

City of Detroit Board of Ethics

Reginald M. Turner, Jr., Esq., Chairperson
Rev. Spencer t. Ellis, Member
James W. Heath, Member
Hon. Charles L. Levin, Member
Reuben A. Munday, Esq., Member
Todd Russell Perkins, Esq., Member
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TO: Hon. Dave Bing, Mayor

Hon. Charles Pugh, City Council President
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Department Directors, Heads of All Boards and Commissions

FROM: Reginald M. Turner, Jr.
Chairperson, Board of Ethics

SUBJECT: 9th Annual Report of the Board of Ethics

DATE: August 25, 2010

The Eighth Annual Report of the Board of Ethics (the “Board”) was submitted on July 22, 2009, and reported on activities of the Board from June 1, 2008 to June 30, 2009. This Ninth Annual Report covers Board activities from July 1, 2009 to June 30, 2010. In accordance with Section 2-6-97 of the Ethics Ordinance (the “Ordinance “), this Report contains:

- 1) An analysis of Board activities, including the number of Advisory Opinions requested and issued, and the number of Complaints filed and their disposition;

- 2) A compilation of Advisory Opinions issued; and
- 3) Recommendations, if any, for improvement of the disclosure requirements and standards of conduct found in the Ordinance, and for improvement of the administration and enforcement of the Ordinance.

Board Activities

A. Meetings

During the period of this Report, the Board met nearly every month and disposed of all matters presented, including six (6) Requests for Advisory Opinion and eleven (11) Complaints.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2009-03, the Board issued an Advisory Opinion interpreting the application of Section 2-6-65 of the Ethics Ordinance, titled “Incompatible employment or rendering services prohibited; exceptions .” A synopsis appears below.

In response to the Request for Advisory Opinion # 2009-04, the Board issued an Advisory Opinion interpreting the application of Section 2-6-65 of the Ethics Ordinance, titled “Incompatible employment or rendering services prohibited; exceptions.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2009-05, the Board reviewed the Request and declined to issue an Opinion based on the Requestors withdrawal of the Request.

In response to the Request for Advisory Opinion # 2009-06, the Board issued an Advisory Opinion interpreting the application of Section 2-6-63 of the Ethics Ordinance, titled “Disclosure of confidential information prohibited.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2010-01, the Board issued an Advisory Opinion interpreting the application of Section 2-6-61 of the Ethics Ordinance, titled “Engaging in official duties for private gain prohibited.” A synopsis appears below.

In response to the Request for Advisory Opinion # 2010-02, the Board issued an Advisory Opinion interpreting the application of Section 2-6-67 of the Ethics Ordinance titled “Self-interested

regulation prohibited.” and Section 2-6-32 of the Ethics Ordinance, regarding the disclosure of interest in city contracts. A synopsis appears below.

C. Complaints

Complaint # 2009-02 alleged that a public servant owned property that was potentially subject to regulation by the public servant and that a Court Order existed prohibiting any involvement with the property by the public servant which had been violated. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-67. “Self-interested regulation prohibited.” and Section 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2009-03 alleged that a public servant owned property that was potentially subject to regulation by the public servant and that a Court Order existed prohibiting any involvement with the property by the public servant which had been violated. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-67. “Self-interested regulation prohibited.” and Section 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2009-04 alleged that a public servant owned property that was potentially subject to regulation by the public servant and that a Court Order existed prohibiting any involvement with the property by the public servant which had been violated. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-67. “Self-interested regulation prohibited.” and Section 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2009-05 alleged that a public servant owned property that was potentially subject to regulation by the public servant and that a Court Order existed prohibiting any involvement with the property by the public servant which had been violated. The complaint alleged a violation of the Standards of Conduct found in the Ethics Ordinance with respect to Section 2-6-67. “Self-interested regulation prohibited.” and Section 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).¹

¹ Regarding Complaints 2009-12 through 2009-05 each contained identical allegations although filed by separate complainants.

