

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2004-02**

DECISION

June 8, 2004

I. ISSUES PRESENTED

A. Is it a violation of the City of Birmingham's Ethics Ordinance for a volunteer member of a city board to advocate on behalf of a person who has brought a lawsuit against the city and certain of its officials and to solicit the donation of funds for the purpose of defraying the expense of that lawsuit?

Answer: It is not. A volunteer member of a city board may advocate on behalf of a person who has brought a lawsuit against the city and certain of its officials and may solicit the donation of funds for the purpose of defraying the expense of that lawsuit. To the extent that the city's Ethics Ordinance as presently drafted can be interpreted to prohibit such activity, that prohibition is barred by First Amendment principles.

B. Is it a violation of the City of Birmingham's Ethics Ordinance for a volunteer member of a city board to be the signatory to or a fiduciary of a bank account the use of which is dedicated solely to funding another person's lawsuit against the city?

Answer: It is. A volunteer member of a city board may not, consistent with the Ethics Ordinance, be the signatory to or a fiduciary of a bank account the use of which is dedicated solely to funding another person's lawsuit against the city. In becoming a signatory to or a fiduciary of such an account, the volunteer assumes a role directly against the interests of the city. That conduct presents an irreconcilable conflict of interest, may tend to undermine respect for city officials and employees and for the city as an institution, might result in or create the appearance of affecting adversely the confidence of the public or the integrity of the city government, and is incompatible and in conflict with the discharge of the volunteer's official duties. It is not protected under First Amendment principles.

II. OPINION

This matter came to the Board of Ethics on a complaint filed by Ms. Dorothy Conrad, a resident of the City of Birmingham, as Complainant, against Mr. Ralph L. Seger, Jr., also a resident of the city, as Respondent. The complaint alleges that Mr.

Seger has violated various portions of sections 2-320 to 2-324 of the city's Ethics Ordinance.

The Board of Ethics is an advisory body created by the City Commission to interpret the Ethics Ordinance. Birmingham Code of Ordinances, § 2-325(a)(1). The Board is required to determine whether the Respondent's conduct as alleged in the complaint or demonstrated at the hearing is in breach of the Ethics Ordinance. Board of Ethics Rule 314. The Board is to make its decision upon a vote of a majority of its members based upon the evidence in the record and controlling law. *Id.* The Board must issue its decision in the form of a written opinion. *Id.*

The City Clerk gave appropriate notice to the parties and scheduled the matter to be heard at the Board's regular April 6, 2004 meeting. The Respondent did not file a written answer to the complaint ahead of the hearing, nor was he required to, but he appeared in person on April 6 to defend.

On March 4, 2004, the City Attorney wrote to the Respondent informing him of his right to have the matter heard in open, public session or in closed, private session. On March 8, 2004, the Respondent notified the City Attorney of his election to proceed in open session. In that same letter, the Respondent requested that city employees Thelma Golden, Lauren Wood and Robert J. Fox be present to testify on his behalf.

At its regular meeting on April 6, 2004, the Board convened in open session to consider this matter. The Complainant and the Respondent appeared before the Board, made opening statements, offered evidence, and presented closing statements. Documents presented included the complaint and its exhibits and Mr. Seger's written response. The witnesses included Ms. Conrad; Mr. Seger; Ms. Thelma Golden, City Treasurer; Mr. Donald Carney, who is Mayor of the City of Birmingham but who appeared in his private capacity; Ms. Lauren Wood, Staff and Services Manager within the Department of Public Services; and Mr. Robert J. Fox, Assistant Director of Public Services. The Board also received public comment from two city residents, Mr. George Stern and Mr. Tom Elliott.

Mayor Carney later raised the question of whether city policy permitted or prohibited his testimony, even though he had testified that he was appearing in his private, not public, capacity. After the City Attorney considered the question, Mayor Carney concluded that under City Resolution No. 1261, he should not have testified.¹ He informed the City Attorney of his conclusion in that regard, who in turn informed the Board and the parties before the Board's deliberations at its May 4, 2004 meeting. At that meeting, the Board asked the parties whether they had an objection to striking and disregarding Mayor Carney's testimony. Neither the Complainant nor the Respondent

¹ "No elected or appointed official should appear before any City board or commission as counsel or advocate for any party participating in any proceedings before such board or commission, whether he is being paid for his services or not." Statement of Policy of Birmingham City Commission, City Resolution No. 1261 (August 5, 1968).

objected. Moreover, Mayor Carney's testimony was cumulative of testimony and argument presented by the Respondent. Accordingly, his testimony was struck and is disregarded by the Board in its consideration of this matter. The Board thanks Mayor Carney for timely raising the question of his disqualification from testifying in this matter.

