



MEETING MINUTES

BOARD OF ETHICS

Tuesday, October 25, 2018

7:00 p.m.

Lorraine H. Morton Civic Center
2100 Ridge Ave, Room 2404

Members Present: Jennifer Billingsley, Karena Bierman, Elizabeth Gustafson, and LJ Ellul

Members Absent: Vincent Thomas

Staff Present: Mario Treto, Jr., Deputy City Attorney

Presiding Member: Jennifer Billingsley, Chair

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1. **Quorum:** Chairwoman Billingsley declared that the Board had a quorum, with 4 of 5 members present and called the meeting to order.
 2. **Public Comment:** The Board opened up the meeting for public comment. Scott Levin, Lori Keenan, and Clare Kelley provided public comment.
 5. **Old Business:** Chair Billingsley stated that the next portion of the meeting relates to the hearings for Complaint 18-BOE-002 filed by Nancy Sreenan against Alderman Rainey and Complaint 18-BOE-003 filed by Lori Keenan and Clare Kelly against Alderman Rainey.

Hearing on Complaint 18-BOE-002

Chair Billingsley opened the hearing and asked Nancy Sreenan to present her complaint for 15 minutes with the respondent having 15 minutes to respond. Sreenan presented her argument related to the allegation that Ald. Rainey acted impartial by favoring a particular set of residents in forwarding an email. Sreenan also included two additional violations arising out of City Code Section 1-10-4(C)(1)(b), Prohibited Activities: Disclosure of Confidential Information and Abuse of Power. Sreenan proceeded to explain the original email that was forwarded and the subsequent correspondence between Ald. Rainey and other individuals.

The Board of Ethics proceeded to ask questions to Sreenan related to the complaint. Treto raised the issue that Sreenan brought forth two new citations that were not considered at the jurisdictional hearing. The Board noted the information.

Sreenan brought forth her first witness, Jill Gordon, to speak about additional electronic correspondence that she believes adds to the complaint against Alderman Rainey.

Chair Billingsley allowed the respondent, Alderman Rainey, and her counsel to present her case. Board member Bierman and Chair Billingsley discussed the possibility to review newly raised allegations. Attorney Levin stated that he would have liked to have time to review the new allegations so that he could properly respond. Levin starts with the first allegation, 1-10-4(A), the Statement of Purpose. Levin stated that an individual cannot violate a statement of purpose. Levin then describes the forwarding of the electronic communication and argued that aldermen must take a position on issues as that is how policy is created. Levin stated that there is no expectation of privacy with emails sent to elected officials. Levin asked the Board of Ethics to consider the underlying ethics issue, but not make a decision related to the demolition of Harley Clarke, or what is deemed acting with manners. Levin stated that there is no ethics violation, but if there are other issues, the resolution is the ballot box.

The Board of Ethics proceeded to ask Alderman Rainey questions related to her participation in the fundraising of the organization supporting the demolition of the Harley Clarke mansion. Rainey proceeded to state that she encouraged two other friends to support the mansion coming down. The Board asked Alderman Rainey if she utilized her City email in which she confirmed that she did. Alderman Rainey indicated that she was astonished by the content of the original email and her vehement opposition to demolishing the mansion.

Chair Billingsley announces that the Board will be deliberating in open session as opposed to the closed session that the City Code authorizes. The Board reviewed whether sending an email from a City email to representatives of the opposing side of an issue gives the appearance of acting impartial.

Board member Bierman reviewed the email and stated that it is not the Board's role to interpret the capitalization of words or tone in which the correspondence was intended to convey. Chair Billingsley stated that she believes the correspondence forwarding rises to acting with impartiality and reviews potential consequences.

Board member Bierman made a motion to make a finding of a violation of City Code Subsection 1-10-4(C)(1) relating to the disparaging language used in multiple emails regarding the position of the complainant and the content of the complainant's email. Seconded by Ellul. Motion passes unanimously. Chair Billingsley made a motion that there is no violation of the Code of Ethics with the sharing of confidential information and that there is no expectation of privacy when sending information to elected officials. Seconded by Gustafson. Motion passes unanimously.

Board member Ellul made a motion that the board find no ethical violation with regard to section 1-10-4(A), Statement of Purpose. Seconded by Gustafson. Motion passes unanimously. Board member Bierman explained the vote to the public.

Chair Billingsley explained that the next regularly scheduled meeting will be on November 20, 2018, which will be when the Board will review the meeting minutes and

the written finding. Board member Bierman moved that the advisory opinion include additional counsel to elected officials to be reminded of the importance of avoiding any appearance of partiality in their dealings with their constituents, whether in writing publicly or otherwise, so as not to harm the faith and government that constituents should come to expect. Board member Gustafson seconded. Motion passes unanimously.

Chair Billingsley states that 18-BOE-0002 is concluded. The Board took a five minute recess.

