

2005
ETHICS BOARD
ANNUAL REPORT

April 26, 2006

To the Honorable Mayor of Milwaukee
and the Common Council

The City of Milwaukee Board of Ethics 2005 Annual Report

The City of Milwaukee Board of Ethics faithfully administers the City of Milwaukee Code of Ethics, Chapter 303, which promotes the essential elements of public trust. The Board works to implement the Code by issuing confidential advisory opinions, investigating sworn complaints, requiring and reviewing annual financial statements and providing educational materials. Seven volunteers, having no affiliation to the City of Milwaukee except for residency, make up the Board of Ethics. Members of the Board are recommended to the Mayor for nomination by seven community groups based in the greater Milwaukee area. The seven groups are: The League of Women Voters of Milwaukee County, the Milwaukee Labor Council, the Public Policy Forum, the Milwaukee Bar Association, the Metropolitan Milwaukee Association of Commerce, the Milwaukee Branch of the N.A.A.C.P. and the Interfaith Conference of Greater Milwaukee.

In the year 2005, the Ethics Board held eleven regular board meetings, and two subcommittee meetings. The Board confidentially addressed eighteen requests for advisory opinions from a variety of sources, including employees, officials, board/commission members, and citizens. The Board filed four complaints against individuals who failed to file the Statement of Economic Interests form. Summaries of the opinions are included in this report. They should not be viewed as definitive advice, but rather as a guide to the types of situations addressed by the Board. If persons subject to the ethics code have any questions regarding their actions, they should request a confidential opinion from the Board of Ethics.

The Board appointed a subcommittee in April to review the 2004 Statement of Economic Interests forms. The purpose of this review was to check for accuracy and inconsistencies in a random selection of completed forms. Overall, the committee found the Statements of Economic Interests to be properly completed.

Beginning in May, a subcommittee of the Board meticulously reviewed the Rules and Procedures for the Ethics Board. A thorough review of this document was long overdue. The committee presented extensive revisions to the Board. After much discussion and revisions, an updated Rules and Procedures were approved by the Board and were ordered on file by the Common Council in July 2005, Council File #050490.

In August, the Board requested that all Department Heads review the list of persons within their departments who are required to file an annual Statement of Economic Interests. The Department Heads then responded to the Board regarding any position they felt should be added to or deleted from the current list. The Board then reviewed these requests according to the Ethics Code and current job descriptions and forwarded the final recommendation to the Finance and Personnel Committee. This process is intended to keep the positions list accurate while giving Department Heads a yearly opportunity to refresh their understanding of Chapter 303.

The Ethics Board welcomed two new board members in 2005. Patricia Hintz, representing the Milwaukee Bar Association, replaced Michael Guerin who resigned in December 2005. Annie Wacker, representing the Milwaukee County Labor Council, replaced Mary Jo Avery, whose term expired in February 2005.

In October, the Board approved minor changes to the Statement of Economic Interests form. Several changes to the form and the instructions reflect Ethics Code amendments that were approved by the Common Council in April 2005, Council File #041443. Briefly, the amendments provide for disclosure of an association with any nonprofit organization, disclosure of real property in Milwaukee, Ozaukee, Racine, Washington and Waukesha counties, and disclosure of income from a corporation taxed under subchapter C of the Internal Revenue Code. Another change to the Ordinances which affect the Ethics Code was made to Section 320-5, Common Council rules, requiring that the Ethics Board be notified upon the introduction of a common council file to create a board or commission so that it may consider whether it is appropriate for nominees to that board or commission to file a Statement of Economic Interests.

The Board relies on the professional support services of some City Employees and an independent contractor. The Board wishes to thank: Edward Ehrlich, of the City Attorney's office, who provides legal counsel; Linda Elmer, staff assistant from the City Clerk's office, who staffs the regular meetings, and Joanna Polanco, Council File Specialist from the City Clerk's office, who provides additional secretarial support. We greatly appreciate our research assistant, Nola Devereaux, who, as an independent contractor, provides invaluable research and technical support. We also wish to thank the City Clerk, Ronald Leonhardt, for providing additional administrative support to the Board.

Please feel free to contact any member of the Board of Ethics should you have any questions or desire additional information. We welcome any comments or suggestions you may have.

