

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES
AUGUST 27, 2015 – 3:00 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202-203**

I. CALL TO ORDER

Sophie Fierro-Share, Chairperson, called the meeting to order at 3:00 PM.

II. ROLL CALL

Present: Ms. Fierro-Share
Mr. Robb
Mr. Schrot

Absent: None

Administration: City Attorney Currier, Clerk Pierce

III. APPROVAL OF MINUTES

MOTION: Motion by Robb, seconded by Schrot:
To approve the minutes of May 5, 2015.

VOTE: Yeas, 3
Nays, None
Absent, None

IV. NEW BUSINESS

- A. Review of Ethics Complaints:**
- 1. 2015-01 Complaint: Ann Endres, submitted by Nancy Fowler**
 - 2. 2015-02 Complaint: Ann Endres, submitted by Carolyn Allen & Stephanie Dziad**
 - 3. 2015-03 Complaint: Ann Endres, submitted by Renee Suchara**

Ms. Fierro-Share disclosed that her daughter was a student of Ms. Endres fifteen years ago. She disclosed that her husband is a candidate for City Commission.

Mr. Schrot disclosed that his daughter was involved in the skating program twenty-five years ago.

Ms. Endres confirmed for Ms. Fierro-Share that she is currently not under contract with the City. Her contract concluded in mid-May, 2015 following the ice show. Ms. Endres confirmed for Mr. Robb that the City has already replaced her and she has not committed herself to another season with the City.

Mr. Robb explained that the preliminary question is whether the board has jurisdiction over this matter. Mr. Schrot agreed that the Board does not necessarily have jurisdiction over past City officials. If Ms. Endres is no longer a contractor with the City and it is not anticipated that she will be doing business with the City through another

venue, it does not appear that she is a City official. Mr. Robb noted that she was not a City official at the time the complaints were filed.

MOTION: Motion by Robb, seconded by Fierro-Share:
That complaint 2015-01, 2015-02, and 2015-03 be dismissed due to lack of jurisdiction.

Mr. Currier commented on Procedural Rule #204, Summary Decision. He noted that the Complaints were filed after the contract expired and noted that the position is now filled.

VOTE: Yeas, 3
Nays, None
Absent, None

A. Review of Ethics Complaints:

4. 2015-04 Complaint: Lauren Wood, submitted by Renee Suchara

Ms. Suchara explained that her complaint and concern is with the money that was paid to AMG, Inc. She questioned why the money was paid to AMG, Inc and not the City. Ms. Wood was named in the complaint as she is the director of the department and oversees the ice arena. Ms. Suchara questioned why the funds are going through a contract employee's account.

Ms. Wood explained that there was an investigation done by the City Attorney's office. She explained that the ice show jackets had been purchased directly by the skating director for about fifteen years. AMG, Inc. was created within the last three to four years. She explained that the costs covered the price for the ice show and the product and costs varied year to year. The City was not involved in the selection of the jacket vendor. She noted that one year the cost for ice time was incorporated into the cost of the jackets, which was paid back to the City for the ice time.

Ms. Suchara expressed concern with the money going through AMG, Inc. Ms. Endres explained that she keeps track of the funds. She noted that she paid for the music in advance due to the turnaround time to request a check for the payment. She noted that she does not charge the City for the art work or time spent picking up the jackets.

In response to a question from Ms. Fierro-Share, Ms. Endres confirmed that the purpose of creating AMG, Inc was to separate her business account from her personal account.

Ms. Suchara explained that the check she wrote to the City was for costume, ice fee, instructor, and production. The check she wrote to AMG, Inc was for costume, ice fee, and instructors. Ms. Endres explained that for ease the items were bundled together. She explained the amount for the jacket and the amount for the opening number. She pointed out the amount that was rebated back to the City for the music cost for the entire show.

Ms. Suchara stated that she would like to see documentation that the funds went back to the City.

Mr. Robb explained that Section 2-324(5) applies: "No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or

her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.”

Mr. Robb questioned whether Ms. Suchara had any info that bears on whether Ms. Wood profited because of her official position. Ms. Suchara stated no.

Mr. Robb questioned if she was aware of any situation where people had paid for jackets or dvds and did not receive them. Ms. Suchara stated that she had not heard anything. Ms. Suchara explained that she felt more strongly that the complaint was more against Ms. Endres than about Ms. Wood; however, Ms. Wood should be more responsible and know what is going on.

Mr. Schrot noted that it would be beneficial for anyone who has an interest in the investigation done by the City Attorney's office to review it. He suggested that, if it could be done without too much effort and expense, that the City demonstrate that Ms. Suchara's funds went to the City.

