

Board of Ethics

Open Session Minutes

April 19, 2017, 2:09 p.m.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Nancy C. Andrade
Stephen W. Beard
Mary T. Carr
Frances R. Grossman
Dr. Daisy S. Lezama
Zaid Abdul-Aleem

STAFF PRESENT

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

MEMBERS OF THE PUBLIC PRESENT

Meredith Monroe, Latham & Watkins
Bill Ruthhart, Chicago Tribune
T.A. James, Chicago Tribune
Casey Williams, Mayer Brown
Michael Graham, Project Six

Orlando Ortiz, Project Six
Alejandra Cancino, BGA
A.D. Quig, The Daily Line
Chris Norborg, Office of Inspector General

The Board's guests introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Nancy C. Andrade and Mary T. Carr, absent) to approve the open session minutes of the Board's special meeting of March 21, 2017.

II. CHAIR'S REPORT

The Chair made no formal report, but did make public comments when the Board re-convened into Open Session after adjourning from Executive Session – see below.

III. EXECUTIVE DIRECTOR'S REPORT

A. Education

Classes and Other Presentations

Since the Board's last regularly scheduled Board meeting on February 15, 226 employees and officials attended regularly scheduled classes on February 16, 23 and 28, March 9, 21, and 30, and April 6 and 18. There are 63 scheduled for classes on April 18, 27 and May 9.

On February 22 and 28, staff conducted two classes for members of the Mayor's management team.

On February 23, staff conducted two classes for new SSA Commissioners and Service Provider representatives. 47 persons attended.

On March 28, the Executive Director gave a presentation to approximately 800 incoming Chicago Police Officers, at the invitation of the Police Superintendent.

On April 10, staff made a presentation to a visiting delegation of anti-corruption officials, journalists, and NGO representatives from Indonesia, at the request of the Mayor's Office and World Chicago.

On March 31, and again on April 24, staff will make presentations to incoming laborers in the Department of Streets & Sanitation, at the request of the Commissioner and the Laborers' Local Union #1001.

On April 24, the first of 3 classes will be held for all employees of the newly-reorganized Civilian Office of Police Accountability (COPA). The other two will be held in May and July. Board legal staff has also assisted COPA in drafting its own internal gifts, conflicts of interests, and confidentiality policies.

On-line Training

Staff is developing the annual 2017 on-line training, but given potential changes to the Ordinance, has delayed it, and expects to have it posted by mid-May.

Lobbyist Training

All lobbyists are required to complete annual training, on line. To date, 270 lobbyists have completed their training. They must complete it before July 1, 2017.

B. Advisory Opinions

Since the last regularly scheduled Board meeting on February 15, 2017, staff has issued 573 informal opinions (it has also issued three (3) formal opinions, two (2) of which were discussed at special meetings; the third will be presented today).

During this time, the leading categories were, in descending order: travel; gifts; lobbying; use of City property/authority; outside employment; Statements of Financial Interests; and outside volunteer service. The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; City Council; Mayor's Office; Department of Planning & Development; Department of Aviation; Chicago Public Library; Department of Public Health; and Department of Law.

358 of these were from City employees in administrative or management positions; 55 from non-administrative/managerial employees; 21 from 11 individual department heads; 31 from 14 different City elected officials; 27 from aldermanic Chiefs of Staff or staffers calling on behalf of the alderman; nine (9) from ethics officials in other government agencies; the remaining 62 were from: 30 lobbyists or persons calling to inquire whether they need to register as lobbyists; eight (8) City appointed officials, 15 from contractors or vendors; the rest came from the media (these last are not actually advisory opinions).

50% came via email; 49% via telephone; the remainder via walk-ins.

Time permitting, several informal opinions of note will be discussed in closed session.

C. Website Modifications/Summary Index of Formal Advisory Opinions/Text of All Formal Advisory Opinions

All formal Board opinions issued since 1986 are now posted on the Board's website (more than 875 of them), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once approved 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 there are others, like Chicago, who issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement procedure.

