



BOARD OF ETHICS SPECIAL MEETING

Tuesday, July 24, 2018

7:00 p.m.

Lorraine H. Morton Civic Center, 2100 Ridge Avenue, Room 2403

AGENDA

1. CALL TO ORDER / DECLARATION OF QUORUM

2. APPOINTMENT OF INTERIM BOARD CHAIR

Former Board Chair Kelda Harris-Harty's term expired on June 11, 2018. The Board of Ethics must appoint an Interim Board Chair.

3. APPROVAL OF MEETING MINUTES

June 19, 2018

4. NEW BUSINESS

Appointment

5. OLD BUSINESS

Review and approval of advisory opinion for Complaint 18-BOE-0001 filed by Misty Witenberg.

Discussion of Board of Ethics Rules

ADJOURNMENT

Next Meeting: August 21, 2018 at 7:00 p.m. in Room 2403

6/19/18

MINUTES



MEETING MINUTES

BOARD OF ETHICS

Tuesday, June 19, 2018

7:00 p.m.

Lorraine H. Morton Civic Center
2100 Ridge Ave, Room G300

Members Present: Kelda Harris-Harty, Karena Bierman, and Jennifer Billingsley

Members Absent: Elizabeth Gustafson and Vincent Thomas

Staff Present: Michelle Masoncup, Staff Attorney

Presiding Member: Kelda Harris-Harty, Committee Chair

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1. **Quorum:** Chairwoman, Harris-Harty declared that the Board had a quorum, with 3 of 5 members present and called the meeting to order.
 2. **Minutes:** The board approved the meeting minutes of December 19, 2017 and March 20, 2018.
 3. **Old Business:** K. Harris-Harty provided a review of the complaint and proceedings to date. She stated that on March 20th the Board conducted an initial/preliminary intake of the complaint filed by Misty Witenberg against Alderman Rue Simmons to evaluate jurisdiction with respect to the allegations raised in the complaint. The Board found that they have jurisdiction to evaluate the issue of conflict of interest raised by Misty Witenberg and the Board would hear testimony on the conflict of interest sections of the Code. She stated that the Board dismissed the allegations made from the source documentation attached to the complaint regarding the CDBG Program Reporting and Administration; Sunshine Enterprises Regulatory Filings and Assumed Name, a claim that Sunshine Enterprises is a fundamentalist religious group, Violations of Church and State, Economic Development Program Grant Administration, and Sunshine Enterprise use of Civic Center meeting rooms.

The Board listened to statements from the complainant and Respondent. Complainant discusses Sunshine Enterprises registration with the Secretary of State and entity names and alleges not tax-exempt and religious group. Alderman Simmons is paid by Sunshine Enterprises and full-time employer. M. Witenberg asked the Board if she took all necessary steps to avoid an appearance of impropriety and her participation on the Economic Development Committee and other city committees on grant awards. She raises grant administration and documentation concerns for the grant agreement with Sunshine Enterprises.

The respondent, Alderman Rue Simmons, stated that presentations went before the Economic Development Committee and grants never went before the MWEBE. She stated that her work with Sunshine Enterprises was disclosed and part of her qualifications for the job. She stated that the grant was approved in 2015. Alderman Rue Simmons stated that she abstained from the vote in late December 2018. She followed the model by prior and current colleagues on abstaining from the vote. Her employer decided to not seek funding for the third year.

K. Harris-Harty read a motion to move into executive session pursuant to 5 ILCS 120/2(c)(4) and (15) to discuss the ethics complaint and deliberate further.

The Board convened back in open session. The Board took public comments:

- (a) Three citizens posed comments that the staff attorney should recuse herself from the proceeding by representing the Board because she is the senior counsel to the City. M. Masoncup stated that she is the staff attorney to the Board and represents the municipal corporation.
- (b) M. Ducre stated that she didn't mean to file a complaint earlier and wants City to change policy about complaints to the City.
- (c) M. Witenberg spoke about her source documentation being addressed as allegations and that she felt they were separate from her allegations.

