

BOARD OF ETHICS

Open Session Minutes

OCTOBER 19, 2020, 3:05 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
David L. Daskal
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
Paully Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Dr. Stephanie Cox-Batson
Dr. Daisy S. Lezama

GUESTS ATTENDING

Alex Nitkin, Daily Line
Alisa Kaplan, Reform for Illinois
Isaac Wink, Reform for Illinois
Miykaya Lopez

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 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of September 14, 2020.

II. CHAIR'S REPORT

The Chair again thanked the staff for its work during the pandemic and extended his congratulations to the Board members who were re-appointed for new four-year terms: Dr. Stephanie Cox-Batson, David Daskal, and the Honorable Barbara A. McDonald. He then asked the Executive Director to report on the status of the Jason Lee v. City of Chicago lawsuit, and of the non-profit lobbyist registration laws. The Executive Director reported that the City is preparing a motion to dismiss Lee's amended complaint, and the Judge will likely set a briefing schedule. He also reported that efforts may soon again be under way to continue working on potential revisions to the non-profit lobbying law, perhaps adding a compensation and activity threshold per calendar quarter, such that no individual would need to register until and unless they meet both prongs, and that this would bring the City in line with the way other major cities handle non-profit lobbying. He also reported that the Board is working with the Mayor's Office on this to re-engage members of the non-profit community, who had raised substantive concerns in late 2019.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Staffing during the Covid-19 Pandemic

Except for me, staff members continue to work remotely for the most part, but all have come in from time to time to work on tasks that can be completed most efficiently in the office. I am fortunate to be able to come in most every day. Recently, the City's human resources policies were amended; now all Board employees will be required to work at least one full day per week in the office, unless they are ill. Most importantly, we're fortunate to have each other in this time, which must resemble 1941-45 in its way.

B. Amendments to the Ordinance

1. Cross-Lobbying ban. On December 18, 2019, the City Council voted into law several amendments to the Governmental Ethics Ordinance. The Board played a key role in drafting them. Effective April 14, 2020, they:

i) prohibit all City employees and officials from acting as lobbyists on behalf of private clients before the State or any other unit of local government in the State, or from receiving compensation or income from such lobbying by others (note: appointed officials may continue to lobby provided the subject matter of their lobbying is wholly unrelated to the work of their City board or commission); and

ii) prohibit elected officials from the State or any other "unit of local government" in the State ["unit of local government" is a defined term] from acting as a lobbyist on behalf of private clients before Chicago government. The Board began enforcing this new ban when it was first passed. Several lobbyist-legislators then resigned. An amendment was then submitted to City Council in April 2020 that would have effectively relaxed the ban for elected officials from jurisdictions with no pending or recurring legislative or contractual matters involving the City." As was widely reported last week, on October 13, I testified before the City Council's Committee on Ethics and Government Oversight on the April amendment (which, due to City Council Rule 41, was granted a committee hearing on October 13). The Committee rejected that amendment by a unanimous vote and the one affected lobbyist has been notified that he must comply with the law.

2. As has now been widely publicized, implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to at least January 1, 2021. We are working with the Mayor's Office and members of the non-profit community on amendments.

3. There will be more discussion in closed session of potential Board actions relating to the procedures covering chapter 2-156 (Governmental Ethics Ordinance) investigations completed by the Office of Inspector General ("IG").

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

C. Board Reappointments

I am pleased to announce that the City Council approved the reappointments to the Board of Dr. Stephanie Cox-Batson, David Daskal, and the Honorable Barbara McDonald for new terms.

D. 2021 Budget

On July 24, we submitted our 2021 budget request, which reflects a cut of \$9,031 in non-personnel costs, to offset the rise in personnel expenses in that amount. We have been advised by the Budget Director that we will not suffer any layoffs. Our virtual budget hearing is scheduled for Friday, October 30.

E. Education

Classes and other presentations

We have cancelled all in-person classes from March 17 on. We are unsure when we will be able to resume but are working to come up with a plan to move to virtual classes. We have extended all training deadlines accordingly. All Board classes cover sexual harassment.

On September 17, I gave a 60-minute virtual presentation to members of the Chicago Animal Care Commission and senior staff from that agency.

I am currently scheduled to give a 60-minute virtual training to the entire staff of the Department of Business Affairs and Consumer Protection on December 2.

On-line Training

For appointed officials

To date, all but 22 appointed officials have completed the new annual training for appointed officials. This represents 97.8% of the total. 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 Intergovernmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 32,390 employees and all 50 aldermen have completed the 2019-2020 program; 30 employees have not, though six (6) are in progress. This puts the City at 99.92% compliance. All but two (2) of those who have not completed the training are City Council employees, working remotely. All will complete it as soon as they can.

We are finalizing the 2020-2021 on-line training and intend to post it this week, with a due date of June 1, 2021.

For lobbyists

To date, 260 lobbyists have completed the all-new annual on-line training, which is 30.7% of the total. Lobbyists will have until March 1, 2021 to complete it.

