

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
SEPTEMBER 24, 2015 – 5:30 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202-203**

I. CALL TO ORDER

Sophie Fierro-Share, Chairperson

II. ROLL CALL

Laura M. Pierce, City Clerk

III. APPROVAL OF MINUTES

A. Approval of minutes of August 27, 2015.

IV. NEW BUSINESS

- A. Review of Draft Opinion for Ethics Complaints:
 - 1. 2015-01 Complaint: Ann Endres, submitted by Nancy Fowler
 - 2. 2015-02 Complaint: Ann Endres, submitted by Carolyn Allen & Stephanie Dziad
 - 3. 2015-03 Complaint: Ann Endres, submitted by Renee Suchara
 - 4. 2015-04 Complaint: Lauren Wood, submitted by Renee Suchara

- B. Review of Draft Opinion Advisory Opinion Request:
 - 1. 2015-05 Advisory Opinion: Andrew Harris

- C. Discussion regarding a review of the Ethics Ordinance.

V. PUBLIC COMMENT

VI. ADJOURN

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES
AUGUST 27, 2015 – 3:00 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202-203**

I. CALL TO ORDER

Sophie Fierro-Share, Chairperson, called the meeting to order at 3:00 PM.

II. ROLL CALL

Present: Ms. Fierro-Share
Mr. Robb
Mr. Schrot

Absent: None

Administration: City Attorney Currier, Clerk Pierce

III. APPROVAL OF MINUTES

MOTION: Motion by Robb, seconded by Schrot:
To approve the minutes of May 5, 2015.

VOTE: Yeas, 3
Nays, None
Absent, None

IV. NEW BUSINESS

- A. Review of Ethics Complaints:**
- 1. 2015-01 Complaint: Ann Endres, submitted by Nancy Fowler**
 - 2. 2015-02 Complaint: Ann Endres, submitted by Carolyn Allen & Stephanie Dziad**
 - 3. 2015-03 Complaint: Ann Endres, submitted by Renee Suchara**

Ms. Fierro-Share disclosed that her daughter was a student of Ms. Endres fifteen years ago. She disclosed that her husband is a candidate for City Commission.

Mr. Schrot disclosed that his daughter was involved in the skating program twenty-five years ago.

Ms. Endres confirmed for Ms. Fierro-Share that she is currently not under contract with the City. Her contract concluded in mid-May, 2015 following the ice show. Ms. Endres confirmed for Mr. Robb that the City has already replaced her and she has not committed herself to another season with the City.

Mr. Robb explained that the preliminary question is whether the board has jurisdiction over this matter. Mr. Schrot agreed that the Board does not necessarily have jurisdiction over past City officials. If Ms. Endres is no longer a contractor with the City and it is not anticipated that she will be doing business with the City through another

venue, it does not appear that she is a City official. Mr. Robb noted that she was not a City official at the time the complaints were filed.

MOTION: Motion by Robb, seconded by Fierro-Share:
That complaint 2015-01, 2015-02, and 2015-03 be dismissed due to lack of jurisdiction.

Mr. Currier commented on Procedural Rule #204, Summary Decision. He noted that the Complaints were filed after the contract expired and noted that the position is now filled.

VOTE: Yeas, 3
Nays, None
Absent, None

A. Review of Ethics Complaints:

4. 2015-04 Complaint: Lauren Wood, submitted by Renee Suchara

Ms. Suchara explained that her complaint and concern is with the money that was paid to AMG, Inc. She questioned why the money was paid to AMG, Inc and not the City. Ms. Wood was named in the complaint as she is the director of the department and oversees the ice arena. Ms. Suchara questioned why the funds are going through a contract employee's account.

Ms. Wood explained that there was an investigation done by the City Attorney's office. She explained that the ice show jackets had been purchased directly by the skating director for about fifteen years. AMG, Inc. was created within the last three to four years. She explained that the costs covered the price for the ice show and the product and costs varied year to year. The City was not involved in the selection of the jacket vendor. She noted that one year the cost for ice time was incorporated into the cost of the jackets, which was paid back to the City for the ice time.

Ms. Suchara expressed concern with the money going through AMG, Inc. Ms. Endres explained that she keeps track of the funds. She noted that she paid for the music in advance due to the turnaround time to request a check for the payment. She noted that she does not charge the City for the art work or time spent picking up the jackets.

