

**Executive Director's Report
June 14, 2021**

Potential Amendments to the Ordinance; New State Law, City Exemption from Home Rule

I am gratified to report that the City was successful in its efforts to have Chicago's lobbying laws exempted from the new state law, SB 539, Amendment 1, that both chambers of the General Assembly approved in the wee hours of June 1. Chicago's laws are stricter in critical respects. These include the length of the revolving door restrictions on lobbying by former City officials and employees (Chicago's last for 1 year for aldermen and 2 years for senior City employees, Mayor's Office personnel, and aboard and commission members, as contrasted with a mere 6 month restriction in the new state law), and cross-lobbying bans. Chicago's law prohibits (whether for compensation or gratis), all City employees and elected officials from lobbying anywhere else in the state on behalf of private clients and prohibits elected officials from lobbying the City on behalf of private clients, whether for compensation or gratis. The new state law allows elected officials, etc. to engage in non-compensated lobbying, and also allows them to engage in "occasional" lobbying on behalf of their non-governmental employers.

Nonetheless, legal staff is combing this law carefully to see whether there are any innovative ideas in it that we can recommend to the Mayor and City Council.

Alderman Michele Smith, Chair of City Council's Committee on Ethics and Government Oversight, Chair Bill Conlon, and I wrote an op-ed published this morning in the Daily Line, urging the General Assembly not to use the State's home rule pre-emption authority to supersede Chicago's 34-year old lobbying laws and regime. It is here: https://www.thedailyline.com/dear_springfield_colleagues_lobbying_laws_are_not_appropriate_for_home_rule_pre-emption?utm_campaign=chicago_first_report_05_10_21&utm_medium=email&utm_source=thedailyline

We also wrote a letter to the editor of the Daily Herald, which in our view unfairly criticized Chicago's laws. See <https://www.dailyherald.com/discuss/20210602/editorial-ethics-bill-allows-lawmakers-to-claim-reform-but-doesnt-build-trust> and <https://www.dailyherald.com/discuss/20210606/chicagos-ethics-reforms-deserve-attention>

As to our own Governmental Ethics Ordinance, We have on our website a color-coded version of the Ordinance showing all changes made since January 2018. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Ordinances/GEO-2019-color%20through%20June%202020.pdf>

The current thinking is still that a package of amendments to the Governmental Ethics Ordinance regarding non-profit lobbying and potentially other topics will be submitted in later in the year.

Education

On-line Training

For appointed officials. To date, all but 36 appointed officials have completed the annual training for appointed officials. We are not going to enforce deadlines for this year's training, due to the Covid-19 pandemic. 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, 24,919 employees and ten (10) aldermen have completed the program to date (putting us at about 80% compliance City-wide). 315 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists. To date, 827 lobbyists have completed the annual on-line training, putting us at 99.2% compliance. Lobbyists had until June 1, 2021 to complete it. Those who have not completed the training by 11:59:59pm June 15 will be fined \$250/day until they complete it.

Classes and other presentations

We cancelled all in-person classes from March 2020 on. Given the waning course of the pandemic, we will re-start these in August 2021. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment..

We are currently scheduling a short Zoom presentation for members of the newly-constituted Board of Health, and for employees of the Treasurer's Office. Earlier today I gave a presentation to the 25 Mayoral Fellows.

Advisory Opinions

Since the Board's last meeting, we have issued 371 informal advisory opinions. The leading categories for informal opinions were, in descending order: Statement of Financial Interests; Lobbying; Gifts; Travel; City Property; Post-employment; and Campaign Financing.

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); Mayor's Office; Department of Public Health; Office of Inspector General (IG); and Department of Law.

Since the last Board meeting we again received a new record number of communications from members of the public – 28.

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.

2021 Statements of Financial Interests

The filing deadline was before May 4 for the 3,603 City employees and officials who on February 28 were notified of the requirement to file their 2021 Statements. As required by law, our EFIS system sent initial notices and then reminders on April 1 and April 16. On May 13, we found 91 employees and official in violation for failing to file by the deadline. As of May 12, we began assessing daily fines of \$250 to all who had not then filed. As of today, there remain seven (7) who have not yet filed and who are accruing daily fines until they file. We will refer 19 cases to the Law Department for collection of more than \$30,000 in fines in the aggregate.

Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 834 registered lobbyists – another all-time high. We have collected \$381,875 in lobbying registration fees. Q1 activity reports were due by 11:59 p.m. Tuesday, April 20, 2021, and all lobbyists filed them. On May 25, we found four (4) lobbyists in violation of the law but assessed fines only as to one; that lobbyist filed on June 9, thereby incurring \$11,000 in fines. If that lobbyist does not pay the fine on or before July 1, 2021, we will turn the matter over to the Law Department for collection.

Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we worked on updating the City Personnel Rules, which were last revised in 2014. In particular, we are assisting on revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

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

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 910), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. 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. The opinion issued by Board staff that will be discussed in Executive Session will be added to these sites.

Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website.

Sister Agency Ethics Officers

In March we met via Zoom with the 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, Cook County Assessor's Office, Cook County Inspector General's Office (who are responsible for the MWRD) and Chicago Housing Authority. Our next meeting will be in July.

Lobbying Assistance to CPS

We modified our ELF program to include lobbyists who may eventually register with the Chicago Public Schools (CPS) and have offered our assistance to them in drafting their lobbying policy. Should CPS pursue this policy in light of the new State law passed two weeks ago, once that policy becomes effective, CPS's lobbyists would be able to begin registering with our office, and the public will know who they are and the information they disclose. All enforcement actions, however, would be up to CPS to bring—we would inform them of missed deadlines, etc. However, as CPS is, like the City, a home rule unit of government, but, unlike the City, is *not* exempt from the new State law, we are unclear whether CPS officials will press forward with their own lobbying policy, as any rules or policies they may adopt that are inconsistent with the new State law would be superseded, and their lobbyists would be required to register in Springfield with the Secretary of State.

Chicago Casino, the Board's Work per the Illinois Gambling Act

Last Fall, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. This has triggered reporting requirements, to the Illinois Gaming Board, of City employees and officials who have "communications" with "applicants" regarding "gaming" under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Further, once a casino operator is identified, other requirements under the substantive ethics provisions of that state statute will take effect. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting the violator to fines up to \$25,000 and 1-3 years in jail.

Board staff has been working closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There were multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements will occur in 2021, after responses to the City's recently issued RFP (request for proposals) are analyzed. Note that the Gambling Act's reporting requirements are in addition to any all restrictions in the City's Governmental Ethics Ordinance that would apply to those "applicants" who "communicate" with City officials or employees, such as the Ordinance's gifts restrictions and lobbyist registration requirements.

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, 126 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 54 such matters.

Summary Index of Ongoing IG/LIG Investigations/Adjudications

There are no completed IG investigations currently awaiting adjudication by the Board.

We post on our website and continually update an ongoing investigative record showing the status of every completed

investigative report brought to the Board by both the IG (12 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. We update it as appropriate, consistent with the Ordinance’s confidentiality provisions. *See*

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PulbicScorecard.pdf>

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 former 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 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>

Note: the fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that.

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.

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.

In 11 matters, the Board has determined that minor violations occurred, and Board sent confidential letters of admonition, as required by Ordinance. These letters are posted on the Board's website, with confidential information redacted out. See https://www.chicago.gov/city/en/depts/ethics/supp_info/ao_-_apptoffil.html

Litigation

Lee v. City of Chicago. In June 2020, the City was sued in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association ("PBPA"). His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City moved to dismiss the enter matter. On February 25, Judge Demacopoulos granted the City's motion to dismiss concerning the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted plaintiff leave to amend the complaint for all of the dismissed counts. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b) of the Ordinance. As a reminder, this is the only claim that survived the motion to dismiss. While Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff, she left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damage. The City filed its answer and affirmative defenses to the amended complaint on April 26.

Note: several PBPA members filed grievances under their collective bargaining agreement, alleging that their right "to counsel of their choice" was violated by COPA. These were settled on terms that do not affect the Governmental Ethics Ordinance's post-employment provisions.

Johnson v. City of Chicago. On October 14, 2020, a now-former elected member of the Library Board of Wilmette (a unit of local government in Illinois), sued the City in U.S. District Court. The case is *Dan Johnson v. City of Chicago*, No. 1:20-cv-06119. The plaintiff asked the court for a preliminary injunction preventing the City from enforcing the "cross-lobbying" ban, §2-156-309, on the basis that it violated his rights of free speech and association under the First Amendment of the U.S. Constitution. On May 14, the Honorable John Robert Blakey granted the City's motion to dismiss the suit on mootness grounds, as the plaintiff is no longer a Wilmette elected official, and thus would not be precluded from registering as a lobbyist with our office. However, the dismissal was without prejudice, meaning that a *new* plaintiff could file a similar lawsuit.

Brookins v. Board of Ethics, et al. This matter is assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board's and my attorneys have moved to dismiss the entire lawsuit and have submitted briefs. We await Judge Atkins's decision.

Freedom of Information Act

Since the last Board meeting, the Board has received four (4) requests.

The first was sent to all departments for records related to another government unit and related topics; we asked the Law Department for its input on a response, which it provided, and the response was sent.

The second was for records filed with the City pursuant to requirements of another City department; we advised the requester that we were the wrong department.

The third was for correspondence during a time period between us and a City official; we responded by partially denying the request based upon our confidentiality obligations, but attached other correspondence including reminders to file Statements of Financial Interests.

The fourth was for the video employees view to comply with the Ordinance's annual training requirements; we sent a copy of the video to the requestor.