

City of Detroit Board of Ethics

Reginald M. Turner, Jr., Esq., Chairperson
Jenice C. Mitchell Ford, Esq., Vice Chairperson
Rev. Spencer t. Ellis, Member
Hon. Charles L. Levin, Member
Reuben A. Munday, Esq., Member
Todd Russell Perkins, Esq., Member
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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: 7th Annual Report of the Board of Ethics

DATE: June 30, 2008

The Sixth Annual Report of the Board of Ethics (the "Board") was submitted on June 29, 2007 and reported on activities of the Board from April 1, 2006 to May 31, 2007. This Seventh Annual Report covers Board activities from June 1, 2007 to May 31, 2008. 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 two Requests for Advisory Opinion and four Complaints.

B. Advisory Opinions

In response to the Request for Advisory Opinion # 2007-01, the Board issued an Advisory Opinion interpreting the application of Section 2-6-1 of the Ethics Ordinance, titled "Engaging in official duties for private gain prohibited." A synopsis appears below.

In response to the Request for Advisory Opinion # 2008-01, the Board issued an Advisory Opinion interpreting the Standards of Conduct of the Ethics Ordinance found at Section 2-6-61 through 2-6-70. A synopsis appears below.

C. Complaints

Complaint # 2007-02 alleged that a public servant represented a private entity before a Commission of which he was a member. The complaint was based upon an alleged violation of the Standards of Conduct contained in the Ethics Ordinance at Section 2-6-61 "Representation of private person, business or organization prohibited; exceptions:*" After review and consideration, the Board concluded that the public servant had not violated the Ethics Ordinance and the complaint was dismissed pursuant to Section 2-6-115 (b)(2).

Complaint # 2007-03 alleged that a individual improperly used City resources while employed by an entity thought to be a City Department. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-64 "Use of City resources for commercial gain prohibited.", and Section 2-6-68 "Improper use of official position prohibited." A review and investigation revealed that the individual was not a public servant within the definition of the Ethics Ordinance, accordingly, the Board concluded that, pursuant to Section 2-6-115 (b)(1)(i) of the Ordinance it did not have jurisdiction and the complaint was dismissed.

Complaint # 2008 - 01, alleged that a public servant lied under oath during a court proceeding. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-68 "Improper use of official position prohibited". After review and consideration, the Board determined pursuant to Section 2-6-115 (b)(3) of the Ethics Ordinance that this matter should be dismissed due to pending criminal proceedings and the need for additional information for Board review and consideration. The Board noted that upon resolution of the criminal charges the Complaint may be refiled.

Complaint # 2008 - 02, alleged that a public servant improperly recommended the settlement of a lawsuit which resulted in the wrongful expenditure of public funds and lied during a court proceeding. The complaint alleged a violation of the Standards of Conduct with respect to Section 2-6-61 "Engaging in official duties for private gain prohibited" and Section 2-6-68 "Improper use of official position prohibited". After review and consideration, the Board determined pursuant to Section 2-6-115 (b)(3) of the Ethics Ordinance that this matter should be dismissed due to pending criminal proceedings and the need for additional information for Board review and consideration. The Board noted that upon resolution of the criminal charges the Complaint may be refiled.

D. Other Activities

All Board materials used in presentations were updated to include the amendments to the Ordinance adopted during 2006. Additional publications are also being developed to further increase awareness.

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 was redesigned. The Ordinance and all forms are now available on the web site. The Boards publications have also been posted on the web page. 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 Board is exploring the possibility of a hosting seminar conducted by a national ethics education organization. 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. The Board also received and responded to media inquiries.

Compilation of Advisory Opinions

Advisory Opinion # 2007-01 held there is no violation of Section 2-6-61 of the Ethics Ordinance which prohibits engaging in official duties for private gain when a public servant accepts an unsolicited gift card of nominal value provided by a contractor as an expression of appreciation for past exemplary customer service. Additionally, the Detroit City Charter and the Ethics Ordinance prohibit actions by elective officers, appointees, or employees, which create the appearance of impropriety. 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. The Board's analysis of the facts presented in this request reveals no appearance of impropriety.

Advisory Opinion #2008-01 held the awarding of a contract to a former public servant is not a *per se* violation of the Ethics Ordinance which establishes Standards of Conduct for public servants. However, all contracts entered into by the City of Detroit are subject to the City of Detroit Purchasing Ordinance and possibly other regulations. The Board of Ethics is not authorized to interpret the requirements of the Purchasing Ordinance or other related regulations. As such, the public servant is encouraged to obtain guidance if needed from entities authorized to interpret such ordinances and regulations.

Recommendations for Improvements in the Ethics Ordinance

In its Sixth Annual Report the Board submitted three recommendations for changes to the Ordinance and respectfully requests that they be considered.

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 the 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.

The Board will be pleased to provide any further information and to respond to any questions about its seventh 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**

**Rev. Spencer T. Ellis, Member
Council Appointee
Term Expiration – June 30th 2009**

**Jenice C. Mitchell Ford, Esq.
Vice Chairperson - Mayoral Appointee
Term Expiration – April 30th 2008**

**Todd Russell Perkins, Esq. Member
Council Appointee
Term to Expire – June 30th 2008**

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

**Byron H. Pitts, Esq. Member
Council Appointee
Term to Expire – June 30th 2010**