

ERIE COUNTY BOARD OF ETHICS

95 Franklin St. 6th Floor Buffalo NY 14202,

Steven Schwartz, Chair

Annual Report of Activities for 2016

Executive Summary: The Erie County Board of Ethics provides an Annual Report of Activities to the Erie County Legislature and County Executive. The report identifies the legislative authority, powers and duties of the Board, membership and frequency of meetings. The Board made the following specific recommendations to the Legislature: to not expand the composition of the Board as initially recommended by the Charter Commission and to modify the provisions of the current law in effect. The Board previously recommended amending the Code of Ethics to include issues of nepotism, and to notify individuals at their time of appointment or election of the requirement to file Annual Financial Disclosures. The Board also recommends that a representative of the County Law Department be included as an ex-officio member.

The Board received complaints about alleged ethical violations, requests for disclosure under FOIL and requests for opinions or actions. This included complaints about accuracy of financial disclosures, and issues outside the jurisdiction of the Board. The Board also provided opinions on accepting travel and conference monies, gift card and restriction on employment after leaving county service. The Board also received and reviewed all Financial Disclosure Forms and sent follow-up letters identifying potential conflicts of interest, incomplete forms and requested additional information on errors in initial submissions. The 2016 Financial Disclosure Forms will include edits and explanations to clarify information requested and reduce errors and the need for followups.

The Erie County Board of Ethics is an independent administrative unit of Erie County. The Board's powers and duties are derived from the County Code and New York State Municipal Law Article 18. Section 10 (d) of the Code provides that "the Board shall be the repository for completed annual statements of financial disclosure required by this local law." Erie County employees who are elected officials or in policy-making positions or able to make County policy are required to annually complete an Annual Statement of Financial Disclosure for the County of Erie. Those who must file also include members of administrative boards, chairs of county political parties, and candidates for elective offices.

The Erie County Board of Ethics was established and exists pursuant to the provisions of Article 19 of the Erie County Code, as amended. The Board is charged with enforcing and implementing the provisions of the Ethics Code of the County of Erie pursuant to operating procedures that govern the Board. The Board shall have the power and duty to:

- A. Initiate and receive complaints of violations of any of the provisions of this chapter;
- B. Conduct investigations, inquiries and hearings concerning any matter covered by this chapter;
- C. Subpoena persons or documents and, by a majority vote, issue subpoenas to the fullest extent authorized by law;
- D. Determine whether to investigate and whether to act upon any particular complaint;
- E. Request the assistance of other appropriate agencies in conducting investigations;
- F. Consult with County agencies, officials and employees on matters involving ethical conduct which are specific to the County of Erie Board of Ethics;
- G. Recommend such legislative action as it may deem appropriate to effectuate the policies within this chapter;
- H. Promulgate rules and regulations for the conduct of Board of Ethics activities, including

- procedural rules consistent with the requirements of due process of law, 310(g) page 41;
- I. Prescribe forms for the disclosure and registration of information as provided in this chapter;
 - J. Render advisory opinions with respect to the provisions of this chapter;
 - K. Advise any individual whose acts are the subject of a complaint to the board and consult with such individual early in the process;
 - L. Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter; and
 - M. Provide an annual report to the Erie County Legislature and the County Executive with respect to the actions of the Ethics Board during the preceding calendar year.

For 2016, the following served as members or staff of the Board:

Steven Schwartz, Chair

Chris Trapp, Vice Chair

Kim Bowers, Secretary (resigned Board September 1, 2016)

Rebecca Town, (Secretary effective September, 2016)

Miles Gresham

Jeremy Toth, Ex-Officio, Department of Law (until April, 2016)

Leslie Ortiz-Fogg, Ex-Officio, Department of Law (assigned effective April, 2016)

Tami Burns-DiCioccio, Support Staff until September, 2016 replaced by Vianne Uthman.

The Board met ten (10) times during 2016. The following were important issues dealt with by the Board during this period:

1. Recommendations to the Legislature:

- a. The Board again recommends that the Legislature amend the Code of Ethics to include issues of nepotism. Model language is included from the 2014, City of Lockport Code of Ethics that added the following: *§ 18-15 Nepotism. Except as otherwise required by law: A. Effective *****, no municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board. Effective *****, no municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.*
- b. The Board again recommends that, at the time of appointment or election, elected officials, affected employees and board members should be notified of the requirement to file Annual Financial Disclosures with the Board.
- c. The Board recommends that a representative of the Department of Law be included as an ex-officio member of the Board.

2. Communications: The Erie County Board of Ethics website <http://www2.erie.gov/ethics/> and email erieethicsboard@gmail.com continued to be updated to improve public communication directly to and from the Board. The Board Secretary and Administrative Staff coordinate Website updates, including meeting schedules, agenda, minutes and the Financial Disclosure Forms. If possible, drafts of monthly minutes will be posted two weeks following meetings. Email requests are forwarded to the Chair who responds between meetings, when practicable.

- a. Website updated with 2016 meeting minutes, future meeting dates and 2015 Ethics Disclosure Form. A link to the 2015 Laws revising The Board authority was added.
- b. Staff from the office of the Clerk of the Legislature began video and audio recordings of meetings, circulated to legislative staff and posted on Legislative website. A link to these recordings will be established on the Board website.