Very truly yours,

Dwight Ellis, Chair

SUMMARIES

Confidential Advisory Opinions

MEB 05-1 Conflict of interest in official action

ISSUE: A member of a City of Milwaukee board requested an opinion as to whether or not she/he could remain a City Board member due to the fact that the Common Council passed a new Lobby ordinance and she/he will be registering with the City as a paid lobbyist.

ADVICE: The Board determined that no restriction within Chapter 303, Code of Ethics exists that would prohibit the individual from continuing her/his Board responsibilities while also being registered as a lobbyist.

MEB 05-2 Potential conflicting employment

ISSUE: A current City employee requested an opinion as to whether a conflict of interest exists in her/his continuing a part-time, private, consulting business not related to her/his city position. The requestor offered guidelines she/he would follow in the pursuit of this business. The guidelines included:

- keeping City employment responsibilities separate for any and all private business pursuits.
- not using her/his City position to advance or benefit the consulting business.
- not doing business with any agency currently contracting with the City department for which she/he works and not consulting in any area similar to the duties of her/his City position.
- having a disclaimer on any contract that her/his work reflects that of a private entity and not of the City department for which she/he works.
- not competing with or leveraging work from existing City Department partners.
- not providing services that are currently being provided by the City Department.
- not disclosing information gained in her/his City position.
- not using City time or resources in pursuit of her/his consulting business.

ADVICE: The Board determined that no conflict of interest exists within Chapter 303, Code of Ethics in continuing the private consulting business as long as the requestor adheres to the guidelines outlined above. The Board further cautioned that she/he:

- must not use or disclose information gained in the course of or by reason of her/his position with the City which is not public information and which could result in a financial gain for herself/himself, her/his immediate family or any other entity as outlined in 303-5-4.

- must avoid any competition with the department for which she/he works and if matters change she/he will seek further guidance from the Ethics Board.
- make any necessary disclosures on the annual Statement of Economic Interests form.

The confidential opinion also stated that the opinion is based on Chapter 303, Code of Ethics, and that individual City departments may have other regulations regarding outside employment that she/he is required to follow.

MEB 05-3 Post employment and lobbying

ISSUE: A former City of Milwaukee employee requested an opinion as to whether a conflict of interest exists in three areas: 1) lobbying the Common Council as a paid lobbyist; 2) lobbying the Common Council as an unpaid volunteer; and 3) being reimbursed for fees and expenses as an unpaid volunteer. Her/his specific concern dealt with whether or not the involvement would violate the post employment restrictions outlined in Chapter 303-5-8(a&b).

ADVICE: The Board determined that her/his involvement in lobbying the members of the Common Council, both paid and unpaid, would constitute a violation of the City of Milwaukee Code of Ethics. The Board based this determination on Chapter 303-5-8(a) and 303-5-8(b). The Board communicated that the requestor may not engage in lobbying activities for 12 months following the date she/he ceased to be an employee of the City. She/he is not prohibited from lobbying outside the City as it does not involve interaction with City officials or departments with which she/he may have been previously associated. The third point, relative to the reimbursement of expenses was deemed to be moot because of the previous prohibitions.

MEB 05-5 Use of campaign funds

ISSUE: A City official requested an opinion as to whether or not it would be violation of the Milwaukee Code of Ethics if he/she used campaign funds to reimburse her/his spouse for handling campaign related activities.

ADVICE: The Board determined that the issue raised in the request is not governed under Chapter 303, Code of Ethics. The Board further recommended that the official direct the request to the Wisconsin State Election Board for guidance.

MEB 05-6 Conflict of interest/potential conflicting nomination

ISSUE: A contract, non-permanent employee of a City department working with a grant program requested an opinion as to whether a conflict of interest exists with her/his

accepting a nomination to serve on the board of directors of a community business association.

ADVICE: The Board determined that it does not have jurisdiction in the matter because 1) the requestor is not a City employee as defined by the Code of Ethics; 2) the requestor's position does not appear in the Positions Ordinance or the Visual Organizational Inventory; and 3) the community/business association is not governed by the City's Code of Ethics.

MEB 05-7 Conflict of interest in official action

ISSUE: An appointee to a City commission requested an opinion as to whether or not a conflict of interest exists in becoming a member of the commission if her/his employer is currently handling a case involving the same commission. The requestor stated that she/he is not personally involved in the pending case and if the case were still pending at the time he/she began service on the commission, he/she would recuse her/himself from participation in the pending case.

