

## **BOARD OF ETHICS REGULAR MEETING**

Tuesday, May 16, 2017

7:00 p.m.

Lorraine H. Morton Civic Center, 2100 Ridge Avenue, Room 2402

### **AGENDA**

#### **1. CALL TO ORDER / DECLARATION OF QUORUM**

#### **2. APPROVAL OF MEETING MINUTES of: May 2, 2017**

#### **3. OLD BUSINESS**

A. Review and approval of advisory opinion for Complaint 17-BOE-0001 filed by Madelyn Ducre' and Betty Ester and Complaint 17-BOE 003 filed by Carolyn Murray.

B. Review and approval of advisory opinion for Complaint 17-BOE-0002 filed by Misty Witenberg.

#### **4. NEW BUSINESS**

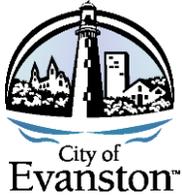
A. Board of Ethics member roles and duties

#### **5. ADJOURNMENT**

Next Meeting: June 20, 2017 at 7:00 p.m. in Room 2403

# BOE Minutes

## 05/02/2017



**DRAFT**

**MEETING MINUTES**

**BOARD OF ETHICS**

Tuesday, May 2, 2017

7:00 p.m.

Lorraine H. Morton Civic Center  
2100 Ridge Ave, Room 2404

Members Present: Mark Sheldon, Kelda Harris-Harty, Jennifer Billingsley, Karena Bierman and Vincent Thomas.

Members Absent: None

Staff Present: Michelle Masoncup, Staff Attorney

Presiding Member: Mark Sheldon, Committee Chair

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Chairman, M. Sheldon declared that the Board had a quorum, with all members present and called the meeting to order at 7:01 p.m.

The Board approved the minutes of June 21, 2016.

M. Sheldon reports that the Board received a new complaint filed by Carolyn Murray 17-BOE-003 against Alderman Holmes for alleged violations of the Code of Ethics. Carolyn Murray addressed the Board to add any additional comments to the written complaint.

Carolyn Murray alleged that Alderman Holmes showed favoritism by sending a newsletter that discussed the past election results.

J. Billingsley asked if there was a determination by the election judge on the polling place issue raised. C. Murray said that she filed a report and the election judge said that it wasn't allowed. V. Thomas asked if the election judge issued a written ruling on the issue. C. Murray said complaints were made to Election Board, but in this situation there was no report.

Alderman Holmes spoke the Board on the issues raised. She said that she did drive voters to the polling place. She indicated that she did not speak to voters in the lobby and make any endorsement or tell them who to vote for at Primm Towers. The newsletter is put together by a group of residents of the 5<sup>th</sup> Ward, they have always sent it out without City help, and the City doesn't generate her newsletter.

The Board moved into closed session pursuant to M. Sheldon's motion citing 5 ILCS 120/2(c)(15) to discuss the new complaint and the two issues that it took under advisement during the April 18<sup>th</sup> meeting.

The Board re-convened into Open Session and K. Bierman read the Board's findings with an advisory opinion to be prepared and reviewed by the Board:

1. Ester/Ducre and Murray complaints: Alderman Holmes distribution of an endorsement utilizing City resources was non-compliant with the City Code. Addressing the second part of Carolyn Murray's complaint, the Board found that distribution of the 5th Ward newsletter following the election was not a violation.

2. Witenberg Complaint: The Board held that Alderman Holmes acted in a manner that showed lack of impartiality by utilizing information obtained in the course of duties as an elected official from a candidate to another candidate's campaign team member.

3. Ester Complaint: The Board found an appearance of impropriety when a member of a City board presented a request for grant funding as an employee of the grant requester to a different City board. However, the Board found that upon the information presented, Robin Rue's direct financial interest was sufficiently tenuous as to not constitute a violation of the Code of Ethics and strongly cautious that all those serving on city boards must understand the implications of giving testimony to influence action when they have a financial interest in the outcome.

J. Billingsley nominated Kelda Harris-Harty for the new chair of the Board of Ethics and the Board unanimously approved the nomination.

## **ADJOURNMENT**

Upon motion and second, the meeting was adjourned.

