



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes ETHICS BOARD

Wednesday, December 8, 2010

4:45 PM

210 Martin Luther King, Jr. Blvd.
Room 108, City-County Bldg.

Ethics Board may go into closed session when considering Agenda Items 8, 9, 10, and 11.

Others Present: Steven Brist (staff); Brenda Konkel, David Pickell, Rosemary Lee, Rick Petri, Lisa Subeck, Deidre Garton, Tom Carto, Greg Everts, Ald. Pham-Remmele)

1. CALL TO ORDER / ROLL CALL

Chair Michael Jacob called the meeting to order at 4:52 p.m. A quorum was present and the meeting was properly noticed.

2. APPROVAL OF MINUTES

The draft minutes of the November 3, 2010 meeting were approved on a motion by Eric Hands, seconded by Laura Rose. Motion was passed by a voice vote.

3. PUBLIC COMMENT

4. DISCLOSURES AND RECUSALS

Members of the body should make any required disclosures or recusals under the City's Ethics Code.

In regard to Agenda Item 8, Eric Hands stated that he is a member of the Board of the Vera Court Neighborhood Center, which seeks funding from the Community Services Committee.

Also in regard to Agenda Item 8, Michael Jacob stated that his wife is a Director at the Goodman Community Center, which seeks funding from the Community Services Committee. Mr. Jacob also stated that he is a member of the City Early Child Care and Education Committee.

In regards to Agenda Items 9, 10 and 11, Alder Michael Verveer stated that he is a member of the Board of the Cultural Arts District Board and that he has had broad conversations with Davin Pickell on how to file complaints under the Ethics Code.

In regard to Agenda Item 8, Carol Weidel stated that she has served as the Treasurer of the election campaign committee of the Complainant Brenda Konkel.

There were no recusals.

NEW BUSINESS

5. Creating Section 3.35(6)(i) of the Madison General Ordinances to establish conditions and procedures for a third party to pay for incumbent's permitted expenses.
- Ald. Pham Remmele spoke in favor of the proposal. She stated she favored increased transparency. She suggested a possible second report to be completed by the Comptroller every 6 months and delivered to the Common Council, with reasons for the Comptroller's determinations on the appropriateness of the third party payment, along with information on the 3rd party itself and the trip.**
- Rosemary Lee spoke and stated that the employee should do the report when they return and the onus should be on the traveler.
- Brenda Konkel stated that not many forms are filed in the Clerk's Office under Sec. 3.35(6)(h) MGO. She suggested that the Clerk's Office could put the forms on their website. She stated the Mayor had filed a form in October, and that there were only 6 or 7 forms on file and having the forms online might serve an educational function. Ald. Verveer asked Assistant City Attorney Brist to contact the City Clerk and ask her if these forms could be scanned and made available on the City's website.
- The Board members then discussed the proposal. Ald. Verveer asked if the proposal needed to be referred to a future meeting. He also asked if Ald. Maniaci's concerns could be dealt with administratively.
- Drew Cochran expressed concern that the language in the proposal might not be precise enough to address all of the fact situations that might occur and asked about the intent of the authors. Ald. Verveer stated that the goal was to capture all third party transactions. Chair Michael Jacob stated that the word "reimburse" implied that a person had paid something originally out of one's own pocket and was not the same as when something was "comped" from the beginning. He stated that he felt that a substitute should be drafted and considered at the next meeting.
- Ald. Verveer asked if there were other ideas for the proposal that should be part of the substitute, such as the points raised by Ald. Maniaci or Ald. Pham Remmele. Drew Cochran asked if there should be an appeal process. Ald. Verveer suggested that such concerns might be dealt with administratively through the APM process.
- There was further discussion about the wording of the language of the proposed ordinance. Michael Jacob stated the waiver of a fee for a speaker, if done for all speakers, might be appropriate.
- Item 5, #19916 was referred to the next meeting by a voice vote.

DISCUSSION ITEMS

Ald Verveer asked if Items 6 and 7 could be placed on the table so that the hearings could be held. There was a general consensus to his request, and Chair Jacob stated that he heard no objections and matters were placed on the table.

Items 6 and 7 were taken up after hearing the complaint of Konkel v. Subeck was discussed.

6. Ethics Board Complaint Form

Ms. Rose stated that she had reviewed the Complaint form and that the changes requested by Committee had been made. She moved adoption of the new form, the motion was seconded by Albino. The motion was adopted on a voice vote.

7. Madison Ethics Board Policy Manual

Ald. Verveer moved to refer Item 7 to the next meeting. Mr. Hands seconded the motion. The motion passed on a voice vote.

