



# Milwaukee County Ethics Board

## CONFIDENTIAL

DATE: January 18, 2017

TO: Attorney Jim Carroll, Principal Assistant Corporation Counsel  
Attorney Colleen Foley, Interim Corporation Counsel

FROM: Christian B. Flores, Chair, Ethics Board

RE: Definition of “Substantive Change(s)” as Used in an Advisory Opinion on September 14, 2016

This memorandum is in response to the Milwaukee County Board of Supervisors’ (the “County Board”) request (via Corporation Counsel) for an advisory opinion to define the term “substantive change(s)” as used in an advisory opinion from the Chairman of the Milwaukee County Ethics Board (the “Ethics Board”) on September 14, 2016.

## BACKGROUND

The Milwaukee County Ethics Code (the “Ethics Code”) was amended in 2004 to add a requirement that Milwaukee County Pension Board (the “Pension Board”) members and officers file a Statement of Economic Interests (“SEI”) on a quarterly basis, rather on the annual basis required of all other County officers, employees, and officials. The Ethics Board’s understanding is that the amendment was the result of Pension Board members abusing their positions and accepting substantial gifts from vendors without disclosing them on their SEI’s. None of the 2004 Pension Board members are serving on the current Pension Board. The Pension Board is asking the County Board to amend the requirement that Pension Board members and officers file a quarterly SEI to require annual filing of their SEIs. The Pension Board’s reasoning is that quarterly filing is burdensome to those members and officers who have significant investments to list every quarter. Additionally, the Pension Board wishes to be treated as all other employees, officers and officials and file their SEI annually.

The Committee on Judiciary, Safety, and General Services recommended adoption of the proposed ordinance in May, 2016. The County Board referred the ordinance change to Corporation Counsel to seek the input of the Ethics Board in July, 2016. The Ethics Board met on August 9, 2016 and Attorney Jim Carroll, Principal Assistant Corporation Counsel, appeared on behalf of the Corporation Counsel’s office to discuss the Ethics Board’s input. Ethics Board members requested further information as to the scope of what the Board was being asked to do.

The matter was held over so that further information could be provided to the Ethics Board.

Subsequently, a response from the Ethics Board was requested prior to the Ethics Board's next regularly scheduled meeting in November.

In accordance with this request, the Chairman of the Ethics Board provided an advisory opinion dated September 14, 2016 (attached) as to whether the Ethics Board had any reservations regarding the proposed ordinance change. The September 14<sup>th</sup> advisory opinion was provided to the County Board as an attachment to a memorandum dated September 16, 2016, from Interim Corporation Counsel Colleen Foley to the County Board. On October 13, Interim Corporation Counsel Foley sent an email to the Ethics Board Chair indicating that the County Board is requesting the Ethics Board define "substantive change" as used in the September 14, 2016 advisory opinion. A request was also made for approval of the advisory opinion by the full Ethics Board.

## DISCUSSION

The County Board and Office of Corporation Counsel seek an advisory opinion from the Ethics Board as to whether the Board has "any reservations" about the "merits" of the proposed ordinance change. As an initial matter, the Ethics Board notes that whether to change SEI reporting requirements (or any other ordinance) is a policy decision that ultimately rests with the Board of Supervisors and the County Executive. The Ethics Board will continue with its mandate of interpreting and applying the Ethics Code ordinances that are enacted by the Board of Supervisors and County Executive. *See* § 9.08(1), M.C.G.O.

As stated in the September 14, 2016 opinion, the Ethics Board does not agree that Pension Board members should be treated the same as other employees, officers and officials with respect to SEI requirements. The Ethics Board believes that if SEI filings are changed to annual for Pension Board members, they should still be required to file a quarterly statement if there are any "substantive changes" to the information required in the SEI.

In response to the September 16, 2016 request for further clarification on the meaning of "substantive change," the Ethics Board points to the requirements for filing as set forth in M.C.G.O. ch. 9.02 and M.C.G.O. ch. 9.04.

M.C.G.O. ch. 9.02(18) and M.C.G.O. ch. 9.04(1)(d), define a "significant fiduciary relationship" as:

M.C.G.O. ch. 9.02(18)

... owning or controlling, directly or indirectly:

- (a) At least ten (10) percent of the outstanding stock or stock of any business corporation having a cost or market values of at least five thousand dollars (\$5,000.00), or

(b) An interest of at least ten (10) percent or five thousand dollars (\$5,000.00) of any organization.

M.C.G.O. ch. 9.04(1)(d)

...the identity and amount of property, bonds, debentures, or debt obligations of a municipal corporation or other corporation in excess of five thousand dollars (\$5,000.00) transferred by him/her or his/her spouse to a member of his/her immediate family...

The Ethics Board believes that these provisions provide guidance as to what is meant by a “substantive change.” There may be other situations that have not yet been presented to the Ethics Board that may constitute a “substantive change” in circumstances. This opinion is limited to responding to the requests of the County Board and Corporation Counsel. Those reservations have been stated. This opinion is the opinion of the entire Ethics Board. This opinion only applies to the scenario as set forth above, and it should not be used for general application to other facts or scenarios. Pursuant to the Ethics Code, your request and this opinion will remain closed to public inspection unless you request in writing that it be made a public record.

Sincerely,

/s/ Christian B. Flores

Christian B. Flores, Chair  
Milwaukee County Ethics Board  
slh