After receiving the evidence and the argument of the parties on April 6, 2004, the Board reconvened at its next regular meeting on May 4, 2004, where it deliberated and voted on the matter. As a result of the vote, the Board issues this opinion as its final decision in this case. The Respondent raised a defense based upon constitutional law as well as defenses based upon the facts. Because the constitutional defense is substantial, the Board addresses it in this opinion. To facilitate the process, the Board issues this opinion in the form of findings of fact, conclusions of law and discussion.

A. FINDINGS OF FACT.

The relevant facts are not in dispute. Mr. Seger forthrightly admitted that the facts as alleged in the complaint are true.

Mr. Seger serves on two city advisory committees. He is a member of the General Investment Committee, and he is chairperson of the Barnum Center Steering Committee. He serves in those positions by appointment of the Birmingham City Commission. He is a volunteer to the city, not a paid employee.

The General Investment Committee is a citizen advisory committee created to provide technical investment assistance to the City Treasurer and to provide an additional periodic professional review of the city's general investment portfolio. Its mandate is to assist the City Treasurer in determining the types of investments which are most appropriate within the investment policy approved by the City Commission and to report annually to the City Commission on investment performance. City Resolution No. 04-328-85 (April 1, 1985). Members of the General Investment Committee are included under the city's fiduciary liability insurance policy. *Id.*

As a member of the General Investment Committee, Mr. Seger is involved in making recommendations to the city and the city's treasurer about investment policy, including the investment of surplus funds that may be used for general city purposes, as may be in the best interests of the city. Among other things, these unrestricted funds may be used to defray the city's litigation expense and satisfy judgments or fund settlements of lawsuits against the city. The General Investment Committee does not recommend specific investments. Rather, it advises the city on the types of investments available, approves a list of brokers the city might employ, and confers on general investment policy as a guideline for use by the City Commission. The General Investment Committee meets quarterly. Its most recent meeting before the Board's April 6 hearing was sometime in the middle of January 2004. The General Investment Committee is governed by the city's General Investment Policy, as approved by the City Commission

on September 8, 2003. Section 6.0 of the General Investment Policy addresses ethics and conflicts of interest specific to that committee. Mr. Seger considers himself bound by the requirements of that section.²

The Barnum Center Study Committee is an ad hoc citizen advisory committee created to advise the city on the use of the property that formerly was Barnum Junior High School and, more recently, owned by William Beaumont Hospital. Its mandate is to gather data, develop an acceptable plan for the interim and long-term public use of the Barnum facility, and make recommendations to the Department of Public Services and ultimately the City Commission.

As chair of the Barnum Center Study Committee, Mr. Seger is involved with making recommendations to the city about the Barnum property, including recommendations about a consultant to advise on its potential uses. The Barnum Center Study Committee usually meets monthly. According to published minutes, it met on December 11, 2003 and January 8 and February 26, 2004.

The complaint commencing this matter arises out of Mr. Seger's efforts on behalf of Mr. Gary Kulak. Mr. Kulak is a former member of the City of Birmingham's Planning Board and Barnum Center Study Committee. On January 26, 2004, Mr. Kulak was removed from those bodies by action of the Birmingham City Commission. On January 29, 2004, he filed a lawsuit in the United State District Court for the Eastern District of Michigan against the city and certain of its elected officials, alleging that the city wrongfully removed him. His lawsuit sought both money damages and injunctive relief. The federal court denied his motion for injunctive relief and dismissed the action. Mr. Kulak then filed suit in the Oakland County Circuit Court.

Approximately one week before Mr. Kulak's removal by the City Commission, Mr. Seger and two other individuals, Ms. Denise Grzech and Ms. Denise McKewan, formed a group to raise funds to help Mr. Kulak defray the cost of his lawsuit against the city. Mr. Kulak, Ms. Grzech and Ms. McKewan established with Midwest Guaranty Bank an account called the Gary Kulak Legal Defense Fund ("the Kulak Fund"). Each of the three individuals is a signatory to the account, and two of them must sign any check drawn on it. To establish the account, the three obtained from the Internal Revenue Service a taxpayer identification number. They did not incorporate, and they made no other filing with a governmental agency.