ADVICE: The Board determined that the requestor may continue without delay in the process of becoming a member of the City commission. The Board cautioned the requestor that it is her/his responsibility to be aware of the Code of Ethics and the need to remove oneself from a matter should a conflict arise.

MEB 05-8 Fundraising

ISSUE: The City official requested an opinion on whether or not a violation of Chapter 303, Code of Ethics exists in holding a political fundraiser at a popular ethnic festival venue. The event would be in an isolated, designated area and would be by invitation only. Further, the official would pay the same hourly rate as anyone else for the use of the space and that those invited to attend would not get free access to the ethnic festival through the official.

ADVICE: The Board determined that no conflict of interest under the Code of Ethics, chapter 303 in proceeding with the fundraiser as described.

MEB 05-9 Payment of expenses

ISSUE: The director of a City department requested an opinion as to whether or not a conflict of interest exists in her/his serving on two committees and participation at two conferences in 2005.

ADVICE: The Board determined that no conflict of interest exists in serving on the two committees and/or participating in the two conferences. The Board based its decision on

the understanding that the requestor would be representing the City of Milwaukee in all instances. Further, none of the instances cited would provide the requestor with a personal benefit as outlined in Chapter 303, Code of Ethics. The Board reminded the requestor to disclose the payment of expenses on the annual Statement of Economic Interests form or on a “Gift and Honoraria or Payment of Expenses” form.

MEB 05-10 Conflict of interest relating to fund raising – Part 1

ISSUE: A City official requested an opinion as to whether a conflict of interest exists between his/her official City duties and the raising of funds for a newly established private endowment fund that would benefit the City official’s department. The fund was established to raise funds from individuals, foundations and corporations for the purposes of supporting programs and projects for the official’s department not covered by its annual budget. The specific question deals with whether or not the official may be involved with fundraising and publicity of this non-governmental charitable fund.

ADVICE: The Board determined that the official’s participation in the solicitation of funds could constitute the appearance of an impropriety based on s. 303-1 and s. 303-5-3, Milwaukee Code. The opinion was based in part on the fact that the fundraising activities could reasonable be misinterpreted as exercising undue influence and/or directly soliciting something of value even though the monies are channeled into a fund that may eventually be used in whole or in part by the department in which the official works. To avoid this perception, the Ethics Board suggested that the official not be involved directly in fundraising activities although the official could publicize the needs of the department which might be supported by the charitable fund.

MEB 05-11 Membership offer

ISSUE: A City official requested an opinion as to whether she/he may accept a “courtesy membership” to a local club. The courtesy membership is non-transferable, has no intrinsic value, allows access to the club facility, identification to club employees and the recipient is responsible for all charges.

ADVICE: Based on the information presented, the Ethics Board was unable to determine that this “courtesy membership” does not constitute “anything of value” as defined by s. 303-3-1, MCO. The Board determined that even though the invitation stated that there was no intrinsic value for the membership that value exists because it would provide the official with access to a facility to which the general public does not have access. Therefore, the Ethics Board recommended that the official decline the invitation. The Board further recommended that if the official wished to become a member of that club, that she/he pay the membership fees and dues that other members pay.

MEB 05-12 Conflict of interest in official action

ISSUE: An appointee to a City board/commission requested an opinion regarding the limitations on her/his ability and the ability of other members of her/his firm to represent clients before the board/commission to which she/he has been appointed.

ADVICE: The Board determined that once the appointee becomes a member of the board/commission, she/he becomes an official of the City of Milwaukee and that representing a client before the board/commission would be a violation of the Code of Ethics. Section 303-7a, MCO clearly states that no official or other city employe may represent a person for compensation before any department. In the event that another member of her/his firm represents a client before the board/commission, she/he would be required to take steps to distance herself/himself from those proceedings. In addition, the Board included a copy of the State of Wisconsin Ethics Board guideline, “Mitigating Conflicts of Interests: Private Interest vs. Public Responsibility”.

MEB 05-13 Conflict of Interest relating to fund raising – Part 2

ISSUE: A City official requested additional consideration regarding her/his involvement in raising funds for a charitable endowment fund. The official provided additional details to the previous request and outlined various ways to diminish or eliminate the appearance of a conflict of interest.

