

City of Detroit Board of Ethics

Reginald M. Turner, Jr., Esq., Chairperson
Hon. Charles L. Levin, Member
Jenice C. Mitchell, Esq., Member
Reuben A. Munday, Esq., Member
Byron H. Pitts, Esq., Member

TO: Hon. Kwame M. Kilpatrick, Mayor

Hon. Kenneth V. Cockrel, City Council President
Hon. Monica Conyers, City Council President Pro Tem
Hon. Sheila M. Cockrel, City Council Member
Hon. Barbara-Rose Collins, City Council Member
Hon. Brenda Jones, City Council Member
Hon. Kwame Kenyatta, City Council Member
Hon. Martha Reeves, City Council Member
Hon. Alberta Tinsley-Talabi, City Council Member
Hon. JoAnn Watson, City Council Member

Hon. Janice M. Winfrey, City Clerk

Department Directors, Heads of All Boards and Commissions

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

SUBJECT: 6th Annual Report of the Board of Ethics

DATE: June 29, 2007

The Fifth Annual Report of the Board of Ethics (the "Board") was submitted on April 25, 2006 and reported on activities of the Board from May 1, 2005 to March 31, 2006. This Sixth Annual Report covers Board activities from April 1, 2006 to May 31, 2007. 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

A. Meetings

During the period of this Report, the Board met nearly every month and disposed of all matters presented, including one Request for Advisory Opinion. The Board received no Complaints against public servants.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2006-01, the Board issued an Advisory Opinion interpreting the application of Section 2-6-65 of the Ethics Ordinance, titled “ Incompatible Employment or Rendering of Services Prohibited.” A synopsis appears below.

C. Complaints

No complaints were received during the period of this Report.

D. Other Activities

A major focus during the Report period was the amendments to the Ordinance. On November 17, 2006 the Council adopted several amendments to the Ethics Ordinance. The amendments to the Ordinance became effective December 15, 2006. During the period of Council’s consideration staff attended numerous meetings as the changes were considered by Council. Information was also provided to Council members regarding the Board’s proposals in an effort to assist in their review.

The amendments to the Ordinance required the revision of existing forms and information in addition to the development and approval of an additional form. Procedures for compliance with the new Disclosure Requirement were also developed. Upon approval the revised forms were distributed to all departments as required by the Ordinance. The Board also revised its Administrative Rules in order to address the changes. The Board’s Rules of Order were also reviewed and updated. As provided for in the Charter, the amendments to the Ordinance now empower the Board to initiate investigations under its own authority however no investigations have been undertaken.

Staff continues to meet with and assists members of the public or city employees who request information regarding the Ordinance or the completion of forms. The Board's web page is being redesigned. The Ordinance and all forms were modified to reflect the changes required by the amendments and are available on the web site. Publications have been developed which will be posted on the web page after being finalized by CCSD. The page will also be expanded to include additional information.

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The Executive Director made presentations to various City Departments as requested. Such presentations were made in an effort to increase employee awareness of the Ordinance and its requirements particularly regarding the amendments to the Ordinance. Regarding ethics education the Executive Director explored the possibility of computer based ethics training. It was determined that there are a small number of companies that provide such products however technical issues regarding implementation and significant costs associated with the methodology make it impractical at this time. This idea may be revisited in the future. The new employee orientation program that is conducted by the Human Resources Department includes the revised information developed by the Director regarding the Charter Provision and the Ethics Ordinance. The Director will participate in the orientation and provide an overview of the Ordinance and the Standards of Conduct once the meetings resume. The Board received periodic informal inquiries to which the Executive Director responded with the approval of the Board. In the upcoming year, the Board hopes to increase public awareness of the Ordinance by the dissemination of its publications and presentations to community groups and organizations when requested.

There currently exist two vacancies on the Board. It is respectfully requested that the City Council fill the positions as soon as possible.

Compilation of Advisory Opinions

Advisory Opinion # 2006-01 held that there is no *per se* violation of Section 2-6-65 of the Ethics Ordinance which prohibits public servants from engaging in incompatible employment, or rendering services for a private or public interest when a public servant is on a leave of absence from the private entity. However, the Detroit City Charter mandates and the Ethics Ordinance prohibit actions by elective officers, appointees, or employees, which create the appearance of impropriety. Additionally, the purpose of the Ethics Ordinance as described in Section 2-6-1 is to promote integrity in government and requires that even the appearance of impropriety is to be avoided by its public servants so that the public interest is protected. Therefore, in order to avoid the appearance of impropriety the public servant should abstain from participating in any vote or resolution regarding the private entity.

Recommendations for Improvements in the Ethics Ordinance

The following are three recommendations for changes to the Ordinance.

1. The Board is recommending that Section 2-6-104, 2-6-115 and 125 be amended to extend the time for the disposition of Opinion Requests, Complaints and Board Initiated Investigations to 180 days upon a showing of extraordinary circumstances as defined at Section 2-6-3 of the Ordinance. This recommendation is submitted in order to assure disposition within the time proscribed by the Ordinance. In the event that a hearing is needed for resolution of Complaints requiring investigation and Board Initiated Investigations, there may not be adequate time within the current extension period (28 days) to meet the deadline. The recommendation is made regarding Advisory Opinions to assure consistency in the time periods.

