

City of Detroit Board of Ethics

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Department Directors, Heads of All Boards and Commissions

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

SUBJECT: 8th Annual Report of the Board of Ethics

DATE: July 22, 2009

The Seventh Annual Report of the Board of Ethics (the "Board") was submitted on June 30, 2008 and reported on activities of the Board from June 1, 2007 to May 31, 2008. This Eighth Annual Report covers Board activities from June 1, 2008 to June 30, 2009. In accordance with Section 2-6-97 of the Ethics Ordinance ("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 four (4) Requests for Advisory Opinion and five (5) Complaints.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2008-02, the Board issued an Advisory Opinion interpreting the application of Section 2-6-69 and 2-6-61 of the Ethics Ordinance, titled “Solicitation or acceptance of promissory note, written loan agreement, or monetary payment, from an individual or an entity that is providing service to, or receiving tax abatements, credits or exemptions from, the City prohibited; exceptions.*” and Engaging in official duties for private gain prohibited. A synopsis appears below.

In response to the Request for Advisory Opinion # 2008-03, 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 # 2009-01, the Board issued an Advisory Opinion interpreting the application of Section 2-6-65 and 2-6-66 of the Ethics Ordinance, titled “Representation of private person, business or organization prohibited; exceptions.*” and “Incompatible employment or rendering services prohibited; exceptions.*” A synopsis appears below.

In response to the Request for Advisory Opinion # 2009-02, the Board issued an Advisory Opinion interpreting the application of Section 2-6-65 and 2-6-66 of the Ethics Ordinance, titled “Representation of private person, business or organization prohibited; exceptions.*” and “Incompatible employment or rendering services prohibited; exceptions.*” A synopsis appears below.

C. Complaints

Complaint # 2008-03 alleged that a public servant improperly approved a project design in order to advance her position within a City of Detroit (“City”) department. The complaint alleged a violation of the standards of conduct found in the Ethics Ordinance (“standards of conduct”) with respect to 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 # 2008-04 alleged that a public servant engaged in a conflict of interest by serving as a Trustee of the Retirement Board and holding a position as a staff attorney in the Law department simultaneously. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-65 “Incompatible employment or rendering services prohibited; exceptions,*” and Section 2-6-68 “Improper use of official position prohibited.” After investigation and review, 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 # 2008 - 05, alleged that a public servant improperly interfered with a matter before the Retirement Board. 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 public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2008 - 06, alleged that a public servant improperly cancelled a department project and challenged a subordinate’s competency regarding technical issues in order to advance her position within the department. The complaint alleged a violation of the Standards of Conduct with respect to 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- 01, alleged that a public servant improperly used the City of Detroit electronic communication system by making email requests for support of his campaign for election to the City of Detroit Pension Board for a position as Trustee. The complaint alleged violations 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)(ii).

D. Other Activities

Information and media articles regarding changes to the Ethics Ordinance and other City policies with ethics implications were reviewed as a result of the year's events (Criminal Proceedings against former Mayor Kwame Kilpatrick and former Chief of Staff Christine Beatty, City Council's hearings and the Special Counsel's report, media editorials and comments). Additional areas considered included the possibility of lobbyist registration, post employment restrictions on former public servants, nepotism, the structure of the Ordinance regarding enforcement, and current standards regarding gifts and gratuities to public servants. Among these areas the Board urges that serious consideration be given to requiring registration for lobbyist. Regarding gifts it is also recommended that the current provision be reviewed as to whether a numerical or value limit should be set on gifts or other gratuities received by public servants.

Ethics Board Staff ("Staff") continues to meet with and assists members of the public or City employees who request information regarding the Ordinance or the completion of forms. Staff received training regarding web page design and management in order to post content directly to the web.

The Board's Executive Director ("Executive Director") made presentations to various City departments as requested. Such presentations were made in an effort to increase employee awareness of the Ordinance and its requirements particularly regarding the amendments to the Ordinance. Regarding ethics education, the Executive Director attended a seminar in order to obtain additional information regarding ethics training techniques and materials. The Board explored the possibility of hosting a seminar conducted by a national ethics education organization. Finally, use of the web for computer based ethics training is also 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 #2008-02 held a public servant who solicits or accepts donations from an entity on behalf of a City department for outreach initiatives or other public purposes does not violate the Section 2-6-69 or Section 2-6-61 of the Ethics Ordinance. The relationship between the entity and the Department which may involve monitoring and or certification for compliance with City policies and regulations does not make the solicitation and or acceptance improper conduct as prohibited by the

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Ethics Ordinance. There are additional City of Detroit procedures which regulate the acceptance of donations. Finally, Executive Order 2007-01 imposes certain requirements on entities seeking contracts and the public servant is encouraged to obtain a legal opinion from the Law Department to provide guidance as to compliance with those mandates.

Advisory Opinion #2008-03 held a public servant who conducts software presentations for a private entity and receives payment for the presentations from the entity does not violate the Standards of Conduct. However, the activity must take place during non-working hours and not involve the use of any City resources.

Advisory Opinion #2009-01 held a public servant who engages in activity with and on behalf 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. Additionally, there is no violation of Section 2-6-66 of the Ordinance which generally prohibits the representation of private persons, business or organizations, if the public servant meets the requirement for exception as delineated in Section 2-6-66 (3). The exception provides that the public servant must not appear before the department or entity of which they are a member, that the appearance must be without compensation, on the individuals leave time, and in accordance with the applicable provisions of their personal services contract.

Advisory Opinion #2009-02 held a public servant who pursues City contracts and other business opportunities with the City 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. Additionally, there is no violation of Section 2-6-66 of the Ordinance which generally prohibits the representation of private persons, business or organizations, if the public servant meets the requirement for exception as delineated in Section 2-6-66 (3). The exception provides that the public servant must not appear before the department or entity of which they are a member, that the appearance must be without compensation, on the individual's leave time, and in accordance with the applicable provisions of their personal services contract.

Recommendations for Improvements in the Ethics Ordinance

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 2008

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

**Honorable Charles L. Levin, Member
Mayoral Appointee
Term Expiration – April 30th 2004**

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

**Jenice C. Mitchell Ford, Esq.
Vice Chairperson - Mayoral Appointee
Term Expiration – April 30th 2008**

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

**Reuben A. Munday, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2005**

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