Hearing on Complaint 18-BOE-003

Chair Billingsley stated that the City received a Motion to Reconsider from the Complainants. Attorney Smith asked the Board to reconsider jurisdiction as related to the state statutes referenced in the original complaint. Smith asked for clarification as to the previous ruling. Board member Bierman clarified that the first allegation will be reviewed under the City Code and not the state statute. Attorney Levin responds by stating that he has no problem with the position that the standards of the state act should be looked into to determine a violation of the City ordinance. Levin follows by stating that municipal governments are permitted to pass acts that contain similar state provisions to the state statute. Levin states that the remedies from the state act are not in the City statute so they cannot be applied, and reviewing state statutes opens the board to having universal jurisdiction. Smith responds by stating that his focus is on what public officers are not allowed to do pursuant to state law.

Board member Bierman moves to deny the motion for reconsideration regarding jurisdiction. Board member Ellul seconds. Motion passes unanimously.

Chair Billingsley then proceeded with the hearing. Attorney Parikh begins with the Complainant's argument, specifically Ms. Keenan. Parikh introduces a video from August 21, 2018 to illustrate an interaction between Keenan and Alderman Rainey. The video fails to work so Parikh starts to make an argument related to prohibited political activity. He states that there appears to be a lobbying attempt with Alderman Rainey. Parikh states that as a sitting alderman, she should remain impartial. It doesn't mean she shouldn't take a stance, but that an elected's judgement cannot be clouded by financial activities.

Parikh states that Alderman Rainey has taken a position on the demolition of Harley Clarke and has been fundraising for one particular group related to the demolition. Parikh then proceeds to show the Board the video from August 21, 2018.

Smith then continues the Complainant's argument, that an elected official is approving a contract before the City Council approving the contract. Smith states to have a sitting alderman raising funds for something that hasn't been approved, the alderman then becomes an agent of that group and is impartial. The Evanston Ethics code is to avoid threats by an elected official. Smith then describes the alderman's behavior at an earlier electoral board hearing. Smith emphasizes the importance of addressing these

issues now prior to having to escalate it to the court level. He asks that the Board recommend censure for Alderman Rainey and that there be a prohibition from voting on Harley Clark, and states that his clients request that the memorandum of understanding related to Harley Clark be rescinded but acknowledges that the Board of Ethics cannot do that. Smith's clients request that their legal fees be paid.

Parikh continues the argument and reminds the Board that Alderman Rainey in the middle of an electoral board hearing and proceeds to Lori Keenan with a profanity. Smith states that alderman should have political freedom and stake stances, but that contracting should be different than what occurred here. Smith states that a politician getting in the middle of who can and cannot get contracts is the problem with politics in this state.

The Board then proceeded to pose questions to the complainant. Smith clarified that there was a vote in November 2017 to negotiate a lease with Evanston Lakehouse and Gardens in response to a City RFP. Smith believes that Alderman Rainey was raising funds to demolish the mansion between November 2017 and April 2018, after policy was already made by the City Council. Board member Bierman asked what Alderman Rainey did specifically to impede the process of entering into the contract with the Evanston Lakehouse Gardens group. Parikh mentions that Alderman Rainey communicated regularly with the dunes group.

Chair Billingsley reminds everyone that this is about whether or not Alderman Rainey violated the Code of Ethics. Levin then presented his argument on behalf of Alderman Rainey. Levin states that the main thrust of all acts at hand are to eliminate improper contracting by elected officials that will benefit them or their family. There is no evidence that Alderman Rainey is a beneficiary of any contract. Levin highlights the importance of respecting legislative immunity. Levin states that the underlying motive for the complaints are disagreement with the legislative policies put forth by the elected. Levin restates that there is no private gain with this matter. Levin also states that when elected officials sway others to vote a certain way is called advocacy. With respect to the use of profanity, that is not a violation of the Code of Ethics. With respect to impartiality, the purpose section standards are not rules and regulations that can be violated. A specific rule must be violated.

Levin states that when a person is elected for office, they do not give up their personal rights. Levin stated that Alderman Rainey has given many hours to the City and it would be an issue to allow complaints to move forward where an elected would need to respond to any negative thing they have stated.

The Board of Ethics began asking questions to the respondent. Levin explained that aldermen were raising funds for the Robert Crown Center, and that raising funds in this instance is similar to raising funds for the Harley Clarke mansion demolition.

Alderman Rainey then explained the process for fundraising for Robert Crown in which she was asked by the City to assist and differentiated the process from that of Harley

Clarke in which the City did not ask to assist. The Harley Clark matter is currently with staff and the aldermen do not have pending matters.

Attorney Parikh responded by stating that Alderman Rainey is a donor and the fact that she did so makes her an interested party. Attorney Smith stated there is a critical distinction between Robert Crown and Harley Clark: Robert Crown was a City-backed City-sanctioned fundraising campaign and Harley Clark fundraising was done prior to an official City decision and it appears to have been done to influence the City's decision. Keenan then provided her account of what happened during the 2018 Evanston Electoral Board hearing and her interactions with Alderman Rainey.

