

# Ethical Practices Board Rochester, MN

## Annual Report 2014



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City Attorney's Office – Room 247  
Rochester, MN 55904

(507) 328-2100

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

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**Ethical Practices Board**  
2014

**Members**

**Joseph F. O'Toole Jr., D. Min. (Vice Chair)**

3218 James Lane NE  
Rochester, MN 55906  
(507) 206-3543 (home)  
(507) 696-1831 (cell)

Appointment: May 1, 2014 - April 30, 2017

**Audrey Ericksen (Chair)**

312 11<sup>th</sup> Avenue NE  
Rochester MN 55906  
(507) 289-6007 (home)

Appointment: May 1, 2014 - April 30, 2017

**Vacant**

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 16<sup>th</sup> Avenue SW  
Rochester, MN 55902  
(507) 282-8139

Appointment: May 1, 2012 – April 30, 2015

**Staff**

**Terry Adkins (City Attorney)**

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

## **Ethical Practices Board**

### **Table of Contents**

#### **Annual Report 2014**

Forward from the Chair .....	4
Introduction .....	5
Authorization .....	6
Organization .....	6
Code of Ethics .....	6
Rules and Procedures .....	7
Jurisdiction .....	8
Complaint Disposition .....	8
Inquiries .....	8
Administrative Matters .....	10
Appendix A .....	11

## Forward from the Chair

The membership of the Ethical Practices Board (EPB) underwent some changes in 2014 due to the expiration of one member's term and a resignation. Linda Gentling's second term expired in May and Joe O'Toole was named to replace her. I, Audrey Ericksen was re-appointed to a second term. The annual Election of Officers for the EPB was held with the following results:

Chair – Ms. Audrey Ericksen  
Vice-Chair – Ms. Shipra Roy  
Secretary – Ms. Kay Batchelder

In October, Shipra Roy resigned her position for family matters, and that position was vacant at the end of 2014, with applicants being considered for replacement in January. At the December meeting, Joe O'Toole was nominated to take over the Vice-Chair position vacated by Ms. Roy.

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 sixth 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:

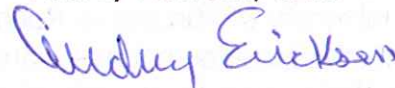
[http://www.rochestermn.gov/departments/mayor/boards/epb/pdf\\_documents/EPB\\_Brochure\\_2015.amd.pdf](http://www.rochestermn.gov/departments/mayor/boards/epb/pdf_documents/EPB_Brochure_2015.amd.pdf)

The members of the EPB received an invitation to speak at the Minnesota School of Business, to the Business Ethics class. Mr. Thompson and I attended two of the classes so far, and spoke about the EPB for the city of Rochester, explained the scope of our duties, and shared the process of filing a complaint to the EPB. We also shared some

generic examples of some of the types of inquiries received by the Board. Our presentations were well-received and we have been invited to speak again for the next term.

It has been my pleasure to serve as a member and as the Chair of the Ethical Practices Board the last year, and I would ask that the following report be accepted as a summary of the EPB activities for 2014.

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.

## **2014 Complaint Disposition**

In 2014 there were three complaints received by the Board. A citizen presented an Ethical Practices complaint against a city employee regarding an issue that occurred outside of the city employee's scope of city employment and city working hours. The Ethical Practices Board, after reviewing all the materials submitted by the complainant, noted that this would not fall within the purview of the EPB, as the complained-of conduct did not violate the City's Code of Ethics. The conduct may be addressed by the City's personnel policies or the City Department's Code of Conduct. The Board concluded that the Board should notify the complainant that he/she may wish to direct the complaint to the City's Human Resources Department or the employee's City department. A letter was sent to the complainant informing him/her of the Board's conclusions and describing other available options.

The second complaint was directed toward the city parks in Rochester. It was reviewed by the Board and also determined to be out of the scope of our duties. The complainant was directed to the appropriate city department for further information.



The third complaint was received in October regarding a perceived conflict of interest of some city board members. Due to the depth of the allegations contained in the citizen's complaint, the Board asked to hire an independent investigator for the purpose of conducting the required preliminary investigation. Upon receipt of the independent investigator's report, the Board met publicly as required by law. After thorough and equitable review of the investigator's report the complaint was determined to be unsubstantiated and was dismissed. The Citizen who had filed the Complaint was advised of the Board's findings and directed toward other options for conclusion.

## **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](http://www.rochestermn.gov/departments/mayor/boards/epb/agendas_and_minutes.asp)

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.

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

*Question:* A city official is concerned about a proposed development, the objections to the proposed development, and the impact of all of this upon the city official's rental property.

*Conclusion:* if the city official concluded his or her personal and business interests would interfere with his or her judgment on the merits of the proposed development based solely upon the applicable legal requirements, the city official should abstain from participating in the discussion and voting on the proposed development.

*Question:* A city employee receives Christmas cards from vendors. He or she asked what he or she should do if there were gift cards enclosed with those Christmas cards. The employee asked about free calendars provided to the employee.

*Conclusion:* He or she should return the gift cards to the sender. The free calendars are gifts to the City rather than to an individual. As such, the calendars should be distributed to other city employees for official use.

*Question:* A national foundation asked a city official to attend a national symposium discussing municipal educational concerns. The foundation would pay all travel and per diem expenses for the city official.

*Conclusion:* The foundation does not do business with the city and is not financially interested in any decision made by the city. This arrangement did not violate the State's prohibition against gifts to public officials.

*Question:* A software vendor wants city employees to travel to a vendor-sponsored conference to speak about the city's experience with the vendor's product. Vendor would pay the cost of travel and conference registration.

*Conclusion:* The Code of ethics prohibits gifts of travel or other rewards which might be viewed as a reward for the city's official action. The offer should be declined.

## **Administrative Matters**

In the 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.

In 2013, 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. 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. This form continues to be a helpful tool for city administration.

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: \_\_\_\_\_

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**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: \_\_\_\_\_