



ETHICS COMMISSION AGENDA

**May 13, 2015
6:30 p.m.
Roseville City Hall
2660 Civic Center Drive**

- I. Call to Order
- II. Oath of Office- Todd Anderson & Sheran Van Driest
- III. Election of Officers-Chair and Vice Chair
- IV. Approve Minutes of February 11, 2015
- V. Recap of 2015 Ethics Training
- VI. Discuss Ethics Tip
- VII. Other Business
- VIII. Adjourn

Memo

To: Ethics Commission
From: Patrick Trudgeon, City Manager
Date: May 6, 2015
Re: May 13, 2015 Ethics Commission Meeting

The Ethics Commission has several organizational items and topics to cover at the May Ethics Commission meeting. They include:

- **Oath of Office for New Commissioners.** The City Council has appointed two new Commissioners to replace Margo Fjelstad and Nancy O'Brien. The new Commissioners are Todd Anderson and Sheran Van Driest. I will give them the Oath of Office to make them official!
- **Election of Officers-Chair and Vice Chair.** Annually each City Commission elects officers. The Commission should appoint a Chairperson and Vice Chairperson. Departed Commissioner Fjelstad was the previous Chairperson. Ben Lehman served as the Vice Chair last year. Nominations for the officer positions should be made at the meeting and a vote will be taken to elect a Chair and Vice Chair.
- **Review 2015 Ethics Training.** City Attorney Gaughan conducted 2015 Ethics Training. It appeared to be a success and well received with over 40 people attending. The Commission should discuss their observations of the training and make suggestions for next year. I have included the informational packet Mr. Gaughan provided at the training.
- **Ethics Tip.** Commissioner Becker has prepared an Ethics Tip and it is included in the packet.

City of Roseville
Ethics Commission Meeting Minutes
Wednesday, February 11, 2015

I. Call to Order

Chair Fjelstad called the meeting to order at 6:34 p.m.

Members Present:

Norine Quick-Lindberg, Matthew Becker, Margo Fjelstad, and Ben Lehman

Members Absent:

Nancy O'Brien

Others Present:

Patrick Trudgeon, City Manager; Mark Gaughan, City Attorney

II. Approve Minutes of November 12, 2014

Lehman moved to approve the November 12, 2014 minutes, seconded by Becker.

Ayes All.

III. Group Discussion – Governmental Ethics in the News

The Ethics Commission talked about several recent newspaper articles regarding ethical situations involving governmental officials.

IV. 2015 Ethics Training

City Manager Trudgeon reported that the date of the 2015 Ethics Training be held on April 8, 201 starting at 6 pm. City Attorney Mark Gaughan will again be the presenter this year. City Attorney Gaughan indicated that he will present information about the Ethics Code and the process when a complaint is filed. City Attorney Gaughan also indicated that he would provide scenarios of ethical situations for the participants to discuss. It is anticipated that the presentation will be about an hour. Commissioner Becker requested that a post-training survey be conducted with the participants. City Manager Trudgeon confirmed that a survey would be sent to the participants.

V. New Commissioners Material

City Manager Trudgeon recommended that that new Commissioners be presented the Ethics Code and Robert Weschler's publication "Local Government Ethics Programs in a Nutshell". Trudgeon also indicated that he would provide an orientation to the new Commissioners to review the material and answer any questions the new members have about the role of the Ethics Commission.

VI. Discuss Ethics Tip

Commissioner Quick-Lindberg brought forward an Ethics Tip regarding the “Front Page” test, which has a person asking themselves “would I be ok if the actions I am taking were reported on the front page of the local newspaper”? The Commission liked the tip and thought it was a good rule of thumb and tied nicely to the discussion earlier in the meeting. The Commission directed the City Manager to publish the Ethics Tip on the website and push it out to all public officials. Commissioner Becker volunteered to create the Ethics Tip for May.

VII. Other Business

City Manager Trudgeon stated that there has not been any ethics complaints forwarded to the City Manager’s Office or to the City Attorney.

City Manager Trudgeon stated that this was Chair Fjelstad’s last meeting and thanked her for her service. Chair Fjelstad said that she enjoyed her time on the Ethics Commission and working with fellow Commissioners.

City Manager Trudgeon indicated that with Commissioner O’Brien also leaving the Ethics Commission that there would be two openings. The City is currently advertising the commission openings. It is expected that the City Council will be making commission appointments by the end of March.

City Manager Trudgeon also indicated that the Commission will need to elect officers at their May meeting.

VIII. Adjourn

Lehman moved to adjourn the meeting at 6:59 p.m. and Quick-Lindberg seconded.
Ayes All.

