

City of Rochester Board of Ethics – November 18, 2014

MINUTES

Meeting called to order at 6:34 pm by Board Chair Carl Steinbrenner.

Members present:

Carl Steinbrenner
Honorable Loretta Scott
James Antonevich
Saul Maneiro
Calvin Lee
Chris Lindley
Tim Weir

Members not present: None

Non-Members Present:

Deputy Corporation Counsel Brian Curran

Reading of Agenda:

- Chair Steinbrenner reviewed the Agenda for the meeting.

Approval of Minutes:

- Minutes for the October 21, 2014 meeting were approved by a vote of 7 – 0.

Business

- Board Member Antonevich provided an update on the subcommittee's progress in amending the ethics code and advised the subcommittee is following a "best practices" approach by benchmarking the City's code against other municipal ethics codes. The subcommittee divided the ethics code into manageable segments which will be addressed separately during the monthly subcommittee meetings.
- In preparation for deliberations on the recent advisory opinion request from Councilmember Jacklyn Ortiz, the Chair opened the floor for board members to address potential conflicts regarding the Rochester Housing Authority (RHA).

- Board Member Lee advised he currently serves on the RHA Board and that any participation in the discussion of RHA matters might be viewed as a conflict of interest. In order to ensure an impartial review of the issues, Board Member Lee advised he would recuse himself from any discussion concerning RHA. Board Member Lindley moved to accept the offer of recusal and Chair Steinbrenner seconded the motion. The motion was carried 6-0.
- Secretary Weir made the Board aware his sister-in-law, Anne Riley, maintains a contract with RHA to provide legal services to the organization. Secretary Weir advised this relationship would not impact his ability to impartially deliberate on the issues at hand. However, if the Board felt otherwise, Secretary Weir agreed to comply with a request for recusal. Board Member Lindley moved that this relationship would not impact Secretary Weir's ability to be impartial and to allow Secretary Weir to participate in the RHA deliberations. Board Member Antonevich seconded the motion. The motion was carried 6-0.
- Deputy Corporation Counsel Brian Curran provided an overview of his legal analysis regarding the 11 questions cited in City Councilmember's letter to the Ethics Board. Counsel Curran emphasized that RHA is separate entity and its employees are not bound by the City's code of ethics. The Board's focus should be limited to the role of City employees how any potential conflicts of interest might negatively impact City government. Counsel Curran referenced a memo to the Chair dated October 29, 2014, in which he provided guidance on the Board's scope of authority regarding the RHA issues. In the memo, Counsel Curran determined the following four issues raised by Councilmember Ortiz were within the scope of the Board of Ethic's authority:
 - Is there a conflict of interest in having a member of the City's Law Department sit on the RHA board?
 - Is it inappropriate, illegal and/or a conflict of interest for the sitting council member to serve as the executive director of the RHA?
 - Is it inappropriate, illegal and/or a conflict of interest for an elected City of Rochester public official to lead a public entity with federal funds
 - Is it in appropriate, illegal, and/or a conflict of interest for John Borek's (Councilman McFadden's Legislative Aid) wife to serve as an RHA board member?

Counsel Curran determined the remaining seven issues cited in the letter were not within the Board's scope of authority. Counsel Curran indicated that his analysis of this issue was only a recommendation and that the Board has the authority to exercise its own judgment about which issues are within it scope of authority.

After further discussion among Board members, Board Member Maneiro moved to consider the four issues as proposed by Counsel Curran and to not render an opinion on the others determined to fall outside the scope of the Board's authority. Board Member Scott seconded the motion. The motion was carried 6-0.

At the request of Chair Steinbrenner, Counsel Curran provided the Board an overview of New York State's Open Meeting Law. This included an exception which allows a Board to move into an Executive Session when discussing personnel matters which might involve the discipline or dismissal of an employee.

The Board discussed the merits of moving into an Executive Session at this point in the deliberations. Several members expressed concern over the appearance of secrecy and encouraged the Board to remain in open session. Counsel Curran advised that at any time going forward the Board could exercise this option if necessary. Board Member Lindley moved to remain in open session and Board Member Maneiro seconded the motion. The motion was carried 5-1.

The Board discussed if it were necessary to address the procedural concern cited in the letter regarding the participation of Board Member Lee. It was agreed the concern was a "moot point" since Board Member Lee had recused himself from the deliberations.

The Board deliberated on four issues within the scope of its authority. The results were as follows:

Is there a conflict of interest in having a member of the City's Law Department sit on the RHA board?

After deliberation, Board Member Lindley moved that there is no conflict of interest in having an employee of the City's Law Department serve on an outside board, to include RHA. Board member Scott seconded the motion. Motion was carried 6-0.

Is it inappropriate, illegal and/or a conflict of interest for the sitting council member to serve as the executive director of the RHA?

Counsel Curran advised he researched the number of contracts between the City and RHA over the past four years and found limited contractual agreements between them. Only three contracts were identified and described as small in scale. All were under \$100,000. Three resolutions were identified between the two parties. Counsel Curran also made the Board aware that per New York State law, City Council approves the compensation levels of RHA employees. Several Board members requested more

information regarding the level of involvement of City Council and RHA leadership in this process. Also questions were raised regarding the materiality of these expenditures with respect to RHA's total budget. Counsel Curran agreed to conduct additional research to address the Board's questions.

Chair Steinbrenner moved to cease deliberations pending Counsel Curran's research and to place this matter on the agenda for the December 9, 2014 meeting. Secretary Weir seconded the motion. Motion was carried 6-0.

Is it inappropriate, illegal and/or a conflict of interest for an elected City of Rochester public official to lead a public entity with federal funds.

After deliberation, Board Member Scott moved that there is no general prohibition against an elected City official accepting a position of leadership with a public entity that receives federal funds. Board Member Antonevich seconded the motion. The motion carried 6-0.

Is it inappropriate, illegal, and/or a conflict of interest for John Borek's (Councilman McFadden's Legislative Aid) wife to serve as an RHA board member?

After deliberation, Board Member Lindley moved there is no conflict of interest for a City employee's spouse to serve on an outside board, to include RHA. Secretary Weir seconded the motion. Motion was carried 5-1. It was noted that a City employee's spouse is not bound by the City's code of ethics and that any membership on a company board falls outside the scope of the Board's authority.

New Business

- None

Adjournment

- Chairman Steinbrenner made a motion to adjourn which was seconded by Board Member Scott. Motion was approved 7 - 0.

Meeting adjourned at 8:08 pm.

**Next Meeting: December 9, 2014; 6:30 p.m.
Rochester City Hall
30 Church Street, Room 208A**