MEETING MINUTES
BOARD OF ETHICS
Wednesday, October 24, 2018
7:00 p.m.
Lorraine H. Morton Civic Center
2100 Ridge Ave, Room 2404

Members Present: Jennifer Billingsley, Vincent Thomas, Karena Bierman, and LJ Ellul

Members Absent: Elizabeth Gustafson

Staff Present: Mario Treto, Jr., Deputy City Attorney

Presiding Member: Jennifer Billingsley, Committee Chair

1. **Quorum**: Chairwoman Billingsley declared that the Board had a quorum, with 4 of 5 members present and called the meeting to order.

2. **Public Comment**: The Board opened up the meeting for public comment. There were no individual present during the meeting. Misty Witenberg provided public comment regarding compliance with various codes, rules and ethics.

3. **Old Business**: Chair Billingsley stated that the next portion of the meeting relates to the hearings for Complaint 18-BOE-001 filed by Misty Witenberg against Alderman Rue Simmons.

**Hearing on Complaint 18-BOE-001**
Chair Billingsley opened the hearing with a summary of the procedural posture of the complaint originally filed on February 11, 2018. A jurisdictional hearing was held on March 20, 2018. Chairwoman Billingsley read the Board’s initial determination with respect to jurisdiction only. The Board determined they do not have jurisdiction over an employer of an elected official, board, or commission member. An employee is not held responsible for the action or inaction of its employer. The Board heard the complaint regarding the 2017 grant funding received by Sunshine Enterprises to determine if there was a conflict of interest with the funding attributed to Alderman Rue Simmons on June 19, 2018. On June 27, 2018, Misty Witenberg filed a Motion for Rehearing because Kelda Harris’ term was expired on June 19, 2018. On August 21, 2018, the Board granted the Motion for Rehearing. The intent of the hearing at hand is to have a rehearing of the June 19, 2018 hearing.

Chairman Billingsley asked for a restatement of the issues, as well as whether or not there are outstanding issues. The Board discussed whether Dr. Vincent’s abstention
affects the number of voting member and what constitutes a ruling or finding. Deputy City Attorney Treto advised that a three member vote would be acceptable. Attorney Shawn Jones, attorney for Alderman Rue Simmons, asked for clarification whether the only matter being heard was the Complaint regarding the grant funds, which Chairman Billingsley confirmed. Attorney Jones waived his Motion to Dismiss.

Chair Billingsley proceeded to begin the hearing for the Complaint. She granted Misty Witenberg fifteen minutes to present her Complaint and Alderman Rue Simmons’ counsel will have fifteen minutes to respond, and will finally grant time for any questions or statement.

Witenberg proceeds to discuss various conflict of interest provisions and how they apply to alleged activities of Alderman Rue Simmons:

- Whether or not the Respondent receive financial interest in the City’s sale of service to her employer; Wittenberg alleges that the Respondent received payment as an employee of almost $84,000 of the funding provided for her employers program.
- Whether or not the compensation was contingent on the City funding approval; Sunshine’s contract specified grant funding for one full-time position. The memorandum of understanding and contract named Respondent for that position. Respondent was hired two weeks after funding approval with 100% of her salary budgeted with the grant. Respondent participated and advocated for the funding for her employer three times: October 2015, December 2015, and August 2016.
- Whether the Respondent attempted to influence the City’s selection or conduct with her employer.
- Whether the Respondent appear before a City committee on her employers behalf.
- In its previous hearings, Witenberg believes the Board previously stated that the City wasn’t obligated to pay; rather, payment was prohibited by the City Ethics Code, through contract, and CDBG regulations. Officials who have any function over the CDBG program can’t have financial interest in its contracts or the work performed under them.
- Whether the Respondent accepted or engaged in employment giving an appearance of conflict;
- Respondent voted on legislation in which she had a business or financial interest;
- Respondent used her position for a purpose reasonably appearing to be for private, rather than public benefit;
- Respondent used City facilities to administer her employers program.
- Respondent was made aware of the funding source by various means.

Chairman Billingsley asked if anyone had questions. Board member Bierman asked whether there was a reference in time relative to when Rue Simmons became an elected official and her activity with regard to Sunshine Enterprises after that. Witenberg begins to give details, claims and evidence with related follow-up questions and
requests for evidence related to her claims. Board member Bierman went on to ask about Witenberg’s claims with regard to creative accounting and overcharging the City, naming of entity and it being improperly registered with the state, and tax exempt status based on religious beliefs. Witenberg does not believe that Respondent is an officer or part owner of the entity. Board member Bierman asked for clarification regarding claims of CDBG regulation violations that prohibit employees from benefiting from the contracts between the City and others. Board member Bierman asked for any specific instances where the Respondent used City property to host meetings specifically for the organization after gaining her elected position.

Chairman Billingsley asked if there were any more questions for Witenberg. There were none. Attorney Jones proceeded with Alderman Rue Simmons’ response.