Complaint # 2009 - 06, alleged that an individual improperly sought elective office. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-68 "Improper use of official position prohibited." After investigation and review, the Board concluded that the individual was not a public servant within the definition of the Ethics Ordinance and therefore the Board had no jurisdiction. The complaint was dismissed pursuant to Section 2-6-115 (b)(1)(i).

Complaint # 2009 - 07, alleged that a public servant misused public funds and resources during an election campaign and improperly participated in an election. The complaint alleged a violation of the Standards of Conduct with respect to Sections 2-6-61 "Engaging in official duties for private gain prohibited," 2-6-64 "Use of city resources for commercial gain" and 2-6-68 "Improper use of official position prohibited." After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2010 - 01, alleged that a public servant disclosed confidential information and improperly approved the release of City of Detroit funds to a third party without the consent of the Complainant. The complaint alleged violations of the Standards of Conduct with respect to Sections 2-6-63 "Disclosure of confidential information prohibited," 2-6-66 "Representation of private person, business or organization prohibited," and 2-6-68 "Improper use of official position prohibited." After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2010 - 02, alleged that a public servant disclosed confidential information and improperly approved the release of City of Detroit funds to a third party without the consent of the Complainant. The complaint alleged violations of the Standards of Conduct with respect to Sections 2-6-63 "Disclosure of confidential information prohibited," 2-6-66 "Representation of private person, business or organization prohibited," and 2-6-68 "Improper use of official position prohibited." After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2010 - 03, alleged that a public servant disclosed confidential information and improperly approved the release of City of Detroit funds to a third party without the consent of the Complainant. The complaint alleged violations of the Standards of Conduct with respect to Sections 2-6-63 "Disclosure of confidential information prohibited," 2-6-66 "Representation of private person, business or organization prohibited," and 2-6-68 "Improper use of official position prohibited." After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2010 - 04, alleged that a public servant disclosed confidential information and improperly approved the release of City of Detroit funds to a third party without the consent of the Complainant. The complaint alleged violations of the Standards of Conduct with respect to Sections 2-6-63 “Disclosure of confidential information prohibited,” 2-6-66 “Representation of private person, business or organization prohibited,” and 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).

Complaint # 2010 - 05, alleged that a public servant disclosed confidential information and improperly approved the release of City of Detroit funds to a third party without the consent of the Complainant. The complaint alleged violations of the Standards of Conduct with respect to Sections 2-6-63 “Disclosure of confidential information prohibited,” 2-6-66 “Representation of private person, business or organization prohibited,” and 2-6-68 “Improper use of official position prohibited.” After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(1)(2).²

D. Other Activities

Information and publications regarding Model Ethics Ordinances were reviewed in order to assist in determining whether additional changes to the current Ordinance should be proposed. Material from other municipalities was also considered with particular attention to the Ethics Handbook for Michigan Municipalities. The Board Chairperson participated in an orientation program for newly elected Councilpersons in order to assist in their transition. The Executive Director also met with each Councilperson and their staff in order to respond to questions or issues regarding the Ordinance.

Ethics Board Staff (“Staff”) continues to meet with and assist members of the public or City employees who request information regarding the Ordinance or the completion of forms. The Appointee Disclosure Forms were circulated to all new appointees and personal services contractors in order to assure compliance with Section 2-6-34 of the Ordinance.

The Board’s Executive Director (“Executive Director”) made presentations to various City departments and public servants as requested. Such presentations were made in an effort to increase

² Regarding Complaints 2010-01 through 2010-05 each contained identical allegations filed by the same complainant but directed to individual public servants.

employee awareness of the Ordinance and its requirements particularly regarding the amendments to the Ordinance. Regarding ethics education, the use of the web for computer based ethics training is under consideration. The new employee orientation program that is conducted by the Human Resources Department includes information developed by the Director regarding the Charter on Ethics and the Ethics Ordinance. The Director participated in the orientation and provided an overview of the Ordinance and the Standards of Conduct at the meetings. The Board received periodic informal inquiries to which the Executive Director responded with the approval of the Board. The Board also received and responded to media inquiries.