² Section 6.0 of the city's General Investment Policy requires, among other things, that officers and employees in the investment process refrain from personal business activity that could conflict with proper execution of the investment program or that could impair their ability to make impartial investment decisions. City of Birmingham, General Investment Policy, § 6.0 (Sept. 8, 2003). As mentioned before, Mr. Seger considers himself bound by this policy, but the Board does not undertake to decide whether he acted in conformity with it because no violation was alleged in the complaint and the Board did not address or consider it during the hearing.

The Kulak Fund bank account was established and used for a sole, restricted purpose. Monies deposited into the account may be spent only to defray expenses incurred relative to Mr. Kulak's lawsuit against the city. Mr. Seger considers himself a fiduciary of the Kulak Fund account, and the Board finds that he is a fiduciary.

Mr. Seger personally solicited and received monies on behalf of Mr. Kulak and deposited those monies into the Kulak Fund bank account. He also deposited checks he received via Mr. Kulak from others. Mr. Seger made payments from the Kulak Fund account in furtherance of the lawsuit.

Mr. Seger also participated in a written solicitation for contributions to the Kulak Fund. With Mr. Seger's knowledge, this solicitation was incorporated into an e-mail distributed to a number of Birmingham area citizens by Mr. Paul Reagan through a subscription called "bEline." The solicitation read:

Kulak Legal Defense Fund Established

Citizen voluteers [*sic*] are under attack by a commissioners [*sic*] indebted to the architects / commercial developers / and realestate [*sic*] speculators that financed their election. Gary Kulak represents an obstacle to the deal making and political spoils system that taken [*sic*] over City Hall. Gary's defense will be expensive. He needs your help.

Please send a check for a contribution to the "Gary Kulak Legal Defense Fund". There is no limit on the amount except the size of your purse and your heart. Mail checks to

Ralph Seger
1199 Pilgrim
Birmingham, MI 48009

This solicitation is the only written request for contributions that Mr. Seger made. Although the solicitation was styled as one in furtherance of the Gary Kulak Legal Defense Fund, Mr. Seger knows that Mr. Kulak is a plaintiff, not a defendant, in the litigation against the city.

Mr. Seger solicited contributions to the Kulak Fund from a number of individuals, some of whom themselves serve on city boards or committees. He did not, however, solicit contributions from the members or staff of the General Investment Committee or the Barnum Center Study Committee. It appears that the General Investment Committee did not meet between the time the Kulak Fund was established in mid-January 2004 and the Board's April 6 hearing.

Mr. Seger did not inform the General Investment Committee, the Barnum Center Study Committee, the City Treasurer or Ms. Wood that he was establishing the Kulak

Fund. The first time Ms. Wood heard that Mr. Seger had established the Kulak Fund was when she was requested to testify at the April 6 hearing. Mr. Kulak did not solicit donations to the Kulak Fund in the presence of Ms. Golden, Ms. Wood or Mr. Fox.

Mr. Seger is aware that the Ethics Ordinance allows city employees or board members to seek an advisory opinion from the Board of Ethics about whether their conduct conforms to the ordinance. He knew that his fellow General Investment Committee member, Mr. Peter Root, sought and obtained such an opinion on an unrelated topic in 2003.

Mr. Seger has performed a range of volunteer services, both directly for the City of Birmingham and for other organizations and causes, for many years. It is important to note that Mr. Seger's official conduct as a member of the General Investment Committee or the Barnum Center Steering Committee has not been called into question in this case. There is no evidence, indeed there has been no accusation or even suggestion, that he used his positions on those committees to gain favor for himself or for Mr. Kulak.

Given his role with the city, however, Mr. Seger's conduct with respect to the Kulak Fund is called into question under several provisions of the city's Ethics Ordinance. He conceded that his conduct in participating in the Kulak Fund may tend to undermine respect for city officials and employees and for the city as an institution.

