information in that process. Scavenger and other tax-delinquent property sales are conducted with a process of public notice followed by competitive bidding and are thus not prohibited by the Ordinance's financial interest in City business provision. The official was advised to consult with private counsel as to whether any state laws may apply, and as to how to title any property purchased through the process.

VIII. OTHER BUSINESS

5. Pending Case List

At 5:05 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent) to adjourn the meeting.