

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2015-001**

DECISION

August 27, 2015

I. STATEMENT OF FACTS

This complaint was filed on July 16, 2015 by Nancy Fowler, who is a board member of the Figure Skating Club of Birmingham and the parent of a child who participates in the city's ice skating program. The complaint was filed against respondent Ann Endres, formerly the director of the city's Birmingham Basic Skills ice skating program and the Birmingham Ice Show. Each program is based at the Birmingham Ice Arena.

The parties appeared for the hearing on the complaint before the Board of Ethics on August 27, 2015. Because of the procedural disposition of this matter, the substance of the complaint is not relevant to the decision. The Board instead makes the following findings of fact.

Ms. Endres served as the director of the Birmingham Basic Skills Program and the Birmingham Ice Show for many years under a series of written contracts with the city of Birmingham. Her most recent contract expired in May 2015 after the 2015 Birmingham Ice Show was completed. Her contract has not been renewed. During the hearing, Mr. Timothy Currier, counsel for the city, confirmed that Ms. Endres is not presently under contract with the city. Instead, he indicated, the city has contracted with someone else to serve as director of the skating programs. There was no indication during the hearing, and there is no indication in the written record, of present intent on the part of either the city or Ms. Endres to re-engage her services with the city.

II. JURISDICTION

Under the Ethics Ordinance, the Board of Ethics has jurisdiction to hear certain kinds of matters involving city officials and employees. Ordinance No. 1819 (May 19, 2003), codified at Birmingham City Code, Art. IX, §§ 2-320 to 2-326 ("Ethics Ordinance"). The ordinance defines city officials and employees as follows:

City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in a position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

Id. § 2-322. The ordinance also specifically defines consultants as follows:

Consultant means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

Id. The Board of Ethics has previously determined that city contractors may come within the definition of “consultant” for purposes of the Ethics Ordinance. *E.g.*, Decision on Request for Advisory Opinion 2003-01, at 4 (Walker Parking) (2003); Decision on Request for Advisory Opinion 2003-02, at 1 (J.H. Hart Urban Forestry) (2003).

In the present case, however, although Ms. Endres may otherwise fall within the definition of “consultant” and thus “city official or employee,” her contractual relationship with the city ended in May 2015. She is not presently a city official or employee. Nor was she when the complaint was filed.

The question thus is whether the Board of Ethics has jurisdiction over a person who is no longer a city official to review conduct that occurred while that person was a city official.


To decide that question, we look to the language of the Ethics Ordinance. The ordinance governs “a person *elected, appointed* or otherwise *servin*g,” and in the context of “consultant,” it refers to “a person who *gives* professional advice.” Ethics Ordinance, § 2-322 (emphasis added). The highlighted verbs are in the present tense. We thus interpret the definitions within the ordinance to require the respondent to be a current city official.

III. HOLDING AND CONCLUSION

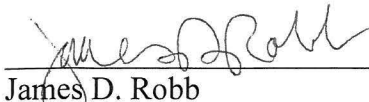
Accordingly, we hold on these facts that the Board of Ethics lacks jurisdiction over the Respondent, Ms. Ann Endres, because she was not a city official when the matter came before the Board of Ethics.

The Board of Ethics expresses no opinion on the merits of the complaint. The Board instead thanks Ms. Fowler for having raised her concerns and for appearing at the hearing, and it likewise thanks Ms. Endres for her response and appearance at the hearing.

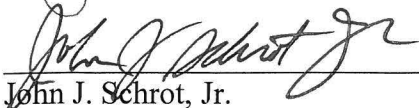
Complaint 2015-001 is dismissed for lack of jurisdiction over the Respondent. Board of Ethics Procedural Rule 304(a).



Sophie Fierro-Share, Chairperson



James D. Robb



John J. Schrot, Jr.