

Ethical Practices Board Rochester, MN

Annual Report 2009



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**Ethical Practices Board
2009**

Members

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Appointment: May 1, 2009 – April 30, 2011

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Appointment: May 1, 2009 – April 30, 2012

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Appointment: May 1, 2009 – April 30, 2011

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Appointment: May 1, 2009 - April 30, 2012

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Appointment: May 1, 2009 – April 30, 2010

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Ethical Practices Board

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Forward from the Chair

2009 served as the inaugural year for the Ethical Practices Board and I have been honored to serve as chair as we set forth on this new initiative. While a code of ethical conduct has been present in both the Rochester City Charter and Rochester City Ordinance, a group had not previously existed that could serve as a body for deliberation of issues related to ethical conduct nor was there a clearly defined process for resolution of complaints. The creation of the Ethical Practices Board served to address these concerns.

Activities during this first year have largely been organizational in nature. The first order of business was to determine rules for conducting the business of the Board. This was quickly followed by setting forth a process whereby individuals could submit complaints and the Board could provide a response. Important to these early steps was the creation of a web site that provides information to the community about the Code of Ethical conduct, the Board, the process for review and a summary of the Board's activities. In that sense we felt a key function of the Board was that of communication.

Perhaps most important among the goals of the Board is that of education. While there may certainly arise occasions where violations need to be addressed the mission of the Board first and foremost is to proactively provide information and guidance so that individuals may avoid situations that could lead to a violation. In many instances an action which may occur that seems very innocent and without malice on the surface may in fact give rise to a violation. I am very happy to report that the number of incidents reported during the year was very low and in fact most of the Board's activities were related to providing advice and guidance.

Again, it has been a privilege to serve as chair for the Ethical Practices Board and I would ask that the following report please be accepted as a summary of the Board's activities for 2009.

Randy Staver
Chairperson

March 2010

Introduction

It is imperative that all persons acting in the public service not only maintain the highest possible standards of ethical conduct in their transaction of public business but that such standards be clearly defined and known to the public as well as to the persons acting in public service.

The proper operation of a democratic government requires that public officials be independent, impartial, and responsible to the people. Governmental decisions and policies must be made in the proper channels of the governmental structure. Public office may not be used for personal gain. Citizens must have confidence in the integrity of their government officials.

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Minnesota, and to carry out impartially the laws of the nation, state and municipality so as to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

In recognition of these goals, there is an established Code of Ethics for elected or appointed public officials, citizen volunteers, and candidates for public office. The purpose of the Code is to establish ethical standards of conduct for such persons by establishing acts which are incompatible with the City's best interests and requiring disclosure of private or financial interests in matters involving the City. The provisions and purposes of this Code of Ethics are declared to be in the best interests of the City of Rochester.

Authorization

The purpose of the City of Rochester Ethical Practices Board (Board) is to further the goals of the established Code of Ethics and as such the Board was formed via city ordinance in December 2008. The Board is comprised of five citizen members who are appointed by a committee consisting of the President of Rochester Community and Technical College, the Chancellor of the University of Minnesota Rochester and the highest ranking officer of the Olmsted County Bar Association not associated with the Rochester City Attorney's Office. Members serve a three year term and may serve up to two consecutive terms.

Organization

The Ethical Practices Board is composed of five members who are residents of the City and serve without compensation. Board members are appointed by an Appointing Committee.

The Board is organized with a chair, vice chair and secretary who are elected by the membership. Board members serve a three year term and may serve two consecutive terms.

No member of the Board may be an elected official, an appointed official, a city employee, related to a local official or city employee, a candidate for elected public office, a person who, for compensation, represents the private interests of others before the city council or mayor, or a paid campaign worker or political consultant of a current local official.

Board action requires the affirmative vote of at least three members of the Board.

Code of Ethical Standards

The Code of Ethical Standards is generally covered in Chapter 13 of the Rochester City Ordinances and covers a broad range of areas including conflict of interest, use of city property and improper conduct. The intent of the Code is to provide broad overview of expected conduct and in some cases offer specific guidance regarding certain activities. Areas not specifically covered in the Code may be addressed to the City Attorney's office or the Ethical Practices Board for further clarification. In some cases there may arise a topic not previously considered by the Code which may result in the issuance of a formal opinion by the Board.

