

Ethics Review Board Meeting Minutes
February 7, 2017
3:15 p.m.

Members in Attendance: Board members Ray Martinez, Gino Campana and Kristin Stephens and Ross Cunniff (alternate)

Also Present: Kevin Jones, Fort Collins Chamber of Commerce;

Staff in Attendance: Carrie Daggett, City Attorney; Jeanne Sanford, Paralegal;

A meeting of the City Council Ethics Review Board (“Board”) was held on Tuesday, February 7, 2017, in the City Attorney’s Office Large Conference Room, to review and recommend City Code amendments in follow up to and as discussed in Ethics Opinion 2016-01, and consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.

The meeting began at 3:18 p.m. The Board reviewed the Agenda which contained the following items:

1. Appointment of Chair for Meeting of the Ethics Review Board for February 7, 2017, Meeting.
2. Review and approval of the October 4, 2016 Minutes of the Ethics Review Board.
3. Review and recommend City Code amendments in follow up to and as discussed in Ethics Opinion 2016-01.
4. Consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.
5. Other Business.
6. Adjournment.

The Board discussed appointment of a permanent chairperson for the meetings. Councilmember Campana nominated Councilmember Ray Martinez to chair the meetings. Councilmember Stephens seconded the nomination and Councilmember Martinez accepted the role of chairperson with the unanimous consent of the Board.

Chair Martinez stated that this was an Ethics Review Board meeting on February 7, 2017 at 3:15 p.m., and after roll call, declared that all members of the Board were present. Ross Cunniff was also present, although not participating as a Board member until later in the meeting.

Chair Martinez called for the approval of the October 4, 2016, Minutes of the Ethics Review Board. Chair Martinez asked the Board if anyone had questions or motions.

Chair Martinez made a motion to approve the October 4, 2016, Minutes. Councilmember Camapana seconded the motion. The Board unanimously approved the October 4, 2016, Minutes.

Chair Martinez called for the second agenda item, review and discussion of draft City Code and Charter amendments discussed in Ethics Opinion 2016-01.

City Attorney Daggett stated there were a few edits requested at the last meeting. Ms. Daggett stated she sent out tracked changes to Councilmembers in December and there were no concerns voiced but she wanted to give the committee a chance to formally approve and recommend this version.

Ms. Daggett did note it was discussed at Leadership Planning Team that a question was raised about whether there should be public outreach about the Code changes before presenting the ordinance to Council for consideration.

Members of the Board indicated they did not think an outreach was needed.

City Attorney Daggett stated conflict issues affect all board and commission members and indicated she had discussed with the City Clerk whether a “super issues” meeting would be practicable. Ms. Daggett indicated that there was just a “super issue” meeting on February 6, 2017.

Councilmember Campana stated he did not think an outreach was necessary but suggested putting the ethics opinion and Code provisions in new educational materials for on-boarding for board members which would provide additional clarity.

Councilmember Martinez agreed it should be provided as part of their training materials.

Councilmember Campana made a motion to approve proposed amendments to City Code Section 2-568. Councilmember Stephens seconded the motion. The Board unanimously approved the changes to Code Section 2-568.

Chair Martinez stated the next item was consideration of an inquiry by Councilmember Campana requesting that the Board consider and provide an advisory opinion regarding the question of whether a Councilmember is allowed to discuss with City staff a matter regarding which a conflict has been declared upon filing a conflict of interest disclosure.

City Attorney Daggett noted for the record that Councilmember Campana was no longer acting as a member of the Board and Councilmember Cunniff was participating in his role as alternate.

