

To: City of Madison Ethics Board Committee Members
From: Brenda K. Konkel
Re: The State of Ethics in the City of Madison
Date: 4/29/2010

Dear Members of the City of Madison Ethics Board:

First of all, thank you for serving, we need more dedicated residents of the City of Madison who are willing to serve on committees, and I often fear that with the recent assault on the committees that make recommendations that are contrary to our Mayor's wishes, fewer and fewer people will be willing to serve, so thank you!

I had to say that because I'm about to ask you to do something unpopular, which might put the future of your appointment to this committee at risk. Over the last nine years, including the eight I served on the Council and the one following it, I have observed many ethics issues that I would like discussed. These issues are of a systemic nature and I'd like to see the board address them at that level instead of on a case by case basis. I attempted to provide some ideas about how the issues might be addressed, but I do not claim to have all the answers and hope that the committee can help brainstorm potential solutions.

I know that the committee members care deeply about the city and so I appeal to you now, to take a proactive role in looking at the ethics laws in the City of Madison and help ensure that city maintains the highest standards of ethics to ensure the integrity of our local government. I thank you for considering these issues.

The issues that I see that need to be addressed are in the following areas:

Disclosure, recusals and resignations from Non-profit Boards for Alders

First, for years, I had thought the general rule was that once elected, an alder who served on a board of a non-profit funded by the City of Madison was required to resign. Numerous alders have been told this over the years and have in fact resigned because of direction from the city attorney. I can think of at least a dozen or so elected officials from the County Board and City Council who were on the Tenant Resource Center Board and were told to resign. That is partially the reason why staff from city-funded non-profits can serve as elected officials, they are not the ones making the financial decisions for the organization. However, in the recent past, at least two alders continued to or started to serve on boards of non-profits funded by the City of Madison. These are two that I happen to know about. There may be others.

Second, even if they were allowed to continue to serve, they should have at least disclosed their position during the budget and abstained from voting on issues related to the funding of the organization that they serve as board members. I do not recall such disclosures in recent years when voting on the budget. I used to, prior to the vote on the operating budget, make a statement about my

conflict of interest due to my staff position at the Tenant Resource Center, but I was told by the City Attorney that it wasn't necessary. That doesn't seem right to me.

Potential Solutions:

1. Education of Alders and candidates running for office about the demands of their dual roles in the community.
2. Put Statement of interest forms on council website as well as on-line in the clerk's office so they are readily accessible.
3. Perhaps revise the ordinance to be more specific about disclosures to keep decisions consistent.
4. Resume disclosures of conflicts of interest when voting on the budget, perhaps consider an item on the agenda where people are asked to disclose conflicts or ask for written disclosure.

Disclosure of conflicts by committee members and staff.

I have witnessed several occasions where members of a committee, board or commission had at least a personal conflict of interest, and possibly a financial conflict of interest that was not disclosed. Some of them mentioned it in passing, but not in any formal kind of way, others perhaps mentioned it at one meeting but not subsequent meetings so those not formerly in attendance would not reasonably know of the conflict. Even when disclosed, it doesn't always formally end up in the minutes.

Recently, regarding the Edgewater one member on one committee was told by staff of the Department of Planning Community and Economic Development that they had to recuse themselves from discussion and voting on a matter because they were on a Board of Directors of a non-profit that took a position on the matter. On another committee, another member who was the chair of the government affairs committee of a community organization that took a position on the matter was similarly cautioned by planning staff and in fact, didn't disclose that relationship.

On at least one occasion, a committee member had a conflict of interest in that a motion made at the committee would benefit a client. In that case the person was paid to represent an organization that would benefit from the ordinance. As more and more members of special interest groups are appointed to committees they seem free to say that they are making or supporting the position endorsed by their community group. In at least one case, the real decision may appeared to be made by an outside group because of the membership of the committee.

Finally, I was amazed to hear that recently a city staff member, acting as a staff member, made remarks at a commission meeting about a project that would impact their own neighborhood. When this happened in the past, people were told to recuse themselves and they were not allowed to appear before the commission representing their personal and perhaps financial interests. Instead, they had to have someone appear on their behalf. However, it seems that the city attorney advice on this matter has shifted over time.

Potential Solutions:

1. Put Statement of Interest forms on-line.
2. Educate the Alders, Staff and board, committee and commission members about conflicts of interest and disclosure.
3. Consider adopting procedures similar to the Office of Community Services where they fill out conflict of interest forms on an annual basis.
4. Consider putting a permanent agenda item for disclosure of conflicts of interests.
5. Consider amendments to the ordinance to make more clear the definition of personal conflict of interest.
6. Revise the lobbying law to include lobbying on behalf of ordinances or otherwise revise the ethics laws to delineate responsibilities when a person serves on a community group that has taken a position on a matter before them on a city committee.
7. Determine some way to provide more guidance to create more consistent outcomes, particularly regarding land use matters.

Can I buy you a drink? Offer you a ride?