The Ethics Board may go into closed session pursuant to Wis. Stats. 19.85(1)(a) concerning the case or cases that are the subject of this quasi-judicial hearing before the Ethics Board. This would include agenda items numbered 8, 9, 10, and 11. The Ethics Board may reconvene in open session following any such closed session.

HEARINGS

Chair Jacob stated that for each of the four hearings, the Committee would first consider whether the Board had jurisdiction. After that determination was made for each of the four items, 8, 9, 10 and 11, a hearing would be held on the substance of the complaint.

Drew Cochrane left at 6 p.m.

8. Ethics Board Complaint. Brenda Konkel v. Lisa Subeck

The Board concluded that it had jurisdiction, based on the facts alleged in the Complaint.

The Board then proceeded to the Substantive Hearing in Item 8, Konkel v Subeck. Both Ms. Konkel and Ms. Subeck appeared before the Committee. The oath was administered to both parties by Mr. Brist. There were two allegations, that Ms. Subeck failed to disclose her personal or financial interest in the YWCA and that Ms. Subeck voted as a member of the Community Services Committee for funding for the YWCA.

The Board then returned to the Hearing in Konkel v Subeck. Ms. Konkel stated that Ms. Subeck's relationship and part time employment with the YWCA constituted a financial or personal interest in the YWCA. Ms. Konkel stated that Ms. Subeck did not disclose at the meeting of the Committee that she had an interest in the YWCA and that it did not appear at that time on her Statement of Interest. Ms. Konkel stated that Ms. Subeck had stated that she was not going to vote on the "C List" of organizations to be funded, but that Ms. Subeck then spoke in favor of funding the YWCA and voted on the "C List".

Ms. Subeck stated that she did not believe that a conflict existed and that she actively made attempts to comply with the Ethics Code. Ms. Subeck stated that

when she filed her Statement of Interest form in December 2009, she was not employed by the YWCA. She stated that she had previously worked full time for the YWCA for 6 years and that she left that employment in 2008. She stated that in 2010, she was asked to serve as a part-time receptionist at the YWCA front desk. She stated she had no decision making authority as a part-time receptionist and that she worked from 5 to 10 hours a month. She stated that before the Complaint was filed in this case that Brenda Konkel told her that her Statement of Interest Form did not indicate that she was employed by the YWCA and that she then filed an amended Statement of Interest Form.

Ms. Subeck stated that she contacted City Attorney Michael May for advice on how to proceed as a member of the Community Services Committee. She stated that she was advised not to score the YWCA and not to vote on the YWCA funding specifically but that voting on a slate of funding for multiple agencies was acceptable. She also stated that she disclosed her part-time employment with the YWCA at the August 11, 2010 meeting of the Community Services Committee.

Ms. Konkel stated that the minutes Committee did not reflect that Ms. Subeck had made a disclosure of the employment and that she did not hear any such disclosure at any meeting when she had been present. Ms. Konkel stated that she was more concerned that Ms. Subeck had a personal interest in the YWCA and that she spoke in favor of the funding and voted on funding for the "C List". Ms. Konkel stated that this type of action would encourage other groups to seek to place their members on the Community Services Committee.

Chair Michael Jacob suggested that a short break might be appropriate because of the length of the meeting. Based on the consensus of the members of the Board, he announced a ten minute recess, starting at 7:50 PM.

The Board reconvened at 8:02 PM, all members were present except Cochrane and Verveer. A quorum was present. Alder Verveer rejoined the Board shortly after the Board reconvened.

The Board members discussed whether they would hold a closed session, as noticed on the Agenda, but it was the consensus of the Board that its deliberations would take place in the public meeting and that a closed session was not necessary in this case.

Ms. Rose moved to dismiss the portion of the complaint under 3.35(5)(f)2, relating to the failure to disclose. Ms. Rose stated that she was making the motion because Ms. Subeck had filed an amended Statement of Interest, which included the interest in the YWCA. Ms. Weidel seconded the motion. After discussion, the motion passed.

The Board members then discussed the alleged violation under Sec. 3.35(5)(a)3. Ms. Rose stated that Ms. Subeck's good faith should be taken into account. She said that finding a violation would be painting with a broad brush, and that she had a hard time punishing in this circumstance.

Mr. Jacob stated that one might say that there was still a violation that did occur, but it was ironic that someone with the experience of Ms. Subeck and who took the efforts of Ms. Subeck was tripped up.

Mr. Albino stated that it was troublesome that the Board might find a violation when the Respondent went thru the hoops to get ethics advice. He stated he did not want to hamper the City Attorney from giving ethics opinions and advice.