City Attorney Daggett stated the question was raised in part because of the decision and evaluation last summer of the actual effect of the Charter related to conflict of interest and how

that limits a board member or Councilmember's activities under the Charter when a conflict has been declared. Ms. Daggett explained the focus of that discussion was distinguishing and participating in an individual or personal capacity. The analysis and interpretation in that opinion is that Charter really limits performance of functions, influencing decisions and participating as member of the Council. That opens up questions as to what other activities are permissible. Ms. Daggett explained the Code has a provision that says a Councilmember shall not represent any person or interest before the Council or any City board or commission. However, it does not address whether a Councilmember in his or her personal capacity as an individual can interact with City staff on an issue. In a nutshell, that is what the question is really about. Ms. Daggett stated there is a limit that is clear in the Code about a Councilmember with a conflict and prohibiting that person from interacting with Council or a board or commission but it does not address that Councilmember's interactions with city staff.

Chair Martinez asked if this was pertaining to personal business.

City Attorney Daggett stated yes, in this case the issue was really about a Councilmember who has a conflict, was not participating as a Councilmember and now wants to be able to express personal opinions and work with staff on policy or other issues. There are some parts of the Code and Charter that bear on this to some extent. Ms. Daggett stated there was a provision adopted in 2014 that prohibits officers/employees from seeking special treatment, so clearly there is a limit to those activities. Ms. Daggett explained there is a Charter provision which may or may not bear on this question but which provides Councilmembers, except for purposes of inquiry, shall deal with the administrative services of the City solely through the City Manager and shall not give orders to subordinates of City Manager. It is unclear whether that Charter provision intends to address activities of a Councilmember speaking personally in his/her individual capacity rather than as a Councilmember giving direction to City staff on an issue. Ms. Daggett summed up there was some ambiguity here and her sense is that this is why Councilmember Campana has asked this question.

Councilmember Stephens asked for clarification if this question would be about a personal or business matter.

City Attorney Daggett stated the question could go to either situation and perhaps Councilmember Campana could explain the nature of the question.

Councilmember Campana stated he recused himself from a topic and staff reached out to him as a professional in the industry that staff wanted professional input from. Councilmember Campana stated he has not responded and does not know how to react to this question. Mr. Campana stated it was suggested he be contacted by the Finance Committee, which probably did not know he had recused himself.

Councilmember Cunniff stated that it seemed risky to him for a Councilmember, whoever that may be, who has recused himself on a matter because of a conflict of interest, to be giving policy advice to staff.

Councilmember Stephens stated her concern is that if you have recused yourself and you are not part of the policy discussion but you are still part of that policy discussion behind the scenes that gives the impression of something happening behind the scenes and not in front of Council.

City Attorney Daggett stated another angle to look at this is to say, when Council adopted Code Section 2-568(c)(2), what was intended?

City Attorney Daggett read Code Section 568(c)(2). Ms. Daggett stated it did not expressly state that Councilmembers shall not represent any personal interest in dealings with City staff in matters that will come to Council or a board or commission, and it may not have intended that. Ms. Daggett asked, was this part of the intent or envisioned by this section?

City Attorney Daggett stated the language in the Code was to define council-driven expectations. Ms. Daggett explained there is a provision in the Code now that was put in by Council, so there may be an area where Council can adopt language for further clarification or interpret it as is and determine there is no desire for the Code to say anything different. This issue may come up more frequently under most recent ethics opinion of Charter about participating in discussions. Ms. Daggett stated that the Charter provision applies to all board members, commission members and Councilmembers. Ms. Daggett believes the stricter treatment of Councilmembers in the Code that goes beyond what the Charter provides was motivated by the sense of basic ethical expectations dictating stricter treatment in some instances.

Councilmember Campana stated he believed additional language should be added to the Code Section 2-568(a)(1) previously discussed.

Councilmembers Campana and Martinez discussed adding the word “directly” to Code language.

City Attorney Daggett asked if all were more comfortable in reopening item 2 under agenda looking at this Code language?

Councilmember Campana stated he thinks City Attorney Daggett is right in that the answer goes to item 2 on the agenda, and the Board may want to discuss further, in the previously discussed ordinance, revisions to the proposed ordinance and apply it to the question.