Ester/Ducres/Murray  
Advisory Opinion

**BOARD OF ETHICS REPORT OF FINDINGS & ORDER**

**File Numbers:** 17 BOE 001 and 17 BOE 003

**Complainants:** Betty Ester, Madelyn Ducre and Carolyn Murray

**Respondents:** Mayor Elizabeth Tisdahl, Alderman Delores Holmes, Alderman Peter Braithwaite, Alderman Eleanor Revelle, and Robin Rue Simmons

This matter coming before the City of Evanston Board of Ethics, and the parties fully advised on the premises, the following findings are entered as a matter of Record, and it is HEREBY ORDERED:

**PROCEDURAL BACKGROUND**

1. On March 13, 2017, the Law Department received and processed a Board of Ethics complaint filed by Madelyn Ducre (“Ducre Complaint”) against Alderman Holmes and Robin Rue Simmons. The Complaint sets forth separate allegations against the individuals.
2. On March 15, 2017, the Law Department received and processed a Board of Ethics complaint filed by Betty Ester (“Ester Complaint”) against Mayor Elizabeth Tisdahl, Alderman Delores Holmes, Alderman Peter Braithwaite, Alderman Eleanor Revelle, and Robin Rue. The Complaint sets forth separate allegations against the individuals. The Ducre Complaint and Ester Complaint are essentially the same complaint and raise the same issues, therefore for purposes of review the complaints have been combined and addressed as one in this report and collectively referred to herein as the “Complaint.”
3. Both Complaints were scheduled to be heard on March 21, 2017 by the Board of Ethics. Due to unforeseen quorum issues (including long standing vacancies on the committee) on the day of the meeting, it was cancelled. The Board of Ethics did not meet until April 18, 2017 to consider the three complaints, after the April 4, 2017 consolidated general election. The Board of Ethics wants to take note that the delay in having the complaints addressed until after the election was unavoidable due to quorum issues and the Board does not want process issues to prevent complaints from being timely addressed. The Board will work with the City to improve processes to address complaints more swiftly in the coming months. Process considerations will be addressed at the June 20, 2017 meeting of the Board of Ethics.
4. The Board of Ethics held two meetings, posted notice and provided a packet on the City’s website, on April 18<sup>th</sup> and May 2<sup>nd</sup> to consider the Complaint at issue.
5. Carolyn Murray filed a Complaint with the Board of Ethics on April 26, 2017 with two main allegations and she addressed the Board of Ethics on May 2, 2017. In part, Murray’s complaint

addresses the same issue (endorsement of Robin Rue via City email) already raised by Betty Ester and Madelyn Ducre, thus the Board's findings will be addressed in this is advisory opinion.

### **ALLEGATIONS**

6. There are five main allegations in the Ester/Ducre Complaint. The first allegation is that current elected officials, Mayor Tisdahl, Alderman Holmes, Alderman Braithwaite and Alderman Revelle, cannot endorse a political candidate. The Complaint alleges that the endorsements by the aforementioned elected officials of Robin Rue Simmons candidate for the 5<sup>th</sup> Ward at the time of filing of the complaint, was a violation of the City Code of Ethics sections: 1-10-3, 1-10-4(A), (B) and (C), 1-10-5 (A) and (B).

7. The second allegation within the Ester/Ducre Complaint and the first part of the Murray Complaint is that Alderman Holmes endorsement of Robin Rue Simmons using a City email delivery service and City staff time was a violation of the Code of Ethics.

8. The third count is filed against Robin Rue Simmons for her service on the City's Compensation Committee "that voted to give the alderman a raise just four months before it was time to file as a candidate for alderman". The third allegation also appears to be against Alderman Holmes as well for voting on the elected official compensation increases and endorsing Robin Rue at a later date.

9. The fourth allegation is that Robin Rue Simmons was a member of a City committee (Minority, Women and Evanston Business Enterprise Development Committee) when she presented to a different committee requesting grant funding (Economic Development Committee) on behalf of a company that she was working for, Sunshine Enterprises, that runs entrepreneurial business training programs.

10. The fifth allegation in the Complaint is that Robin Rue Simmons's company, Signature Construction Service, was involuntarily dissolved by the Illinois Secretary of State in 2014, but received funding under HUD's Neighborhood Stabilization Program grant to the City for rehab of existing units and new construction of affordable housing.

11. The last allegation is contained in Murray's complaint. She alleges that it was an improper use of City e-mail when the 5thWard newsletter, entitled "Time to Move Forward" was distributed following the April 4, 2017 election.

