

City of Sandy Springs Board of Ethics Meeting was held at Sandy Springs City Hall, 7840 Roswell Road, Building 500, Sandy Springs, Georgia, 30350, on July 15, 2010, at 9:00 a.m.

Call to Order

Chairman Kirk Childs called the meeting to order at 9:03 a.m.

Roll call

City Clerk Michael Casey called the roll.

Board Members Present: Kirk Childs, Andrew Heyward, Charles Maddrey, Dick Isenberg, Kevin King
Ted Sandler, Stuart Steinmark

Staff and Representatives Present: Wendell Willard, Michael Casey

Ruling on Quorum

Chairman Childs ruled a quorum was in place for the meeting.

Approval of Meeting Agenda

Motion and Vote: Andrew Heyward moved to approve the agenda as submitted. Dick Isenberg seconded the motion. The motion carried unanimously.

City Clerk Michael Casey reminded everyone to please identify themselves before they speak. This will help with the transcription of the recording for the minutes.

Approval of Board Meeting Minutes

Motion and Vote: Charles Maddrey moved to approve the April 14, 2010, meeting minutes. Dick Isenberg seconded the motion. The motion carried unanimously.

Old Business

There was no old business.

New Business

a. Discuss distribution of informal opinion by City Attorney to the Municipal Judge

Chairman Kirk Childs stated this item deals with the distribution of an informal opinion by City Attorney Wendell Willard to Municipal Judge Jim Anderson. Each Board member received a copy of the opinion. This item was tabled at the last meeting to wait until City Attorney Wendell Willard was present. The discussion was to try to determine as a Board if the informal opinion should be distributed beyond the Board.

City Attorney Wendell Willard stated an informal opinion is rendered when someone has doubt about whether or not an action would constitute a violation of the Ordinance. It is referred to as an informal opinion because nothing has occurred or transpired. The informal opinion gives the individual direction

on how to conduct themselves under the circumstances as described. The City Attorney goes through a factual determination before a decision is made. A formal opinion is more "after the fact"; the conduct has already occurred. In this case, Judge Anderson is also a private practicing attorney. He is a part time Judge for the City and has had clients from his law firm, such as Sandy Springs Police Officers that he represents, come before him in court to provide testimony in a case. His concern was how that affects his standing as Judge and specifically as to the Ethics Ordinance. It is not just the Ordinance he should be concerned about, but also the Judicial Qualifications Commission and Judicial Ethics. There are three sections in the Ordinance that cover this: 2-113-5; 2-116-1; and 2-118-1. A conclusion was made that this circumstance does not violate the Ordinance. In Judge Anderson's position he should avoid any impropriety or appearance of impropriety. The Judicial Qualifications Commission and the Georgia Code of Judicial Conduct is what would address this as to whether or not there is an impropriety for him to consider recusing himself from hearing a case.

Charles Maddrey stated when he looked at the opinion he had no problems with the decision made and he agreed with it. He would like to know who has the authority to disseminate the informal opinion. Is it the Board's decision? The Bylaws and Ordinance are not clear who has the ultimate authority. It should be up to the Board to decide who they disseminate the information to. However, if the Board disagrees with the opinion, then it would probably be good not to disseminate it to too many people.

Stuart Steinmark stated in the event the Board is considering a position contrary to that of the City Attorney, it would be prudent to have a meeting with the City Attorney to discuss the differences and go from there. Depending on the circumstances, the Board may ultimately be in agreement with the City Attorney, or the City Attorney may change his opinion.

Kevin King asked if the opinion was requested of the City Attorney and the City Attorney gave his opinion, what the Board's role is at that point. Why would the Board have the role to disseminate or not disseminate informal opinions?

City Attorney Willard stated the Ordinance provides direction as to informal opinions being issued by the City Attorney. The Board does not have the authority to override the City Attorney's informal opinion. The purpose of the informal opinion is to give someone guidance on an unclear factual issue.

Charles Maddrey stated the Ordinance is very clear. If the Board and the City Attorney disagree, they just disagree. In regards to the dissemination of the information beyond the person that requested it, the Board has no authority for that whatsoever. That is strictly between the City Attorney and the person requesting the information. The Board should have some oversight as to whom these opinions are distributed, but the By-Laws and Ordinances are not clear.

City Attorney Willard stated the only caveat he has with that is the fact the informal opinion is based upon an inquiry as to specific facts. He would not want someone to construe the opinion incorrectly for their unique situation.

Ted Sandler asked what happens to these opinions once they are issued. Are the opinions available to the public?

City Attorney Willard stated the informal opinions are filed in the City Clerk's office as a document of the City.

Ted Sandler stated that makes them available under the Open Records Act. Are the opinions placed where a Judge could ask to see formal or informal opinions that may have been issued? Do we place the

formal or informal opinions on the website? Do we make these more publicly available without any analysis or recommendation?

City Attorney Willard stated we do not have anything that catalogs or indexes the opinions. These are the first three we have had. We could keep these as a booklet with the City Clerk.

Ted Sandler asked if there is a benefit to having the formal and informal opinions readily available at one place.

Kevin King said the dissemination of an informal opinion is outside the role of the Board.

Chairman Childs stated each case will be different. The informal opinions are part of the public record. He does not see the benefit of placing them on the website or disseminating them.