In response to a question from Mr. Schrot, Ms. Wood explained that the conversation she previously had with Ms. Suchara led her to review the operations of the ice arena. She noted that within the investigation, many recommendations were made and changes put into place. Ms. Wood stated that in reviewing the issues, no violations were done by her and the issues in the complaint do not pertain to her or reflect her conduct and actions.

Ms. Fierro-Share noted that this goes back to communication. Rhonda Casper, parent at the club, explained the communication includes a handout and emails which are sent as needed.

Ms. Fierro-Share stated that as the director, it would have been a better policy to be more aware of what was happening and the potential problems that could occur. She stated that the lack of knowledge helped to create some of the additional problems.

Mr. Robb noted that legitimate issues were raised and concerns which have already caused the City to focus on those issues.

Given the discussion today, Ms. Suchara confirmed that she would be willing to withdraw ~~dismiss~~ the complaint.

MOTION: Motion by Robb, seconded by Schrot:
That the complaint 2015-04 be deemed withdrawn ~~dismissed~~.

VOTE: Yeas, 3
Nays, None
Absent, None

The Board recessed at 4:28 PM.
The Board reconvened at 4:35 PM.

B. Review of Advisory Opinion Request:
1. 2015-05 Advisory Opinion: Andrew Harris

Ms. Fierro-Share disclosed that her husband is running for City Commission. Given the nature of the request, there could potentially be a conflict of interest. She assigned Mr. Robb as the chairperson. Ms. Fierro-Share left the meeting at 4:37 PM.

Mr. Robb pointed out that Mr. Harris is also running for City Commission. Mr. Robb disclosed that Mr. Harris used to be his neighbor; however, he does not see this as a conflict and stated his impartiality.

Mr. Schrot disclosed that he is representing a City Commission candidate in a legal matter, but does not know Mr. Harris. He stated his impartiality.

Mr. Harris confirmed for Mr. Robb that he has been a member of the Library Board since 2008. He explained that he argued two property tax appeals to the Board of Review on behalf of two clients and filed appeal petitions with the tax tribunal. He stated that he received the City's answer in one matter and the other matter is still pending.

Mr. Currier disclosed that Jeff Kragt of Beier Howlett is representing the City on these matters.

Mr. Robb questioned if Mr. Harris was the only attorney at his firm that does this type of work. Mr. Harris responded that one attorney could do the work; however, he no longer works full-time.

Mr. Harris confirmed for Mr. Schrot that real estate taxes go to support the library. Mr. Currier explained the library millage.

The Board discussed the fiduciary duty of the public officials. Mr. Schrot pointed out Section 2-324(a)(6) which forbids any City official to render service when in conflict with official duties. He noted that as a City official, you give up certain rights as an individual given the fiduciary duties that are assumed.

Section 2-324(a)(6): "No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter."

Mr. Currier pointed out that Mr. Harris' firm could represent clients on this matter, but he could not. The Board discussed the Kulak and Segar cases. Mr. Schrot expressed the concern with the case is whether or not there is any potential adverse effect. He noted the correlation, or at least an appearance, to reduce property taxes and the effect on the library. In addition to a City official appearing in public litigation against the City. He pointed out sections 2-231 and 2-323.

Sec. 2-321 Responsibilities of public office: *"City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the state and to carry out impartially and comply with the laws of the nation, state, and the city. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of morality and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their conduct in both their official and private affairs should be above reproach.*

All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding conduct which may tend to undermine respect for city officials and employees and for the city as an institution."

Sec. 2-323 Intention of code: *"It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:*

- (1) Using public employment or office for private gain;*
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;*
- (3) Losing complete independence or impartiality of action;*
- (4) Making a city decision outside official channels; or*
- (5) Affecting adversely the confidence of the public or the integrity of the city government.*

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law."

Mr. Currier explained that the Board of Review is appointed by the City Commission. After their appointment, they are an arm of the State Tax Tribunal.

The Board agreed that the answer to the first two questions submitted by Mr. Harris is in the negative. The answer to the third question is another person in the firm. Mr. Schrot noted that he has the right to contest his own taxes, but when representing the public, it is a different matter. Mr. Robb agreed and noted that if the library could not be affected by the result of it, he could represent the public.

The Board agreed that Mr. Robb would write the opinion.

The Board commended Mr. Harris for raising the issue before the Board of Ethics.

V. PUBLIC COMMENT

VI. ADJOURN

The meeting adjourned at 5:18 PM.

Laura M. Pierce
City Clerk