Respectfully submitted,
Patrick J. Trudgeon
City Manager

**CITY OF ROSEVILLE
ETHICS TRAINING
ROSEVILLE CITY HALL
PRESENTED BY: MARK F. GAUGHAN
APRIL 8, 2015**

- I. The Code of Ethics
 - A. Who Does It Cover
 - B. What Does It Cover
 - 1. Conduct
 - 2. Disclosure
 - C. Ethics Commission

- II. Complaint Procedure
 - A. Form and Filing
 - B. Process
 - 1. Fact Gathering
 - 2. Investigative Report
 - 3. Ethics Commission Review
 - 4. City Council Action
 - C. Examples

- III. Advisory Opinions
 - A. Formal and Informal
 - B. Disposition

- IV. Inquiries
 - A. Staff and Residents

- V. Questions and Comments

A.

**ROSEVILLE
CODE OF ETHICS**

**EXTRACT OF MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was held on the 14th day of July 2014, at 6:00 p.m.

The following members were present: McGehee, Willmus, Laliberte, Etten, Roe

and the following members were absent: None.

Council Member Laliberte introduced the following resolution and moved its adoption:

**RESOLUTION NO. 11163
A RESOLUTION AMENDING THE CODE OF ETHICS FOR PUBLIC
OFFICIALS IN THE CITY OF ROSEVILLE
(RESOLUTION NO 10905)**

WHEREAS, it is the Council's desire to create and maintain ethical standards that guide Public Officials in the transaction of public business; and

WHEREAS, the Council has determined the most effective way to do so is to adopt and enforce a Code of Ethics that guides the conduct of Public Officials:

NOW THEREFORE BE IT RESOLVED, by the Roseville City Council, that the following Code of Ethics is hereby adopted:

**CODE OF ETHICS FOR PUBLIC OFFICIALS IN THE CITY OF
ROSEVILLE**

Purpose

Officials in the public service must maintain the highest possible standards of ethical conduct in their transactions of public business. Such standards must be clearly defined and known to the public as well as to the Public Officials. Violations of the ethical standards in this ordinance are punishable by the City Council and are not to be deemed criminal misdemeanors of any other type of crime except as those behaviors or activities may separately be determined to be criminal under state or federal law.

Section 1. Declaration of Policy

The proper operation of democratic government requires that Public Officials be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

In recognition of these goals, there is hereby established a Code of Ethics for all Public Officials of the City of Roseville. The purpose of this Code is to establish ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the City, and by directing disclosure by such officials of private financial or other interests in matters affecting the City. The provisions and purpose of this Code and such rules and regulations as may be established are in the best interests of the City of Roseville.

Recognizing that education on ethics in government is the key to having good government, this code requires that annual training be held to discuss the meaning of this code with Public Officials, and in addition such training shall involve trained experts on government ethics. The City Manager shall be the coordinator for the annual training. The training will keep the subject of ethics in government fresh in everyone's mind.
(amended 5-23-2011)

To increase the awareness and understanding of the importance of ethical considerations and behavior among the public as well as government employees, communication of the role of the ethics commission and this Code must occur at least annually in local newspapers and the Roseville website as determined by the City Manager. Additionally, this Code of Ethics shall be reviewed annually to determine if modifications are appropriate.

Section 2. Definitions of Terms

Public Official

Any person that has been elected to office, appointed to a City board or commission, or hired by the City to serve as a department head or assistant department head.

Public Officials include the following:

- a. Members of the City Council and Mayor;
- b. The department head and assistant department head of each City department;

- c. Any person that has been appointed by the Roseville City Council. This would include City commission, board, and task force members; and
- d. The City Manager.

Anything of Value

Money, real or personal property, a permit or license, a favor, a service, forgiveness of a loan or promise of future employment. The term "Anything of Value" shall not be deemed to include:

- (1) Services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- (2) Services of insignificant monetary value;
- (3) A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- (4) A trinket or memento costing \$5 or less;
- (5) Informational material of unexceptional value;
- (6) Food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program; or
- (7) A contribution as defined in Minn. Stat. § 211A.01, subd. 5.

Compensation

A payment of Anything of Value to an individual in return for that individual's services of any kind.

Association

A business entity of any kind, a labor union, a club or any other group of two or more persons other than the immediate family.

Immediate Family

A reporting individual, spouse, minor children, minor stepchildren or other person residing in the same household.

Gift

The payment or receipt of Anything of Value unless consideration of greater or equal value is provided in return.

City Manager

The person that heads up the administration of the operating government of Roseville.

Section 3. Ethical Considerations

Public Officials are to serve all persons fairly and equitably without regard to their personal or financial benefit. The credibility of Roseville government hinges on the proper discharge of duties in the public interest. Public Officials must assure that the independence of their judgment and actions, without any consideration for personal gain, is preserved.

Specific ethical violations are enumerated below for the guidance of Public Officials, but these do not necessarily encompass all the possible ethical considerations that might arise.