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

As the President of COGEL, I can report that planning for the streamlined virtual conference in December continues. There will be two plenary sessions, and several videos of panel discussions. All will be offered free of charge to more than 600 COGEL members, including any Board members or staff of our office. The schedule is:

The following pre-recorded sessions will be approximately one hour long and will be available on-demand on the COGEL website throughout the month of December:

- Ethics Update (combined into one 60-minute session this year) (I and the Executive Director of the Ohio State Ethics Commission do this session every year)
- Elections Update
- Enforcement Update
- Campaign Finance Update (combined into one 60-minute session this year)
- Lobbying Update
- FOI Session
- Professional Development Session (Communication and Diversity)

The live COGEL sessions this year are as follows:

December 1, 2020 3:00 PM ET - President’s Welcome / Plenary Session

December 8, 2020 3:00 PM ET - Annual Business Meeting

December 15, 2020 3:00 PM ET - Awards Presentation / Networking Event / 2021 Conference Announcement

G. Consultation with Indiana Shared Ethics Commission advocates

On September 16, I met (via Zoom) with 3 members of the Shared Ethics Commission covering Lake, Porter, Newton Counties in Indiana, about setting up their Commission and implementing a training program. We sent them a thumb-drive version of our two most recent trainings for all employees and elected officials.

H. Sister Agency Ethics Officers

The next meeting of the ethics officers from the other local governmental agencies will be in November: these are our colleagues from 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). Please note that we are in talks with the Chicago Public Schools to assist them in implementing a lobbying policy. We may extend our ELF program to include lobbyists registered with the CPS.

I. Advisory Opinions

Since the Board’s last meeting on September 14, we have issued 345 informal advisory opinions. The leading categories for informal opinions were, in descending order: City Property; Lobbying; Gifts; Political Activity; Post-employment; and Conflicts of Interests/Improper Influence.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Police Department/Civilian Office of Police Accountability (COPA); Department of Cultural Affairs and Special Events; Treasurer's Office; and Department of Aviation.

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.

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 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.

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

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. There are no pending Board-initiated enforcement actions.

K. 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.

L. 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.

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

There are currently no completed IG investigations awaiting adjudication.

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 11 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 former 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 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 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>

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.

N. 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.

O. 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.

P. Litigation

Lee v. City of Chicago. On June 26, the City was served with a lawsuit, filed 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. 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 has filed its brief to dismiss the entire matter, and we await oral argument on the City's motion.

As a corollary, please note also that several Chicago Police Sergeants have filed grievances against the City, alleging that the Board has improperly denied them counsel of their choice. I am scheduled to testify in that arbitration on November 18, 2020.

Q. Lobbyists-regulation and Enforcement

To date for 2020, there are 846 registered lobbyists – another all-time high – and we have collected \$412,850 in lobbying registration fees. This represents ~45% of our expected budget request for 2021.

Q3 activity reports are due by October 20, 2020. To date about 85% of lobbyists have filed them.

R. Freedom of Information Act

Since the last Board meeting, the Board has received eight (8) new requests for records

The first was for records involving discipline of an employee in another department; we advised the requestor that we were the wrong department from which to request the records.

The second was for the October open session agenda; the requestor was advised there was no record and when there was it would be posted pursuant to the OMA.

The third was for records involving opinions issued addressing social media blocking versus "comment-restricted"; the requestor was advised we have no such records.

The fourth was for limited records involving disciplinary files for certain police officers and disciplinary action against a list of police officers; the requestor was advised we have no such records.

The fifth was for a list of records involving generally disciplinary files for a list of police officers; the requestor was advised we have no such records.

The sixth was for records in 2017 involving certain police officers and visits by certain U.S. Attorneys to Chicago Police Headquarters; the requestor was advised we have no such records.

The seventh was addressed to all departments for employment records between the requestor and a third party; we responded using a draft provided by the Department of Law.

The eighth was for Board contracts with respect to advertising; the requestor was advised we have no such records

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

1. Status Report: Case No. 19029.IG, Post-Employment, Confidential Information, Conflicts of Interest

The Executive Director reported that the subject of the case paid his fine and the file is closed.

2. Consideration of Sending Formal Notifications and Recommendations to City Officials based on Communications from the Office of Inspector General to the Board and Others

The Board deferred discussion of this matter until Executive Session.

VII. NEW BUSINESS

Consideration to Issue Advisory Opinion re Unauthorized Use of City-owned Property by City Employee with respect to City Employee's Personal Perspectives

The Board deferred discussion of this matter until Executive Session.

At 3:15 p.m., the Board VOTED 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, 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, 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.

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

At 4:30 the Board VOTED 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The member of the public was invited to rejoin the 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 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the September 14, 2020 meeting.

II. OLD BUSINESS

1. Status Report: Case No. 19029.IG, Post-Employment, Confidential Information, Conflicts of Interest

The Executive Director reported that the subject of the case paid his fine and the file is closed.

2. Consideration of Sending Formal Notifications and Recommendations to City Officials based on Communications from the Office of Inspector General to the Board and Others

The Board discussed that it will send the Office of Inspector General a letter signed by the Chair on behalf of the entire Board outlining the Board's concern and request.

III. NEW BUSINESS

Consideration of Issuing an Advisory Opinion re: the Misuse of City-owned Property

The Board VOTED 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to issue an advisory opinion regarding the misuse of City-owned property by an elected official with respect to that official's personal views.

IV. CASEWORK

A. Potential Probable Cause Findings re Violations of §2-156-445(a) of the Governmental Ethics Ordinance

1. Case Nos. 20026.CF.1 and 20026.CF.2, Campaign Financing

The Board VOTED 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to find there is probable cause to conclude that a City contract made excessive political contributions to committees affiliated with two aldermen and to send notices of probable cause to the contributor and to the recipients, providing for an opportunity to respond to the Board by each party in order to attempt to overcome those Board findings.

At 4:44 p.m., member Nancy C. Andrade left the meeting and the Board VOTED 4-0 (Nancy C. Andrade, Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to adjourn the meeting.