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2024 JUN 14 AM 11:32

Opinion of the City of Rochester Board of Ethics
Opinion 2024-1
June 11, 2024
C23-1a

Overview

In September of 2023 a complaint was made to, and later accepted by, the Board of Ethics (Board), alleging that a member of the City’s Zoning Board of Appeals (ZBA) voted on a matter brought by an applicant with whom the ZBA member had a “financial relationship.” Further investigation of the matter determined that the ZBA member—who later resigned from the ZBA—had no business relationship with the applicant at the time of the vote. This opinion is being provided by the Board to provide general guidance to other City board members concerning disclosure of prior business relationships while serving on a board.

The authority of the Board of Ethics is defined in the City Charter, Section 2-18 F as follows:

(3) The Board of Ethics shall render written advisory opinions to City officers and employees with respect to the Code of Ethics and Article 18 of the General Municipal Law or amendments to either. Any relevant matter may be brought before the Board for an opinion upon the written request of any City officer or employee or upon the initiative of the Board...

Opinion

The City of Rochester’s Ethics Code, at Rochester City Charter § 2-18(C)(1) provides that “[n]o City officer or employee shall have any employment, or engage in any business or commercial transaction, or engage in any professional activity, or incur any obligation, as a result of which, directly or indirectly, he or she would have an interest that would impair his or her independence of judgment or action in the performance of his or her official duties or that would be in conflict with the performance of his or her official duties.”

Ethics Code §2-18(C)(3) provides that “[n]o City officer or employee shall discuss, vote on, decide or take part in, formally or informally, any matter proposed or pending before any agency or other City officer or employee in which he or she has an interest” except where that interest is minimal.

The Ethics Code defines employee to include persons “serving on administrative or advisory boards, commissions or committees,” whether paid or unpaid. An “interest” is a benefit or advantage of an economic or tangible nature that a person or a member of his or her family would gain or lose as a result of any decision or action, or omission to decide or act, on the part of the City government or any of its agencies, officers and employees.

Given the foregoing, it would be a plain conflict for a member of a City board to deliberate and/or vote on a matter brought before the board by an applicant for whom the board member is currently doing work. In such case the board member should disclose the conflict and recuse him or herself from deliberations and voting.

This opinion addresses the scenario where the board member is no longer working for the applicant, but has done work for the applicant in the past. Particularly if the prior work has been publicized in the news media or on social media, an *appearance* of conflict may arise, even if there is no actual present conflict between the member and the applicant. In order to promote transparency and dispel any such appearance, it is advised that the City board member disclose any business relationship, employment, or other compensated work performed for an applicant in the two years prior to the filing of the applicant's matter to the board. This disclosure should include an affirmative statement of the approximate date of the conclusion of the work for the applicant, and that no further work is outstanding or compensation owed to the board member. Following such disclosure, the board member may deliberate and vote on the application.

(Escher, Graham, Harris, Weir)