- A. Other Offices or Employment. An elected Public Official shall not hold another incompatible office, as that term has been interpreted from time to time by statute, the courts, and by the Attorney General. Employed Public Officials shall not hold such incompatible office nor shall they engage in any regular outside employment without notice to and approval by the City Council, in the case of the City Manager, and the City Manager in the case of other employed Public Officials.

Elected and appointed Public Officials shall not hold other office or employment which compromises the performance of their elected or appointed duties without disclosure of said office or employment and self disqualification from any particular action which might be compromised by such office or employment.
- B. Use of Confidential Information. No Public Official shall use information gained as a Public Official which is not generally made available to and/or is not known to the public, to directly or indirectly gain anything of value, or for the benefit of any other person or entity; nor shall any Public Official make such information available when it would be reasonably foreseeable that a person or entity would benefit from it.
- C. Solicitation of or Receipt of Anything of Value. A Public Official shall not solicit or receive anything of value from any person or association, directly or indirectly, in consideration of some action to be taken or not to be taken in the performance of the Public Official's duties.

- D. Holding Investments. No Public Official shall hold any investment which might compromise the performance of the Public Official's duties without disclosure of said investment and self disqualification from any particular action which might be compromised by such investment, except as permitted by statute, such as Minnesota Statute 471.88.
- E. Representation of Others. A Public Official shall not represent persons or associations in dealings with the City where the persons or associations have paid or promised to pay compensation to the Public Official.
- F. Financial Interest. Where a Public Official or a member of the Public Official's immediate family has a financial interest in any matter being considered by the Public Official, such interest, if known to the Public Official, shall be disclosed by the Public Official. If the Public Official has such a financial interest or if the minor child of a Public Official has such a financial interest, the Public Official shall be disqualified from further participation in the matter.
- G. City Property. No Public Official shall use City-owned property such as vehicles, equipment, or supplies for personal convenience or profit except when such property is available to the public generally, or where such property is provided by specific City policy in the conduct of official City business.
- H. Special consideration. No Public Official shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- I. Giving Anything of Value. No elected Public Official shall give anything of value to potential voters in return for their votes, promises, or financial considerations which would be prohibited by the State Minnesota Fair Campaign Practices statute.
- J. Public Funds, etc. No Public Official shall use public funds, personnel, facilities, or equipment for private gain or political campaign activities, except as may be authorized by law.
- K. Expenses. Public Officials shall provide complete documentation to support requests for expense reimbursement. Expense reimbursement shall be made in accordance with City policy.
- L. Donations. No Public Official shall take an official action which will benefit any person or entity because of a donation of Anything of Value to the City by such person or entity.

- M. Official Action. No Public Official shall take an official action or attempt to influence any process which will benefit any person or entity where such Public Official would not have otherwise have taken such action but for the Public Official's family relationship, friendship, or business relationship with such person or entity.
- N. Compliance with Laws. Public Officials shall comply with all local ordinances and State and Federal Statutes including, but not limited to, the Criminal Code, Fair Campaign Practices Act, and laws governing the functioning of municipalities, their elected and appointed officials, and employees.
- O. Cooperation with Ethics Committee Investigations. Public Officials shall cooperate with ethics investigations and shall respond in good faith to reasonable requests for information.
- P. Resolution of Ethics Complaints. The Ethics Commission, City Attorney, or City Manager, as the case may be, shall promptly attend to all ethics complaints in the manner provided in this Code. It is expected that most complaints will be investigated as necessary and presented to the City Council for consideration within 45 days of submission of the complaint.

Section 4. Special Considerations

Situations can arise where a member of a commission, a board, or the City Council abstains from voting because of a conflict of interest, but his or her abstention becomes a vote either for or against the matter because a majority are required to pass or reject that matter. This can happen where four-fifths vote is needed to pass an issue, or the vote has to be a clear majority and a split vote does not pass or reject.

When this happens, the City Attorney must be consulted and the final vote should carry a public notice explaining what took place, and how it was resolved.

Section 5. Handling Alleged Violations of Code of Ethics

- A. Complaints alleging ethical violations by Public Officials must be submitted in written form to the City Attorney. Complaints alleging ethical violations by City employee Public Officials shall be submitted in written form to the City Manager.
- B. The City Attorney shall investigate all ethics complaints pertaining to non-employee Public Officials unless the City Attorney has a conflict, in which case outside counsel will be assigned the complaint. The City Manager will investigate complaints pertaining to employee Public Officials.

