

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: August 31, 2016

**MEMORANDUM**

TO: Members of the Ethics Board

FROM: Steve Brist, Assistant City Attorney

RE: Ethics Board Meeting of September 1, 2016  
Complaint: Singer v. Nicholson

An examination of the Complaint Form in the above-referenced matter leads me to a conclusion that there may be jurisdictional defects in Mr. Singer's complaint.

First, the complaint does not cite a specific section of the Ethics Code Ordinance that was alleged to have been violated. Instead, the Complaint cites the "Madison Ethics Code Simplified" which states that the purpose of the Ethics Code is "to ensure that City elected officials, employees, and appointees (a) act impartially, responsibly and independently... and (c) serve the public interest rather than some private interest." A copy of the relevant page from the Ethics Code Simplified pamphlet is attached to this memorandum. The Complaint does not explain how the cited purposes relate to a code violation. It appears that the language quoted in the pamphlet relate to Sec. 3.35(4) of the Ethics Code, which contains the general preamble to the Ethics Code entitled "Responsibility in Public Office", rather than a section of the "Standards of Conduct" contained in Sec. 3.35(5). If this complaint were dismissed for this first reason, it would likely be possible for the complainant Mr. Singer to refile the complaint, with an appropriate citation to the Ethics Code itself.

However, the second apparent defect may be more fundamental. I have been informed that Ms Nicholson, the Subject of the Complaint, is not a City employee and is therefore apparently not subject to the Ethics Code. A witness from the Parks Department is prepared to testify that Ms Nicholson is not employed by the City, but is instead an employee of the Olbrich Botanical Society, a 501(c)3 membership organization.

Sec. 3.35(3) MGO provides that the Ethics Code applies to elected officials, employees and members of boards and commissions.<sup>1</sup> Based on this provision, a reasonable person might conclude that the Ethics Code does not apply to employees of other organizations, even if those private organizations might perform functions that are of benefit to the City.

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<sup>1</sup> Sec. 3.35(3):

- “(3) Application. This section applies to the following persons:
- (a) Elected officials of the City;
  - (b) All employees of the City;
  - (c) All members of City boards, committees, commissions, subcommittees and ad hoc committees.
- Wherever the word “incumbent” appears in this section, it shall mean all those included in subdivisions (3)(a), (b), (c).”

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I have had a general discussion of the existence of these two issues with Mr. Singer by telephone, in response to an inquiry from Mr. Singer regarding the purpose of the jurisdictional hearing. Mr. Singer was informed the hearing was his opportunity to argue jurisdiction to the Board.

Attachment: (Page 1) Madison Ethics Code Simplified

# MADISON ETHICS CODE SIMPLIFIED

The goal of the **Simplified Code** is to describe the City of Madison Ethics Code in everyday language. It is not intended to be a substitute for the Code. **Anyone who is uncertain whether a particular action (or inaction) may be a violation of the Code, or who believes that a violation of the Code has occurred, should obtain a copy of the Code and/or seek the advice of the City Attorney's Office or the City of Madison Ethics Board.**

## WHAT IS THE MADISON ETHICS CODE?

The Code spells out ethical standards of conduct intended to foster public trust and promote confidence in the integrity of government by avoiding the appearance of self-interest, personal gain, or benefit. The Code also requires written disclosures by most City elected officials, employees and appointees regarding their private financial or personal interests in matters that may affect the City. Page 3 of the Simplified Code discusses this obligation in greater detail. The Ethics Code is found in Section 3.35 of the Madison General Ordinances (MGO).

## WHY HAVE A CODE?

The Madison Ethics Code establishes guidelines to insure that City elected officials, employees, and appointees (a) act impartially, responsibly and independently, (b) make decisions and policies through proper channels of City governmental structure, and (c) serve the public interest rather than some private interest.

The major areas of responsibility and accountability spelled out in the Code include:

- Disclosure of conflicts of interest and possible disqualification from subsequent action
- Use of office for private gain
- Disclosures of confidential or privileged information
- Receipt of gifts and favors
- Incompatible employment
- Restrictions after leaving office or appointment.

By enacting a Code of Ethics, the City recognizes that certain responsibilities accompany public office or public position. These responsibilities address the need for City officials, employees, and appointees to discharge their duties in the public interest, uphold the U.S. and State Constitutions, and carry out the laws of the nation, state, and municipality with impartiality and fairness and without regard to their private interests.