

City of Detroit Board of Ethics

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

SUBJECT: Second Annual Report of the Board of Ethics

DATE: September 30, 2003

The First Annual Report of the Board of Ethics was submitted on September 12, 2002, and reported on activities of the Board from its inception to that date. This Second Annual Report covers Board activities from that date to the present. In accordance with Section 2-6-97 of the Ethics 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 Ethics Ordinance, and for improvement of the administration and enforcement of the Ordinance.

Board Activities

During the period of this Report, the Board met nearly every month. The principal administrative focus was on the recruitment and selection of an Executive Director. From a pool of approximately 120 applications, a Search Committee of the Board narrowed the field to four well-qualified applicants who were interviewed by the full Board. After two rounds of interviews, the Board selected Ms. Deborah J. Gaskin to be its first Executive Director. Ms. Gaskin began her duties in early August, and is in the process of establishing an independent Board office. With the anticipated hiring of an Administrative Secretary, the Board will be fully staffed. In addition to assisting the Board in its routine business, it is expected that the Board staff will develop seminars and materials to educate City public servants about the provisions and requirements of the Charter and the Ethics Ordinance during the coming year.

In terms of substantive work, the Board received and processed one Request for an Advisory Opinion, and one Complaint during the period of this Report. (A second Request was received recently, and is under Board review.) In response to the first Request, the Board issued Advisory Opinion 2003-1 on March 31, 2003, accompanied by a Dissenting Statement of two Board members. This Advisory Opinion interpreted Section 2-6-65 of the Ethics Ordinance, titled "Incompatible Employment or Rendering Services Prohibited." A synopsis appears below. The Board also received a related Complaint, which it determined did not include sufficient factual information as presented to meet the threshold requirements of the Ethics Ordinance. The Complaint was dismissed without prejudice when no further information was provided.

Compilation of Advisory Opinions

Advisory Opinion 2003-1 held as follows:

Pursuant to Section 2-6-65 of the Detroit Ethics Ordinance, a public servant shall not engage in or accept employment, or render services, for a public interest where such employment or service is incompatible with the discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the discharge of his or her official duties for the City. Under this Section, a Detroit City Council Member may not simultaneously serve as city attorney for a municipality that has, or is negotiating, any contract with the City of Detroit. Where such circumstances exist, a Detroit City Council Member may only come into compliance with the requirements of Section 2-6-65 of the Detroit Ethics Ordinance by resigning from one of the two incompatible positions because divided loyalty is a breach of duty of the office of City Council Member. In order to ensure compliance with Section 2-6-65 of the Detroit Ethics Ordinance, it is the responsibility of the public servant, prior to accepting employment, or rendering services for a public entity, to determine whether the public entity has, or is negotiating, any contract with the City of Detroit.

Recommendations for Improvements in the Ethics Ordinance

The Board has no recommendations at this time for improvements of the Disclosure Requirements that are found in Division 2 of the Ethics Ordinance. The Board proposes an

amendment to Section 2-6-66 for improvement of the Standards of Conduct found in Division 3. The proposed amendment would limit the prohibition on representation of persons or entities before a City agency for compensation to persons who are public servants only based upon service in a position in which they receive compensation from the City. A proposed amendment is attached.

In addition, the Board proposes an amendment to Section 2-6-101, Subdivision B, Advisory Opinions, of Division 4. The proposed amendment recognizes the lack of any provision for participation in the Advisory Opinion process by a public servant who, although not named, is known to be the subject of a Request for an Advisory Opinion. This exclusion stands in marked contrast to the due process opportunities provided to a public servant who is the named subject of a Complaint. Rather than importing the due process protections into the Advisory Opinion subdivision, the Board proposes limiting this subdivision to requests from a public servant about his or her own, past, ongoing, or prospective conduct. Inquiries about the conduct of another public servant would be left to the Complaint process where the public servant whose conduct is questioned receives notice and has an opportunity to participate. A proposed amendment is provided.