- C. If the City Attorney or City Manager determines that the subject of the complaint may have committed a crime, the City Attorney and City Manager shall refer the matter to the appropriate criminal authority.
- D. If the criminal proceeding ends with a sentencing, said sentencing shall be considered to be the final disposition of the complaint.
- E. If there has been no violation of a criminal law, the City Attorney or City Manager, as the case may be, shall issue a report that documents the results of the City Attorney's or City Manager's investigation(s).
 - 1. The report shall be sent directly to the City Council if the complaint involves an Ethics Commission member. The Council shall have the authority to dismiss any Ethics Commission member found to have violated the Ethics Code.
 - 2. The report shall be sent to the Ethics Commission if the complaint involves other Public Officials. The Ethics Commission shall have the authority to convene and issue its own report and recommendation to the City Council. Thereafter, the City Council shall take action as the Council deems appropriate.
- F. The standard for decisions regarding allegations of ethical violations covered by Section 3 of this code shall be "clear and convincing evidence." The term "clear and convincing evidence" shall mean that burden of proof as defined by Minnesota State law.
- G. In processing complaints, the City Attorney, City Manager, Ethics Commission and City Council shall process and maintain data in a manner consistent with Minn. Stat. Ch. 13, the Minnesota Data Practices Act.
- H. A complainant may withdraw a complaint, filed under this Code at any time, in writing with the City Manager or City Attorney. Unless the City Council directs otherwise, City personnel need not take any further action in accordance with the Code after such withdrawal. Once acceptance by the City Council has been granted, the City Attorney or City Manager shall provide notice to the complainant, the subject of the complaint if appropriate, and the Ethics Commission that the withdrawal has been accepted.

Section 6. Disclosure of Financial Interests

Not later than ninety (90) days after the date of approval of this Code, each Public Official of the City shall file as a public record, in the office of the City Manager, a statement containing the following:

1. A list naming all business enterprises known by the Public Official to be licensed by or to be doing business with the City in which the Public Official or any member of the Public Official's immediate family is connected as an employee, officer, owner, investor, creditor of, director, trustee, partner, advisor, or consultant; and
2. A list of the Public Officials and members of the Public Officials' immediate family's interests in real property located in the City or which may be competing with the interests of the City located elsewhere, other than property occupied as a personal residence.

Each person who enters upon duty after the date of this code in an office or position as to which a statement is required by this Code shall file such a statement on forms to be provided by the City not less than thirty (30) days after the date of his/her entrance on duty.

Each person who made an initial filing shall file a new Statement by January 30 of each year thereafter giving the information called for above as of the time of the new statement. If a change in financial interest or property ownership occurs between filings, a new filing shall be made within thirty (30) days of the change.

The interest of any member of the immediate family shall be considered to be an interest of a person required to file a statement by or pursuant to this Code.

This Code shall not be construed to require the filing of any information relating to any person's connection with or interest in any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil, or political organization, or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise.

However, if any of such organizations seeking any action or benefit come before a Roseville commission or the Council, then membership in the organization shall be a potential conflict of interest and must be reported as such to the City Manager by the Public Official in an amended disclosure statement. The other stipulations of this Code then apply.

The City Manager shall inform each person who is required to file of the time and place for filing. The City Manager shall inform the Council whenever a person who is required to file a statement fails to do so.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member McGehee and upon vote being taken thereon, the following voted in favor: McGehee, Willmus, Laliberte, Etten, Roe

and the following voted against: none.

WHEREUPON said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY).

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the 14^h day of July, with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 14^h day of July, 2014.

Patrick Trudgeon, City Manager

State of Minnesota - County of Ramsey
Signed or Attested before me on this

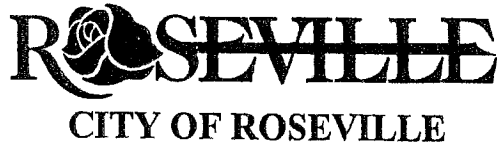
_____ day of _____, 2014

by: Patrick Trudgeon

Notary Public

B.

**ROSEVILLE
PUBLIC OFFICER
DISCLOSURE STATEMENT**



DISCLOSURE OF FINANCIAL INTERESTS STATEMENT

The City of Roseville Code of Ethics (attached) provides that Roseville public officials shall file a Disclosure of Financial Interests Statement with the City Manager. Public Officials include the following: Members of the City Council and Mayor; the department head and assistant department head of each City department; any person that has been appointed by the Roseville City Council. This would include City commission, board and task force members; and the City Manager.

Each person shall file the report within thirty days after assuming the position of a public official. Each person shall file a new statement by January 30 of each year thereafter during the time of service as a public official. If a change in financial interest or property ownership occurs between filings, a new filing shall be made within thirty days of the change.

The interest of any member of the immediate family (spouse, minor children, minor stepchildren or other persons residing in the same household) shall be considered to be an interest of the public official.

