

**CITY OF BIRMINGHAM  
BOARD OF ETHICS  
ADVISORY OPINION 2007-03**

**DECISION**

**June 13, 2007**

**Questions Presented**

Ms. Joan Heinicke filed a request for an advisory opinion on the questions of (1) what constitutes “residency” in the city for purposes of valid membership on an elected city board and (2) whether intent to move into the city qualifies a person to run for or hold office on that board.

Based upon its review of Ms. Heinicke’s request, the Board of Ethics was initially under the impression that Ms. Heinicke was seeking guidance about her own conduct. At the hearing of the matter held on April 5, 2007, however, it became apparent that Ms. Heinicke’s request was actually a complaint about or a challenge to the conduct of another person.

**Answer and Discussion**

The Board of Ethics declines to respond to Ms. Heinicke’s request as stated for two reasons.

First, Ms. Heinicke’s request states a purely legal question. The jurisdiction of the Board of Ethics is to provide interpretations and opinions as to the application of the code of ethics to a particular situation involving city employees or officials. Birmingham Code of Ordinances, § 2-325(B). The request as stated does not appear to implicate the code of ethics.

Second, and more importantly, Ms. Heinicke’s request does not call for a review of Ms. Heinicke’s own conduct or anticipated conduct. Rather, it seeks review of the conduct of another person. That person is entitled to notice of the allegations and a host of procedural protections, including the right to request that the meeting be closed to the public pursuant to the Open Meetings Act. Our previous decision in Advisory Opinion 2006-01 is instructive:

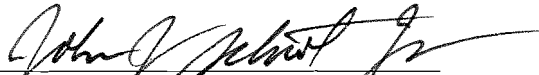
[t]he request from a city official or employee for an advisory opinion involves a review of his or her own conduct and does not implicate the rights of others. The board of ethics may decide the question based upon that person’s written request, with or without his or her personal appearance, and it may receive information from the requesting party or even ask other persons to appear and give information. See generally, Board of Ethics Procedural Rules, Chapter 2.

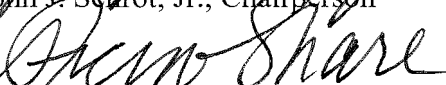
The filing of a complaint, however, involves the conduct of others and implicates their rights. In that instance, the rules of the Board of Ethics allow certain due process rights to both the complainant and the respondent. The complainant must identify the respondent and state why the respondent is in violation of the code of ethics. The respondent is entitled to be served with a copy of the complaint and to answer it in writing or orally. Both the complainant and the respondent are entitled to appear at the hearing. The complainant has the burden to come forth with evidence to support the complaint and may do so through witnesses and documents. Both the complainant and the respondent may be represented by an attorney. Both may request that the city clerk request others to appear at the hearing. Both may give opening statements, present evidence, and give closing statements, among other rights they have. See generally, Board of Ethics Procedural Rules, Chapter 3.

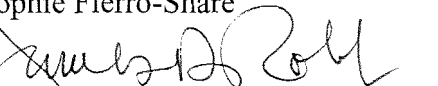
Advisory Opinion 2006-01, at 3-4 (August 17, 2006).

Accordingly, the Board of Ethics declines to act on the request. Ms. Heinicke is entitled to have the board consider the issue insofar as it pertains to a third person by filing a complaint form with the City Clerk. The board so advised Ms. Heinicke at the April 5, 2007 hearing.

In declining to act today on Ms. Heinicke's request, the Board of Ethics does not opine on the merits of the underlying assertions.

  
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John L. Schrot, Jr., Chairperson

  
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Sophie Fierro-Share

  
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James D. Robb