

SUSPENSION

ERIE COUNTY BOARD OF ETHICS

95 Franklin St. 6th Floor Buffalo NY 14202

Steven Schwartz, Chair

(March 2015)

Annual Report of Activities for 2014

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 require annual financial disclosures from those no longer serving as employees or board members; amending the Code of Ethics to include issues of nepotism; update the Financial Disclosure Form, and to notify at their time of appointment or election, those effected elected officials, employees and board members of the requirement to file Annual Financial Disclosures.

The Board received complaints about alleged ethical violations, requests for disclosure under FOIL and requests for opinions or actions. These included Board complaints about the proper use of the County Seal, political fundraising activities, objectivity of Board members and the redaction of financial categorical information from re-disclosure of financial forms requested under FOIL. The Board also provided an opinion on whether an employee can accept expenses from a vendor to attend a conference. Lastly, the Board received and reviewed all 273 Financial Disclosure Forms and sent follow-up letters identifying potential conflicts of interests, incomplete forms and acceptance of improper gifts. Nine candidates for elected offices also failed to file disclosures as required by law.

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;

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- 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, for approval of the County Legislature;
- 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 2014, the following served as members or staff of the Board:

- Steven Schwartz, Chairman
- Chris Trapp, Vice Chair
- Kim Bowers, Secretary
- Anna Falicov
- Rebecca Town (June, 2014)
- Jeremy Toth, Ex-Officio, Legal Counsel
- Tami Burns-DiCioccio, Administrative Staff

The Board met nine times during 2014. The following were important issues dealt with by the Board during this period:

1. Recommendations to the Legislature:

- a. In 2014 the Board made a request to the Legislature for a change in the law so that disclosures are required even though a person is no longer an employee or board member at time the disclosure form is due. Proposal was submitted on August 1, 2014 to the Legislature seeking the following changes: *Section 3(f) ADD The term "officer or employee" shall also mean those individuals defined herein who shall serve or have served at any time, regardless of duration, during the calendar year for which disclosure is sought regardless of whether they are affiliated with the County at the time the request for disclosure is made.* *Section 4 ADD "Such disclosure shall be filed regardless of whether such individual is employed, a member of a Board or Commission, or otherwise affiliated with the County at the time the request for disclosure is made."* *Section 8 ADD Same language as section 4. Also, "The form of the financial disclosure statement required under this local law of all current and former individuals required to file same shall be as determined annually by the Board of Ethics which shall maintain the authority to modify same as may be deemed necessary."* *This will eliminate pages 18-37.* *Section 9 ADD "A reporting individual as defined in sections 3 and 4..."* *Section 10(h) ADD "...and sufficient funds as may be necessary to fulfill the mission of such Board."*

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- b. The Board also 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.*
- c. The Board recommends that the Legislature review and revise the Financial Disclosure Form included in the 1989 legislation establishing the Board of Ethics. The current county form contains financial categories that are out of date and no longer conform to the New York State Financial Disclosure Form that was used as the initial model for the County. The Board will provide a model for an updated form. See websites below for the current Form and Instructions:

<http://www.jcope.ny.gov/forms/ethc/Financial%20Disclosure%20Statement%20for%202013.pdf>
<http://www.jcope.ny.gov/forms/ethc/Instructions%20for%20Financial%20Disclosure%20Statement%20for%202013.pdf>

- d. The Board further recommends that, at the time of appointment, election or employment, effected elected officials, employees and appointees should be notified by the Department of Personnel of the requirement to file Annual Financial Disclosures with the Board.

2. Communications:

- a. The Erie County Board of Ethics website <http://www2.erie.gov/ethics/> and email erieethicsboard@gmail.com were updated so that interested persons can communicate directly to the Board. Kim Bowers and Tami Burns-DiCioccio coordinated Website updates, including meeting schedules, minutes and the Financial Disclosure Form. Communications were received that concerned completion of the Disclosure Form and questions about whether individuals were required to file the Disclosure.
- b. There were also complaints about alleged ethical violations, request for disclosure under FOIL and requests for opinions or actions (see below).
- c. The 2013 Annual Activity Report was submitted to the Legislature and County Executive. The Chair met with the Governmental Affairs Committee of the Legislature to discuss the report and the issue of gifts in the Code of Ethics. Arthur Mussara, County Comptrollers Office requested and received further clarification of report details.