NAME _____

ADDRESS _____

PHONE NUMBER _____

CITY POSITION _____

DISCLOSURE

1. Names of all business enterprises known by you to be licensed by or to be doing business with the City in which you or any member of your immediate family is connected as an employee, officer, owner, investor, creditor of, director, trustee, partner, advisor, or consultant.

Disclosure of Financial Interests

2. List your interest and members of your immediate family's interests in real property located in the City of Roseville, or which may be competing with the interests of the City located elsewhere, other than property occupied as a personal residence.

If you have any questions regarding the Code of Ethics or this form, please contact the City Attorney.

Date

Signed

C.

**MINNESOTA STATUTES
SECTION 609.42**

609.42 BRIBERY.

Subdivision 1. **Acts constituting.** Whoever does any of the following is guilty of bribery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:

(1) offers, gives, or promises to give, directly or indirectly, to any person who is a public officer or employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person's performance of the powers or duties as such officer or employee; or

(2) being a public officer or employee, requests, receives or agrees to receive, directly or indirectly, any such benefit, reward or consideration upon the understanding that it will have such an influence; or

(3) offers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a person who is a witness or about to become a witness in a proceeding before a judicial or hearing officer, with intent that the person's testimony be influenced thereby, or that the person will not appear at the proceeding; or

(4) as a person who is, or is about to become such witness requests, receives, or agrees to receive, directly or indirectly, any such benefit, reward, or consideration upon the understanding that the person's testimony will be so influenced, or that the person will not appear at the proceeding; or

(5) accepts directly or indirectly a benefit, reward or consideration upon an agreement or understanding, express or implied, that the acceptor will refrain from giving information that may lead to the prosecution of a crime or purported crime or that the acceptor will abstain from, discontinue, or delay prosecution therefor, except in a case where a compromise is allowed by law.

Subd. 2. **Forfeiture of office.** Any public officer who is convicted of violating or attempting to violate subdivision 1 shall forfeit the public officer's office and be forever disqualified from holding public office under the state.

History: 1963 c 753 art 1 s 609.42; 1976 c 178 s 2; 1984 c 628 art 3 s 11; 1986 c 444

609.415 DEFINITIONS.

Subdivision 1. **Definitions.** As used in sections 609.415 to 609.465, and 609.515,

(1) "Public officer" means:

(a) an executive or administrative officer of the state or of a county, municipality or other subdivision or agency of the state;

(b) a member of the legislature or of a governing board of a county, municipality, or other subdivision of the state, or other governmental instrumentality within the state;

(c) a judicial officer;

(d) a hearing officer;

(e) a law enforcement officer; or

(f) any other person exercising the functions of a public officer.

(2) "Public employee" means a person employed by or acting for the state or a county, municipality, or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a public officer. Public employee includes a member of a charter commission.

(3) "Judicial officer" means a judge, court commissioner, referee, or any other person appointed by a judge or court to hear or determine a cause or controversy.

(4) "Hearing officer" means any person authorized by law or private agreement to hear or determine a cause or controversy who is not a judicial officer.

(5) "Political subdivision" means a county, town, statutory or home rule charter city, school district, special service district, or other municipal corporation of the state of Minnesota.

Subd. 2. **Deemed officer or employee.** A person who has been elected, appointed, or otherwise designated as a public officer or public employee is deemed such officer or employee although the person has not yet qualified therefor or entered upon the duties thereof.

History: 1963 c 753 art 1 s 609.415; 1983 c 359 s 88; 1986 c 444; 1992 c 592 s 16; 2002 c 352 s 13

D.

**SAMPLE ETHICS
COMPLAINT INVESTIGATIVE
REPORT**

REPORT OF THE CITY ATTORNEY
IN RE: ETHICS COMPLAINT DATED OCTOBER 2, 2012

This office received a resident complaint dated October 2, 2012, alleging a violation of the Roseville Code of Ethics. Pursuant to Section 5.E of the Ethics Code, this office has investigated the complaint. Under Section 5.E.2, this document constitutes our formal report and recommendations in the matter.

The complaint (copy attached) asserts a violation of Section 3.J of the Ethics Code. Section 3.J states:

Public Funds, etc. No Public Official shall use public funds, personnel, facilities, or equipment for private gain or political campaign activities, except as may be authorized by law.

The complaint alleges that the City Council, the Human Rights Commission, and the City Manager violated this provision of the Ethic Code. While the complaint fails to specifically identify the exact actions that purportedly violate Section 3.J, the complaint does state in pertinent part:

"The discussion on the issue and instructing people to vote YES (sic) on a state constitutional amendment is clearly an act of being engaged in political campaign activity...Public funds, personnel, and facilities were used for this activity and there is nothing in law that authorizes city resources to be used in this manner...There are numerous meeting minutes and videos of City Council and Human Rights Commission meetings that these issues were discussed along with numerous newspaper articles."

