

**STATE OF WISCONSIN
CITY OF MADISON
ETHICS BOARD**

Katherine M. Hurtgen

v.

File No. 44164

Gregg McManners

**FINAL DECISION FINDING NO JURISDICTION
AND DISMISSING THE COMPLAINT**

This matter came on for a hearing before the Ethics Board on September 1 and September 22, 2016, and October 25, 2016. Having determined that the Ethics Board lacks jurisdiction over the matters alleged in the complaint, the Board issues this Decision Finding No Jurisdiction and Dismissing the Complaint.

THE COMPLAINT AND THE HEARINGS

Katherine Hurtgen, a City of Madison employee employed as the Business and Finance Manager at Monona Terrace (MT) filed the complaint on May 6, 2016, against Gregg McManners, employed as the Director of MT and Hurtgen's immediate supervisor. The complaint alleged five violations of the City's Code of Ethics, sec. 3.35, MGO:

Count 1: McManners improperly used a sole source contract for the Hiebing Group, contrary to City ordinance and therefore contrary to sec. 3.35(4), MGO.

Count 2: McManners improperly allowed Studio Gear, a contractor, to exceed \$25,000 in payments from the City without filing an Affirmative Action Plan, contrary to City ordinance and therefore contrary to sec. 3.35(4), MGO.

Count 3: McManners improperly directed Ms. Hurtgen to work with the Friends of Monona Terrace, an affiliated organization that raises funds for MT, contrary to sec. 3.35(5)(c), MGO.

Count 4: McManners improperly allowed Tai Ping, a contractor, to exceed \$25,000 in payments from the City without filing an Affirmative Action Plan, contrary to City ordinance and therefore contrary to sec. 3.35(4), MGO.

Count 5: McManners improperly failed to remedy time card issues, in violation of federal and state wage laws, and therefore contrary to sec. 3.35(4), MGO.

At the hearing on September 1, 2016, the City Attorney questioned the Board's jurisdiction, since the Board has on several prior occasions ruled that violations of sec. 3.35(4), MGO, without more, are not valid complaints within the jurisdiction of the Ethics Board. Sec. 3.35(4) reads:

Responsibility of Public Office. Incumbents are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, state, and municipality. They are bound to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Incumbents shall adhere to the rules of work and performance established as the standard for their positions by the appropriate authority. They shall not exceed their authority or breach the law or ask others to do so, and shall work in full cooperation with others unless prohibited from so doing by law or by officially recognized confidentiality of their work.

The Board reasoned in the prior cases that it did not have the expertise to determine when a person had violated other laws, and expanding this section to cover such violations would lead to absurd results, e.g., a covered person getting a parking ticket could then have an ethics complaint filed against them and the Board would have to hold a hearing.

On September 1, the Board rejected its prior reasoning and found it had jurisdiction because the face of the complaint alleged violations of sec. 3.35(4), MGO. McManners then retained legal counsel, who filed a Motion to Dismiss, which was heard on September 22, 2016. The Board voted to hold the motion to dismiss in abeyance, and asked the City Attorney to request reports from other City agencies as to whether McManners had violated other City ordinances. At this hearing, the attorney for Hurtgen admitted that the claim in Count 3 did not fall within sec. 3.35(5)(c), MGO, for outside employment, but was a claim under sec. 3.35(4). The Board heard extensive argument from the attorneys at this hearing, but did not take testimony.

On September 22, 2016, the Board found that it did not have jurisdiction over the complaint as set forth in this decision.

ANALYSIS AND DECISION

The Board finds that the allegations of three of the counts of the complaint, counts 2, 4 and 5, contain no allegation of any action by McManners that was within the 12 months prior to the filing of the complaint on May 6, 2016. The Code of Ethics requires that such an allegation be made to give the Board jurisdiction. Sec. 3.35(12)(c), MGO. Therefore, counts 2, 4, and 5 are dismissed as time-barred.

The Board finds that counts 1 and 3 do not allege any violation of secs. 3.35(5)-(9) or (14) of the Code of Ethics. These counts only allege other legal violations that are then alleged to be within the Board's jurisdiction under sec. 3.35(4), MGO. In addition, the Board finds that the reports filed by the other City agencies do not find any action by McManners violated other city ordinances. Adhering to its prior rulings, the Board finds that it lacks jurisdiction over these counts of the complaint. Therefore, counts 1 and 3 are dismissed.

All counts of the complaint having been dismissed, the Board's actions on this matter are concluded.

Approved on behalf of the Board of Ethics this _____ day of _____, 2016.

Michael P. May, City Attorney

