

Ethical Practices Board Rochester, MN

Annual Report 2013



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<http://www.rochestermn.gov/ethics>

Ethical Practices Board
2013

Members

Linda Gentling

2221 Baihly Ct. SW
Rochester, MN 55902
(507) 288-2851 (home)

Appointment: May 1, 2011 – April 30, 2014

Audrey Ericksen (Chair)

312 11th Avenue NE
Rochester MN 55906
(507) 289-6007 (home)

Appointment: May 1, 2011 – April 30, 2014

Shipra Roy (Vice Chair)
2604 Heartland Drive NW
Rochester, MN 55901
(507) 271-7492 (home)

Appointment: May 1, 2013 – April 30, 2016

Steve Thompson

1089 Autumn Woods Circle SW
Rochester, MN 55902
(218) 390-9147 (cell)

Appointment: September 16, 2013 - April 30, 2015

Kay Batchelder (Secretary)

415 16th Avenue SW
Rochester, MN 55902
(507) 282-8139

Appointment: May 1, 2012 – April 30, 2015

Staff

Terry Adkins (City Attorney)

201 4th Street SE – Room 247
Rochester, MN 55904
(507) 328-2100

Ethical Practices Board

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Forward from the Chair

In order to provide transparency and clarity, please note that the membership of the Ethical Practices Board (EPB) underwent some changes in 2013 due to the expiration of a term and a resignation. Ray Schmitz, who was serving as Vice-Chair, completed his term and was replaced by Shipra Roy in April. At that time I was named Vice-Chair and Kay Batchelder agreed to act as Secretary. In June, Dr. Joe O'Toole resigned from the Board to campaign for an elected office, creating a vacancy on the EPB. At that time, I was named Chair and a new member, Steve Thompson was welcomed to the position. Ms. Roy was then named Vice-Chair.

While a code of ethical conduct has been present in both the Rochester City Charter and Rochester City Ordinance, an oversight 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 EPB was formed in 2008 to address items and concerns which arise in the normal course of government activity.

The items of interest that have come to the EPB in this fifth year have been similar in nature to the items, issues and inquiries that had arisen in the past. The majority of the EPB's activities were related to providing advice and guidance. At each of the EPB meetings we have received and reviewed several questions that the City Attorney has received from various City Department Heads, employees and elected officials. Typically the City Attorney has fielded and provided the appropriate response to the raised items and then subsequently informed the EPB of those findings and responses. The EPB then had the opportunity to provide direction and feedback to the City Attorney. The EPB is truly appreciative of all the information and service that the City Attorney and his office has provided and has found the insights, responses and legal reviews to be invaluable to the operation of the Board.

Perhaps most important among the goals of the EPB is that of education. As a result of much investigation and discussion, we now have available our own 'Speakers Bureau' and a variety of print and electronic media for presentation purposes. The brochure can be found on the EPB website at

http://www.rochestermn.gov/departments/mayor/boards/epb/pdf_documents/EPB_Brochure_2013.pdf

It has been my pleasure to serve as a member and as the Chair of the Ethical Practices Board since July, and I would ask that the following report be accepted as a summary of the EPB activities for 2013.

Audrey Ericksen
Chair

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 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 or six years, whichever is longer.

Organization

The Ethical Practices Board is composed of five members who are residents of the City of Rochester and serve without compensation. EPB members are appointed by an Appointing Committee (see Authorization paragraph).

The EPB 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 EPB 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 EPB.

Code of Ethics

The Code of Ethics 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. The EPB is not involved in determining whether disciplinary action should occur.

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
- Mayo Civic Center Commission
- Energy Commission
- Heritage Preservation Commission

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

2013 Complaint Disposition

In 2013 there were no complaints received by the Board. Several informal inquiries were received which resulted in resolution being rendered by the City Attorney's office. The EPB finds the information provided by the City Attorney to be absolutely crucial, and finds that by receiving and reviewing the issues and items that come to the City Attorney, the EPB is able to discern issues and items that may lead to the issuing further advisory guides and enhances the EPB's understanding of what they may have to address in the future regarding ethics educational needs of our employees and others.

