

BOARD OF ETHICS

Open Session Minutes

JUNE 15, 2020, 3:16 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Dr. Stephanie Cox-Batson
David L. Daskal
Dr. Daisy S. Lezama
Hon. Barbara McDonald

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Counsel
Ana Collazo, Attorney/Investigator
Edward Primer, Program Director
Pully Casillas, Staff Assistant

GUESTS ATTENDING

Peter Czerwonka

The meeting was convened and conducted through the use of the Zoom remote video and audio meeting platform.

I. APPROVAL OF MINUTES

The Board VOTED 7-0 to approve the open session minutes of the Board's meeting of May 11, 2020.

II. CHAIR'S REPORT

The Chair reported that, on June 10, a lawsuit was filed against the City by Jason Lee, a former investigator for the Civilian Office of Police Accountability (COPA), charging that the post-employment provisions of the Governmental Ethics Ordinance are unconstitutionally vague and improperly impinge on the Illinois Supreme Court's sole authority to regulate the practice of law. The matter is assigned to Judge David B. Atkins's courtroom in the Cook County Circuit Court, Chancery Division.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Staffing during the Covid-19 Pandemic

Most staff members continue to work remotely. However, I come in nearly all days, and Richard has come in a few times when I am out, and staff members come in periodically to complete in-office tasks.

B. Amendments to the Ordinance

1. On December 18, the City Council voted into law several amendments to the Governmental Ethics, which this Board played a role in drafting. These took effect on April 14, 2020, and:

- Prohibit City elected officials from acting as lobbyists on behalf of private clients before any other government unit in the State, or from receiving compensation or income from such lobbying by others. **Note:** as was reported in the Tribune, on April 22, an amendment was submitted to the City Council that would effectively relax this prohibition by limiting the prohibition on lobbying for private clients to elected officials from jurisdictions that have “pending or recurring legislative or contractual matters involving the City.” See: <https://chicago.legistar.com/LegislationDetail.aspx?ID=4424766&GUID=B022DC30-A23F-4E93-A035-468556C844A0&Options=Advanced&Search=>

I do not know whether the City Council’s Committee on Ethics and Government Oversight will hold hearings on this amendment.

2. As has now been widely publicized, implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to July 1, 2020. The latest thinking from the Mayor’s Office is to delay implementation of this or any substituted law covering lobbyist registration by paid individuals on behalf of non-profits until January 2021. We anticipate that amendments will be submitted to the City Council perhaps in September 2020. Just before the Covid-19 crisis began, we were working diligently with representatives from the Mayor’s Office and non-profit community on potential amendments.

We have posted on our website a color-coded version of the Ordinance showing all changes made since January 2018.

C. Education

Classes and Other Presentations

We have cancelled all classes from March 17 on. We hope to resume them perhaps in July. We have extended all training deadlines accordingly. All Board classes cover sexual harassment.

This morning, I gave a virtual presentation to all 35 Mayoral Fellows on the Governmental Ethics Ordinance and our work.

On-line Training

For appointed officials

To date, 433 appointed officials have completed the new annual training for appointed officials. Unfortunately, this represents about only about 64% of the total. They have until July 1 to complete it, though we will likely extend that deadline. We are grateful for the assistance of the Mayor’s Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 31,898 employees and 29 aldermen have completed the program. 56 are in progress. This represents 99.7% of the total required to complete the training before July 1, 2020. We are in contact with training administrators from all departments with employees who have not completed the training, and with those aldermen who have not yet done so.

D. Council on Governmental Ethics Laws (“COGEL”)

As the President of COGEL, I chaired a meeting of the Steering Committee last week and we made the painful but necessary decision to cancel the December 2020 in-person annual conference in Atlanta, and instead offer a streamlined virtual conference free of charge to more than 600 COGEL members.

E. Sister Agency Ethics Officers

We postponed until September our quarterly meetings of ethics officers from the other local governmental agencies: the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor’s Office, and Chicago Housing Authority.

F. 2020 Statement of Financial Interests

On February 28, notices to 3,616 City employees and officials were sent via email and U.S. first class mail advising them of the requirement to file 2020 Statements of Financial Interests before May 1. That included persons identified by each Ward or alderman who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors. Due to the Covid-19 crisis we extended that deadline to July 1 and may again extend it.

To date, all but 292 have filed, leaving us at 92% compliance.

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.

G. Advisory Opinions

Since the Board’s last meeting on May 11, we have issued 329 informal advisory opinions. The leading categories were, in descending order: Statements of Financial Interests; Lobbying; City Property; Gifts; and Post-employment.

The leading City departments from which requesters came in this period were (in descending order): City Council; Police Department/Civilian Office of Police Accountability (COPA); Department of Public Health; Department of Law; Chicago Fire Department; Mayor’s Office; and Department of Procurement Services.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions.) 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. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

Every formal Board opinion issued since 1986 is posted on the Board's website (more than 908), 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. Only a handful of other ethics agencies 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.

I. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted six (6). By law, we make all granted waivers public on our website.

J. Summary Index of Board-Initiated Regulatory Actions/Adjudications/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 undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 125 such matters, but only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 53 such matters.

K. Summary Index of Ongoing IG/LIG Investigations/Adjudications

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of eleven since July 1, 2013, the last two (2) of which are on today's agenda, one for a finding of probable cause, the other for a status report concerning potential settlement) 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. We update it as appropriate, consistent with the Ordinance's confidentiality provisions.