In response to a question from Ms. Fierro-Share, Ms. Endres confirmed that the purpose of creating AMG, Inc was to separate her business account from her personal account.

Ms. Suchara explained that the check she wrote to the City was for costume, ice fee, instructor, and production. The check she wrote to AMG, Inc was for costume, ice fee, and instructors. Ms. Endres explained that for ease the items were bundled together. She explained the amount for the jacket and the amount for the opening number. She pointed out the amount that was rebated back to the City for the music cost for the entire show.

Ms. Suchara stated that she would like to see documentation that the funds went back to the City.

Mr. Robb explained that Section 2-324(5) applies: "No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or

her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.”

Mr. Robb questioned whether Ms. Suchara had any info that bears on whether Ms. Wood profited because of her official position. Ms. Suchara stated no.

Mr. Robb questioned if she was aware of any situation where people had paid for jackets or dvds and did not receive them. Ms. Suchara stated that she had not heard anything. Ms. Suchara explained that she felt more strongly that the complaint was more against Ms. Endres than about Ms. Wood; however, Ms. Wood should be more responsible and know what is going on.

Mr. Schrot noted that it would be beneficial for anyone who has an interest in the investigation done by the City Attorney's office to review it. He suggested that, if it could be done without too much effort and expense, that the City demonstrate that Ms. Suchara's funds went to the City.

In response to a question from Mr. Schrot, Ms. Wood explained that the conversation she previously had with Ms. Suchara led her to review the operations of the ice arena. She noted that within the investigation, many recommendations were made and changes put into place. Ms. Wood stated that in reviewing the issues, no violations were done by her and the issues in the complaint do not pertain to her or reflect her conduct and actions.

Ms. Fierro-Share noted that this goes back to communication. Rhonda Casper, parent at the club, explained the communication includes a handout and emails which are sent as needed.

Ms. Fierro-Share stated that as the director, it would have been a better policy to be more aware of what was happening and the potential problems that could occur. She stated that the lack of knowledge helped to create some of the additional problems.

Mr. Robb noted that legitimate issues were raised and concerns which have already caused the City to focus on those issues.

Given the discussion today, Ms. Suchara confirmed that she would be willing to dismiss the complaint.

MOTION: Motion by Robb, seconded by Schrot:
That the complaint 2015-04 be dismissed.

VOTE: Yeas, 3
Nays, None
Absent, None

The Board recessed at 4:28 PM.
The Board reconvened at 4:35 PM.

B. Review of Advisory Opinion Request:
1. 2015-05 Advisory Opinion: Andrew Harris

Ms. Fierro-Share disclosed that her husband is running for City Commission. Given the nature of the request, there could potentially be a conflict of interest. She assigned Mr. Robb as the chairperson. Ms. Fierro-Share left the meeting at 4:37 PM.

Mr. Robb pointed out that Mr. Harris is also running for City Commission. Mr. Robb disclosed that Mr. Harris used to be his neighbor; however, he does not see this as a conflict and stated his impartiality.

Mr. Schrot disclosed that he is representing a City Commission candidate in a legal matter, but does not know Mr. Harris. He stated his impartiality.

Mr. Harris confirmed for Mr. Robb that he has been a member of the Library Board since 2008. He explained that he argued two property tax appeals to the Board of Review on behalf of two clients and filed appeal petitions with the tax tribunal. He stated that he received the City's answer in one matter and the other matter is still pending.

Mr. Currier disclosed that Jeff Kragt of Beier Howlett is representing the City on these matters.

Mr. Robb questioned if Mr. Harris was the only attorney at his firm that does this type of work. Mr. Harris responded that one attorney could do the work; however, he no longer works full-time.

Mr. Harris confirmed for Mr. Schrot that real estate taxes go to support the library. Mr. Currier explained the library millage.

The Board discussed the fiduciary duty of the public officials. Mr. Schrot pointed out Section 2-324(a)(6) which forbids any City official to render service when in conflict with official duties. He noted that as a City official, you give up certain rights as an individual given the fiduciary duties that are assumed.

Section 2-324(a)(6): "No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter."