Inquiries

Throughout the year the City Attorney's office receives a variety of inquiries related to ethical issues. The City Attorney is most often able to provide appropriate guidance almost immediately. For awareness, a summary of those issues is provided to the Board at each meeting and those that require further discussion are addressed as necessary. Inquiries brought to the Board's attention can be found in our meeting minutes at http://www.rochestermn.gov/departments/mayor/boards/epb/agendas_and_minutes.asp

The following are some examples of the inquiries discussed at the meetings:

- A volunteer serving on a city board was wondering if there is a conflict of interest in the situation where a matter is coming to the board in which he/ she has no financial interest, but has provided volunteer time and work. In that case, yes, there is a conflict of interest, as a conflict does not necessarily have to do with money.
- Some members of a city department received an invitation to an open house for a new business and were invited to make purchases at the store as if that person had a membership. There was no conflict of interest in this case because several other non-public employees received the same invitation.
- At a Council meeting, Mr. Adkins was asked to refresh the Council as to when council members can vote on matters originating with boards and commissions upon which they sit. He indicated they could vote if the council member's appointment to the board or commission occurred by way of the Home Rule Charter, a city ordinance, or a contract with the city. Otherwise, the councilmember could not vote.
- A member of a city board sits on private entity board of directors, and a matter involving the private entity, but not sponsored by the private entity, is coming before the city board. There is no conflict of interest because the member is not involved in the matter as a member of the private entity's board of directors. In this case, Mr. Adkins suggested a disclosure at the outset of the city board meeting would be beneficial.

Administrative Matters

For the purpose of information and keeping City Council abreast of the latest activities within the EPB the following overview is provided.

In the recent past the EPB has found the need to engage an outside investigator to assist in the response to citizens' complaints and inquiries. A major finding within the process has been the need for an assessment form to provide clarity and transparency to city employees regarding possible potential conflicts of interest. The Investigative firm engaged by the EPB provided a 'Conflict of Interest Assessment Form' that other clients of the investigator's firm have found valuable.

The EPB worked with senior City administrative staff regarding the development of a 'Conflict of Interest Assessment Form' to be used preliminarily as a needed tool to aid in the transparency and clarity of city operations and city employees openness regarding real or potential conflicts of interest.

In March of 2013, Mr. Gary Neumann (Assistant City Administrator) and Mr. Terry Spaeth (Administrative Assistant) attended the regular meeting of the EPB to discuss the Conflict of Interest Assessment form. A meeting of the city department heads and administrators was held to discuss the form. There was consensus that the form was a good idea and to be used as a voluntary tool if there might be any concern of a potential conflict of interest. If the form is not filled out, the group felt it would be important to not assume there was a conflict of interest. This would be strictly a voluntary opportunity. It is not a personnel policy, but is under the control and care of the EPB, and the form can be amended at any time. In the cover letter that will accompany the Conflict of Interest Assessment Form, it is stated that any questions on how to use the document can be directed to Mr. Adkins. The Board passed a motion to implement the Conflict of Interest Assessment form in mid-2013.

After Mr. Terry Adkins attended the City Administrator's meeting, he reported that the form may have resulted in some confusion about the trigger for use of the Conflict of Interest Assessment Form. It was determined that the form would be recommended if there was anything that would prevent an unbiased, unprejudiced decision from being made. If there is even a perception of a conflict of interest, then the form should be completed. Simply stated, the form is protection for the employee, supervisor, and the City of Rochester. Examples might include a perceived financial interest or someone from a family that might benefit from a project or decision.

See Appendix A for sample of the form.

Appendix A

CITY OF ROCHESTER ORGANIZATIONAL CONFLICT OF INTEREST ASSESSMENT FORM

Project/Initiative Description: _____

Appointed Official / Employee Name: _____

Employee Job Title: _____

Department Head Name & Job Title _____

DEPARTMENT HEAD CONFLICT OF INTEREST REVIEW AND ASSESSMENT

I have reviewed the following information for the purpose of assessing actual and potential conflicts of interest (check all that apply):

- Conflict of Interest Disclosure Form dated _____, and on file with the City Clerk’s office in accordance with Rochester Code of Ordinances 13, Section 13.05.
- Other relative documents (Specify): _____

Based upon my review and in my professional judgment (check all that apply):

- No actual conflict of interest exists.
- No potential conflict exists.
- An actual or potential and disqualifying conflict of interest exists. The employee or appointed official will not take part in the project / initiative.
- An actual or potential conflict of interest may exist. The attached plan for management of the situation is in place and will be reviewed _____ (specify review period) to ensure that the potential conflict of interest is eliminated, minimized and/or appropriately managed.

Date: _____

Signature: _____

CITY ATTORNEY'S OFFICE CONFLICT OF INTEREST REVIEW

Comments: _____

Date: _____ Signature: _____

EMPLOYEE/APPOINTED OFFICIAL ACKNOWLEDGMENT

I _____ (employee or appointed official name) acknowledge receipt of and accept responsibility for complying with the aforementioned recommendations, decisions, and review timelines to ensure that the actual or potential conflict of interest is eliminated, minimized and/or appropriately managed.

Date: _____ Signature: _____