With this information, our office assumes that the complainant alleges that the Ethics Code violation arises from the following occurrences:

1. On May 16, 2012, after conducting several public meetings on the topic, the Human Rights Commission discussed and passed a resolution in which the advisory body publicly stated its collective opposition to a proposed state constitutional amendment regarding the definition of marriage and its encouragement to Roseville and Minnesota voters to vote "no" on the ballot question. (Copy of resolution attached.)
2. On August 27, 2012, the City Council discussed and passed a resolution in which the governing body publicly stated its collective opposition to the aforementioned proposed state constitutional amendment and similarly encouraged Roseville and Minnesota voters to vote no on the ballot question. (Copy of resolution attached.)

Applying these facts, which are not in material dispute, to the above-referenced Ethics Code provision, this office submits the following analysis and substantive conclusions. Further, because this is the first known complaint asserted under the City's Code of Ethics, this report also offers guidance regarding proper procedure to be used by both the Ethics Commission and City Council in this matter.

ANALYSIS

Section 3.J of the Ethics Code involves four distinct elements that must exist before a violation can occur. The four elements are:

- A. Conduct by Public Officials;
- B. Use of public funds, personnel, facilities, or equipment;
- C. Political campaign activity; and
- D. Lack of authorization by law.

Scrutiny of each element is necessary for a proper determination in this matter. If all four elements are found to exist in this matter, then a violation of the Ethics Code has been committed. If any of the four elements are not present, then a violation of the Ethics Code has not been committed. Under Section 5.F, the standard for decisions regarding allegations of ethical violations shall be by "clear and convincing evidence," as that phrase is defined by state law. In Minnesota, clear and convincing evidence requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing evidence exists only where the truth of the facts asserted is "highly probable."

A. CONDUCT BY PUBLIC OFFICIALS

The Code of Ethics defines "Public Officials" as: members of the City Council and Mayor; the department head and assistant department head of each City department; members of any City commission, board, and task force; and the City Manager. The complaint asserts that actions by the City Council, the Human Rights Commission, and the City Manager constitute the alleged violation. To the extent that the complaint alleges a violation due to the discussion and passing of distinct resolutions, the Human Rights Commission and City Council are appropriately named. As such, the complaint sufficiently satisfies the first element of Section 3.J with regard to the Human Rights Commission and the City Council. The fact that the City Manager may have been present for one or both actions, however, does not equate to actual conduct by the City Manager. Therefore, the complaint does not satisfy the first element of Section 3.J with regard to the City Manager.

B. USE OF PUBLIC FUNDS, PERSONNEL, FACILITIES, OR EQUIPMENT

The complaint asserts that the alleged violations involved the use of an advisory commission's meetings and a regular meeting of the City Council, all or some of which presumably occurred at a public facility (City Hall). Further, the drafting and execution of the respective resolutions presumably required some involvement by City personnel and equipment. It can fairly be concluded, then, that public personnel, facilities or equipment were used in the commission of the alleged violation. Whether public funds were actually expended within the context of the alleged violation is less certain. It is difficult, if not impossible, to compute whether the amount of public funds required to support the personnel (salaries/wages/etc.), facilities (council chambers/etc.), or equipment (paper/copy machine/etc.) actually increased as a result of the alleged violation. Therefore, it cannot be said that public funds were expended in this matter.

However, to the extent the complaint alleges that City facilities, personnel, and equipment were used in this matter, the complaint sufficiently satisfies the second element of Section 3.J.

C. POLITICAL CAMPAIGN ACTIVITY

The Ethics Code does not define "political campaign activity." According to the complaint, the discussion of and encouragement toward voters for a particular vote on a state constitutional amendment issue "is clearly an act of being engaged in political campaign activity." The complaint is correct on this point. The third element of Section 3.J is satisfied by the complaint.

D. LACK OF AUTHORIZATION BY LAW

Finally, no violation of the Ethics Code exists under Section 3.J if the alleged activity is authorized by law. There is significant reason to believe that the actions by the Human Rights Commission and the City Council in this matter are authorized by law. First and foremost, the First Amendment affords freedom of speech to all citizens and associations, including governmental entities. Further, as far back as 1966, the Attorney General of the State of Minnesota has offered the opinion that governing bodies can individually and collectively voice their support or opposition for a ballot initiative. Again in 2006, the Attorney General stated:

"Public officials are generally free, individually and collectively to announce their views on matters of public interest. Furthermore, it is not likely that local governments or associations can be precluded from taking and publicizing positions on such matters, even in those circumstances where the matters are not within the jurisdictions of the governing bodies."

