CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION REQUEST 2009-03

May 4, 2010

I. INTRODUCTION

David L. Wisz, a member of the City of Birmingham's Traffic and Safety Board, requested that the City of Birmingham Board of Ethics issue an advisory opinion about whether certain alleged conduct of City of Birmingham Commissioner Scott Moore violates the city's Code of Ethics. Because Mr. Wisz's request on its face fails to demonstrate any violation of the code of ethics, the Board of Ethics issues this summary opinion under Rule 205(e) and dismisses the matter summarily.

II. DISCUSSION

The facts are not in dispute. This matter is related to matter 2009-02 in which the Birmingham City Commission requested an advisory opinion about Mr. Wisz's own conduct, specifically his holding himself out as a member of the city's Traffic and Safety Board on political literature he circulated about certain public mass-transit issues having nothing to do with Traffic and Safety Board matters. In that literature and at various public appearances, Mr. Wisz has publicly taken a position against a county-wide bus tax and against a proposed new transit center, including train and bus stops, to be located in Troy and adjacent to Birmingham. The City of Birmingham has officially endorsed both projects.

Commissioner Moore was invited to speak at a public forum on these mass-transit issues called "Transit Now!" organized by a third-party group. That group issued promotional literature listing as forum speakers Commissioner Moore and many other governmental and public affairs representatives, including Jana Ecker, the city's Planning Director.[1]

Reduced to its essence, Mr. Wisz's position is that Commissioner Moore's designation on the forum literature as a member of the Birmingham City Commission constitutes a violation of the Code of Ethics because Commissioner Moore was holding himself out as a representative of the city. Mr. Wisz's theory is that by holding himself out as a city official and espousing a political viewpoint at the forum, Commissioner Moore could be viewed as offering his personal views as the official views of the city, in contravention of the Code of Ethics. *See, e.g.*, City of Birmingham Code of Ethics § 2-324(2) ("no official or employee of the city shall represent his or her personal opinion as that of the city").

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[1] Mr. Wisz has filed a similar request for advisory opinion as to Ms. Ecker's conduct. See this Board's decision on Advisory Opinion Request 2009-04, issued contemporaneously with this decision.

At a January 22, 2010 hearing of the Board of Ethics, however, Mr. Wisz conceded that the representations of the third party in designating a forum speaker as a city official cannot amount to a violation of section 2-324, as it is the third party, not the city official, making the representation. Moreover, the Board of Ethics takes administrative notice that the official position of the City of Birmingham is in support of the matters about which Commissioner Moore was speaking at the forum, matters about which as a Commissioner he had the right to speak even on the city's behalf.

Given his concession on this dispositive point, the Board of Ethics asked Mr. Wisz to voluntarily withdraw his advisory opinion requests as to Commissioner Moore and Ms. Ecker. Mr. Wisz refused.[2] Regardless, the Board of Ethics now holds that, on its face, Mr. Wisz's request for an advisory opinion as to the conduct of Commissioner Moore fails to demonstrate a violation of the Code of Ethics. There is no showing that Commissioner Moore held out his personal views as being those of the city. Rather, it is undisputed that the city has already taken an official position on the matters discussed at the forum, and furthermore there is no allegation that Commissioner Moore was speaking against that position. The Board of Ethics accordingly dismisses this matter by summary decision without the necessity of requiring Mr. Moore to appear and defend his own actions. Board of Ethics Procedural Rule 205(e) (Board of Ethics may issue summary decision when "[t]he request for advisory opinion on its face fails to demonstrate any violation of the code of ethics").

III. CONCLUSION

The request for advisory opinion fails on its face to demonstrate a violation of the Code of Ethics. The matter is summarily dismissed.

James D. Robb, Chairperson

John J. Schrot, Jr.

Sophie Fierro-Share

[2] The Board of Ethics is prepared to decline to address politically or personally motivated requests for action by the Board. *See* Decision in City of Birmingham Board of Ethics Complaint 2007-05 (January 31, 2008) at 10.