

**CITY OF BIRMINGHAM  
BOARD OF ETHICS  
ADVISORY OPINION 2010-01**

**DECISION  
July 22, 2010**

**Question Presented**

May the Birmingham Historical Museum and Park Board, or its individual members, raise monies to fund certain Museum operations?

**Answer**

City of Birmingham Ordinance no. 62-31 (e) grants the Birmingham Historical Museum and Park Board the power to raise funds for certain purposes. The ordinance establishing the Birmingham Historical Museum and Park Board divides responsibility for operations between the Board and the City Administration. To avoid creating the appearance of making a decision outside of normal City channels in violation of the Ethics Ordinance Sec. 2-323 (4), the Ethics Board recommends that the Birmingham Historical Museum and Park Board meet with the City Manager to define the extent and methodology of any fund raising activities.

Individual Board members in their capacity as private citizens may participate in fund raising to support the Historical Museum with groups not part of city government, such as the Birmingham Historical Society, as long as they do not create the impression that the individual Board member is representing the City in this effort.

**Analysis and Discussion**

In its presentation to us, the Birmingham Historical Museum and Park Board was forthright that its purpose was to fully fund the museum director's position, which was reduced to part-time in next year's City budget. The Board understandably believes that a full-time director is critical to the success of its mission of fostering a greater understanding of the City of Birmingham's unique heritage. Sec. 62-31(a). This request for an advisory opinion brings into focus two separate problems: how far may a City board go in carrying out its mission and what must individual board members do if they wish to engage in private activity in support of what they perceive to be in the City's interests.

**May the Board Raise Money to Preserve an Employment Position on the Birmingham Historical Museum Staff?**

Yes. The ordinance which creates the Birmingham Historical Museum and Park Board contains a system of shared responsibility. The Board has the power to "operate" the museum and serves as "an advisory authority exercising control and management over this cultural resource." Sec. 62-31(d). It is empowered to "raise funds for the exercise of its powers and duties" [Sec. 62-31(e)], which specifically includes the operation of the museum. The Board is authorized to "expend such funds as may from time to time be appropriated to it by the city commission or

otherwise received by it for the purpose of carrying out" its powers and duties. Sec. 62-30.

The shared responsibility is most clear in relation to the museum's executive director. The executive director is a city employee, who is "appointed, removed and supervised by the city manager." Yet the museum director reports to the Board, carries out the duties the Board requires and attends all Board meetings. Sec. 62-32.

The Ethics Board has limited powers. We resolve complaints and issue advisory opinions regarding the Ethics Ordinance. We do not interpret potential conflicts or ambiguities in other ordinances, except as absolutely necessary to giving an opinion under the Ethics Ordinance; nor do we give opinions as to what conduct is permissible under other ordinances. We are not now concerned with the exact division of responsibility between the City Manager and the Birmingham Historical Museum and Park Board in the supervision of the museum's executive director. We are mindful, though, that one of the purposes of the Ethics Ordinance is to "make government decisions and policy in the proper governmental channels." Sec. 2-320. This public policy is reiterated in the Ethics Ordinance's requirement that all "City officials and employees avoid any action....which might result in or create the appearance of....making a City decision outside official channels." Sec. 2-323(IV). Additionally the Ethics Ordinance does not displace rights under the City's collective bargaining agreements. Sec. 2-323.

The fund raising that the Birmingham Historical Museum and Park Board is thinking of might easily come into conflict with the City's budgeting process, or its human relations policies or the City Manager's duties under the ordinance establishing the Board. In order to stay within proper governmental decision-making channels, the Ethics Board recommends that the Birmingham Historical Museum and Park Board meet with the City Manager to assure that any fund raising activities it undertakes comply with City policies and follow the appropriate decisional process. We are deciding only that the Birmingham Historical Museum and Park Board should not start a fund raising campaign to support its operations unless it has met with the City Manager to discuss the issue. Although we doubt it will be necessary, we reserve for a later time and the development of a more complete factual record, the question of whether, under the Ethics Ordinance, the Birmingham Historical Museum and Park Board may raise funds in a manner opposed by other City officials or boards.

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### **May Individual Board Members Participate in Independent Fund Raising Such as For the Birmingham Historical Society?**

Yes, but with certain conditions. The Birmingham Historical Society is a separate, private organization and is not a body of the City of Birmingham. The Historical Society does, however, provide some funding to the city-owned Birmingham Historical Museum. We have previously issued advisory opinions about whether a City employee or board member may call attention to his or her City affiliation in private fund raising or political activity. Those opinions are instructive.

In Ethics Opinion 2003-04 we said that the Ethics Ordinance allows a City employee to disclose the fact and nature of his employment in campaign literature for a non-partisan political office. We placed importance on the public's rights to know one's qualifications, but we warned that: "caution

must be taken however when one's conduct gives the appearance as a 'City Official' that his or her opinion is that of the City itself or its Board(s)."

In Ethics Opinion 2009-02, we said that under the Ethics Ordinance a member of a City board may not, in private political activity unrelated to the Board's duties, identify himself as a City Board member. We further observed that identification as a Board member may be permissible under the Ethics Ordinance "if it is germane to his role as a City Official and if he states that it is his personal opinion and not that of the.....Board or the City."

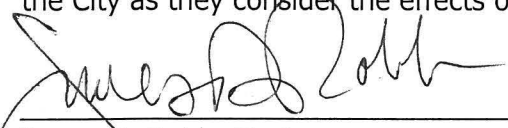
In Ethics Opinion 2004-02, we held that a volunteer member of a City board may solicit funds in his personal capacity, even where the use of those funds is adverse to the City, so long as he does not hold himself out as raising those funds in his official City capacity.

This basically answers the question. Fund raising through the Historical Society to support the museum's operations is germane to the Birmingham Historical Museum and Park Board's business. Raising money for the operation of the museum is therefore germane to the individual Board member's role as a City Official. The Birmingham Historical Society is a private group that supports the museum's work financially. Board members may participate, in their individual capacity, in the Historical Society's fund raising and, in any such fund raising activities, the Board members must take pains to make it clear that their fund raising activities are not approved by the City or the Birmingham Historical Museum and Park Board. Our opinion in this regard assumes that the individual Board members' activities are solely related to private fund raising efforts. The City is not bound to accept any donations which are offered or may attach conditions, in its sole discretion.

#### Conclusion

The Birmingham Historical Society may raise money for the Birmingham Historical Museum, but the Birmingham Historical Museum and Park Board cannot, as a board, raise money for the Birmingham Historical Society. The individual members of the Birmingham Historical Museum and Park Board may in their personal capacity raise money for the Birmingham Historical Society, but only if they make it clear that their participation is in their individual not City capacity.

The Ethics Board wishes to thank the members of the Birmingham Historical Museum and Park Board for bringing this matter to us. We hope this Opinion will assist Board members throughout the City as they consider the effects of the City's declining revenues on our community.

  
James D. Robb, Chairperson  
John J. Schrot, Jr.  
Sophie Fierro-Share