B. CONCLUSIONS OF LAW AND DISCUSSION.

1. Jurisdiction.

The first question is jurisdictional: whether the Ethics Ordinance applies to Mr. Seger. He conceded that it does apply, and he is correct. The Ethics Ordinance defines "city official or employee" to include "persons who serve on advisory boards and commissions." Birmingham Code of Ordinances, § 2-322. Thus, Mr. Seger is a city official for purposes of the Ethics Ordinance and is subject to and bound by its provisions. Accordingly, the Board of Ethics has jurisdiction to determine the matter.

2. Constitutional Analysis of the Ethics Ordinance as Applied to Mr. Seger's Activities.

The Board must determine whether Mr. Seger's activities meet or violate the provisions of the Ethics Ordinance. But because one of Mr. Seger's defenses is that his activities are protected speech under First Amendment principles, the Board looks first to those principles to determine if they are dispositive of the case in his favor. Mr. Seger's constitutional defense is substantial, requiring the Board to interpret the Ethics Ordinance in light of First Amendment jurisprudence.

The freedom of speech embodied in the First Amendments to the U.S. Constitution and the Michigan Constitution enjoys important stature in American society. It is "the indispensable condition of nearly every form of freedom." *Palko v. Connecticut*, 302 U.S. 319, 327, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937) (Cardozo, J.). Freedom of speech is not absolute, however. The government may validly restrict the time, place and manner of speech and may regulate, prohibit or punish certain speech, such as commercial speech, defamation, advocacy of violence, and obscenity. Ronald D. Rotunda & John E. Nowak, *TREATISE ON CONSTITUTIONAL LAW – SUBSTANCE AND PROCEDURE* § 20.7 (3d. ed. 1999).

The constitutional jurisprudence most closely relevant to the instant matter involves the statutory prohibition of political activity undertaken by governmental employees. It has long been held that governmental employees may be prohibited from participating in political campaigns, including the solicitation of donations. *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d. 830 (1973) (construing the Hatch Act); *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d. 796 (1973). Indeed, Michigan has long prohibited certain governmental employees from soliciting or receiving political contributions. *See, e.g.*, Mich. Comp. Laws Ann. § 38.419 (county employees), § 38.465 (township employees). The Board notes, however, that, to be enforceable, restrictions on the political activity of governmental employees must not be vague or overly broad. Rather, they must be drawn sufficiently clearly so as to give the employees appropriate notice of the prohibited conduct and not drawn so broadly as to exceed the governmental purpose furthered by the restriction. *See generally, United States Civil Service Commission, supra.*

Certain activity, though characterized as speech or being related to speech, is held for constitutional purposes not to be speech at all but rather is conduct that may validly be regulated or even prohibited. *Virginia v. Hicks*, ___ U.S. ___, 123 S. Ct. 2191, 156 L. Ed. 2d. 148 (2003) (public housing agency may ban from low-income housing development a trespasser who sought to distribute leaflets); *Board of Trustees of the State of New York v. Fox*, 492 U.S. 469, 473, 109 S. Ct. 3028, 106 L. Ed. 2d. 388 (1989) (state university may prohibit Tupperware parties from residential dormitories even though such parties have a home economics (and thus speech) component as well as a commercial component).

Under this analysis, Mr. Seger's activities with respect to the Kulak Fund are separable into two categories: speech and conduct. Each category is accorded different constitutional protection.

Mr. Seger's advocacy on behalf of Mr. Kulak's cause, including his solicitation of contributions to the Kulak Fund, is speech. Under the facts presented and the language of the Ethics Ordinance, those activities are protected by the First Amendment. The Board does not decide the question of whether the city may validly regulate or prohibit Mr. Seger's speech under the facts presented, or even whether it should do so. Rather, the Board concludes that, although the Ethics Ordinance could be interpreted to prohibit Mr.

Seger from soliciting contributions to the Kulak Fund, its language is not sufficiently clear and narrow to withstand constitutional scrutiny. Thus, the Board finds that Mr. Seger's activities in advocating on behalf of Mr. Kulak's cause and in soliciting donations to support Mr. Kulak's litigation against the city do not constitute a violation of the Ethics Ordinance. On the other hand, Mr. Kulak's role as a signatory to and a fiduciary for the Kulak Fund bank account constitutes conduct, not speech, which may validly be prohibited by the city.

3. Analysis of Whether Mr. Seger's Role As a Signatory to and Fiduciary of the Kulak Fund Account Violates the Ethics Ordinance.

