



Board of Ethics
MEETING MINUTES
June 4, 2012
City Council Chambers
12:00 p.m.

Present: Tenley Callaghan, Brenda Robb, Daniel Feltes, Scott Daniels, John Sullivan, City Clerk Janice Bonenfant and City Solicitor Jim Kennedy.

City Solicitor Jim Kennedy introduced himself and indicated that for the purpose of this first meeting of the board, they would review draft rules and see if the board can adopt draft rules so that at its next meeting they can proceed with any business that may come before the board.

Mr. Sullivan asked city staff to walk members through the ordinances in regards to conflicts of interest as well as what the board's mission is. Mr. Kennedy provided an overview of the ethics ordinances explaining that the board is a fact finding advisory board.

Mr. Feltes inquired as to where the draft rules originated from. Mr. Kennedy indicated that the draft rules were created in the Legal Department and are based upon looking at rules of other ethics committees or other adjudicatory boards that have fact finding rules. He stated that it sets up a procedural process for the committee to review complaints and a process that follows the ordinance for the code of ethics.

Copies of draft rules were distributed to members of the board for their review.

Mr. Feltes referenced D6 of the draft rules which states "the board shall review complaints and determine whether the complaints as submitted merits the scheduling of a public hearing" questioning whether there should be a standard as to how they determine what merits a public hearing and what doesn't. Mr. Kennedy responded that there can be a standard to determine that.

Ms. Callaghan asked whether other communities had a threshold for a complaint. Mr. Kennedy replied that it was a fairly general standard but that they can put a motion to dismiss type standard.

Mr. Daniels noted that the only issue he has with a standard such as this is that they are taking away or denying someone the right to a hearing at some level.

Mr. Sullivan stated that given the potential political nature of City Council business, he doesn't want to see the Board of Ethics become a vehicle for somebody to run part of their campaign. He indicated that he is a member of the City's Personnel Appeals Board and explained that if a city employee gets disciplined, they can go through a Personnel Appeals Board process which is very confidential unless the employee wants to open it to the public. He added that if the Ethics Board is going to follow 91-A, implied within is that there is a level of protection for the accused. Mr. Kennedy explained that the

confidential issues that arise in employment contacts are different than the public official's contacts. He indicated that public officials don't enjoy the type of privacy protections that accommodate citizens. He stated that employees of the City of Concord have far greater protection for confidential hearings under the non-public section of 91-A which is 91-A: 3 in which there is a provision that allows the employee to determine whether or not they want it in open or in private.

Ms. Robb stated that she does not feel that every case should have a public hearing.

Mr. Daniels noted that he feels that if even one Ethics Board member thought there should be a public hearing on a given complaint, perhaps that could be a standard to be used. Mr. Kennedy indicated that could work noting that they could write in: a) if the board determines that a complaint merits the scheduling of a public hearing, the board shall direct the Clerk to schedule a public hearing; b) if the board determines a complaint does not have merit, the board shall notify the City Council of its determination (any determination that a complaint does not have merit shall be by unanimous vote of a quorum of the board present at the meeting).

Mr. Feltes questioned how they determine whether or not it has merit.

Ms. Callaghan noted that she would like to see ways some other committees have dealt with this topic obtaining background information as to how others have made that evaluation. She questioned whether the board would be able to amend their rules in the future. Mr. Kennedy responded that if the board of Ethics established rules that they wanted to amend in the future they would indeed be able to do that, as long as they resubmitted them to City Council for approval.

Referencing the draft rules, Mr. Kennedy indicated that D 6 (b) now reads "subject to approval of the committee, if the board determines that the complaint does not have merit, the board shall notify the City Council of its determination. Any board determination that a complaint does not have merit shall be made by unanimous vote of those members present at the meeting".

Mr. Feltes indicated that is in 6 (b) which references merit but 6 generally references merit the scheduling of a public hearing and feels that these are two different questions and wonders whether the proposed language should go into 6. Mr. Kennedy responded that they should add scheduling of a public hearing.

Ms. Robb asked at what point a person making a complaint before the board would be given the opportunity to come before the board. Mr. Kennedy replied that once the board, under 6 (a), makes a determination that a public hearing is warranted, then a public hearing would be held at which point the complainant would have the opportunity to present evidence.

Referencing 30-3-29 (a) of the ordinance, Mr. Sullivan questioned what was meant in regards to improper activities. Mr. Kennedy responded that he was not involved with the process of drafting that ordinance and was unsure as to its intended meaning.

Discussion ensued in regards to the definition of improper activities and the need for clarification.

Mr. Kennedy stated that the committee could propose their question to the Council in regards to the interpretation of the terms set forth in the ordinance.

Ms. Callaghan questioned how the process to submit items to be included on a given City Council agenda. City Clerk Bonenfant pointed out that the next Council meeting is on June 11, after that the next regularly scheduled meeting is July 9th.

In follow-up to an inquiry about the quorum section of the draft rules, Mr. Kennedy provided clarification in regards to a quorum and members not being able to make it to a meeting.

Mr. Feltes indicated that he is fine with moving as quickly as they expeditiously can but feels that it's more important to get it right which would require clarification specific to the definitions they would like clarification on. He questioned whether the Council could address the definitions next week. Mr. Kennedy indicated that the Boards questions could be reviewed by the Legal Department by researching minutes of the Rules Committee that worked on the ethics ordinances as well as City Council minutes specific to the public hearings regarding the ethics ordinances.

Mr. Feltes asked whether the information requested could be researched with the board meeting again once the research was complete. He stated clarification on the terms discussed would be critical for the board to proceed.

Mr. Sullivan questioned the idea of making a motion to direct the Clerk to make an inquiry to the Council and City Solicitor asking for assistance on 1) is the phrase improper activities in 30-2-29 (a) intended to encompass activities outside of the conflict of interest; 2) is there guidance available from the Council as to how they wish the board to handle the apparent conflict of interest.

Mr. Kennedy stated that as legal counsel for the board the Legal Department can do research, reviewing Council and/or Rules Committee minutes, for potential clarification of the definitions questioned by the board.

Following brief discussion Ms. Callaghan moved to direct the City Solicitor's Office to conduct a standard review and research the definitions of improper activities and apparent conflict of interest as set forth in the ordinance. The motion was duly seconded and passed with no dissenting votes.

The time being 12:58 p.m., Ms. Callaghan moved to adjourn the meeting, meeting again on Friday, June 8th at 9:00 a.m.

The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

Michelle Mulholland
Deputy City Clerk