Rules and Procedures

In carrying out its duties, several responsibilities for the Board are specified in the ordinance. Among these are the following.

- The Board shall have jurisdiction to review and make findings concerning any alleged violation of RCO Chapter 13 by any public official.
- To make notifications, extend deadlines, conduct investigations, make findings of fact, conclusions of law and order, review allegations and conduct hearings as needed to decide specific cases in which a violation of RCO Chapter 13 is alleged.
- To report its findings regarding any complaint to the person's Appointing Authority and to the City Administrator.
- To issue ethics opinions to public officials regarding the propriety of any matter within the Board's jurisdiction.
- To conduct a preliminary investigation of a filed complaint, or of any circumstance or situation of which the Board may become aware that appears to violate any provision of RCO Chapter 13.
- To cooperate with the human resources department in the design of ethics education seminars, and to promote the city's ethics program and high ethical standards in city government.
- To make recommendations for changes to the Code of Ethics or the governing ordinance which the Board believes would enhance their purpose.

Except as provided elsewhere in city ordinances, a Public Official who violates the Code of Ethics may be subject to disciplinary action up to and including termination of city employment/city volunteer duties.

An elected official or an appointed member of any board or commission, whose discipline is addressed by the City of Rochester Home Rule Charter or the Rochester Code of Ordinances and who violates the Code of Ethics may be subject to such disciplinary action as is provided by the Home Rule Charter or the Code of Ordinances.

Jurisdiction

The Code of Ethics pertains to and is applicable to public officials including elected officials and city employees as defined in RCO 13.01 Subd. 7. Also included, but not limited to, are members of the following boards and commissions:

- Building Code Board of Appeals
- Downtown Development District Advisory Board
- Ethical Practices Board
- Housing and Redevelopment Authority
- Heating, Ventilation and Air Conditioning Board of Review
- Housing Board of Appeals
- Music Board
- Park Board
- Planning and Zoning Commission
- Public Utility Board
- Library Board
- Zoning Board of Appeals

The Board has jurisdiction to review and make findings concerning any alleged violation of this chapter by any public official.

2009 Complaint Disposition

In 2009 there was a single formal complaint received by the Board. The complaint involved the appropriateness of a city employee owning a business that may occasionally perform work inside the city limits but not for the City of Rochester and the work performed as a city employee was not the same as the work performed outside the scope of city employment. The Board determined that there was sufficient separation of activities and that no action needed to be taken.

In addition, several informal inquiries were received which resulted in opinions being rendered by the City Attorney's office and one inquiry that resulted in the Board issuing a formal opinion. Details related to these inquiries may be found later in this report.

Inquiries

The question most frequently asked involved an elected official's ability to accept a free meal, gift, expression of appreciation or something else of value. More often than not, the free gift is also made available to non-public officials. Under state law, the elected official can accept the gift when non-public officials receive the same gift. Otherwise, state law will not allow gifts between a public official and someone who has a financial interest in a decision to be made by that official.

The second most asked question involved a council member who sits on a non-city board or commission. If that board or commission brings a matter before the City Council, must the council member abstain from any discussion or voting on the matter? The answer is no if there is an ordinance or contract requiring a council member to sit on the board or commission (such as the RPU Board or RCVB). The answer is yes if the council member's membership on the board or commission is voluntary (such as Boy's and Girl's Club, or RNeighbors). As a result of these questions the Board issued a formal opinion (Opinion 09-01).

There were several questions about the existence of a conflict of interest in a particular factual situation. If the elected official's financial or personal interest in the matter pending before the Council impairs his or her ability to fairly and independently judge the matter in the performance of his or her official duties, then there is a conflict of interest. If not, then there is no conflict of interest.

2009 Advisory Opinions

The Board will occasionally issue an opinion in response to a general inquiry or formal complaint if it feels a response will be of value to help clarify an aspect of the Code of Ethics or be of instructional value to a broad range of individuals. In 2009 one such opinion was issued. The full text of opinions rendered may be found on the web site (<http://www.rochestermn.gov/ethics>) or may be viewed in the City Attorney's office. Following is a brief summary of opinion(s) issued this year.

Opinion 09-01 – 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.

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.

Elected Official Participation in Committee Meetings

References: RCO Ch. 13.01 subd. 2, 13.04 subd. 1