Compilation of Advisory Opinions

Advisory Opinion #2009-03 held a public servant who serves as a Board member of a non-profit organization does not violate Section 2-6-65 of the Ethics Ordinance as long as the involvement is not incompatible with the discharge of their official duties for the City or where the involvement does not impair the judgment of the public servant in the discharge of their official duties for the City. The current assignment of the public servant does not involve the evaluation of requests from or the awarding of funds to non-profit entities such as the organization of which the public servant is a member therefore the Board membership is not a violation of Section 2-6-65.

Advisory Opinion #2009-04 held a public servant who pursues City of Detroit contracts or other business opportunities with the City, unrelated to their existing responsibilities, does not violate Section 2-6-65 of the Ethics Ordinance if the business interest is not incompatible with discharge of the public servants official duties nor impair the public servants judgment in the discharge of official duties. The public servant however should not utilize any information which is not readily available to the public in the process of attempting to secure the contract or business opportunity.

Advisory Opinion #2009-06 held a public servant who compiles information and prepares reports and documents based on information from City of Detroit records and discloses it to a 3rd party does not violate Section 2-6-63 of the Ethics Ordinance, which prohibits the disclosure of confidential information, if the information is available to all members of the public pursuant to the Michigan Freedom of Information Act. However the Board of Ethics is not authorized to interpret the requirements of the Michigan Freedom of Information Act. As such, the public servant is encouraged to obtain guidance from the City Law Department or other entities authorized to interpret such regulations in advance of the disclosure.

Advisory Opinion #2010-01 held a public servant who serves as an appointee of an elected official, who accepts a gift unrelated to his official duties from another appointee of the same elected official, does not violate Section 2-6-61 of the Ethics Ordinance. The recipient of the gift does not

supervise nor have any official involvement with the donor therefore the private gain prohibitions of the Ordinance are not violated.

Advisory Opinion #2010-02 held a public servant who is engaged to be married to a City contractor and who exercises significant authority in the course of their duties as defined by the Detroit Ethics Ordinance is not required to disclose the relationship as defined by Sections 2-6-31, and 32 of the Ordinance. The status of "engaged" is not included in the list of relationships as defined by the Ordinance that mandate disclosure. However in the interest of transparency and in consideration of the purpose of the Ordinance regarding similar relationships, the public servant is encouraged to disclose the relationship and abstain from participating in matters regarding the contractor.

Recommendations for Improvements in the Ethics Ordinance

In its Seventh and Eighth Annual Reports the Board submitted the following recommendations for changes to the Ordinance and respectfully requests that they be considered.

The Board recommends the following two (2) amendments to the Ordinance. These changes are submitted to address circumstances where other investigations and or charges are pending against a public servant and the Board determines the complaint should be dismissed in deference to the other proceedings. The amendments will allow the Board to reinstitute the complaint without regard to the time limit for current disposition (91 days and in exceptional circumstances an additional 28 days).

Sec. 2-6-111. Complaint; contents thereof; limitation of action.

(a) Except for members of the Board of Ethics, any person may file a complaint with the Board of Ethics where the person believes that a public servant may have violated this article.

(b) A complaint shall be made in writing on a form that is created by the Law Department and prescribed by the Board of Ethics, shall specify the provision(s) of this article alleged to have been violated and the facts alleged to constitute the violation, and shall be signed by the person who is making the complaint and sworn to in the presence of a notary public.

(c) Such a complaint shall be filed within one hundred eighty-two (182) days from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the Board of Ethics consider a complaint which has been filed more than two (2) years after a violation of this article is alleged to have occurred.

(d) **A complaint that has been filed within the above designated time period and**

dismissed by the Board due to other investigations and or other pending proceedings shall be deemed dismissed without prejudice and the Board shall have the authority to reconsider the complaint at the conclusion of the other proceedings.

Sec. 2-6-115. Disposition of complaints.

(a) The Board of Ethics shall dispose of a complaint within ninety-one (91) calendar days after its receipt. However, under extraordinary circumstances, as defined in section 2-6-3 of this Code, the Board may extend its time to respond to a specific complaint by not more than twenty-eight (28) additional days. In the event the Board extends its time to respond to a complaint, the Board shall notify, in writing, the complainant(s) and the public servant of the extension and of the specific reasons therefore.