Mr. Currier pointed out that Mr. Harris' firm could represent clients on this matter, but he could not. The Board discussed the Kulak and Segar cases. Mr. Schrot expressed the concern with the case is whether or not there is any potential adverse effect. He noted the correlation, or at least an appearance, to reduce property taxes and the effect on the library. In addition to a City official appearing in public litigation against the City. He pointed out sections 2-231 and 2-323.

Sec. 2-321 Responsibilities of public office: *"City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the state and to carry out impartially and comply with the laws of the nation, state, and the city. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of morality and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their conduct in both their official and private affairs should be above reproach.*

All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding conduct which may tend to undermine respect for city officials and employees and for the city as an institution."

Sec. 2-323 Intention of code: *"It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:*

- (1) Using public employment or office for private gain;*
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;*
- (3) Losing complete independence or impartiality of action;*
- (4) Making a city decision outside official channels; or*
- (5) Affecting adversely the confidence of the public or the integrity of the city government.*

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law."

Mr. Currier explained that the Board of Review is appointed by the City Commission. After their appointment, they are an arm of the State Tax Tribunal.

The Board agreed that the answer to the first two questions submitted by Mr. Harris is in the negative. The answer to the third question is another person in the firm. Mr. Schrot noted that he has the right to contest his own taxes, but when representing the public, it is a different matter. Mr. Robb agreed and noted that if the library could not be affected by the result of it, he could represent the public.

The Board agreed that Mr. Robb would write the opinion.

The Board commended Mr. Harris for raising the issue before the Board of Ethics.

V. PUBLIC COMMENT

VI. ADJOURN

The meeting adjourned at 5:18 PM.

Laura M. Pierce
City Clerk

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2015-001**

DECISION

August 27, 2015

I. STATEMENT OF FACTS

This complaint was filed on July 16, 2015 by Nancy Fowler, who is a board member of the Figure Skating Club of Birmingham and the parent of a child who participates in the city's ice skating program. The complaint was filed against respondent Ann Endres, formerly the director of the city's Birmingham Basic Skills ice skating program and the Birmingham Ice Show. Each program is based at the Birmingham Ice Arena.

The parties appeared for the hearing on the complaint before the Board of Ethics on August 27, 2015. Because of the procedural disposition of this matter, the substance of the complaint is not relevant to the decision. The Board instead makes the following findings of fact.

Ms. Endres served as the director of the Birmingham Basic Skills Program and the Birmingham Ice Show for many years under a series of written contracts with the city of Birmingham. Her most recent contract expired in May 2015 after the 2015 Birmingham Ice Show was completed. Her contract has not been renewed. During the hearing, Mr. Timothy Currier, counsel for the city, confirmed that Ms. Endres is not presently under contract with the city. Instead, he indicated, the city has contracted with someone else to serve as director of the skating programs. There was no indication during the hearing, and there is no indication in the written record, of present intent on the part of either the city or Ms. Endres to re-engage her services with the city.

II. JURISDICTION

Under the Ethics Ordinance, the Board of Ethics has jurisdiction to hear certain kinds of matters involving city officials and employees. Ordinance No. 1819 (May 19, 2003), codified at Birmingham City Code, Art. IX, §§ 2-320 to 2-326 ("Ethics Ordinance"). The ordinance defines city officials and employees as follows:

City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in a position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

Id. § 2-322. The ordinance also specifically defines consultants as follows:

Consultant means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

Id. The Board of Ethics has previously determined that city contractors may come within the definition of “consultant” for purposes of the Ethics Ordinance. *E.g.*, Decision on Request for Advisory Opinion 2003-01, at 4 (Walker Parking) (2003); Decision on Request for Advisory Opinion 2003-02, at 1 (J.H. Hart Urban Forestry) (2003).

In the present case, however, although Ms. Endres may otherwise fall within the definition of “consultant” and thus “city official or employee,” her contractual relationship with the city ended in May 2015. She is not presently a city official or employee. Nor was she when the complaint was filed.

The question thus is whether the Board of Ethics has jurisdiction over a person who is no longer a city official to review conduct that occurred while that person was a city official.