The sole purpose of the Kulak Fund is to support Mr. Kulak's litigation seeking the recovery of damages and injunctive relief against the city and certain of its officials. Mr. Seger admitted that he deemed himself a fiduciary of the Kulak Fund, and the Board concludes that he is a fiduciary. Furthermore, The Ethics Ordinance declares that public office is a public trust. Birmingham Code of Ordinances, § 2-320. The complaint alleges that Mr. Seger owes a fiduciary obligation to the city as well, and the Board so concludes. Thus, the Board concludes that Mr. Seger's activity as a signatory to and fiduciary of the Kulak Fund account constitutes a violation of the Ethics Ordinance, for several reasons presented below.

a. Violation of Section 2-320.

The Ethics Ordinance proscribes actions that are incompatible with the public interest. *Id.* § 2-320. It requires city officials or employees to avoid conflicts between their private interests and the public interest. *Id.* City officials or employees hold their positions in public trust, which they are required to honor by integrity and conduct. *Id.*

The Board holds that Mr. Seger violated section 2-320 of the Ethics Ordinance. His fiduciary role and his service as a signatory to the Kulak Fund account is incompatible with the public interest and results in an irreconcilable conflict between his private interest in supporting Mr. Kulak's cause against the city and the public interest. Mr. Seger's integrity is not at issue, and his advocacy on behalf of Mr. Kulak is not prohibited by section 2-320 under the facts presented, but his conduct in assuming a fiduciary responsibility directly against the interest of the city violates section 2-320.

b. Violation of Section 2-321.

Section 2-321 requires city officials or employees to avoid conduct which may tend to undermine respect for city officials and employees and for the city as an institution. Section 2-321 also requires city officials and employees to carry out their duties impartially and remain non-partisan in their official acts.

The Board finds no evidence, nor even an allegation, of partisanship in Mr. Seger's official acts. But Mr. Seger admitted, and the Board concludes, that his conduct tends to undermine respect for city officials and employees and for the city as an institution. The Board points out that the Kulak lawsuit is brought against both the city and certain of its elected officials.

c. Violation of Section 2-323.

Section 2-323(5) requires city officials or employees to avoid any action that might result in or create the appearance of affecting adversely the confidence of the public or the integrity of city government.

The Board concludes that Mr. Seger's service as a signatory to and fiduciary of the Kulak Fund account might result in or create the appearance of affecting adversely the confidence of the public or the integrity of city government. His role on a city committee could readily be compromised and his vote subjected to challenge were someone appearing before that committee to make a contribution to the Kulak Fund, even absent Mr. Seger's solicitation or knowledge. The risk of the appearance of adversely affecting the confidence of the public or the integrity of city government, even inadvertently, is a risk that the Ethics Ordinance holds the city is unwilling to assume under the facts of this case. The legality of Mr. Seger's conduct is not in question, but that is not relevant. Moreover, the substantiality of his conflict of interest or the perceived risk to the public's confidence in the city is not relevant. Indeed, the risk to the public's confidence was increased by Mr. Seger's failure to disclose his association with the Kulak Fund to the two city committees on which he serves.

d. No Violation of Section 2-324 (a)(4).

Section 2-324(a)(4) forbids a city official or employee to solicit any gift of money for the benefit of any other person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

The Board concludes that Mr. Seger has not violated section 2-324(a)(4). Although Mr. Seger solicited and received gifts of money for the benefit of Mr. Kulak, there has been no showing that the gifts have influenced or even tend to influence the manner in which he has performed his official duties or any other officials or employees have performed their official duties.

e. Violation of Section 2-324 (a)(6).

Section 2-324(a)(6) forbids a city official or employee to render services for any private or public interest when that service is incompatible or in conflict with the

discharge of his or her official duties or may tend to impair his or her independence of judgment or action in the performance of his or her officials duties.