With this background, the League of Minnesota Cities issued a bulletin this year in which it advised that a city council can legally adopt a resolution in support or opposition to a constitutional amendment. Further, this summer the Minnesota Supreme Court issued an opinion in Abrahamson v. St. Louis County School District, A10-2162 (Aug.10, 2012), in which a school board expended public funds to distribute newsletters and other publications in support of a school bonding referendum. The Supreme Court ruled that the school district was subject to campaign-finance requirements for the funds used in such advocacy---and, therefore, suggested that not only can a governing body advocate for a particular ballot question, but also that expenditure of public funds to do so is authorized under the law. In any event, the weight of authority supports the proposition that the Human Rights Commission and City Council acted under authorization of law in discussing a state constitutional amendment and advocating a particular vote on the issue, even taking into account the potential for nominal public funds to have been spent in doing so. Therefore, the final element of Section 3.J is not satisfied by the complaint.

CONCLUSION

This office concludes that a violation of Section 3.J of the Roseville Code of Ethics has not been established by clear and convincing evidence. This office recommends that the complaint be dismissed and that no adverse action be taken in this matter.

PROCEDURE

Section 5 of the Ethics Code provides a procedural framework for the handling of the present complaint. The process is as follows:

1. The City Attorney shall investigate the complaint.
2. The City Attorney shall issue a report that documents the results of the City Attorney's investigation.
3. The City Attorney's report shall be delivered to the Ethics Commission.
4. The Ethics Commission is authorized to convene and issue its own report and recommendation to the City Council.
5. Thereafter, the City Council shall take action as the Council deems appropriate.

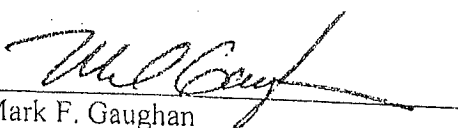
The Ethics Code provides no further procedural guidance. This office understands that the Ethics Commission will convene on November 14, 2012. The Commission will have three options to consider: (1) Adopt the report and recommendations of the City Attorney and forward the same to the City Council; (2) Reject the report and recommendations of the City Attorney, in whole or in part, and formulate its own report and recommendations to be forwarded to the City Council; or (3) Take no position on the report of the City Attorney and forward the matter to the City Council. The Commission is not authorized, under the Ethics Code or Section 206 of City Code, to undertake any additional actions.

Under the Ethics Code, the City Council's sole directive is to "take action as the Council deems appropriate." This office's recommendation is for the Council to receive the report and recommendations of the City Attorney (and, if applicable, the Ethics Commission) and take any appropriate action via motion after Council discussion. Because the task of investigation is vested within the City Attorney's office, no further information gathering is necessary.

Respectfully submitted,

Date: _____

11/9/2012


Mark F. Gaughan
City Attorney
Erickson, Bell, Beckman & Quinn, P.A.
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1700 West Highway 36
Roseville, Minnesota 55113

E.

**ROSEVILLE
ADVISORY OPINION
PROCEDURE**

**EXTRACT OF MINUTES OF MEETING
OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

* * * * *

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 19th day of November, 2007, at 6:00 p.m.

The following members were present: Roe, Pust, Kough, Ihlan and Klausing.
and the following were absent: none.

Member Klausing introduced the following resolution and moved its adoption:

**RESOLUTION No. 10568
Resolution Establishing a Procedure for Advisory Ethics Opinions**

WHEREAS, At the March 26, 2007 City Council meeting the City Council the Council adopted Resolution 10489 authorizing the Ethics Commission to establish a procedure relative to handling difficult situations before they become breaches of ethical conduct; and

WHEREAS, The Ethics Commission presented their recommendations for a procedure for Advisory Ethics Opinions at the October 15, 2007 City Council meeting; and

WHEREAS, It was recommended that the procedure be formally adopted by resolution;

NOW, THEREFORE, BE IT RESOLVED, that the City of Roseville hereby adopts the procedure for Advisory Ethics Opinions per Attachment A.

The motion for the adoption of the foregoing resolution was duly seconded by Member Ihlan, and upon a vote being taken thereon, the following voted in favor thereof: Roe, Pust, Kough, Ihlan and Klausing
and the following voted against the same: none.

WHEREUPON said resolution was declared duly passed and adopted.

PROCEDURE FOR ADVISORY ETHICS OPINIONS

I. Advisory Opinions

Individuals who are subject to the requirements of the Roseville Ethics Code may request an advisory opinion from the City Attorney regarding the Ethics Code to guide their actions for compliance with the law. Individuals may request formal or informal opinions. Requests for opinions and the opinions issued, are classified as private/confidential data under the Minnesota Government Data Practices Act. A public version of any formal advisory opinions shall be published by the City as limited by the State's Data Practices Act.