3. FOIL Requests, Policies and Procedures:

- a. The Board responded to the FOIL requests requesting copies of Financial Disclosure forms filed with the Board by Sheriff Timothy Howard and Clerk Chris Jacobs.

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- b. Future reports requested under FOIL requests for Financial Disclosure Forms may be obtained personally or by mail by requestors. The Board reviewed the Erie County Legislature's Resolution of December 20, 1990 regarding the Erie County Board of Ethics Rules Governing Annual Statement of Financial Disclosures that outlines a procedure for public inspection of disclosures. It was determined that Freedom of Information Laws (FOIL) and procedures consistent with the past practices of the Board for public requests for records preempt this resolution. Pursuant to that, the Financial Disclosure forms requested, with specific financial categories redacted, were mailed. A practice has been established in which the board will inform those affected when a FOIL request has been made including who made the request.

4. Complaints:

- a. A complaint was received via County Comptroller about use of the County Seal on the fundraising page of the County Executive. The Board responded that the "proper use of the County seal is limited to official County business". The County Seal was removed from the identified web page and from the website of a County Legislator. The Legislature may wish to consider legislation defining the proper use of the County Seal.
- b. The Board responded to a complaint regarding the political fundraising activities of the County Executive by noting that issues related to campaign finance should be directed to the Board of Elections.
- c. A complaint was received claiming improper treatment from a Town of Sardinia employee. Board responded to the complainant that the "inquiry is beyond the scope of this Board and beyond the powers enumerated under the law governing the Board of Ethics."
- d. Peter Reese attended a Board meeting to complain that an employee of the County Attorney's office is appointed to a the Erie County Board of Ethics as Counsel when action is being sought against the County Executive. In the event this occurs in the future, we have attorneys on our board that could stand in his or her place or we could request a replacement, and the County-appointed attorney would recuse him or herself. He also expressed concerns regarding political affiliations of Board members. The role of County attorney is as an ex-officio member of the Ethics Board. The enabling legislation requires that no more than three Board members can be affiliated with a particular political party.
- e. Paul Wolf made requests that the Board post the financial disclosure forms of all Erie County elected officials on-line for interested members of the public to view without any information being redacted, revise the disclosure form to utilize the more detailed financial categories that the state disclosure form contains and adopt a policy against nepotism. The Board posted information to facilitate FOIL requests for disclosures and recommended that the Legislature update the disclosure form and consider adding a policy on nepotism to the Code of Ethics.

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5. Request for Opinion:

On December 1, 2014 Daniel Rizzo, Deputy Commissioner of Building & Grounds (Department of Public Works), requested advice on whether or not he should attend a conference with all expenses paid by a vendor (vendor initiated the invitation). The vendor is an industrial supply company that is on the state contract list. Mr. Rizzo recommends purchases and approves orders of \$50-100,000 annually from this vendor. These purchases are reviewed again by county Budget prior to final ordering. Mr. Rizzo's responsibilities also include supervision of all related projects, contractor consultations, and provision of budgetary assistance. The Board advised against accepting this invitation and would not signoff as required by the vendor. Prior to the Board decision, Mr. Rizzo had already declined the invitation.

6. Financial Disclosures:

- a. Letters were sent to department heads February, 2014 requesting lists of employees and board members required to file disclosure forms. Changes were made to previous letters and forms to increase clarity and reduce errors and the need for follow-up letters. Directions clarified the definitions of policy-making positions. The forms were due to be returned May 15, 2014.
- b. For the first time in the history of the Board, all 273 of the requested disclosure forms were returned without additional notices.
- c. The Board reviewed all of the individual disclosure forms for completeness and possible ethical violations. Twenty-five required further information for clarification or possible action including warnings about potential conflicts of interest or notices of gifts received in violation of County Code of Ethics. The Board utilized three 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 were also sent to department heads and the District Attorney as appropriate. Based upon concerns expressed by recipients of follow-up letters, the board is reviewing these letters to clarify when no further response is necessary.
- d. Although candidates for public office are required to file disclosures, nine candidates did not respond by filing their disclosures (copies of notifications sent to Erie County Board of Elections in April, 2014): Bert Dunn; Anthony D'Orazio; Joyce Nixon; Christopher Fellows; Wynn Fisher; Wesley Moore; Thomas Irish; Brian Burke and Lauren Gray.