D. Summary Index of Board Investigations and Regulatory Actions

I am pleased to report that, in closed session, staff will present a draft of the index of 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 will include an ongoing summary of all lobbying regulatory actions which the Board is currently pursuing. It will name names and penalties assessed where authorized by law. There are, to date, 103 such matters. The document shows that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, not a "do-nothing" agency.

While there is nothing confidential about the document, it is still in draft form. Once completed, it will be posted on the Board's website and updated regularly. Investigations concluded prior to July 2013 are themselves confidential, by law, but the Board is authorized to publish summary reports of its investigations, findings and recommendations (and has done so in the past).

E. Summary Index of Ongoing Investigations/Adjudications

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 by IG since late December 2015, there has been little to update, though the IG has begun to report on closed campaign financing investigations which were not brought to the Board for adjudication.

Note that adjudicated or settled matters (on or after July 1, 2013) shall include the names and penalties assessed.

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.

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 mid-level City employee in an operating department, and one (1) department head and one (1) or former department heads that their past conduct violated the Ordinance. In three (3) of these six (6) 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. The Board has not received a report of any completed investigation in the other matter (from the IG). 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.

I note 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.

G. Lobbyists-Regulation and Enforcement

As of today, there are 644 lobbyists registered. This represents an 11% increase in the number of registered lobbyists since the February 15 meeting, and is also the largest number of lobbyists this Board has had since 2011. The Board has collected \$332,000 in registration fees.

The annual registration (or re-registration) deadline for lobbyists was the close of business, Friday, January 20. All lobbyists' filings were completed on-line, using the Board's ELF system. As of this writing, all lobbyists registered in 2016 either re-registered or terminated for 2017, and filed activity reports as required.

As required by law, on January 26, 2017, staff sent out 152 notices of probable cause that the Ordinance was violated to late filing or non-paying lobbyists with respect to their registration and activity report. All but eleven (11) then filed within the notice period, or provided a valid reason (under the Board's revised Rules & Regulations) for not doing so (these lobbyists were permitted to file late and did so). Accordingly, except for those few who were excused for

their lateness, the remaining late lobbyists were determined to be in violation of the Ordinance, and their names were published on our website. Eleven (11) of these lobbyists filed after the due date in the notice of probable cause and, therefore, have been fined \$1,000 per day until filing. One had his fine waived. All but two (2) filed promptly. Thus, the amount of their fines were specifically determined and imposed: a total of \$18,000. One (1) was assessed a \$3,000 fine; two (2) were assessed a \$2,000 fine; one paid. Seven (7) were assessed \$1,000 fines; all paid. One was assessed a \$4,000 fine; it is unpaid.

On March 15, staff sent to the Law Department requests to collect the determined amounts of \$6,000 from the two (2) remaining lobbyists who have not paid their fines (after filing their documents, but beyond the probable cause notice period).

The deadline for lobbyists to file their 2017 first quarter activity reports is tomorrow, April 20, at 11:59:59 p.m. The Board sent reminders of this deadline to all registered lobbyist on April 1, 2017.

H. 2017 Statements of Financial Interests

To date, 1,575 employees and officials have filed their 2017 Statements of Financial Interests, which is 43% of those required to file them by the close of business on May 31, 2017. The office sent reminders via email or first class mail to all those who had not filed as of yesterday, April 17, and will send another reminder on May 15. Staff is in regular contact with ethics liaisons from every City department and ward office, reminding them to remind their not-yet-filed personnel to file, and sending them lists of those who have not yet filed.

Newly hired, appointed, or promoted employees or officials are flagged by ethics liaisons or the Mayor's Office as filers, and are then sent notices to file (with password information) by the Board's "EFIS" system.

Filed forms are posted on the Board's website as soon as they are processed by staff. Typical processing time is 24 hours.

I. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received four (4) new requests under the Freedom of Information Act. The first request was for Statements of Financial Interests for an alderman for five (5) years; the requestor was sent the links for those records, which are maintained on the Board's EFIS system. The second request was for all lobbyists' filings for 4 years; the requestor was advised that records for two of the years requested are no longer maintained and were disposed of pursuant the Board' document retention schedule approved by the Secretary of State; for the remainder, the requestor advised he would develop a spreadsheet he could use to enter all the data. The third request was for varied categories of records referencing the requestor himself; the requestor was advised that this agency located no responsive records. The fourth request was for Statements of Financial Interests filed by 12 different employees; the requestor was sent a link for all but two (2) of the records, and .pdf versions for those remaining two, as they do not exist in the EFIS system.

At 2:12 p.m., the Board VOTED 5-0 (Nancy C. Andrade and Mary T. Carr, absent) 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 Board then excused its guests until the open session reconvened.

During Executive Session, Board members Nancy C. Andrade and Mary T. Carr arrived.

At 3:55 p.m., Member Nancy C. Andrade excused herself from the meeting.

At 3:55 p.m., the Board VOTED 6-0 (Nancy C. Andrade, absent) to reconvene into open session, and the Board invited its guests to re-join the open session of the meeting.

The Chair asked the Board Members and Board staff to introduce themselves to the guests.

The Chair then made a statement explaining that, while the fines in some lobbyist cases may ultimately come to significant amounts if the Board makes final determinations that the Ordinance was violated, the Board looks forward to hearing all the defenses, arguments and materials that it anticipates each subject of probable cause findings will present, and that the Board will come to reasonable conclusions as to any fines assessed and imposed.

The Chair then announced that, earlier in the day, Case No. 17005.LOB was concluded, fines totaling \$92,000 having been paid via two (2) checks, covering fines assessed to David Plouffe for unregistered lobbying, and to the company that hired or retained him.

Last, the Chair thanked members of the media and watchdog groups, both those present at the meeting and those not present, for their work in bringing to light materials on which the Board's lobbying cases are based. Because the Board cannot investigate potential violations of the Ordinance's lobbying or other provisions, it relies on other persons to make such materials part of the public record, where the Board can direct its staff to review them for potential violations.

IV. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

V. APPROVAL OF THE EXECUTIVE SESSION MINUTES OF THE MARCH 21, 2017 SPECIAL MEETING.

The Board announced that in executive session it had discussed (Nancy C. Andrade and Mary T. Carr, absent) approving the executive session minutes of its special meeting of March 21, 2017. The

Board confirmed its discussion in that it VOTED 6-0 (Nancy C. Andrade, absent) to so approve those minutes.

VI. CASEWORK

A. LOBBYING

1. Case No. 17015.Q, Lobbying

In this case, staff had advised the Board that, based on clear Board precedent and other applicable laws or rules, it had concluded that an attorney for a union negotiating a collective bargaining agreement with the City is not thereby engaging in lobbying, as defined in the Ordinance, and had advised the attorney accordingly.

2. Case No. 17011.01, Unregistered lobbying
3. Case No. 17011.04, Unregistered lobbying
4. Case No. 17011.07, Unregistered lobbying
5. Case No. 17011.08, Unregistered lobbying
6. Case No. 17011.12, Unregistered lobbying
7. Case No. 17011.13, Unregistered lobbying
8. Case No. 17011.14, Unregistered lobbying

In the seven (7) cases listed above, which had been pending in the two (2) previous Board meetings, but on which the Board had been unable to vote to due lack of a quorum, the Board VOTED 4-0 (Chair William F. Conlon and Member Zaid Abdul-Aleem, recusing, and Member Nancy C. Andrade, absent) to determine there is probable cause to conclude that individuals had engaged in unregistered lobbying on behalf of persons or entities that had retained or hired them, in violation of the Ordinance, and to issue notices of the Board's finding of probable cause to the parties, giving them until the close of business on May 8, 2017 to respond with any arguments, facts or other materials they wish to present, except on Case No. 17011.04.LOB, in which the Board, by the same vote, determined that there is no probable cause to conclude that an individual had engaged in unregistered lobbying.