II. Formal Advisory Opinions

1. Who may request. The City Attorney may issue a formal advisory opinion on the request of a person to whom the Roseville Code of Ethics applies. A request for a written advisory opinion may be made only by an individual that wishes to use the opinion to guide the individual's own conduct.
2. Requests must be in writing. Requests for formal advisory opinions shall be in writing and must set out with reasonable specificity the facts and circumstances of a real case. Requests for advisory opinions shall be filed with the City Attorney, who shall assist any person requesting an advisory opinion in preparing the request.
3. Discretion to issue. The City Attorney shall expeditiously determine whether to issue a written advisory opinion addressing the issues raised. The City Attorney may determine that no opinion may be given, or that an informal opinion will be rendered.
4. Issuance. If the City Attorney determines that he/she shall issue an advisory opinion, it shall be prepared in writing, and shall be forwarded to the person requesting it and to the City Attorney, City Manager and Ethics Commission. The Ethics Commission shall publish an opinion or a summary of an opinion, as limited by the State's Data Practices Act, but any such published opinion or summary of an opinion may not include the name of the requestor, or any other information that might identify the requestor.
5. Effect. When a formal advisory opinion is issued, a person that acts in conformity with the written advisory opinion shall not be subject to any

discipline, reprimand, or other action by the City in any subsequent complaint that may be made covering the action to which the written advisory opinion applies, except when:

- a. A written advisory opinion has been amended or revoked before the initiation of the complaint proceeding;
 - b. It is determined that the original request for a written advisory opinion omitted or misstated material facts; or
 - c. It is found that the person making or covered by the request in question had not acted in good faith in reliance on the opinion.
6. Timeframe for issuing written advisory opinions. The City Attorney shall issue his/her opinion as soon as possible, but at least within 60 days from the request.

III. Informal Advisory Opinions

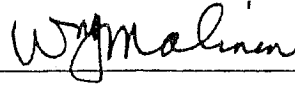
The City Attorney is authorized to give oral informal advice to persons seeking guidance as to the spirit or legal requirements of the Roseville Ethics Code. Such informal advice shall be rendered only to an individual that wishes to use the advice to guide the individual's own conduct. In giving such informal opinion the City Attorney shall inform the individual that although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk insofar as it is not a written advisory opinion. Such opinions may be given orally, by phone or otherwise. When giving such an opinion, the City Attorney shall maintain a record of the opinion rendered. The City Attorney shall periodically inform the Commission of all opinions rendered.

Reso. Establishing Procedure for Advisory Ethics Opinions

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the 19th day of November, 2007 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 19th day of November, 2007.



William J. Malinen, City Manager

(Seal)

The previous Ethics Tip discussed the “front page” test, a device that a city official could use - in a pinch - to decide whether or not their actions would violate the Ethics Code.

“The test requires you to ask yourself: How would I feel if the course of action I am considering were reported on the front page of the local newspaper or in a blog? If you would be at all uncomfortable, the best course of action is not to proceed with the action.”

When a city official who is governed by the Ethics Code has more time, however, the city of Roseville provides options to further “test” the action in question in what are known as “advisory opinions:”

“Individuals who are subject to the requirements of the Roseville Ethics Code may request an advisory opinion from the City Attorney regarding the Ethics Code to guide their actions for compliance with the law. Individuals may request formal or informal opinions. Requests for opinions and the opinions issued, are classified as private/confidential data under the Minnesota Government Data Practices Act. A public version of any formal advisory opinions shall be published by the City as limited by the State’s Data Practices Act.”

As mentioned above, there are two types of advisory opinions: formal and informal. Request for formal opinions must be in writing to the City Attorney, who may or may not decide to issue an opinion. If the City Attorney decides to issue an opinion, it must also be in writing and is forwarded to the requester, the City Manager, the City Council and the Ethics Commission, who may attach an opinion of their own. The formal advisory opinion means that person who requested the opinion is not subject to “discipline, reprimand, or other action by the City in any subsequent complaint that may be made covering the action to which the written advisory opinion applies.”

The timeline for the formal opinion is 60 days. However, there is a middle ground between the “front page” test and the formal opinion: the informal advisory opinion. These requests to the City Attorney and the City Attorney’s subsequent opinions may be made casually and orally, however, the City Attorney will inform the requester that the advice is given “in good faith” and does not carry the same protections that the formal opinion does. The City Attorney records notes from each informal opinion given, and periodically reports on these opinions to the City Council.

With these three tests readily available to all city officials who are subject to the Ethics Code - the “front page” test, the formal advisory opinion and the informal advisory opinion - they have ample resources when deciding whether or not action violates the code.

Further reading:

Advisory Opinion Issued October 2008:

<http://www.cityofroseville.com/DocumentCenter/Home/View/2617>

Procedure for Advisory Ethics Opinions Resolution:

<http://www.cityofroseville.com/DocumentCenter/View/1449>