(b) After giving due consideration to a complaint in accordance with the time-lines delineated in subsection (a) of this section, the Board of Ethics shall take any action or combination of actions, upon majority vote, which the body deems appropriate in order to dispose of a complaint including, but not limited to, one or more of the following:

(1) Dismiss the complaint based on any of the following grounds:

(i) The Board has no jurisdiction over the matter; or

(ii) The complaint does not allege facts sufficient to constitute a violation of this article; or

(iii) The complainant has failed to cooperate in the Board's review and consideration of the complaint; or

(iv) The complaint is defective in a manner which results in the Board being unable to make any sound determination;

(v) **There are other pending proceedings arising out of the same transaction(s) or occurrence(s), including but not limited to local, state or federal law enforcement investigations or criminal litigation, in which case the dismissal shall be without prejudice and the Board shall have the authority to reconsider the complaint following the conclusion of the other proceedings.**

or

(2) Determine that no violation of this article has occurred; or

(3) Determine that further information must be obtained in order for the Board to determine whether the complaint alleges fact sufficient to constitute a violation of the article or whether a violation of this article has occurred; and

(i) Conduct its own investigation with respect to any alleged violation; or

(ii) Request the city attorney to investigate the complaint and report all findings back to the Board; or

(4) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or

(5) Determine that the complaint alleges facts sufficient to constitute a violation of this article and that the board will conduct a hearing with proper notice to determine whether a violation of this article has occurred; or

(6) Determine, on its own motion or upon request of the party who has had the complaint filed against him or her, whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity.

(c) Where a hearing is held, the Board shall issue written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the board may recommend the appropriate determinations that are delineated in section 2-6-116 of this Code.

Regarding the issue of Lobbyist registration the Board recommends that serious consideration be given to the enactment of a requirement that would establish a process where those who serve as lobbyist register in order to create greater transparency. Although no specific language is offered if we can assist in the development of a procedure or provide additional information the Boards staff is available.

Finally, the Board also suggests that the private gain provision of the Ordinance regarding gifts (Section 2-6-3 Definitions) be reviewed to consider whether a numerical or value limit should be imposed on gifts or gratuities received by public servants.

In its Seventh Annual Report the Board submitted three recommendations for changes to the Ordinance and respectfully requests that they be considered.

1. The Board is recommending that Section 2-6-104, 2-6-115 and 125 be amended to extend the time for the disposition of Opinion Requests, Complaints and Board Initiated Investigations to 180 days upon a showing of extraordinary circumstances as defined at Section 2-6-3 of the Ordinance. This recommendation is submitted in order to assure disposition within the time proscribed by the Ordinance. In the event that a hearing is needed for resolution of Complaints requiring investigation and Board Initiated Investigations, there may not be adequate time within the current extension period (28 days) to meet the deadline. The recommendation is made regarding Advisory Opinions to assure consistency in the time periods.

2. The Board is recommending that Section 2-6-34 be amended to modify the disclosure

requirement to impose the duty to disclose the relationship on the elected official and not the appointee. The Board received comments from appointees and elected officials that there was significant ambiguity as to who was required to make the disclosure and submit the form. The experience demonstrated that in all instances where a disclosure was required and made the form was completed by the elected official and not the appointee. Additionally in most other instances where the form was submitted by an appointee it was unnecessary (i.e., there was no relationship to disclose); therefore the form was submitted in the negative (i.e., "I am not related to any of the designated elected officials."). In order to clarify the reporting requirement the Board believes that directing the duty to the designated elected officials will improve the existing Section and preserve the objective of the provision. Included below is the current Section and the Board's suggested revision for your consideration.

Within thirty (30) days of enactment of this section, or within thirty (30) days of appointment, whichever is earlier, each public servant, who (1) is an appointee and an immediate family member, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk; or (2) is an appointee and a relative, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk, shall disclose the relationship on a form that shall be created by the Law Department and made available at the Office of the City Clerk, at each City department and each City agency, and filed upon completion at the Office of the Board of Ethics. (Sec. 2-6-34).