Attorney Levin stated that there was no personal gain when the Alderman fundraised money prior to the memorandum of understanding being signed. Alderman Rainey stated that there could not be a memorandum of understanding without the funds being raised. Alderman Rainey proceeded to give her account of what happened during the 2018 Evanston Electoral Board hearing and her interactions with Lori Keenan. Board member Bierman asked Alderman Rainey if Charles Lewis was a donor to her campaign and she responded with no.

Chair Billingsley proceeded to begin the deliberations. The Board reviewed City Code provisions related to prohibited political activities: volunteering fundraising and organizing on behalf of interests of private individuals under City Code Section 1-10-5. Board member Bierman stated that the activity of the Dunes is not what City Code Section 1-10-5 is referencing. This portion of the City Code speaks to whether an elected official or employee conduct prohibited political activity during an election. Chair Billingsley believes there is no violation of counts 1 and 2. Chair Billingsley indicated that they need to determine whether one side's interests advances a particular side. Board member Bierman stated that each individual action on its own may not be a violation but the sum of its parts is what may be more offensive. Board Member Ellul states that the entirety has an appearance of bias. Chairperson Billingsley stated that an alderperson using City resources for a private group seems problematic. The complication is that the money is being raised for the City. Chair Billingsley also stated that if there are elected officials with opinions on contentious issues, the residents should want them to be able to take a stand. When looking at the sharing of information, fundraising, using City resources, and using City email, this seems like a real conflict. The Board took note that there was a substantial amount of correspondence between Alderman Rainey and Charles Lewis.

The Board moved on to discuss the third issue: representing private interests. Board member Bierman stated that an alderman can take a position and advance it. Chair Billingsley asked whether Alderman Rainey being on the donor list and raised money is that enough to give her a financial interest. Board members discussed the impact of having an institution tied to you while requesting money has. Member Bierman indicated the she does not believe there is a violation of 1-10-4(C)(3)(b)(3).

Chair Billingsley proceeded to count four: abuse of power. Chair Billingsley indicated that she believes there is nothing in the evidence that shows a benefit to Alderman Rainey herself or that she was actively fundraising. Board member Bierman suggested moving on to count number five.

Chair Billingsley introduced count number five: impartiality. Board member Bierman highlighted that there is a difference between advocacy and participating in a matter. Bierman also differentiated Robert Crown with Harley Clark. Bierman stated that she thinks that everything comes together with a lack of partiality. If there was just a personal donation alone wouldn't have triggered the Code of Ethics. Chair Billingsley indicated that elected officials are entitled to have their positions, but does believe there is a lack of partiality in the cumulative.

Chair Billingsley concluded count five and believed there was a violation of the Code of Ethics. She asked what the remedy or guidance should be from the Board. Billingsley suggested recusing one's self and providing guidance when using City email to solicit funds. She acknowledged that people have lives and using City email is difficult.

Board member Bierman moved that the Board of Ethics find that there is no violation of count one: prohibited activity and volunteer fundraising and organizing on behalf of interests of private individuals under City Code Section 1-10-5. Board member Ellul seconded. Motion passed unanimously.

Board member Bierman moved that the Board of Ethics find that there is no violation of count two: prohibited political activities with use of property and resources of the City in connection with any prohibited political activity under City Code Section 1-10-5. Board member Ellul seconded. Motion passes unanimously.

Chair Billingsley moved that the Board of Ethics find that there is no violation of count three: representing private interests before city bodies or courts under City Code Section 1-10-4(C)(3)(b)(3). Board Member Bierman seconded.

Board member Bierman made a motion to table the vote for count three. Board member Ellul seconded. Motion passed unanimously.

Board member Bierman moved that the Board of Ethics find that there is no violation of count three: representing private interests before city bodies or courts under City Code Section 1-10-4(C)(3)(b)(3). Board member Bierman seconded. Motion passes 3-1 with Board member Ellul voting nay.

Chair Billingsley moved that the Board of Ethics find that there is no violation of count four: abuse of power under City Code Section 1-10-4(C)(3)(b)(2). Board Member Bierman seconded.

Chair Billingsley made a motion to table the vote for count four. Board member Bierman seconded. Motion passed unanimously.

Board member Bierman moved that the Board of Ethics find that there is a violation of count five: impartiality under City Code Section 1-10-4(C)(1). Chair Billingsley seconded. Motion passed unanimously.

Chair Billingsley made a motion to reconsider count four. Board member Bierman seconded. Motion passed unanimously.

Board member Ellul moved that the Board of Ethics find that there is a violation of count four: four: abuse of power under City Code Section 1-10-4(C)(3)(b)(2). Board member Gustafson seconded. Motion passes unanimously.

Chair Billingsley moved that the Board of Ethics provide guidance in their advisory opinion that recusal is an appropriate way to handle impartiality and the abuse of power and all aldermen should seriously consider whether or not using city email to solicit donations is appropriate. Board member Bierman seconded. Motion passes unanimously.

4. **Adjournment:** Upon motion by Chair Billingsley and second by Board member Bierman, the meeting was adjourned with all voting in favor.