To decide that question, we look to the language of the Ethics Ordinance. The ordinance governs “a person *elected, appointed* or otherwise *servng*,” and in the context of “consultant,” it refers to “a person who *gives* professional advice.” Ethics Ordinance, § 2-322 (emphasis added). The highlighted verbs are in the present tense. We thus interpret the definitions within the ordinance to require the respondent to be a current city official.

III. HOLDING AND CONCLUSION

Accordingly, we hold on these facts that the Board of Ethics lacks jurisdiction over the Respondent, Ms. Ann Endres, because she was not a city official when the matter came before the Board of Ethics.

The Board of Ethics expresses no opinion on the merits of the complaint. The Board instead thanks Ms. Fowler for having raised her concerns and for appearing at the hearing, and it likewise thanks Ms. Endres for her response and appearance at the hearing.

Complaint 2015-001 is dismissed for lack of jurisdiction over the Respondent. Board of Ethics Procedural Rule 304(a).

Sophie Fierro-Share, Chairperson

James D. Robb

John J. Schrot, Jr.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2015-002**

DECISION

August 27, 2015

This complaint was filed on July 16, 2015 by Carolyn Allen and Stephanie Dziad, who each is a board members of the Figure Skating Club of Birmingham and a parent of children who participate in the city's ice skating program. The complaint was filed against respondent Ann Endres, formerly the director of the city's Birmingham Basic Skills ice skating program and the Birmingham Ice Show. Each program is based at the Birmingham Ice Arena.

The parties appeared for the hearing on the complaint before the Board of Ethics on August 27, 2015.

For the reasons set forth in Decision 2015-001 involving the same set of facts, we hold that the Board of Ethics lacks jurisdiction over the Ms. Endres because she was not a city official when the matter came before the Board of Ethics.

The Board of Ethics expresses no opinion on the merits of the complaint. The Board instead thanks Ms. Allen and Ms. Dziad for having raised their concerns and for appearing at the hearing, and it likewise thanks Ms. Endres for her response and appearance at the hearing.

Complaint 2015-002 is dismissed for lack of jurisdiction over the Respondent. Board of Ethics Procedural Rule 304(a).

Sophie Fierro-Share, Chairperson

James D. Robb

John J. Schrot, Jr.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2015-003**

DECISION

August 27, 2015

This complaint was filed on July 16, 2015 by Renee Suchara, who is a parent of a child who participates in the city's ice skating program. The complaint was filed against respondent Ann Endres, formerly the director of the city's Birmingham Basic Skills ice skating program and the Birmingham Ice Show. Each program is based at the Birmingham Ice Arena.

The parties appeared for the hearing on the complaint before the Board of Ethics on August 27, 2015.

For the reasons set forth in Decision 2015-001 involving the same set of facts, we hold that the Board of Ethics lacks jurisdiction over the Ms. Endres because she was not a city official when the matter came before the Board of Ethics.

The Board of Ethics expresses no opinion on the merits of the complaint. The Board instead thanks Ms. Suchara for having raised her concerns and for appearing at the hearing, and it likewise thanks Ms. Endres for her response and appearance at the hearing.

Complaint 2015-003 is dismissed for lack of jurisdiction over the Respondent. Board of Ethics Procedural Rule 304(a).

Sophie Fierro-Share, Chairperson

James D. Robb

John J. Schrot, Jr.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2015-004**

DECISION

August 27, 2015

This complaint was filed on July 16, 2015 by Renee Suchara, the parent of a child who participates in the city's ice skating program. The complaint was filed against respondent Lauren Wood. Ms. Wood is the Director of the Department of Public Services for the city of Birmingham. Among her many responsibilities are management oversight of the Birmingham Ice Arena and the city staff that operates it.

The parties appeared for the hearing on the complaint before the Board of Ethics on August 27, 2015. As discussions surrounding the matter ensued, it appeared that the parties have come to a satisfactory understanding and resolution. Upon Ms. Suchara's admission that she knows of no facts to support her claim of a violation of the Ethics Ordinance by Ms. Wood, Ms. Suchara agreed to withdraw her complaint voluntarily.

The Board thanks Ms. Suchara for having raised her concerns, for appearing at the hearing, and for frankly responding to the Board's inquiries. The Board likewise thanks Ms. Wood for her response and appearance at the hearing and for clearly and thoroughly addressing the concerns of the Complainant and the Board.