Mr. Jacob stated that based on the testimony, what was alleged was a personal, not a financial interest.

Mr. Albino stated that the section dealt more with someone being a partner or a co-owner of an entity.

Ms. Weidel stated that she could reach the conclusion that although the Respondent had acted in good faith but still violated the ordinance, Ms. Weidel stated that it could be interpreted that there was a personal interest. Mr. Albino stated he felt there was not a personal interest. Mr. Jacob stated he was torn. Mr. Jacob said that it was not clear that there was a financial interest.

Ald. Verveer stated that there might be technical violation but that there were mitigating circumstances, in filing an amendment and asking the City Attorney for advice. He said that the Respondent said she couldn't vote on it but then spoke for it. He felt that this was largely offset by mitigating factors and that there should be no sanction. Taking it in totality, he stated he could not find a clear way to dismissal, but there were mitigating circumstances, it was a technical violation and the record was not sufficient. He favored no sanction.

Ms. Rose moved to dismiss the complaint, Mr. Albino seconded the motion. Ms. Rose stated she made the motion because she was not comfortable finding a violation when she felt that the Respondent had taken steps to comply with the Code. The motion passed on a voice vote. There was then discussion about what had been adopted and Mr. Jacob stated he had been confused about what the question was before the Board. Ald. Verveer moved to reconsider the vote by which the motion to dismiss the claim under Sec. 3.35(5)(a)3 was adopted. Mr. Hands seconded the motion. The motion to reconsider passed on a voice vote. The motion to dismiss the claim under Sec. 3.35(5)(a)3 was again before the Board. The Board members discussed the question of the act of voting on the "C list" by the Respondent. Discussion was heard that when a motion is a slate that an appropriate course would be to separate an item on which a person has a conflict and then abstain on the separated item. After discussion, the main motion dismissing the claim was adopted.

9.

Ethics Board Complaint. Davin Pickell v. Tom Carto

After listening to both parties and reviewing the Complaint, the Board concluded that Mr. Carto was a City employee and therefore the Board did have jurisdiction in Pickel v. Carto.

At this point in the Hearing, Chair Jacob asked that the Board to temporarily turn to Item 9, because he understood that the partries were requesting that the Substantitive Hearing on Item 9 be set over until a future hearing. Both Mr.

Petri and Mr. Pickell stated that they did not wish to proceed this evening on further consideration of Item 9. Hearing no objection from the members of the Board, Chair Jacob stated that Item 9 would be heard at the next meeting of the Ethics Board.

10. Ethics Board Complaint. Davin Pickell v. Dave Cieslewicz

In Pickell v. Cieslewicz, Attorney Greg Everts appeared on behalf of the Respondent. Mr. Everts stated that he challenged the sufficiency of the pleadings in the matter. He stated that the complaint was inadequate because it did not allege facts that constituted a violation of the Ethics Code. He stated that there was no allegation of solicitation. He stated that the section of the Code cited in the complaint, Sec. 3.35(5)(a)2 MGO, required three elements, and that none of the 3 elements (solicitation, thing of value, expected to influence the incumbent) were met. He stated that the complaint did not allege a violation on its face.

The Complainant, Mr. Pickell then spoke on his own behalf. He stated that he felt that the Mayor's statements in advocacy of the Common Council endorsement of a plan that would benefit 201 State or the Overture Development Corporation were like the facts in the Advisory Opinion made by the Ethics Board on October 15, 2010, because it benefited private corporations.

The Board then concluded that it did not have jurisdiction, based on the complaint and the arguments heard from the Parties.

11. Ethics Board Complaint. Davin Pickell v. Deirdre Garton

Attorney Rick Petri, representing the Respondent, asked to be heard on the question of jurisdiction. Mr. Petri stated that Ms. Garton was not an incumbent, that she was not a City employee, that she acted on behalf of a private entity (201 State), and that she was appointed by the Governor. Mr. Petri stated that the computers, lists and software allegedly used were not the property of the City.

The Complainant, David Pickell, spoke and stated that 201 State had received \$1.4 million from the City, that the computers were tagged with City inventory tags, that the \$1.4 million was comingled with private funds, that MCADB pays for City IS services and that City employees compiled the lists.

David Albino stated that if Ms. Garton was not a City employee, then the Board did not have jurisdiction. Drew Cochrane left the meeting at 6 PM, as he had previously stated that he had another commitment. The Board then adopted a motion that it did not have jurisdiction because the Complaint did not indicate that Ms. Garton was an incumbent under the Ethics Code.

12. ADJOURNMENT

The meeting was adjourned at 9:04 p.m.