Dick Isenberg suggested the opinions should be indexed, so anyone looking for the information can find it. If they are "hidden" with the Ethics Committee Minutes, it's going to be a task for anyone looking for this information.

City Attorney Willard referred to the Ordinance that addresses this. Under the duties and powers of the Board, Section 2-151, Section (2)(b) states the Board may "respond, as it deems appropriate, to requests for confidential advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion;" Section (C) states the Board may "Render and publish written formal opinions on any matter within the scope of the Board's authority; the Board may initiate opinions on its own motion or upon request;" Section (D) states "At the request of a person, the City Attorney may render an informal opinion with respect to the prospective conduct of such person. Nothing in this Ordinance shall be construed to prohibit a request for an informal opinion by any Public Servant from the City Attorney regarding a potential conflict of interest." Both of these opinions dealt with a conflict of interest. "If the City Attorney elects to render an informal opinion, the City Attorney shall, within a reasonable time, submit a written summary of the opinion to the Board for the Board's information; if the City Attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the Board for an opinion;"

Chairman Childs stated it sounds like the Board does not have much authority to do anything beyond reading the informal opinion and being aware of it.

City Attorney Willard stated he would be concerned about disseminating, because of the facts that have to be construed as presented to the City Attorney.

Stuart Steinmark stated he disagrees with Chairman Childs. The Board does have a function. If the Board had no role, then the document would never come to them in the first place. The Board has the responsibility to review the facts of the case and consider whether there is a potential ethical problem. In regard to Judge Anderson's case, Judge Anderson is representing a Police Officer employed by the City of Sandy Springs in a matter unrelated to any function regarding the City. Judge Anderson is compensated for his private services by that Police Officer. That Police Officer may appear in Judge Anderson's court as a witness or to obtain a search warrant or for some other purpose consistent with his duties as a Police Officer. There is a potential conflict of interest, regardless of the nature of the subject matter. There is the potential that Judge Anderson's loyalties might be somewhat compromised, because of this previous financial relationship. It would be appropriate for Judge Anderson, under those circumstances, to fully disclose to opposing Council what that relationship is.

City Attorney Willard stated the Georgia Code of Judicial Conduct provides the guidance. The Code states if there is a relationship between the Judge and the person appearing before him, there is a need for that to be disclosed.

Charles Maddrey stated the informal opinion is for a person, written to that person. Any ethics issue falls under the Board. Near the end of the year when the Board makes suggestions to Mayor and Council for changes to the Ordinance, it should be clarified in the Ordinance and By-Laws about the dissemination of informal opinions. Right now it is not clear.

Ted Sandler stated it would be worthwhile to have the informal opinions indexed. All of the opinions should be maintained in one folder. This would be easier for the Board to find the opinions in the future.

City Attorney Willard stated if that is the decision of the Board, the opinions will be catalogued. This will be done by assigning a number to them.

Ted Sandler asked what the Board will do with formal opinions. Should they discuss the process of whether or not to disseminate formal opinions?

Charles Maddrey suggested that they take that up when they are ready to make recommendations to Council for changes. He respectfully asked that the Board wait until they have that discussion, which may be at the next meeting.

Dick Isenberg stated he agrees with Ted Sandler; the formal opinions need to also be catalogued, so that they are readily available to whomever.

Motion: Charles Maddrey made a motion that the dissemination of all informal opinions be subject to the oversight of the Ethics Board, other than the dissemination from the response of the City Attorney to the person requesting.

Kevin King stated he does not understand the dissemination that Charles Maddrey is authorizing in the motion. Will it be up to the Board to decide now or at a later time?

Charles Maddrey stated his motion is that the Board has oversight over the dissemination.

Second: Chairman Childs asked if there is a second to the motion. The motion failed for lack of a second.

City Attorney Willard stated this issue came up because former Chairman Glenn Moffett made a recommendation that this opinion be disseminated to all the Judges.

Ted Sandler asked if any action is required for cataloguing the opinions.

City Attorney Willard stated the opinions will be part of the City Clerk's records.

Charles Maddrey announced the Board has a visitor today. The visitor is his grandson, Eli Rogers, who is an honor student at Oconee Middle School. Charles and Eli left the meeting at this time.

Dick Isenberg asked if the oversight of dissemination could be brought up at the next meeting.

Board of Ethics Meeting Minutes

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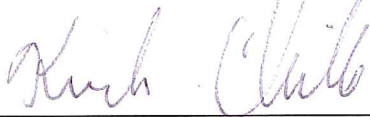
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Chairman Childs stated that this item can be brought up at the next meeting, if someone wants to bring it back up. Regarding the new informal opinion received today, in light of today's discussion, there won't be any conclusion on it at this time. He recommends the Board members read it and make it part of the discussion at the next meeting.

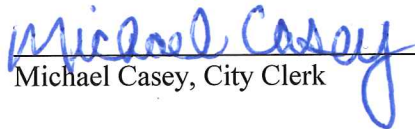
Kevin King stated in the minutes from the last meeting there was a discussion on how many meetings he has missed. It was an accident from his failure to communicate his whereabouts and contact information to Chairman Childs. He appreciates the Board allowing him to be a member of the Board.

Adjournment

Motion and Vote: Dick Isenberg moved to adjourn the meeting. Andrew Heyward seconded the motion. The motion carried unanimously. The meeting adjourned at 9:55 a.m.



Kirk Childs, Chairman



Michael Casey, City Clerk