

## ***City of Detroit Board of Ethics***

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**Department Directors, Heads of All Boards and Commissions**

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

**SUBJECT: Third Annual Report of the Board of Ethics**

**DATE: May 30, 2004**

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The Second Annual Report of the Board of Ethics was submitted on September 30, 2003, and reported on activities of the Board from September 12, 2002 to that date. This Third Annual Report covers Board activities from September 30, 2003 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 and disposed of all matters presented, including two Requests for Advisory Opinions and one Complaint. One of the principal administrative priorities of the Board was to establish an independent Board office. The Board has been provided temporary office space in the Law Department and was approved for permanent independent space on May 19, 2004 by the City Council. The office will be located in the First National Building, Suite 1537, and it is expected that the office will be fully operational by July 1, 2004. An Administrative Secretary was hired in February and the Board is now fully staffed.

The Board reviewed and revised its Rules and Order of Business. Pursuant to Section 2-111 of the Charter, the Board also developed and published proposed Administrative Rules that are scheduled for public hearing on June 15, 2004 and will be finalized after the hearing.

The Executive Director developed training programs for public servants and conducted numerous presentations to various City departments and public officials. The new employee orientation program that is conducted by the Human Resources Department will also include information regarding the Ethics Ordinance and its requirements. Meetings were conducted with the Communications and Creative Services Department in order to develop a web site, which will further increase awareness of the Ordinance. It is expected that the web site will be operational by July 1, 2004. The Board will develop an informational brochure for general use. There has also been contact with the staff of the Cable Commission about the use of its technology and resources to increase public awareness of the Ordinance. The Board received periodic informal inquiries to which the Executive Director responded with the approval of the Board.

In response to Request No. 2003 - 01, which alleged that a family relationship between public servants presented a conflict of interest, the Board concluded that there was no basis to take action given the information that was presented.

The second component of the Request alleged the improper disclosure of confidential information in violation of Section 2-6-63 of the Standards of Conduct. After review, the Board concluded that the issue presented was more appropriate for referral as a complaint rather than an advisory opinion, and suggested that the party making the referral file a complaint, if he/she wished to have the matter further considered.

Request No. 2003 - 02 involved Section 7-1104 of the Charter and questioned the appointment of a public official selected, that was alleged to have been in violation of a time period specified in the Charter. The Board declined to issue an Advisory Opinion on the basis of its conclusion that a complaint would need to be filed to give the Board jurisdiction and sufficient information upon which to proceed.

The Board received Complaint No. 2004 - 01, which alleged a violation of the Disclosure Requirements (Section 2-6-32), and a violation of the Standards of Conduct (Section 2-6-68). After review and investigation, the Board concluded that no violation had occurred and dismissed the Complaint.

### **Compilation of Advisory Opinions**

There were two Requests for Advisory Opinions received. Both Requests were considered and dismissed for the reasons outlined above.

### **Recommendations for Improvements in the Ethics Ordinance**

The Board has no additional recommendations at this time for improvements to the Ethics Ordinance. In its Second Annual Report the Board recommended three changes to the Ordinance which have not been acted upon. The Board offered to provide clarification and/or additional information regarding its proposed amendments in order to assist the Council with its review of the proposals. The Executive Director was invited to appear before the City Council and participated in a discussion concerning the Board's proposal and is scheduled for a return appearance July 9, 2004. Copies of our proposed amendments are attached to this Report.

Finally, it should be noted that there currently exists one vacancy on the Board, and three members are currently serving expired terms. It is respectfully requested that the vacancy be filled and the expired terms be addressed as soon as possible.

The Board will be pleased to provide any further information and to respond to any questions about its third year of operation. 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 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.