2. The Board is recommending that Section 2-6-34 be amended to modify the disclosure requirement to impose the duty to disclose the relationship on the elected official and not the appointee. The Board received comments from appointees and elected officials that there was significant ambiguity as to who was required to make the disclosure and submit the form. The experience demonstrated that in all instances where a disclosure was required and made the form was completed by the elected official and not the appointee. Additionally in most other instances where the form was submitted by an appointee it was unnecessary (i.e., there was no relationship to disclose); therefore the form was submitted in the negative (i.e., "I am not related to any of the designated elected officials."). In order to clarify the reporting requirement the Board believes that directing the duty to the designated elected officials will improve the existing Section and preserve the objective of the provision. Included below is the current Section and the Board's suggested revision for your consideration.

Within thirty (30) days of enactment of this section, or within thirty (30) days of appointment, whichever is earlier, each public servant, who 1) is an appointee and an immediate family member, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk, or 2) is an appointee and a relative, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk, shall disclose the relationship on a form that shall be created by the Law Department and made available at the Office of the City Clerk, at each City department and each City agency, and filed upon completion at the Office of the Board of Ethics. (Sec. 2-6-34).

Suggested Revision of Section 2-6-34

Within thirty (30) days of enactment of this section, or within thirty (30) days of appointment, whichever is earlier, each public servant who is an elected official (the Mayor, A City Council Member, or the City Clerk) as defined in Section 2-6-3 of the code who is a relative of, or immediate family member of an appointee shall disclose the relationship on a form that shall be created by the Law Department and made available at the Office of the City Clerk, at each City department and each City agency, and filed upon completion at the Office of the Board of Ethics.

3. The Board is recommending that Section 2-6-94 which was enacted November 2006 be repealed. The current Section is included below and prohibits certain political activity by board members.

While a member of the Board of Ethics, a Board member shall not:

(1) Be a candidate for the office of Mayor, City Council, or the City Clerk;

(2) Be a campaign treasurer, campaign manager or officer, or participate in a committee for the campaign of a candidate for the office of Mayor, City Council or City Clerk;

(3) Make a monetary or an in-kind contribution to, or expenditure for, a political campaign that is in excess of one hundred dollars (\$100.00) for a candidate for the office of Mayor, City Council or City Clerk; or

(4) Solicit votes, or raise monetary or in-kind contributions, for a candidate for the office of Mayor, City Council or City Clerk. (Sec. 2-6-94).

The goal of this provision, as stated in the Commentary on Section 2-6-94, is to ensure that Board members are free to consider claims before them without feeling obligated or pressured to take sides during election cycles for the offices of Mayor, City Council and the City Clerk, the Board submits that these restrictions are overreaching. The Board's concerns regarding the Section are numerous and outlined as follows:

1. The Mayor and/or City Council appoint persons to the Board who they believe are persons of integrity. Accordingly, a Board of Ethics member who would allow himself/herself to feel pressured by the Mayor or a City Councilperson would allow himself/herself to feel pressured when he/she was appointed by the Mayor and/or the City Council, whether or not the Board member made a significant contribution to the Mayor or to a Councilperson. When confronted with a complaint or request for an opinion in a matter in which the Mayor or a Councilperson is a party, a

Board member should be allowed to rely on his/her integrity to decide that s/he: (i) can be objective in deliberating on the matter; or (ii) cannot be objective and recuse him/herself. Rather than regulating and restricting a Board member's political activities, it would be less intrusive to require Board members to disclose the nature of their political support of a candidate for Mayor, City Council or City Clerk in cases involving those candidates.

2. Most City residents who are committed enough to the City to volunteer to serve on the Board are likely to be citizens who are anxious to support candidates who they believe will provide good leadership to the City. The restrictions in Section 2-6-94 will likely severely limit the pool of good candidates for membership on the Board.

3. Hopefully, most matters coming before the Board will not involve a candidate for Mayor, City Council or City Clerk, and, therefore, political support of those candidates by Board Members will not be relevant.

4. Section 2-6-94's prohibition against soliciting votes for a candidate or campaigning for the office of Mayor, City Council or City Clerk is very vague. For example, wearing a campaign button or displaying a yard sign could be construed as soliciting votes. Additionally the Section does not define when campaigning begins or takes place. These ambiguities could present operational issues regarding compliance with the restriction.

For the reason outlined herein the Board urges repeal of this section.

The Board is willing to provide clarification and/or additional information regarding these proposed amendments in order to further assist the City Council with its review.

Finally, there currently exists two City Council vacancies on the Board and it is respectfully requested that the vacancies be filled as soon as possible.

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

Thank you.

cc: Municipal Reference Library



Member Roster 2007

**Reginald M. Turner, Jr. Esq. – Chairperson
Joint Appointee
Term Expiration – June 30th 2006**

**Honorable Charles L. Levin, Member
Mayoral Appointee
Term Expiration – April 30th 2004**

**Byron H. Pitts, Esq. Member
Council Appointee
Term Expiration – June 30th 2005**

**Jenice C. Mitchell, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2008**

**Council Vacancy
Term to Expire – June 30th 2008**

**Reuben A. Munday, Esq. Member
Mayoral Appointee
Term Expiration – April 30th 2005**

**Council Vacancy
Term to Expire – June 30th 2009**