- c. Communications were received that concerned advice on completion of the Disclosure Form, denial of requests to be exempt from filing County Disclosure Form and questions from individuals who were required to file the Disclosure. There were also complaints about alleged ethical violations, requests for disclosures under FOIL and requests for opinions or actions (see below). Anonymous written accusations that were received lacked information or clarity and were therefore impossible to investigate.
- d. The 2015 Annual Activity Report was submitted to the Legislature and County Executive. The Chair and Vice-Chair testified before the Legislature about legislative changes proposed by the Charter Review Commission which were subsequently modified. Subsequent proposals were also reviewed.
- e. FOIL requests were submitted and answered for Financial Disclosure Forms and for Board correspondence related to communications and investigations. The Board instituted a policy of charging \$.25/page plus postage for printed copies requested. Electronic communications may be sent electronically without cost.

3. Complaints and requests for investigations:

- a. After referring findings of ethical violations by Stephan Mychijlaw to the District Attorney's Office, the DA determined that there was no statutory basis to pursue further actions and that, therefore, the actions did not constitute a crime.
- b. The investigation of Legislator Ted Morton's disclosures for 2013 and 2014 resulted in an issuance of \$500 fine. Mr. Morton requested a reconsideration of this determination. After further consideration, the Board confirmed their decision. Mr. Morton consequently filed a suit in Federal Court disputing the authority, process and decisions of the Board in this matter. The suit is still pending.
- c. Many complaints and request for investigations were outside the authority of the Board of Ethics. These included complaints against attorneys and concerned actions with towns and other municipal authorities. Complainants were given information on other venues available to pursue their complaints. Also, the Board was unable to investigate anonymous complaints.
- d. Complaints regarding the Department of Social Service were referred to the Commissioner's Office for successful resolution.
- e. Chairman Mills requested an investigation on the legality and ethics of County Executive Poloncarz's communications with him regarding appropriations and county road improvement work. Any criminal issues were advised to be referred to the County Attorney. The Board could not identify relevant provisions of the Code of Ethics and invited the Chair to provide further information and to attend a future meeting.
- f. The Board investigated a complaint that commercial advertising was being distributed in the County Clerk's Pistol Permit Office. Upon review, no commercial advertisements were present.

4. Request for Opinions:

- a. Supported the return of an unsolicited gift card given to a public employee for a public presentation.
- b. Provided advice on accepting travel and conference expenses from governmental sources to attend government sponsored conferences, securing supervisory approvals and ways to report these expenses on subsequent disclosure forms.
- c. Based upon her request for an opinion, Ms. Dankert-Maurer, former Commissioner of Social Service & Mental Health, was advised of applicable laws governing employment in contract agencies after leaving county service and the Board's recommendation that she not appear before the county for any matter that was within her capacity as Commissioner of DSS for a period of two years.
- d. The Water Authority requested clarification of their need to file Disclosures with the Board. Upon review, they were informed of the requirement and will file 2016 Forms.

- e. Supported the Legislative staff ability to accept use of gift cards awarded in a county government competition.
6. Financial Disclosures – Letters were sent to department heads February, 2016 requesting lists of employees and board members required to file 2015 disclosure forms. Most forms were returned by the May 15, 2016 due date.
- a. For the second year, all 302 of the required disclosure forms were returned without the necessity of additional written notices. All but six disclosures were received on time. Department heads and commissioners were notified and all six delinquent and three incomplete disclosures were subsequently received. All Disclosures were reviewed for completeness and clarity.
 - b. The Board reviewed all of the individual disclosure forms for completeness and possible ethical violations. Nineteen required further information for clarification or possible action including warnings to avoid potential conflicts of interest that would violate the County Code of Ethics. (The Board utilizes templates to request additional information, to warn of potential conflicts of interest, or to notify individuals that they had violated county law by accepting gifts in excess of allowable amounts. Copies are also sent to department heads and the District Attorney when appropriate.) One resulted in further investigation to determine practice and policy regarding former county employees representing contract agencies in appearance before their previous departments (see below).
 - c. Follow-up letters requesting additional information were sent to the following:
 - i. Comptroller Mychijlaw (solicitation of gifts) “Prohibited activities – No elected official, county officer or employee shall; directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
 - ii. Legislator Ted Morton (amended 2013 disclosure). Based upon the revised 2013 Financial Disclosure Form submitted by Legislator Morton, and the Request for Investigation, the Board requested Morton provide additional information on debts listed, including identification of creditors and evidence of dates when debts were satisfied. The Board also requested information on when the error in filing was discovered. This information was received January 2016.
 - d. 2016 Changes for 2015 Disclosures or directions included a notice to “PLEASE KEEP A COPY FOR YOUR RECORDS” and a request for email addresses. Information on changes in practice for FOIL releases noted above were also be provided. The categories of disclosure for assets were updated to reflect changes in economic conditions since 1989. Categories will no longer be redacted in response to FOIL request. Financial Disclosure Forms are now in pre-fillable format on the website but still require actual signatures. In the future, the Board would request that the online Form be able to accept an electronic signature. This would substantially reduce paperwork, storage and printing costs.