Finally, the Board notes an inconsistency between Section 2-106 of the 1997 Detroit City Charter and the Ethics Ordinance. While the Charter indicates that the Board "shall be authorized by ordinance to conduct investigations on its own initiative . . .", the Ordinance only allows investigations to be conducted in conjunction with a Complaint filed by any person except members of the Board. Proposed amendments to Sections 2-6-91 and 2-6-111 would provide that the Board may conduct investigations on its own initiative, and, where such an investigation indicates that there is reasonable cause to believe that a violation of the Ordinance has occurred, the Board may direct that a Complaint be filed in the name of the Board. Proposed amendments are provided.

The Board will be pleased to provide any further information about its second year of operation that may be helpful, and to respond to any questions. Thank you.

xc: Municipal Reference Library

PROPOSED AMENDMENT TO SECTION 2-6-66

Amend Subsection (A) of Section 2-6-66, "Representation of private entity prohibited," to limit the prohibition to persons who are public servants only by virtue of service in a position in which they receive compensation from the City. A person who is a public servant only because of service as an unpaid member of a board, agency, commission or other entity would not be prohibited from receiving compensation for representing another person or entity in any matter that is pending before a City agency, but would remain subject to other provisions of the Ordinance.

Sec. 2-6-66. Representation of private entity prohibited.

(a) A public servant who receives compensation from the City in his or her capacity as a public servant shall not act, for compensation by any person other than the city, as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency.

(b) A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties.

PROPOSED AMENDMENT TO SECTION 2-6-101

Currently a public servant may request an advisory opinion about his or her own conduct, or about the conduct of another public servant, which has occurred or which may occur. The Board is concerned that, where the request concerns the conduct of another public servant which has occurred, the advisory opinion will impact upon the other public servant with no opportunity for that person to participate in the process. Rather than incorporate the due process opportunities from the complaint process into the advisory opinion process, the Board recommends limiting a request for an advisory opinion to a public servant's own conduct, past, continuing, or prospective. Concerns about the conduct of another public servant may be addressed through the complaint process in which the public servant whose conduct is questioned may participate.

Sec. 2-6-101. Opinion request.

(a) A public servant, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the board of ethics regarding the following:

(1) The application a) of the disclosure requirements that are found in Division II of this article, or b) of the standards of conduct that are found in Division III or this article, to particular facts and circumstances; and

(2) Where a public servant, a former public servant, or an applicant or candidate to be a public servant believes that he or she, ~~or another public servant, former public servant, or applicant or candidate to be a public servant~~ may have violated, may currently be violating, or may violate this article, whether an actual violation may have occurred, a violation may be continuing, or a potential violation may occur.

(b) A request for an advisory opinion shall be addressed to the board of ethics, shall be submitted in writing, shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed by the person who is making the request.

**PROPOSED AMENDMENTS TO CONFORM ETHICS
ORDINANCE TO 1997 DETROIT CITY CHARTER**

Section 2-106 of the 1997 Detroit City Charter, in pertinent part, provides that: "The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative . . ." The only investigations that the Board may undertake are with respect to the Complaint process under Subdivision C of the Ethics Ordinance. In its current form, Subdivision C makes no provision for the Board to conduct investigations on its own initiative, but limits the Board to investigating Complaints filed by any person except for members of the Board. The proposed amendments to Sections 2-6-91 and 2-6-111 would conform the Ethics Ordinance to Section 2-106 of the Charter.

Sec. 2-6-91. Charter independence; duties; promulgation of rules.

(a) The City of Detroit Board of Ethics is an independent body that was created by section 2-106(2) of the 1997 Detroit City Charter for the following purposes:

(1) To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;

(2) To conduct investigations on its own initiative, or based upon a complaint, in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and

(3) To recommend a) improvements in the disclosure requirements that are found in Division II of this article, and the standards of conduct that are found in Division III of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

(b) In accordance with section 2-111 of the 1997 Detroit City Charter, the board of ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

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 prepared 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

AMENDMENT TO CONFORM ETHICS ORDINANCE TO CHARTER

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person who is making the complaint and sworn to in the presence of a notary public. Where, as a result of an investigation conducted on the Board's own initiative, there is reasonable cause to believe that a violation of this Article may have occurred, the Board may direct that a complaint be filed in the name of the Board.

(c) Such a complaint shall be filed within six (6) months 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.