### **FINDINGS & ORDER**

12. During the consideration of the issues raised, the Board evaluated the Complaint and all statements on the Record on April 18, 2017 and May 2, 2017.

13. **Endorsement of Candidates:** The mere act of endorsing a candidate for office is not a violation of the Code of Ethics. Therefore, elected officials are permitted to endorse a candidate for office; and the allegations made by B. Ester and M. Ducre against Mayor Tisdahl, Alderman Holmes, Alderman Braithwaite, and Alderman Revelle for providing endorsements to candidates are found to not be a violation of the Code of Ethics.

14. **Use of City Resources:** Distributing an endorsement for a candidate for office using City e-mail and City staff members is an unauthorized use of City resources. City Code § 1-10-4(C) *Standards of Conduct*(3)(b)(11) states:

*Use Of City Property.* No officer or employee shall use or permit the use of any person, funds, or property under his/her official control, direction, or custody, or of any City funds or property, for a purpose which is, or to a reasonable person would appear to be, for a non-City purpose. Notwithstanding the foregoing, nothing shall prevent the private use of City property that is available on equal terms to the public generally (such as the use of library books or tennis courts), or the use of City property in accordance with municipal policy for the conduct of official City business (such as the use of a City automobile or travel reimbursements for official business).

Alderman Holmes distributed an endorsement for a 5<sup>th</sup> Ward candidate, Robin Rue Simmons, using the City's email delivery system called "GovDelivery." In addition, Alderman Holmes utilized City staff members to compile a list of email addresses to send the endorsement and utilized City staff for the actual transmission of the endorsement. These actions are incompatible with City Code § 1-10-4(C) and an unauthorized use of City resources. Elected officials cannot engage in political activity by providing an endorsement of a candidate by City email and using City staff members.

15. **Compensation Committee Participation:** Pursuant to City Code § 1-5-9, a non-aldermanic committee shall review the aldermanic compensation structure every four years. Non-Aldermanic members of the 2016 Compensation Committee included Robin Rue Simmons. The Compensation Committee convened between the months of February- May 2016 to discuss recommendations on salary and benefit adjustments for City elected officials. The recommendations provided by the Committee were reviewed and approved by the Council, as required by City Code. The allegation against Robin Rue Simmons's service on the Compensation Committee which voted to give aldermen raises is not a violation of the Code of Ethics and the action was required under the City Code.

16. **Conflict of Interest:** In 2015, Robin Rue Simmons was an independent contractor of Sunshine Enterprises running programming for Evanston entrepreneurs and in 2016 was hired as a full time employee to serve as the North Side Program Coordinator. Robin Rue Simmons assisted with the presentation of Sunshine Enterprises proposal to the Economic Development Committee on

October 28, 2015 and on August 24, 2016 for grant funding requests. Robin Rue Simmons was a member of the MWEBE Committee at the time of her presentations to the Economic Development Committee.

Section 1-10-4(B) of the Code of Ethics sets the parameters for individuals that are subject to the Code of Ethics, this includes “members of boards and commissions appointed by the city mayor or city council”. Therefore, at the time of filing the Complaint, Robin Rue Simmons was within the purview of the Code of Ethics as a committee member of MWEBE. All appointed members of boards and commissions must review the Code of Ethics in relation to their service on the respective board or commission.

Based on Robin Rue Simmons ties to Sunshine Enterprises, the Board finds that her presentation to the Economic Development Committee gave the appearance of impropriety and a personal benefit could be inferred and potential conflict of interest under 1-10-4(c)(3)(b)(2). In this case, the Board finds that her presentation to the Economic Development Committee and her position on the MWEBE Committee was sufficiently tenuous that no violation of the Code of Ethics occurred. This finding is retrospective only and limited to the four corners of the complaint before the Board of Ethics.

17. **Signature Services Corporation:** The corporate status of Signature Services Corporation does not raise Code of Ethics issues, thus it is not within the jurisdiction of the Ethics Board and dismissed.

18. **Ward Newsletters:** Carolyn Murray also alleges in her complaint that the 5<sup>th</sup> Ward newsletter should not be distributed using City resources and more specifically the newsletter distributed following the April election was biased. The Board finds that distribution of community news and segments entitled “Time to Move Forward” does not violate Section 1-10-4 of the Ethics Code nor is it in furtherance of prohibited political activities.