ADVICE: The Board determined that the official may proceed in promoting the fund to potential donors. The Board continued to advise her/him to distance her/himself from direct fundraising and personal solicitation of funds. Additionally the Board determined that merely informing groups that the fund exists and how to contact it would not constitute a direct solicitation or a violation of the Code of Ethics.

MEB 05-14 Potential conflicting offices

ISSUE: A City official requested an opinion as to whether a conflict of interest exists in seeking donations for two nonprofit organizations in the City of Milwaukee. The official has no financial interest in either of the organizations and wishes to contact friends and business acquaintances about the needs of these organizations and request money or gift certificates to be directed to them.

ADVICE: The Ethics Board determined that the official’s direct involvement in fundraising on behalf of these organizations could constitute a conflict of interest as defined by the Code of Ethics, s. 303-5-3. The Board concluded that by soliciting funds

from a variety of sources, the official could open her/himself up to the perception of *quid pro quo*. The Board further suggested that the official contribute personally to these organizations and lead others by that example.

MEB 05-15 Lack of jurisdiction

ISSUE: A current employee of the Police Department requested an opinion regarding a matter in which she/he is involved.

ADVICE: Upon review of the request, the Board determined that it did not have jurisdiction in the matter based on the Code of Ethics, s. 303-3-11 which defines Other City Employee. Based on the definition in the Code the matter should be forwarded to the department or the Fire and Police Commission for consideration.

MEB 05-16 Potential conflict in disclosing confidential deliberations

ISSUE: A former City official requested an opinion as to whether or not a conflict of interest exists as a result of her/his disclosure of information from confidential deliberation due to a federal subpoena. The former official wished to notify the Board for which she/he served to make them aware of the subpoena and get advice as to whether the Board wished to file a motion with the Federal Court to quash the subpoena.

ADVICE: The matter was dismissed from Federal Court and therefore no further action was required of the Board or the requestor.

MEB 05-17 Gift/Payment of Expenses

ISSUE: A City official requested an opinion as to whether or not it is permissible under the Code of Ethics to accept a trip including transportation, meals and lodging. The purpose of the trip would be to learn about the rapid economic growth of another country.

ADVICE: The Board determined that no conflict of interest exists in accepting the invitation to attend the trip. The Board based its opinion on the Code of Ethics, s. 303-9-3-c which states that “a public official may receive...on behalf of the city transportation, lodging meals, food, beverage, or reimbursement ...of actual and reasonable cost that the official can show... were received on behalf of the city and not primarily for the private benefit of the official or any other person.” The Board further advised the official to disclose all of the underwritten expenses to the Ethic Board on the 2005 Statement of Economic Interests form or on the “Gifts, Honoraria, Payment of Expense form.”

MEB 05-18 Conflict of interest relating to fundraising

ISSUE: A City of Milwaukee official requested an opinion as to whether a conflict of interest exists in the desire to personally pursue additional funding from two foundations for special programs for the City Department with which she/he is involved. The official's involvement at this point would be informal with the emphasis being on the exploration of possible interest in financial support. Formal processes such as grant writing have yet to be determined.

ADVICE: Based on the information provided the Board determined that no conflict of interest or other violation of the City's Code of Ethics exists in approaching the two foundations for preliminary discussions of financial support. The Board found that the discussion pertaining to grant proposals and general administration of the funds are too uncertain and vague for the Board to comment or respond. The Board suggested that the requestor return for further advice once the process becomes clearer or more concretely defined.

Complaints

MEB 05-405-1

The Ethics Board filed a complaint against a member of a City Board or Commission for failure to file the annual Statement of Economic Interests form within the prescribed time. The individual filed the completed Statement of Economic Interests and the complaint was dismissed.

MEB 05-405-2

The Ethics Board filed a complaint against a member of a City Board or Commission for failure to file the annual Statement of Economic Interests form within the prescribed time. The individual filed the completed Statement of Economic Interests and the complaint was dismissed.

MEB 05-405-3

The Ethics Board filed a complaint against a member of a City Board or Commission for failure to file the annual Statement of Economic Interests form within the prescribed time. The individual filed the completed Statement of Economic Interests and the complaint was dismissed.

MEB 05-1105-1

The Ethics Board filed a complaint against a member of a City Board or Commission for failure to file the annual Statement of Economic Interests form within the prescribed time. The individual resigned her/his position with the City Board or Commission and the Board determined it was not in the public interest to proceed with the complaint.