Minutes of the
City of Rochester Ethical Practices Board
Thursday, April 12, 2012

The City of Rochester Ethical Practices Board meeting was called to order at 12:04 p.m. in Room 104 of the Government Center, 151 4th St. SE, Rochester, MN.

Members present: Ms. Kay Batchelder. Ms. Audrey Ericksen. Ms. Linda S. Gentling, Dr. Joseph O’Toole, Mr. Ray Schmitz

Staff present: Mr. Terry Adkins

A motion was made and seconded to approve the minutes of the meeting of March 1, 2012. Motion passed.

The order of the proposed agenda was presented and the board consented to move forward with the agenda.

City Attorney, Mr. Terry Adkins, reported that there was one inquiry since our last meeting on March 1, 2012:

3/23/12: Council member’s spouse may seek appointment on Charter Board. There is nothing in the Charter that prevents such an appointment, but there may be conflicts of interest involving both the council member and the spouse for those matters involving both public bodies.

Mr. Schmitz and Dr. O’Toole reported on their visit with the Rochester City Administrator, Mr. Stevan Kvenvold, where they discussed the Ethical Practices Board’s (EPB) expectation of awareness of city ethical issues. Both felt it was a very productive discussion. The initial concern was exactly what would be addressed with the City Administrator (CA) and with the future of the CA as it pertains specifically to the reporting request. Dr. O’Toole summarized the board’s concerns and expectations with the CA. Essentially, the EPB should be notified as soon as the CA receives a complaint. The EPB needs to be fully informed so that there are “no secrets, no surprises”. This will enable the EPB to better address the business of the board and will provide the opportunity to comment and consider all issues to be addressed. The EPB’s expectations of ordinance 13.13 (c) were discussed, understood, and accepted by the CA. This is merely another example of the growing pains that can be expected as the EPB becomes more familiar with our responsibilities and communicates those responsibilities and opportunities to the city departments via the CA and through our EPB’s speaker’s bureau. The CA will take the responsibility of disseminating these expectations to the department heads of the City. The next effort will be to follow-up with the CA regarding the communication of this information to those groups not specifically tied to the CA, but tied to the Charter groups (Public Library, RPU, and the Parks and Recreation Department). Finally, it is the desire of the EPB to have an EPB member at the department head meeting when this effort is discussed. Mr. Adkins will communicate our desire to the CA.

Ms. Ericksen gave an update on the speaker’s bureau effort. She presented a draft of the trifold to be given to the attendees at the presentations. Ms. Ericksen has worked very diligently at making the document easily understood by all audiences. Our intent is to also translate the trifold into Spanish, and possibly other languages as the need is merited. Dr. O’Toole offered the assistance of a technical writer to work with the trifold and make any necessary suggestions for a professional appearing document. Several suggestions were made with the draft document. Ms. Ericksen will re-work the document for presentation
at our next EPB meeting.

Dr. O’Toole presented the EPB Annual Report for board review. After a short comment period, Dr. O’Toole will input the board’s suggestions and present at the City Council Committee of the Whole Meeting (COW). Mr. Adkins will notify Dr. O’Toole when the next COW meeting is to present the annual report. Ms. Batchelder moved the EPB Annual Report be accepted with suggestions. Ms. Ericksen seconded and the motion was unanimously approved.

Mr. Schmitz asked how we come to closure with the previous complaint lodged by Dr. Brad Erickson. Mr. Adkins was very helpful in our understanding of what can/cannot occur now that the issue has been investigated and no further action was required per the EPB’s vote. He cited the privacy act, which essentially states that at the point the final decision is made by the EPB, if disciplinary action is determined, than the case and action become public; if no disciplinary action, than the case is closed and not available for review by the public. The appointing authority is aware of the full investigative process and outcome. In the case recently concluded, a complaint was lodged, it was investigated, the complaint was determined to be unsubstantiated, and the issue is now closed, and the end for the EPB. This is according to the law. The question was asked regarding how does the matter get to the appointing authority? If the EPB determines an issue is in violation, it then goes to the appointing authority. There is a policy in place to assist people who file complaints in understanding the process and other avenues of relief. This awareness is created in written letters to the accuser after the case is closed. The EPB has concluded their charge, however, other avenues may be available to the accuser and it is the responsibility of the accuser to follow-up if desired. As a board, our responsibility lies only in determining whether an action violated the city Code of Ethics. Discipline is not under the purview of the EPB. Mr. Schmitz offered to flow chart this process for greater understanding among the board and the public.

Dr. O’Toole noted an item of interest. According to the Rochester Post Bulletin, on April 5, 2012, the Kasson Library Board violated the open meeting law. This furthered a question by asking if there was a possibility of conducting an executive meeting with closed meeting privileges. This cannot be done according to the open meeting law. It is not enough to close a meeting despite the discussion of private documents. Mr. Adkins provided clarity in indicating that there are exceptions for the EPB, but it is highly unlikely any of these exceptions would exist to close the EPB meetings to the public. Two possible exceptions would be a pending lawsuit, which might possibly, but not with certainty, close the meeting; and the other would be with the attorney/client privilege. However, even in this event, it would still be highly unlikely to close an EPB meeting to the public. To have a closed meeting would essentially require a change in the state of Minnesota law, which is unlikely.

There have been three applications for the two EPB positions available. On April 16, those applicants will be presented to the City Council for approval and by April 26th, the Appointing Committee will make their decision.

The next Ethical Practices Board meeting will be on Thursday, May 10, 2012, from noon - 1:30 p.m. in Conference Room 104 of the City Hall, 151 4th St. SE, Rochester, MN.

The meeting was adjourned at 1:05 p.m.

Submitted by:

Linda S. Gentling
Secretary, Ethical Practices Board