Attorney Shawn Jones begins by pointing out that many of the alleged conflicts issues brought to the Board’s attention were from 2012, 2015, and 2016. Alderman Rue Simmons worked as a full time employee of Sunshine Enterprises. She taught two to three days a week in Woodlawn and Saturdays in Evanston. The grant did not fully fund her. The 2017 grant was the second year of a three year grant. The initial grant was voted on before the election that resulted in Alderman Rue Simmons being elected into office.

Attorney Jones called Alderman Thomas Suffredin to answer questions regarding his employment, his clients, and whether his clients conduct business with the City of Evanston. Alderman Suffredin is an attorney as well as a registered lobbyist with the State of Illinois. One of his client’s is Amazon.com, which conducts business with the City of Evanston.

Attorney Jones asks Alderman Suffredin what he does when items come to a vote for the Evanston City Council regarding Amazon. Alderman Suffredin stated that he abstains. Attorney Jones then proceeded to explain that other aldermen abstain from voting where a conflict exists and that Alderman Rue Simmons abstains from voting on matters that pertain to Sunshine Enterprises. Jones began listing the committees of which Alderman Rue Simmons is a part of and that Sunshine Enterprises has never come before those committees.

Attorney Jones ended his response by reiterating that the only issue before the Board is the 2017 grant, that previous years are not before the Board, and that it has been determined the Board has no jurisdiction. Jones states that it has never been hidden from the public the Alderman Rue Simmons was employed by Sunshine Enterprises and that Sunshine had business with the City.

Chairman Billingsley ask if there are any questions. Board member Bierman verifying how many years Sunshine was receiving the grant from the City. Attorney Jones clarifies that Sunshine withdrew from receiving the third and final grant year funding due to the Complaint in question. She asks how funds were disbursed. Attorney Jones was unsure.
Board member Bierman asks Witenberg to explain how Alderman Rue Simmons promoted activities that would benefit her employer through committee and City Council work. Witenberg describes that Aldermen Rue Simmons talked about how she spoke freely and proudly about Sunshine Enterprises, suggesting that this would influence board and committee decisions. Board member Bierman asks Witenberg if she can show a specific contract to show evidence of self-promotion due to Rue Simmons' position as alderman. Witenberg references her exhibits.

Board member Bierman asks Attorney Jones whether Sunshine is still receiving funds from Evanston. Attorney Jones states that Sunshine continues to do business in Evanston, but they no longer receive funding from Evanston. The Board proceeded with a discussion and posed questions related to the entrepreneurship grants offered by Evanston and whether or not attending a Sunshine class was a requirement. Attorney Jones says it is not a requirement and Witenberg disagrees. Board member Bierman asks Witenberg to point out where in her Complaint this is addressed. Witenberg refers the Board to Exhibit F1-F28.

Chair Billingsley stated for the record that Vincent Thomas has left the meeting.

Witenberg refers the Board to Exhibit F7: Eligibility Criteria. She points out Sunshine Enterprises is listed on the requirements, but in the footnotes are other programs that applicants can complete to meet the eligibility criteria for the entrepreneurship grant, noting all of them are located outside of Evanston.

Board member Bierman asks Witenberg for clarification regarding the claim of an ethics violation for merely mentioning her employer or employment and how that constitutes promotion and contract making. Witenberg clarifies that is not her position, but that if she speaks freely and proudly of their noteworthy work in regards to her employer, or states that she thinks her employer would be a good fit, during the decision making process, this would constitute promotion and contract making. Witenberg thats that Alderman Rue Simmons cannot making any statements that are influential or appear to be influential, and says Alderman Rue Simmons voted on Council and Committee on matters that specifically affect her employer.

Board member Bierman stated there are no more questions.

Witenberg claims that Attorney Jones presented incorrect information and asks for permission to ask him questions. Chair Billingsley grants a five minute rebuttal to Witenberg and five minute rebuttal to Attorney Jones.

Witenberg begins her rebuttal by asking Alderman Suffredin about what his financial interest in is with regard to payments. Alderman Suffredin objects to answering her question. Witenberg goes on to state that Alderman Suffredin’s financial interest would be negligible. Witenberg discusses Alderman Rue Simmons’ position with Sunshine and working location with relation to the funding timeline.
Board member Bierman asks follow-up questions related to the total income for Sunshine from all sources, and how Witenberg would recommend for an Alderman to avoid the appearance of impropriety, and the reasonableness of the City to allow a contractor to utilize their facilities free of charge if the City is paying for a service contract.

Chair Billingsley asked if Attorney Jones had a rebuttal. Attorney Jones did not.

Chair Billingsley begins Board discussions by first giving Board member Ellul background on previous hearings regarding this Complaint prior to her being on the Board. Chair Billingsley also explains to the public that this is not an open discussion between the Board and the public; the Board decided to discuss the Complaint in open session unless it is determined that the Board should continue in closed session.

Chair Billingsley led discussions regarding payment to Alderman Rue Simmons as an employee of a company that received funds from the City, and if there was a financial interest by Alderman Rue Simmons.