9. Case No. 17011.15, Unregistered lobbying
10. Case No. 17011.16, Unregistered lobbying
11. Case No. 17011.17, Unregistered lobbying

In the three (3) cases listed above, which had not previously been presented to the Board, the Board VOTED 5-0 (Chair William F. Conlon, recusing, and Member Nancy C. Andrade, absent) to determine there is probable cause to conclude that individuals had engaged in unregistered lobbying on behalf of persons or entities that had retained or hired them, in violation of the Ordinance, and to issue notices of the Board's finding of probable cause to the parties, giving them until the close of business on May 8, 2017 to respond with any arguments, facts or other materials they wish to present, except on Case No. 17011.16, in which the Board, by the same vote, determined that there is no probable cause to conclude that an individual had engaged in unregistered lobbying.

12. Case No. 17011.18, Unregistered lobbying

In the case listed above, which had not previously been presented to the Board, Case No. 17011.18.LOB, the Board deferred a vote until its next meeting (Chair William F. Conlon recused himself from consideration of Case No. 17011.18.LOB).

13. Case No. 17011.19, Unregistered lobbying
14. Case No. 17011.20, Unregistered lobbying
15. Case No. 17011.21, Unregistered lobbying
16. Case No. 17011.22, Unregistered lobbying
17. Case No. 17011.23, Unreported lobbying
18. Case No. 17011.24, Unregistered lobbying
19. Case No. 17011.25, Unregistered lobbying
20. Case No. 17011.26, Unregistered lobbying

In the eight (8) cases listed above, which had not previously been presented to the Board, the Board VOTED 6-0 (Member Nancy C. Andrade, absent) to determine there is no probable cause to conclude that individuals engaged in unregistered or unreported lobbying.

B. CAMPAIGN FINANCING

21. Case No. 17017.CF

In executive session, the Board heard staff's report on this matter, involving the issue of whether certain persons might have been "seeking-to-do-business" with the City as that term is defined in the Ordinance. Staff's research is continuing. The Board discussed preparing an advisory opinion with proposed recommendations and determinations.

C. REFERRED COMPLAINT REPORT

22. Case No. 17016.C

Staff reported that it received a written complaint alleging improprieties by several individuals. However, the complaint was also filed with other investigative agencies, including and the City's Inspector General. Staff informed the complainant that it could take no action on the matter, but that it appeared that the complainant had filed the complaint with the correct agencies.

VII. OLD BUSINESS

To help clarify the Board's actions at this meeting, and ensure that all present know the status of pending lobbying matters listed on the agenda for today's meeting, the Executive Director explained the current posture of each of the lobbying cases. The Board has commenced 27 cases:

In one (1) case, Case No. 17005.LOB, the Board found that an individual violated the Ordinance for engaging in unregistered lobbying, as did the person or company that retained this individual, and the \$92,000 fine was paid;

In 12 cases, the Board determined that there was no probable cause to conclude that an individual had engaged in unregistered lobbying or failed to disclose lobbying activity as required, and dismissed these matters;

In one (1) case, the Board has deferred a finding of probable cause until its next meeting;

In the remaining 13 cases, the Board found probable cause to conclude that an individual and the person who retained or hired that individual has violated the Ordinance's lobbying provisions. The Board made this finding in five (5) of these matters at previous Board meetings. The other eight (8) were decided at today's meeting. The Board has received written responses from the first five (5), and responses from the eight (8) individuals and entities from today's meeting are due by close of business on May 8. The Board will then begin considering final determinations in these 13 matters.

The Board then briefly discussed changing the start time of its meetings to perhaps 2:00 p.m., or even in the morning.

Member Stephen W. Beard excused himself at 4:15 p.m.

At 4:17 p.m., the Board VOTED 5-0 (Stephen W. Beard and Nancy C. Andrade, absent) to adjourn the meeting.