



Legislation Details (With Text)

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Title: Board of Ethics Complaint: Davin Pickell v. Diedre Garton, 3.35 (5) (f) 2

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Attachments: 1. PICKELL V. GARTON.3.35(5)(f)2.pdf

Date	Ver.	Action By	Action	Result
3/20/2012	1	COMMON COUNCIL	RECOMMEND TO COUNCIL TO GRANT UNDER SUSPENSION OF MGO 2.055 - REPORT OF OFFICER	Pass
2/23/2012	1	ETHICS BOARD	RECOMMEND TO COUNCIL TO ACCEPT - REPORT OF OFFICER	
2/8/2012	1	ETHICS BOARD		

Title

Board of Ethics Complaint: Davin Pickell v. Diedre Garton, 3.35 (5) (f) 2

Body

Sec. 3.35(13) MGO provides that, if the Ethics Board determines that a person has violated any provision of the ethics code, then the Ethics Board makes a report to the Common Council, with any recommendation regarding sanctions. In Pickell v Garton, Legistar #24342, the Ethics Board found a violation of Sec. 3.35(5) (f)2, MGO, but recommended that no sanction be imposed.

Legistar #24342 was one of three complaints filed by Mr. Pickell involving Ms. Garton. All three of the complaints contained exactly the same facts, but each complaint alleged a violation of a different section of the Ethics Code. In the excerpt of the draft minutes, below, Legistar #24342 is referred to as "Item 6" on the Ethics Board agenda.

Excerpt from Draft Minutes

Items 5, 6 and 7, Complaints, were considered together. The Complainant, Mr. Pickell was not present. The Respondent, Ms. Garton was not present but Attorney Rick Petri appeared on her behalf. In response to a question from a Board member, Assistant City Attorney Brist stated that under Section I.V.7 of Ethics Board Policy Manual, the Board "may" dismiss a complaint if the complainant does not appear.

Assistant City Attorney Brist stated that all three complaints were based on the same alleged act, that Ms. Garton failed to disclose her membership in the 201 State Foundation, on her statement of ethics forms, but that each complaint alleged that this alleged action was a violation of three separate sections of Sec. 3.35. He state that, under the concept of "multiplicity", that if the Board were to find the single act of failure to disclose violated three separate sections of the ethics code, it would be appropriate that only one penalty should be imposed.

Attorney Petri stated that he had attempted to contact Mr. Pickell to discuss a resolution of the complaints but that Mr. Pickell did not respond to Attorney Petri's letters. Attorney Petri asked that, since the Respondent had admitted to the allegations in the first complaint (Item 5) that the Board should proceed on that complaint and dismiss with prejudice Items 6 and 7.

It was a consensus of the Board members present that the members knew what the facts were in the complaints and that the Board should proceed without Mr. Pickell's presence.

In response to a question from Mr. Cochrane, Attorney Petri stated that the Respondent had admitted to a failure to disclose her membership in 201 State Foundation in response to the first complaint (Item 5). Attorney Petri stated that Ms. Garton listed membership in over two dozen organizations on the Statement of Interests form and that the omission of 201 State Foundation was an oversight, and at the most Ms. Garton should be admonished by the Board for this oversight. Attorney Petri reviewed the entities connected with the Overture Center and the history of the negotiations with banks regarding the transfer of the ownership of the Overture Center.

Ms. Rose asked if it was correct that the Ad Hoc Committee no longer existed, and if so, what penalty could be imposed if Ms. Garton was no longer a city employee or committee member. Assistant City Attorney Brist stated that the Ad Hoc Committee no longer existed and that the Board could admonish the Respondent or possibly refer the matter to the City Attorney for prosecution. The Board's sanctions are stated in Sec. 3.35 (13). Mr. Cochrane pointed out that only Sub (b) of that Section applied to City Committee members, other than the prosecution. Mr. Cochrane stated that because Ms. Garton was not an elected official, the Board could not sanction, censure or reprimand a committee member under Sub (a).

Ms. Rose moved to find that the Respondent had violated 3.35(5)3(a), as outlined in the first complaint (Item 5). Mr. Albino seconded the motion.

Mr. Cochrane stated that although the Respondent had admitted to the a violation of the first complaint (item 5), that he felt that the allegations in the second complaint (item 6) better fit the circumstances, because Sec. 5(f)2 involved a failure to disclose. By consent the members of the committee amended the motion to find a violation of the second count (Item 6), rather than the first complaint (Item 5). Attorney Petri agreed to withdraw the admission to the first complaint and admit to the second complaint on behalf of the Respondent.

The Chair called the motion, finding a violation of the Second Complaint (Item 6), the motion passed on a voice vote. Mr. Cochrane moved that there be no sanction for the violation, and Ms. Rose seconded the motion. Mr. Cochrane stated that the Board found a violation and he did not want to go further with an admonishment. Mr. Jacob stated that facts were particular to the case and the motion was appropriate. Mr. Cochrane stated, that based on the facts, that he thought that everyone knew what Ms. Garton's role was and who she represented in the Ad Hoc committee actions. He also mentioned the limited penalties available for a former committee member. The motion for no sanctions passed on a voice vote.

Mr. Cochrane moved to dismiss the complaints in Items 5 and 7 with prejudice. Mr. Albino seconded the motion. The motion passed on a voice vote.

Respectfully Submitted,
Steven Brist
Assistant City Attorney