



ETHICS COMMISSION AGENDA

**November 14, 2012
6:30 p.m.
Roseville City Hall
2660 Civic Center Drive**

- I. Call to Order
- II. Approve Minutes of August 8, 2012
- III. Discuss Ethics Complaint Received October 4, 2012
- IV. Discuss April Ethics Training Session
- V. Discuss Ethics Tip
- VI. Set 2013 Meeting Schedule
- VII. Other Business
- VIII. Adjourn

City of Roseville
Ethics Commission Meeting Minutes
Wednesday, August 8, 2012

I. Call to Order

Chair Fjelstad called the meeting to order at 6:30 p.m.

Members Present:

Anne Collopy, Margo Fjelstad, Ben Lehman, LuAnne Pederson, and Nancy O'Brien

Members Absent:

None.

Others Present:

City Manager Bill Malinen

II. Approve Minutes of May 9, 2012 Meeting

Collopy moved, Pederson seconded approval of the minutes of the May 9, 2012 meeting, as presented. Ayes All.

III. Review of Joint Meeting with City Council

The Commission recapped the discussion held at the joint meeting with the City Council.

The Commission and Council discussed the length of the Ethics Training event and concluded it should be shorter and tied more to City Code.

The Commission and Council identified the need to elect Chair and Vice Chair positions.

Collopy moved, O'Brien seconded election of Fjelstad as new Commission Chair. Ayes All.

Pederson moved, Fjelstad seconded election of Lehman as new Commission Vice Chair. Ayes All.

The Commission reported no ethics complaints during the year and discussed the process for public officials who did not file a timely annual disclosure form. The process agreed on included reporting the names of those who had not filed a timely annual disclosure form to the Council, and if there was no reported action the City Manager would file an Ethics Violation.

IV. Set Date and Discuss 2013 Ethics Training Event

The Commission discussed the length of the previous Ethics Training Event and the possibility of shortening the duration. The Commission discussed holding the 2013

Ethics Training Event on April 10, 2013. City Manager Malinen indicated he would review the date for potential conflicts. The Commission discussed the possibility of a start time at 5:30 p.m., presentation at 6:00 p.m. and a conclusion at 7:15 p.m., however they thought this arrangement might be too lengthy as well. The Commission discussed potential speakers for 2013 including Mark Anfinson with the MN Newspaper Association and Don Gamberling with the MN Department of Administration. The Commission agreed that the presentation for 2013 should be linked to our City Code. O'Brien and Collopy agreed to work with the City Manager as a planning committee for next year's event reporting their findings in November.

V. Discuss Ethics Tip

Fjelstad prepared the Ethics Tip, "*The 2012 Political Season is in Full Swing*" relating to elections and code. The Commission discussed placing a set of all Ethics Tips on the Website for public view. Pederson agreed to prepare the next Ethics Tip.

VI. Other Business
None.

VII. Adjourn

Lehman moved to adjourn the meeting at 6:50 p.m., seconded by Collopy.

Respectfully submitted,

William J. Malinen
City Manager

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.

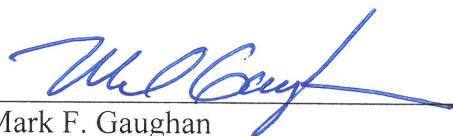
The Ethics Code provides no further procedural guidance. This office understands that the Ethics Commission will convene on November 14, 2012. The Commission will have three options to consider: (1) Adopt the report and recommendations of the City Attorney and forward the same to the City Council; (2) 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.
110 Rosedale Tower
1700 West Highway 36
Roseville, Minnesota 55113

Ethics Tip

With the traditional holiday season quickly approaching, the Ethics Commission thought it would be a good time to remind Public Officials and others of the rules regarding gifts.

Roseville's Code of Ethics states:

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.

Section 3(C).

The Code defines "anything of value" to include money, real or personal property, a permit or license, a favor, a service, forgiveness of a loan or promise of future employment. Section 2. It does not, however, include services to assist the official in the performance of official duties such as providing advice or consultation; services of insignificant monetary value; a plaque or other memento recognizing individual services in a field of specialty or to a charitable cause; a trinket or memento costing \$5 or less; informational material of unexceptional value; food or 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 a contribution as defined by Minnesota statutes.

As you meet and talk with members of the public and other constituents – not only at this time of year, but always – please keep this rule and its purpose in mind.

Ethics Commission
2013 Proposed Meeting Schedule

The Ethics Commission meets quarterly, on the second Wednesday of February, May, August and November at 6:30 p.m. in Roseville City Hall.

Quarterly meetings:

- o February 13
- o May 8
- o August 14
- o November 13

Additional meetings include:

- o Annual training session
Wednesday, April 10
(5:00 - 6:00 p.m. light refreshments; 6:00 p.m. training session)
- o Joint meeting with the City Council
Monday, May 20 (6:00 p.m. meeting)