I was constantly amazed when a bartender or lobbyist would offer me a beer or soda and I would refuse they would ask me why. I'd explain the ethics laws and they would proceed to either try to convince me there was a dollar limit or tell me of other alders who they have bought drinks for. There seems to be a general feeling that if it is not substantial in value, it doesn't matter. Additionally, while on my bike or on my way to a same venue, lobbyists would offer me a ride. I'd politely decline and explain I could not accept their ride, even if I had to follow them to the next location in a separate vehicle or on bike.

Potential Solutions:

1. Send out educational materials with lobbyist registration information about what they cannot do. A copy of the ordinance is not enough.
2. Change the ethics law to a dollar limit to conform with current practice.
3. Consider a definition of transportation.

One year moratorium.

The current ethics laws, paraphrased, say that a former elected officials cannot appear before a board committee or commission representing anyone as a volunteer or for pay or concerning a matter over which they previously had control. If, like many former elected officials, you are involved with any organizations, sit on any boards, or are otherwise engaged in the community, or if you had sponsored many items as a council member, this rule basically results in a year of being a second class citizen. Due to those laws most former alders I know thought, and were told, that they could not serve on a committee for a year after being on the council and that was the practice until recently. Now, the mayor routinely appoints former alders to committees within weeks of their leaving office.

Potential Solutions:

1. Consider changing the law to explicitly say alders cannot serve on committees for one year following the end of their term of office. Clarify that this doesn't just address appearances before the body.
2. Consider clarifying the laws to make clear how one could testify on their own personal opinions or what committees they could serve on without violating the law.

The Mayor's Bike Ride.

I simply do not get it. How was this not a violation of the ethics laws. When the Council President arranged a get together between the business community and the alders, we had to pay our own way. A few dollars for some hors doeuvres. But the Mayor can accept a trip to Europe? Was the meeting with the business community not for the benefit of the city? Additionally, originally it was reported that the city attorney approved the trip because a foundation paid for it. That is a distinction that is clearly not in the law and moreover I believe the purpose of the foundation is to lobby government.

Potential Solutions:

1. Education of elected officials.
2. Review the forms in the clerk's office about what items are disclosed and consider ordinance modification.
3. Consider an ordinance change that creates a definition of what benefits the city.
4. Look closely at tightening the language about what types of groups can pay for such items that "benefit the city".

Burden on the Accuser/Shifting City Attorney Opinions/Is there Another Way?

Over the years, I have raised some of these issues and have had conversations with the City Attorney about several of these matters. I suspect many other alders and committee and staff members have as well. After all, the people faced with the questions are most likely to know about them. However, most of the issues never see the light of day and I suspect that you as committee members have no idea these issues are being discussed.

Additionally, for the issues to come before you, there needs to be a complaint. Most of the people in the positions to know about the violations are not likely to file a complaint for fear of how it would be perceived in the media or by their colleagues. And the general public does not have access to the information and evidence necessary to be able to file a complaint.

Possible Solutions:

1. Have the city attorney do a monthly report of questions received about ethics issues so the board stays informed of current issues.
2. Consider alternatives to the current complaint system for issues to come before the board, allow a way for issues that are not yet a complaint to come forward.

3. Consider an investigation or discovery system so members of the public can get access to the information to allow them to meet the burden of proof.
4. Have regular meetings where issues can be raised instead of not meeting for months at a time leaving no venue for issues to be resolved.

Other Issues

While all of these issues may not technically fall within your purview, they are matters which you may want to consider or bring to the attention of others within the city. Also, I have some brief recommendations about my experience filing lobbying complaints and how that system does (or does not) work and would welcome further discussion on those matters.

1. In order for the public to have access to information about items to be discussed, we have a computer system that allows attachments to make agenda items available. Several committees do not use that function and do not attach their materials for the meetings, leaving the public with no choice but to seek out the staff or attend the meeting and hope that they have enough handouts for the public. Some agendas are particularly vague and the public has no real notice of what will be discussed. The Police and Fire Commission is particularly problematic and not willing to remedy the situation.
2. In recent years, I have seen deliberate attempts to get around the open meetings laws openly discussed by government bodies. One committee has gone as far as to appoint staff and committee member work groups where the members of the committee don't break walking quorum rules, but they still are groups created by the committee and I believe should be publicly noticed.
3. I have several issues with web policies. The mayor's blog appears to be in violation of several APMs and questionable about if it is campaign activity, and doesn't follow web linking policies for the city. In addition, alders seem to have a double standard. They are not allowed to blog and when it comes to linking to outside organizations, links are not allowed to go to an organization like Progressive Dane, but they are allowed to go to the Chamber of Commerce which does endorse in political campaigns.
4. Lobbying violations, even with the much weakened laws, appear to be going on, on a regular basis and there is little attempt to rectify that. Complaints are very much discouraged because there are not staff resources to be put into investigating the complaints and again, the burden is on the person who does not have access to the information. A small thing that could be done would be to actually look at what is submitted and ensure that clear violations are remedied in the reporting.

This letter took me some time to write, because I know there are other issues that are out there, but I decided to not let the perfect be the enemy of the good. I hope you will consider these thoughts and consider getting further information and addressing the issues that you find to be important. Thanks again for your time.