K. Bierman read the Board's determinations on M. Witenberg's Complaint against Alderman Rue Simmons:

- Evaluated the complaint alleging violations of section 1-10-4-b (Conflict of Interest)
- The Board already reviewed a presentation that she made on behalf of her employer at the Economic Development Committee meeting. The Board found 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 the 2017 case, the Board found 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.
- For this complaint, the Board considered the conflict of interest issue after she took office in May 2017. The grant awarded to Sunshine Enterprises was for a 3 year term; 2 years of grant were performed by Sunshine Enterprises (2016 and 2017). In order to for the City to meet its contract obligations after grant performance by Sunshine Enterprises, funds must be approved for payment. Recusal from the vote, as Alderman Rue Simmons did at a Council meeting, is a reasonable solution to address the issue.
- The Ethics board is not a gateway for all complaints relating to the operation of city government.
- This particular claim really relates to the administration of the grant. Recommends that this would be more properly reviewed and addressed by the appropriate city staff, for example, Community Development staff.

- Improper administration of the grant is not an ethics violation.
 - Votes to approve the stated advisory opinion.
4. **Adjournment:** Upon motion and second, the meeting was adjourned.

DRAFT

Draft Findings and Order for 18 BOE 0001

BOARD OF ETHICS REPORT OF FINDINGS & ORDER

File Number: 18 BOE 001

Complainant: Misty Witenberg

Respondents: Alderman Robin Rue Simmons

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. Misty Witenberg (the “Witenberg”) filed a complaint against Alderman Robin Rue Simmons (“Rue Simmons”) for violations of the Code of Ethics (the “Complaint”).
2. The Board of Ethics held two meetings, posted notice and provided a packet on the City’s website, on March 20th the Board held an initial intake of the Complaint to consider jurisdiction and held a hearing on June 19th to consider the allegations still at issue.
3. Upon conclusion of the hearing on June 19th, the Board of Ethics deliberated on the pleadings and testimony provided prior to issuing this final Order.

ALLEGATIONS

4. Witenberg alleges that Alderman Rue Simmons violated several sections of the Code of Ethics § 1-10-4(C)(3)(b)(2),(4),(5),(6),(8),(9),(11) and (12). The documentation attached to the complaint included documents and allegations that the Board found that it does not have jurisdiction over following the preliminary hearing/intake on March 20th. The source documents made allegations and provided documents outside the scope of the Board of Ethics. These included: CDBG Program reporting and administration inquiries; Sunshine Enterprises Regulatory Filings and Assumed Name, a claim that Sunshine Enterprises is a fundamentalist religious group, Violations of Church and State, Economic Development Program Grant Administration, and Sunshine Enterprise use of Civic Center meeting rooms.
5. In summary, the Complaint sets forth allegations against Alderman Rue Simmons for conflicts of interest related to her full-time employment with Sunshine Enterprises and her actions prior to and after she took office as an elected official in May 2017.

FINDINGS & ORDER

6. During the consideration of the issues raised, the Board evaluated the Complaint and all statements on the Record on March 20, 2018 and June 19, 2018.

7. The Board already reviewed an ethics complaint in 2017 filed against Alderman Rue Simmons raising the same conflict of interest issue. The Board reviewed Robin Rue Simmons presentation to the Economic Development Committee for grant funding, on behalf of her employer, Sunshine Enterprises, prior to her becoming an alderman and while she was a member of another City board, MWEBE committee. In that case, 17 BOE 001, Board found 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 the 2017 case, the Board found 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.

8. For the hearing on June 19th, the Board considered the conflict of interest issue not yet reviewed by the Board for funding disbursements reviewed and approved after she took office in May 2017. The Board notes that the grant awarded to Sunshine Enterprises was for a 3 year term; 2 years of grant were performed by Sunshine Enterprises (2016 and 2017). The City of Evanston approved the grant prior to Alderman Rue Simmons taking office. Alderman Rue Simmons recused herself from a Council vote to approve a payment to Sunshine Enterprises. Sunshine Enterprises affirmatively stated that they are not seeking funding for the last year of the grant, 2018. Therefore, there no competing grant requests now or in the future to impair her ability to fairly evaluate requests. In order to for the City to meet its contractual obligations after grant performance by Sunshine Enterprises, funds must be approved for payment. Recusal from the vote, as Alderman Rue Simmons did at a Council meeting, is a reasonable solution to address the issue.

9. Several of the allegations and testimony by administration of the grant. Allegations of improper administration of the grant are not an ethics violations, rather compliance with the terms of the grant and applicable federal regulations.

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

Date: July 24, 2018

Entered:

Vice Chair