CITY OF ROCHESTER

ETHICAL PRACTICES BOARD
OPINION #09-01

Date Issued: September 3, 2009

- QUESTION PRESENTED -

WHETHER A MEMBER OF THE CITY COUNCIL, OR ANY OTHER CITY BOARD OR COMMISSION SHOULD PARTICIPATE IN ANY WAY IN THE DISCUSSION OR VOTE ON A MATTER THE MERITS OF WHICH THE MEMBER PREVIOUSLY HAS STATED HIS OR HER VIEWS.

- ETHICAL PRACTICES BOARD'S OPINION -

IT IS THE BOARD'S OPINION THAT A MEMBER OF THE CITY COUNCIL, OR ANY OTHER CITY BOARD OR COMMISSION SHOULD NOT PARTICIPATE IN ANY WAY IN THE DISCUSSION OR VOTE ON A MATTER THE MERITS OF WHICH THE MEMBER PREVIOUSLY HAS STATED HIS OR HER VIEWS.

- DISCUSSION -

Section of the Rochester Code of Ordinances ("R.C.O") 13.01, subd 2 provides that the "proper operation of a democratic government requires that public officials be independent, impartial, and responsible to the people." This ordinance further notes that "[g]overnmental decisions and policies must be made in the proper channels of the governmental structure."

R.C.O. §13.04, subd 1also states that no public official "shall knowingly engage in a conflict of interest." Subdivision 2 states a conflict of interest includes one who engages in any business or transaction which is incompatible with the proper discharge of one's performance of official duties.

The Board has been asked to provide an opinion on the following question: Is it appropriate for a member of the City Council, or other city board or commission to express an opinion on a matter pending or expected to come before the Council, board or commission without abstaining from all discussion and voting on the matter when it does come before the public body.

The Board concludes that a member of the Council, board or commission cannot publicly or privately express a position on the merits of a pending matter prior to a full discussion of the matter at the Council, board or commission meeting or hearing and then fail to recuse himself or herself on the matter when it does come before the public body. By discussing and voting on a matter upon which the council member has stated his or her judgment, the member has compromised his or her ability to fairly and impartially listen to the testimony, weigh the evidence, apply the law and reach a decision. At a minimum, this action constitutes the appearance of impropriety as it strongly suggests the member possesses a bias, partiality or prejudgment on a matter that comes to the public body for a recommendation or final decision.

A member of a public body cannot engage in any action that would impair the member's independent judgment or action in the member's performance of official duties. A public expression of predisposition on the merits of a matter prevents a public official from participating in the discussion of and voting on the same matter when it comes before the public body. In order to maintain his or her ability to fairly and impartially determine a matter that comes before the public body, a member should either refrain from making public judgments concerning the merits of the proposal or be prepared to not participate in any way in the discussion of or voting on the matter when it comes before the public body.

Accordingly, it is the Board's opinion that a member of the City Council, or any other City board or commission should not participate in any way in the discussion or vote on a matter the merits of which the member previously has stated his or her views.

So as to not compromise the member's ability to have all of the facts available when making a decision or recommendation, the Board wishes to note those activities not prohibited by this Opinion. This Opinion does not prohibit:

1. A public body member from testifying or stating his or her position on a matter, and then recusing himself or herself from any and all discussion and voting on the matter when it reaches the body;

2. A public body member from attending meetings at which the merits of a pending proposal are discussed; or

3. A public body member from listening to constituents or interested parties seeking to inform the member concerning a pending proposal.

Finally, this Opinion is limited to those circumstances when the public body acts as a "quasi-judicial" body. In other words, this Opinion applies only when the public body conducts a public hearing, receives evidence, applies the law and makes a recommendation/decision. When the public body acts as a legislative body (adopts resolutions, enacts ordinances or establishes policies), the member need not be concerned with the limitations provided in this Opinion although best practices suggest the member maintain an open mind until full public input has been obtained.

- AUTHORITY -

This opinion is issued pursuant to R.C.O. §13.10, subd. 5(G) which authorizes the Ethical Practices Board "[t]o issue ethics opinions to public officials regarding the propriety of any matter within the Board's jurisdiction." The Board is primarily responsible to ensure compliance with the Code of Ethics as found in R.C.O. ch. 13. Accordingly, the issue addressed in this Opinion is within the Board's jurisdiction.

Ethical Practices Board

By _____
Its Chair

By _____
Its Secretary