19. This is an advisory opinion pursuant to City Code § 1-10-8(G).

Date: May 16, 2017

Entered:

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Kelda Harris-Harty, Chairwoman

Approved as to form:

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Michelle L. Masoncup, Deputy City Attorney

# Witenberg

## Advisory Opinion

**BOARD OF ETHICS REPORT OF FINDINGS & ORDER**

**File Number:** 17 BOE 002

**Complainant:** Misty Witenberg

**Respondents:** Alderman Delores Holmes

This matter coming before the Board of Ethics, and the parties fully advised on the premises, the following findings are entered as a matter of Record, and it is HEREBY ORDERED:

**PROCEDURAL BACKGROUND**

1. On March 23, 2017, the Law Department received and processed a Board of Ethics complaint filed by Misty Witenberg (the “Complaint”) against Alderman Delores Holmes (Exhibit 1). The Complaint sets forth separate allegations against the individuals. In addition, the Board reviewed an Addendum to the Complaint submitted by Misty Witenberg on May 1, 2017. The Board of Ethics did not meet until April 18, 2017 to consider the complaint, after the April 4, 2017 consolidated general election. The Board considered ramifications of the delay and will examine, and if necessary, improve the process so that complaints are heard in a timely manner. Process considerations will be discussed at the June 20, 2017 meeting of the Board of Ethics.
2. The Board of Ethics held two meetings, posted notice and provided a packet on the City’s website, on April 18<sup>th</sup> and May 2<sup>nd</sup> to consider the Complaint at issue.
3. During the hearings, the Chairman and members of the Board, all asked questions of the Complainants and Respondents related to the allegations contained within the Complaint.
4. Upon conclusion of the hearing, the Board of Ethics deliberated on the pleadings and testimony provided prior to issuing this Order.

**ALLEGATION**

5. The Complainant alleges that Alderman Holmes violated several sections of the Code of Ethics § 1-10-4(C)(1), (3)(b)(1), (2), and (11) when she forwarded emails from Misty Witenberg to Janet Alexander. Witenberg alleges that Alderman Holmes forwarding of her emails to Janet Alexander, an opposing 5<sup>th</sup> Ward alderman candidate’s campaign team member, was improper because the emails were “private, privileged emailed intervention request” (Exhibit 1, Complaint).

Witenberg indicates that she sent the emails to Alderman Holmes requesting assistance in a situation that she viewed to be acts of intimidation and public safety concerns from the opposing candidate’s campaign team. Witenberg reports that “these disclosures were sent on the Respondent’s government email, city property and official control” (Exhibit 1, Complaint). Lastly, she alleges that

the emails were forwarded to Janet Alexander “to advance the private interests of the Opposing Candidate” *Id.*

**FINDINGS & ORDER**

6. During the consideration of the issues raised, the Board evaluated the Complaint and all statements on the Record on April 18, 2017 and May 2, 2017.

7. Witenberg emailed Alderman Delores Holmes at her City email account. The Freedom of Information Act, 5 ILCS 140/1 is clear that all City email is potentially subject to disclosure. Witenberg perceived that her emails were private, but the statute dictates in this case. In addition, there is no privilege between the candidate and the Alderman on a City email server. Furthermore, Ms. Witenberg obtained copies of the emails that she complains about by submitting multiple Freedom of Information Act requests. She cannot now claim that the emails are privileged if she is aware and did obtain copies of email exchanges to which she was not a party by a FOIA Request.

8. Janet Alexander was an organizer of the Robin Rue Simmons Aldermanic Campaign (Exhibit 1, Addendum to Complaint) and the co-chair of a community group called WEST (West Evanston Strategic Team). Given Alexander’s known involvement in an opposing candidate’s campaign by Alderman Holmes, it is concerning that Robin Rue Simmons campaign team was provided the information on an opposing candidate’s campaign efforts. The Board finds Section 1-10-4(A) and (C)(1) of the Ethics Code was violated by showing a lack of impartiality by utilizing information that Alderman Holmes obtained in the course of her duties as an elected official and forwarding it to a campaign that she later endorsed.

9. This is an advisory opinion pursuant to City Code 1-10-8(G).

Date: May 16, 2017

Entered:

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Kelda Harris-Harty, Chairwoman

Approved as to form:

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Michelle L. Masoncup, Deputy City Attorney