City Attorney Daggett explained that this language “attempt to influence” does not apply to Councilmember contacts.

Councilmember Cunniff suggested that the “attempt to influence” language would probably say, “attempt to influence or influence, as it pertains to this Section, shall mean take any action *intended* instead of the previously discussed *calculated*, to impact, shape, control, sway, bias or prejudice.”, because the word *calculated* is a little vague.

City Attorney Daggett stated that this language in that Section (§2-568(a)(1)) of the Code is still only addressing board or commission members. If the desire is to clarify in Code what Councilmembers may do, then the Board would need to look at Section 2-568(c)(2) which talks

about what Councilmembers can do. Ms. Daggett stated there is potential confusion from the Code because it only talks about Councilmembers contacts with Council and boards, and does not answer what Councilmember can do with staff.

City Attorney Daggett explained that Code Section 568(c)(2) – could say, *no Councilmember shall attempt to influence the City Council or any board or commission of the City.*

City Attorney Daggett stated her recommendation would be to address this provision by separate ordinance rather than modify the previously drafted ordinance, because it relates to Ethics Opinion 2016-01 from last July. She indicated a separate ordinance could be ready to approve with the already drafted one.

Ms. Daggett further explained if the Board renders an opinion that includes a recommendation for a Code change, the opinion would need to go to Council for approval by resolution but the ordinance could be considered at the same time. Ms. Daggett inquired the Board's opinion regarding what restrictions apply in the interim period before a Code change.

Councilmember Cunniff stated it is not explicitly prohibited by the current Code and Charter provisions for Councilmember Campana to answer staff's question. Councilmember Cunniff stated he believed this was a consensus of the Board.

City Attorney Daggett indicated she would include as part of the opinion a recommendation that Council clarify the section regarding Councilmembers.

Under *Other Business* in the Agenda, Councilmember Cunniff moved that the question that Councilmember Campana had is not directly raised in the Code or Charter and therefore his answering staff questions is not prohibited.

The Board unanimously approved Councilmember Cunniff's motion.

City Attorney Daggett stated she would draft the opinion, circulate it among the Board and schedule another 15 minute meeting to circle back and approve the language.

Ms. Daggett stated her understanding of what the Board desired for Code language to say is along the following lines: *“No Councilmember shall influence or attempt to influence directly or indirectly, the City Council or any commission or board of the City regarding any matter that which that Councilmember has declared a conflict of interest.”*

City Attorney Daggett asked the Board to go back and reconsider the previous unanimous vote and for Councilmember Cunniff to be the alternative board member for Councilmember Campana.

Councilmember Campana made a motion to reconsider Code Section 2-568 proposed changes. Councilmember Stephens seconded the motion. All board members unanimously approved the motion.

Councilmember Stephens left the meeting and Councilmember Campana returned to the discussion of the Board.

City Attorney Daggett stated her understanding that the desired Code amendment would change the definition of influence or attempt to influence and substitute the word *intended* where it previously said *calculated* so it would read, “*Attempt to influence or influence, as it pertains to this Section, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.*”

Chair Martinez stated let the record reflect the Board unanimously approved the Motion.

Councilmember Campana asked City Attorney Daggett if he should wait to talk with staff.

City Attorney Daggett stated that technically, the opinion is not in force until Council acts on it – which it cannot do at tonight’s Council session, but would be asked to consider on February 21.

Councilmember Campana stated he would hang tight until then.

Chair Martinez asked the Board if there was other business.

City Attorney Daggett noted she would work on drafting an opinion for Board review, would modify the previously drafted ordinance, and would prepare a new ordinance per the Board’s action. She indicated she would work with staff to schedule a Board meeting for review of the new materials prior to the print deadline for the February 21 meeting (February 15).

The Board voted unanimously to adopt Chair Martinez’s Motion to adjourn the meeting.

Meeting adjourned at 4:06.

Carrie M. Daggett, City Attorney