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

Then, if the Board finds that the evidence presented warrants a *prima facie* finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City's Law Department or IG is present. Note that the Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding (and indeed has done so). 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.

If the subject is unable to rebut the Board's *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by his or her attorney. At the conclusion of the hearing, the ALJ submits his or her findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Ethics Ordinance (or finds none) and impose appropriate fines.

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of Mayor Emanuel's Ethics Reform Task Force in Part II of its 2012 Report – the primary purposes being (i): to guarantee due process for all those investigated by the IG (or former LIG); (ii) to ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by the IG or LIG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public's right to know of ethics violations.

On our website, we have a publication that describes this process in detail: <https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

On today's agenda are two IG case, pending since October 2019 and May 2020, respectively, for status reports, pending meetings with the respective subjects and their counsel. The first case, 19029.IG, involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. The second, 20005.IG, involves the filing false or misleading Statements of Financial Interests.

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 IG or, if he or she fails to do so within two (2) 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, two (1) mid-level City employees, one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these 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.

In the four (4) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

M. City Council Handbook

The project of completing a handbook for the operations of aldermanic offices has been resurrected. We updated the content for which we are responsible and submitted it this week. We do not know when the final product will be released, or which aldermen will shepherd it. Previously, the role of shepherding this work fell with former 40th Ward Alderman Patrick O'Connor.

N. Litigation

On the evening of June 10, a lawsuit was filed against the City in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA), who left City employment on February 28, 2020. The suit alleges, that the post-employment provisions of the Ordinance are unconstitutionally vague, and improperly attempt to regulate the practice of law by Illinois attorneys. It prays for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. The City is preparing its answer.

O. Lobbyists-Regulation and Enforcement

To date for 2020, there are 805 registered lobbyists, and we have collected \$380,525 in lobbying registration fees. The deadline for lobbyists to re-register or terminate was by the close of business on Tuesday, January 21. The Board extended the filing deadline for Q1 activity reports to July 1, 2020, though we have not extended the deadline for Q2 reports, which are due July 20, 2020.

Note that we discovered a glitch in the ELF (Electronic Lobbyist Filing) system in November 2019

whereby the compensation reported by lobbyists for the second, third and fourth quarter was combined with compensation reported in previous quarters, and then posted erroneously into the public interface of the program, which is on a SOCRATA platform. I am pleased to report that programmers at the Department of Assets and Information and their contractors at Electronic Knowledge Interchange fixed this problem and we announced the fix publicly on March 2, 2020.

P. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received no requests for information under the FOIA.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

1. Status report on implementation of the lobbying laws and proposed revisions to them and to Rule 6 of the Board's Rules and Regulations

Implementation of the Ordinance's non-profit lobbying provisions was delayed to July 1, 2020. The latest thinking from the Mayor's Office is to delay implementation of this or any substituted law covering lobbyist registration by paid individuals on behalf of non-profits until January 2021. We anticipate that amendments will be submitted to the City Council perhaps in September 2020. Just before the Covid-19 crisis began, we were working diligently with representatives from the Mayor's Office and non-profit community on potential amendments.

VII. NEW BUSINESS

On the evening of June 10, a lawsuit was filed against the City in Cook County Circuit Court, Chancery Division, by Jason Lee, a former City employee of COPA, who left City employment on February 28, 2020 and is now employed by the Police Benevolent and Protective Association. The suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague and improperly attempt to regulate the practice of law by Illinois attorneys. It prays for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. The City is preparing its answer.

At 3:37 p.m., the Board VOTED 7-0 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, 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.

Member of the public was asked to leave the Executive Session of the meeting and advised they would be invited into the reconvened Open Session of the meeting.

At 4:22 the Board VOTED 7-0 to reconvene in Open Session.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 7-0 in open session, to approve the executive session minutes of the May 11, 2020 meeting.

II. CASEWORK

A. Consultation

1. Case No. 20013.CNS, Board Members, Political Activity

The Board VOTED 7-0 to send a letter to the Mayor, requesting that the blanket prohibition on Board members' political activity (contained in § 2-156-310(a)(2) and -320 be amended to enable Board members to engage in political activity (as defined in §2-156-010(s)) in support of candidates for elected public offices or races over which the Board has no jurisdiction, such as President of the United States or Governor, or in any other race in which no current City employee or official is a candidate. The ban on participating in elections for any of the 53 elected City offices would continue.

B. Status Report on Matter after Board's Probable Cause Finding Based on a Completed Investigation by the Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance

2. Case No. 19029.IG, Post-Employment, Confidential Information, Conflicts of Interest

The Board voted 7-0 to continue the matter after staff provided an oral status report that the matter will proceed to a subject meeting for the July 2020 Board meeting. Staff further provided the Board with a synopsis of the facts, which involve potential violations of the post-employment provisions by a former Chicago Fire Department (CFD) employee.

C. **Status Report on Matter after Board's Probable Cause Finding Based on a Completed Investigation by the Office of Inspector General, Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance, in Response to Board's Request for Investigation.**

3. Case No. 20005.IG, Statement of Financial Interests

The Board voted 7-0 to continue the matter after staff provided the Board with an oral status report that the matter will proceed to a subject meeting for the July 2020 Board meeting. Staff further provided the Board with a synopsis of the facts, which includes the potential violation of the Statements of Financial Interests provision by a former Aviation employee.

III. **OTHER BUSINESS**

None

At 4:27 p.m., the Board VOTED 7-0 to adjourn the meeting.