Board member Bierman stated that in the past, the Board of Ethics determined that recusal one’s self from a vote as a City Council member remove the conflict. Board member Bierman stated that Alderman Rue Simmons is not a direct recipient of the funds from the City. Board member Bierman states that a salary from your employer will be paid to you by your employer regardless of where funds are obtained. Board member Ellul made a comment that Alderman Rue Simmons does not have an ownership stake in the company, she is not a principal or a signatory.

Board member Bierman’s largest concern is the appearance and potential influence with other aldermen would result in an alderman receiving a payment. At that point Sunshine had to get the contract and Alderman Rue Simmons was an independent contractor at that time of the original contract and receiving payment. That provides significant distance for her. There were no negotiations after the award.

Board member Bierman stated that the use of public office for private gain is strictly prohibited, the contract was pre-existing prior to Alderman Rue Simmons being elected. It has already been decided that it was not a conflict of interest was she was an appointed official, and that is not before the Board.

Chair Billingsley does not believe there is a conflict of interest under City Code Section 1-10-4(C)(3)(b)(4), acquisition of interest.

Chair Billingsley reads the second allegation, City Code Section 1-10-4(C)(3)(b)(6), payment contingent on a specific action. Chair Billingsley states that this appears to relate more to bribery or kickbacks.
The Board proceeded to review the possibility of providing guidance in their advisory opinion. Board member Bierman stated that there hasn’t been evidence of influence, but would like to provide guidance about the appearance of using influence. Board member Bierman asks whether a person who has an indirect financial interest have influence in the City’s decision-making.

Board member Bierman stated where a contract was awarded prior to Alderman Rue Simmons being elected is not at issue. Chair Billingsley suggested that the Board recommend recusal where an individual’s employer is mentioned in a contract reviewed by the City.

Chair Billingsley reviewed the allegation based on City Code Section 1-10-4(C)(3)(b)(5), compatibility of employment. Board member Bierman provides examples of incompatible employment where there is a harm in the City’s interest and Chair Billingsley states that she does not believe there is a violation here.

Chair Billingsley reviewed the allegation based on City Code Section 1-10-4(C)(3)(b)(9), city’s relationship with third parties. Chair Billingsley raised the option of recusal as a way to address this type of potential issue.

Chair Billingsley reviewed allegation nine of the complaint based on City Code Section 1-10-4(C)(3)(b)(2), abuse of power of office. The Board proceeded to review examples in which there is an abuse of power of office and Chair Billingsley did not believe any of the evidence indicated a violation of this City Code.

Chair Billingsley reviewed the tenth allegation of the complaint based on City Code Section 1-10-4(C)(3)(b)(11), use of City property. Chair Billingsley found it reasonable for these City program sessions to be held at publicly owned buildings. Board member Bierman proceeded to provide examples in which there could be a use of publicly owned spaces for personal gain, which she did not see here.

Chair Billingsley reviewed question twelve of the complaint based on City Code Section 1-10-4(C)(3)(b)(8), participant in contract making. The Board proceeded to review hypotheticals in which there might be ethical issues related to City Code Section 1-10-4(C)(3)(b)(8).

Chair Billingsley reviews the possible options for the Board in making a decision related to this complaint. Chair Billingsley explains that she wants to move forward with this matter in a thorough way so as to avoid issues with the Open Meetings Act and procedural issues. Chair Billingsley continued to review the possible motions, the actions of the March 20, 2018 meeting, and advised the use of recusal to avoid issues related to the Evanston Code of Ethics.

Board member Bierman recommended that elected officials should be aware of appearances related to the Code of Ethics and how to best avoid those issues. She
also encourages those that can provide their unique perspective in board and committees should be encouraged to participate.

Board member Bierman made a motion that the Board adopt the findings of June 19, 2018 that there was not a conflict of interest under all of the subsections enumerated in the June 19, 2018 draft order related to the payment. The draft order would be amended to specifically state that there was no jurisdiction as stated in the minutes of March 20, 2018. Finally, Board member Bierman adds that the draft order needs to incorporate guidance for all elected officials and people who have business with the City that they should take a long hard look at what it looks like to the citizens of this city, and specifically their wards where decisions are being made, what an elected official can do to prevent a backroom view of politics; it is the burden of elected officials to self-reflect and make sure that their personal interests to not cloud decision-making. Board member Ellul seconds the motion. The motion passed unanimously.

Chair Billingsley and Board member Bierman proceeded to discuss hypothetical ethics violations. Board member Bierman moved that the order list as an example of a violation of the ethics code where: an individual sits on a committee that puts forth guidelines possibly favoring the individual’s employer, which in turn has the potential for personal gain of the individual. Recusing oneself avoids the appearance of a conflict of interest. With the case at hand, there has been no evidence showing a conflict of interest under City Code Section 1-10-4(C)(3)(b)(12).

4. **Adjournment**: Upon motion by Board member Bierman and second by Board member Ellul, the meeting was adjourned with all voting in favor.