Complaint 2015-004, because it was voluntarily withdrawn by Ms. Suchara, is dismissed for lack of a pending matter.

Sophie Fierro-Share, Chairperson

James D. Robb

John J. Schrot, Jr.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
REQUEST FOR ADVISORY OPINION 2015-005**

DECISION

August 27, 2015

I. STATEMENT OF FACTS

Andrew Harris, as requesting party, seeks an advisory opinion from the Board of Ethics concerning the possible conflict between his role as a present – and hopeful future – city official and his role as an attorney in private law practice serving as counsel of record for clients in two property tax assessment appeals potentially adverse to the city of Birmingham.

The facts are not in dispute. Mr. Harris is currently an elected trustee of the Birmingham Library Board. Moreover, he is a candidate for election to Birmingham City Commission at its upcoming November 3, 2015 election.

Mr. Harris is also a lawyer in private law practice. He currently is counsel of record on behalf of two separate Birmingham home owners who are contesting the assessment valuation of their properties for real estate tax purposes. Mr. Harris represented those clients in their property tax appeals before the Birmingham Board of Review. Upon receiving the decisions of the Birmingham Board of Review, Mr. Harris filed appeals on behalf of his clients with the Michigan Tax Tribunal, where those matters remain pending. Theoretically, the results of those cases could impact the amount of property tax revenue the city receives from Mr. Harris's taxpayer clients.

II. DISCUSSION

As an elected trustee of the Birmingham Library Board, Mr. Harris is presently a city official within the meaning of the Ethics Ordinance, Ordinance No. 1819 (May 19, 2003), codified at Birmingham City Code, Art. IX, §§ 2-320 to 2-326 (“Ethics Ordinance”). The ordinance defines city officials and employees as follows:

City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in a position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

Id. § 2-322. See also Decision on Complaint 2007-04 (July 26, 2007) (VanderMeer) (elected members of the Library Board are city officials). Of course, should Mr. Harris be elected to the city commission, he would also be a city official.

Fundamentally, the city has declared through the Ethics Ordinance that “[p]ublic office and employment are public trusts.” *Id.* § 2-320. As such, “all city officials and employees must avoid conflicts between their private interests and the public interest.” *Id.* With respect to Mr. Harris, the Ethics Ordinance gives specific guidance:

No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

Id. § 2-324(6). We have described the level of duty a city official owes to the city as being a fiduciary one. Decision on Complaint 2004-02 (June 8, 2004) (Seeger). Because the duty Mr. Harris holds to his law clients is also fiduciary, those duties are incompatible.

III. CONCLUSION AND RECOMMENDATION

The Board of Ethics concludes that Mr. Harris’s continued representation of his tax-payer clients while continuing as a city official would present an irreconcilable conflict. He can thus withdraw from the representation or conclude his service as a public official. If Mr. Harris withdraws from the representation, he must, as he is aware, do so consistent with the Michigan Rules of Professional Conduct that govern lawyer-client relationships. Mr. Harris indicated that another lawyer in his firm would be competent to assume the representation of the clients. On the assumption the clients agree, the Board of Ethics holds that the conflict would be resolved so long as Mr. Harris takes no further part in the continued representation of the clients on those matter. The Board would recommend that Mr. Harris and his firm construct what in law practice is known as a “Chinese wall,” by which Mr. Harris is purposefully isolated from those matters.

The Board of Ethics commends Mr. Harris for having realized that he may have come into a potential conflict of interest and for bringing it to the Board for this advisory opinion. The Ethics Ordinance indeed is designed by the city to “provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.” Ethics Ordinance § 2-320. The ordinance is intended to be “preventative and not punitive.” *Id.* § 2-323. We note that Mr. Harris is not the first city official who, intent on running for elected office, brought his concerns to the Board of Ethics for an advisory opinion. *See. e.g.*, Decision on Request for Advisory Opinion 2003-04 (February 3, 2004) (Studt). And we hope he will not be the last.¹

James D. Robb

John J. Schrot, Jr.

¹ Chairperson Sophie Fierro-Share took no part in this decision, having recused herself because her husband, Daniel Share, is likewise a candidate for election to the Birmingham City Commission.