

CITY OF MADISON
ETHICS BOARD

In re: Gregg McManners

Ethics Board Matter #44164

BRIEF IN OPPOSITION TO MOTION TO DISMISS

INTRODUCTION

This brief is in opposition to the Motion to Dismiss filed by Gregg McManners (“McManners”) on Friday, September 16, 2016. The filing of this Motion to Dismiss occurred over two weeks after this Board unanimously found jurisdiction to hear this case, and over four months after this Compliant was filed on May 8, 2016. This Motion to Dismiss is too little too late, and the Motion is easily defeated on the merits, even if it had been filed in a timely fashion, for the reasons included herein.

I. The Ethics Board Already Correctly Determined that it Has Jurisdiction.

At the jurisdictional hearing on September 1, 2016, the Ethics Board evaluated the allegations, analyzed the ethics code, and determined that it had jurisdiction over all five claims. Undoubtedly, McManners is not pleased with this decision against his interests. He for some reason asserts that the procedural rules be bent in his favor in that he asserts that now, after he had the opportunity to bring witnesses and present evidence, but declined to do so, is the time to challenge jurisdiction. However, in not bringing up any of these issues before the Board on the date of the hearing, McManners has waived his opportunity to do so.

McManners' ostensible concern over the possibility of the Ethics Board having "infinite" jurisdiction and his attempt at a slippery slope argument vis a vis parking tickets being brought before the ethics board fall flat as unrealistic and misses the point of the Ethics Code. In bringing these arguments, McManners is attempting to minimize the severity of his numerous ethical violations. More concerning is his inability to provide any alternative venue for the bringing of the claims. Where then, would a concerned citizen bring concerns over a City employee's continued failure to comply with the Madison Ordinances? And, how would a continued failure to follow Madison Ordinances not be questionable, ethically? Both the Madison Ethics Board Policy Manual and the Ethics Code make it clear that this is, in fact, the correct venue, and the Ethics Board has jurisdiction.

The purpose of the Board is to "see that the purpose of the code of Ethics is uniformly applied to all City of Madison Officials and Employees." (See, Madison Ethics Board Policy Manual). Within the declaration of policy in the Ethics Code, it states that the purpose of the code is "to establish guidelines for ethical standards of conduct for all such officials and employees." MGO 3.35 (1). The Ethics Code states that incumbents are bound to "carry out impartially the laws of the nation, state and municipality, and that they are not to "breach the law or ask others to do so." MGO 3.35(4). The ethics complaint alleges that McManners violated numerous laws and asked others to do so – precisely what the Ethics Code, and the Ethics Board, are set up to address.

II. The Complaint Was Brought within the Proper Time Frame, and is Therefore Reviewable.

The Complaint alleges that McManners has been continuously violating the Ethics Code through consistently ignoring or worse, purposely working around, various purchasing and other City ordinances, and asking his employees to do the same. The ethics complaint she filed is

structured by violation for the purposes of clarity, and looking at each violation individually in a vacuum belittles the overall manner by which McManners is governing a large City of Madison Department. None of the allegations are time-barred, as all are matters of continuing violation.

McManners has cherry-picked statements from the Ethics Complaint regarding instances that occurred outside of the 12-month time frame either because he is attempting to confuse the Board, or possibly because he doesn't understand how statutes of limitation work. That Hurtgen mentions facts that occurred outside of the 12-month window do not automatically make a claim not actionable due to time. Rather, if a continuum of events is established, the last actionable event in a sequence of events determines the time for statute of limitations purposes. *See Robinson v. Mt. Sinai Medical Center*, 137 Wis. 2d 1, 402 N.W.2d 711 (1987); *Evers v. Hager*, 188 Wis. 2d 82 (Ct. App. 1994) (unpublished opinion).

A. Hiebing

Hurtgen's first claim, involving skirting purchasing rules to enter into a contract with Hiebing, very clearly states that the alleged misconduct continually accrued over a number of years, but unequivocally included actions within the previous 12 months, in contracting with Hiebing in August 2015. (*See* Complaint, p. 2; Ex. 1, 2).

B. Studio Gear

The second claim regarding Studio Gear likewise falls within the time frame. Payments for Studio Gear equipment rose to over \$25,000 by April 15, 2015. Studio Gear then requested payment by check in April or May from Monona Terrace. Hurtgen brought this request to McManners' attention. McManners then told Hurtgen to make purchases on the "P" (purchasing) card knowing it would be a way around the Affirmative Action Ordinance.

(Complaint, Ex. 8). This last action in directing Hurtgen to pay with a P card occurred within the previous 12 months, and therefore, the second claim is not time-barred.

C. Friends of Monona Terrace

The allegation that McManners has instructed Hurtgen to manage the finances of the Friends of Monona Terrace (or Monona Terrace Friends Group), is a violation that continues to this day as she still keeps the checkbook and receives the bank statements. Hurtgen sent an email to the City Attorney's Office in September 2015 complaining about the practices (Complaint, Ex. 9).

D. Tai Ping Carpets

The fourth claim against McManners involves Tai Ping's failure to file an Affirmative Action plan, and McManners' ignoring such failure and doing business with Tai Pig anyway. The discovery of these events occurred during various dates in August of 2015. Again, this is within the 12-month time frame.

E. Time Card Fraud

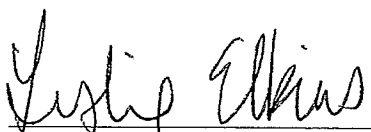
The fifth claim alleges time card fraud in relation to the failure of certain employees, in particular maintenance employees, to correctly document their time. In order to properly discipline employees for errors on their time cards, a timecard policy must be signed. However, the files of the maintenance employees *still* do not have signed time card policies in their files. Hurtgen has brought this issue up to McManners on multiple occasions, yet he has failed to properly oversee this issue or to bring the employees into compliance with the policy. In his pre-hearing brief, McManners attaches an unsigned time-card policy, but that certainly does not prove that the polices have in fact been signed, or that they are being followed. (McManners Ex. 19). Accordingly, the violation continues to this day and therefore this is not time-barred.

CONCLUSION

In conclusion, the Ethics Board possessed the capacity to properly decide that Hurtgen's complaint fell within its jurisdiction, and that issue is now moot. Furthermore, Hurtgen has set forth facts to indicate that the events alleged in her Complaint took place well within the 12-month time frame required by the Ethics Code. More importantly, however, is the fact that McManners' conduct should not be classified as singular events or minor instances, but rather a general disregard for proper governance and ethics, and failure to prosecute the issue would only demonstrate to other City officials and employees that such conduct is accepted and tolerable. As such, the Ethics Board should fully hear Hurtgen's Complaint on its merits and act according to its duties under the City of Madison ordinances.

Respectfully submitted this 20th day of September, 2016.

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