The Board concludes that Mr. Seger has violated section 2-324 (a)(6). His fiduciary role and his service as a signatory to the Kulak Fund account are, as a matter of fact and as a matter of law, incompatible and in conflict with the discharge of his official duties, which involve maximizing the financial resources of the city. Mr. Seger contended that, even if he is a fiduciary, he is a fiduciary only for a limited, private purpose. Thus, he contended, there is no conflict between his role in the Kulak Fund and his role in the city. He is incorrect. The first and paramount duty of a fiduciary is loyalty to the principal. *Stephenson v. Golden*, 279 Mich. 710, 276 N.W. 849 (1937). That loyalty must be absolutely undivided. *Cozzens v. Bazzani Building Co.*, 456 F. Supp. 192 (E.D. Mich. 1978). He cannot serve both interests consistent with the Ethics Ordinance. Moreover, the Ethics Ordinance makes no provision for substantiality of the conflict. Without regard to the content of his speech, Mr. Kulak's status as a fiduciary in a matter against the direct interest of the city is incompatible with his role as a city official or employee under the Ethics Ordinance.

4. Discussion of Other Defenses Asserted.

Mr. Seger asserted several defenses in addition to this constitutional defense. The Board rejects these defenses.

Mr. Seger asserted that his conduct in his official capacity on the two city committees on which he serves has been beyond reproach. The Board accepts that assertion, for there is evidence in the record to support it, and no evidence to the contrary has been presented. But, as stated above, that defense is irrelevant. Mr. Seger was not charged with any malfeasance or improper conduct while serving on the committees. What is at issue is his role in supporting Mr. Kulak's lawsuit by serving as a signatory to and fiduciary of the Kulak Fund account, the sole purpose of which is to fund litigation against the city.

Mr. Seger also asserted that his activity on behalf of the Kulak Fund is personal activity that is not subject to the Ethics Ordinance. He is incorrect. The ordinance explicitly addresses private activity and the need to balance, indeed sometimes subordinate, a volunteer's private interest with the interests of the city and the people. Birmingham Code of Ordinances, § 2-321.

Finally, Mr. Seger contended that the complaint submitted in this case is politically and personally motivated. The Board rejects that defense for three reasons. First, the defense is irrelevant. Mr. Seger admitted that the allegations of the complaint are true. Consequently, the veracity of the Complainant was not brought into issue at the hearing. Thus, her motivation in filing the complaint has no bearing on any fact of consequence to the determination of the matter.

Second, in enacting the Ethics Ordinance, the city has devised a way for the public to seek a determination of whether the conduct of its officials and employees meets the prescribed standard of conduct. The Board has jurisdiction to review that conduct, whether brought in the form of a complaint by a citizen, as in this case, or as a request by the official or employee for an opinion about his or her own conduct. The Complainant had the legal right to file the complaint. Moreover, had Mr. Seger been sensitive to the question of whether his conduct might violate the Ethics Ordinance, he himself could have requested from the Board an advisory opinion, a process that he admittedly knew existed, thereby avoiding the filing of the complaint altogether.

Third, the Board concludes as a matter of fact that there is insufficient basis to demonstrate that the complaint was politically or personally motivated. Mr. Seger accused the Complainant of filing the complaint out of personal animus. He was correct in arguing that the Ethics Ordinance is not to be used to settle personal or political scores. But he did not demonstrate animus on the part of the Complainant. Rather, the animus demonstrated in the record appears to be Mr. Seger's animus towards the Complainant. The Board specifically rejects Mr. Seger's irrelevant, misleading, unjustified, and disrespectful *ad hominem* attack against the Complainant.


5. Recommendations.

The Board is vested with the authority to determine whether the Respondent's conduct conforms to the Ethics Ordinance. The Board is not empowered to prescribe a sanction or penalty, nor does it undertake to do so, but instead leaves that consideration to the City Commission as the ordinance prescribes.

Because the Board has an advisory function, however, it customarily recommends ways in which city officials and employees can meet the requirements of the ordinance. In his written submission to the Board, Mr. Seger indicated that he could either recuse himself from the matter before the General Investment Committee or the Barnum Center Steering Committee or terminate his association with the Kulak Fund. In the opinion of the Board, because his conflict is one of status, he may cure the conflict only by resigning from the committees or from the Kulak Fund. For purposes of advising similarly situated volunteers, the Board holds that, at the time he assumed his role with the Kulak Fund, he should have informed the General Investment Committee and the Barnum Center Steering Committee so that its members could have taken that factor into account during their consideration of the matters before them. He should not have participated in any discussions or decisions of those bodies until he disclosed his association with the Kulak Fund and the question of compliance with the Ethics Ordinance was decided.



James D. Robb



John J. Schret, Jr.

Ms. Fierro-Share submitted a dissenting opinion.

Sophie Fierro-Share