Suggested Revision of Section 2-6-34

Within thirty (30) days of enactment of this section, or within thirty (30) days of appointment, whichever is earlier, each public servant who is an elected official (the Mayor, A City Council Member, or the City Clerk) as defined in Section 2-6-3 of the code who is a relative of, or immediate family member of an appointee shall disclose the relationship on a form that shall be created by the Law Department and made available at the Office of the City Clerk, at each City department and each City agency, and filed upon completion at the Office of the Board of Ethics.

3. The Board is recommending that section 2-6-94 which was enacted November 2006 be repealed. The current Section is included below and prohibits certain political activity by board members.

While a member of the Board of Ethics, a Board member shall not:

- (1) Be a candidate for the office of Mayor, City Council, or the City Clerk;
- (2) Be a campaign treasurer, campaign manager or officer, or participate in a committee for the campaign of a candidate for the office of Mayor, City Council or City Clerk;
- (3) Make a monetary or an in-kind contribution to, or expenditure for, a political campaign that is in excess of one hundred dollars (\$100.00) for a candidate for the office of Mayor, City Council or City Clerk; or
- (4) Solicit votes, or raise monetary or in-kind contributions, for a candidate for the office of Mayor, City Council or City Clerk. (Sec. 2-6-94).

The goal of this provision, as stated in the Commentary on Section 2-6-94, is to ensure that Board members are free to consider claims before them without feeling obligated or pressured to take sides during election cycles for the offices of Mayor, City Council and the City Clerk, the Board submits that these restrictions are overreaching. The Board's concerns regarding the section are numerous and outlined as follows:

1. The Mayor and/or City Council appoint persons to the Board who they believe are persons of integrity. Accordingly, a Board of Ethics member who would allow himself/herself to feel pressured by the Mayor or a City Councilperson would allow himself/herself to feel pressured when he/she was appointed by the Mayor and/or the City Council, whether or not the Board member made a significant contribution to the Mayor or to a Councilperson. When confronted with a complaint or request for an opinion in a matter in which the Mayor or a Councilperson is a party, a Board member should be allowed to rely on his/her integrity to decide that s/he: (i) can be objective in deliberating on the matter; or (ii) cannot be objective and recuse him/herself. Rather than regulating and restricting a Board member's political activities, it would be less intrusive to require Board members to disclose the nature of their political support of a candidate for Mayor, City Council or City Clerk in cases involving those candidates.

2. Most City residents who are committed enough to the City to volunteer to serve on the Board are likely to be citizens who are anxious to support candidates who they believe will provide good leadership to the City. The restrictions in Section 2-6-94 will likely severely limit the pool of good candidates for membership on the Board.

3. Hopefully, most matters coming before the Board will not involve a candidate for

Mayor, City Council or City Clerk, and, therefore, political support of those candidates by Board Members will not be relevant.

4. Section 2-6-94's prohibition against soliciting votes for a candidate or campaigning for the office of Mayor, City Council or City Clerk is very vague. For example, wearing a campaign button or displaying a yard sign could be construed as soliciting votes. Additionally the Section does not define when campaigning begins or takes place. These ambiguities could present operational issues regarding compliance with the restriction.

For the reason outlined herein the Board urges repeal of this section.

The Board is willing to provide clarification and/or additional information regarding these proposed amendments in order to further assist the City Council with its review.

The Board will be pleased to provide any further information and to respond to any questions about its eight years of operation.

Thank you.

cc: Municipal Reference Library



Member Roster 2009

**Reginald M. Turner, Jr. Esq. – Chairperson
Joint Appointee
Term Expiration – June 30th 2006**

**James W. Heath, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2014**

**Rev. Spencer T. Ellis, Member
Council Appointee
Term Expiration – June 30th 2009**

**Honorable Charles L. Levin, Member
Mayoral Appointee
Term Expiration – April 30th 2011**

**Todd Russell Perkins, Esq. Member
Council Appointee
Term to Expire – June 30th 2008**

**Reuben A. Munday, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2010**

**Byron H. Pitts, Esq. Member
Council Appointee
Term to Expire – June 30th 2010**