

**City of Milton Board of Ethics
Regular Meeting
Monday, August 18, 2008, 6:00 PM**

This summary is provided as a convenience and service to the public, media, and staff. It is not the intent to transcribe proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted and heard by the Board, but not quoted. This is an official record of the City of Milton Board of Ethics Work Session proceedings. Official Meetings are audio recorded.

AGENDA

- I. Call to Order – Chairman Todd Ashley
- II. Approval of the July 21, 2008 Work Session minutes.
- III. Discussion on revisions to Chapter 6, Code of Ethics and Standards of Conduct.
- IV. Old Business
- V. New Business
- VI. Next Meeting Date
- VII. Adjourn

MEETING CALLED TO ORDER

Chair Todd Ashley:

- Called the Board of Ethics Work Session meeting to order for Monday, July 21, 2008 at 6:10 p.m.

ROLL CALL:

Todd Ashley, Chair
Carol Lane, Vice Chair
Clint Johnson
Howard Drobos
Kristin White
Joe Whitley (participating via conference call @ 6:12 p.m.)

Not Present: Carol Cookerly

City Staff: Paul Frickey, City Attorney's Office
Francesca Ivie, City Clerk's Office

APPROVAL OF THE MINUTES

Chair Todd Ashley:

- Called for approval of the July 21, 2008 meeting minutes with one correction being noted and changed on page 5.

Motion and Second: Clint Johnson made a motion to approve the July 21, 2008 meeting minutes with the condition that the change be made on page 5, deleting the word "unanimous" and replacing it with the word "majority." Kristin White seconded the motion. There was no discussion. Vote: 5-0-1, with Joe Whitley voting via conference call. Motion unanimously carried.

Chair Todd Ashley:

- Called the next agenda item, Discussion on Revisions to Chapter 6, Code of Ethics and Standards of Conduct.

Attorney Paul Frickey:

- Referenced the latest version of the Ordinance.

Chair Todd Ashley:

- Opened floor for continued discussion.

Vice Chair Carol Lane:

- Had questions in the Ordinance about people on boards attending other meetings within the city.
- Could an Ethics Board member attend a Planning Commission meeting?
- Could someone on City Council attend an Ethics Board meeting?
- Rules about this issue.

Chair Todd Ashley:

- Can they exclude anyone from attending one of the city's meetings opened to the public?

Attorney Paul Frickey:

- Stated no ethical reason they could not attend.

Vice Chair Carol Lane:

- Allowed to speak?
- Participate?

Attorney Paul Frickey:

- Only to same extent the public would be allowed to speak.

Clint Johnson:

- Cannot participate.
- Once question was asked of them it is over.

Attorney Paul Frickey:

- Confident that the attendance is fine.
- Section Ten of the Ordinance references any restrictions on appearances before city entities.
- Can appear on behalf of themselves.
- Cannot appear in their official capacity.

Vice Chair Carol Lane:

- Question about supporting people during an election.
- Can board members help with their campaign.
- Fundraisers?

Chair Todd Ashley:

- As long as you do not solicit or receive money.
- Could not say "fundraiser."
- Could be construed as you soliciting funds.
- Host perhaps a "meet and greet."
- If held at your house and it was not solicited by you, that is okay.
- If candidate solicits a check or their campaign people, then that would be fine.
- As long as you are not doing the asking.

Vice Chair Carol Lane:

- Inquired of Joe Whitley (participating via conference call) to weigh in.

Joe Whitley (via conference call):

- Agreed with Chairman.
- A meet and greet with no money raised or solicited.
- That would not constitute fundraising.

Attorney Paul Frickey:

- Section Nine (B)(3) on page 10 references this matter.
- There is also a "knowingly" provision in the Ordinance.
- Would not recommend doing this if at all possible.
- Avoid there being any misunderstanding.
- Cannot write to cover every gray area.

Board discussion about supporting a candidate and holding a "meet and greet" and raising monies.

Clint Johnson:

- Questions about spouses being allowed to raise money.
- Both names are on deed if it is held in your house.
- If you do a "meet and greet" and say bring your checkbook, that is soliciting.

Vice Chair Carol Lane:

- This happened last year.
- Some people had a fundraiser for some of the candidates for City Council.

Chair Todd Ashley:

- Elected officials can solicit all they want for other people.

Joe Whitley (via conference call):

- Referred Board members to page 16, Section Eleven, Advisory Opinion.
- This may be useful resource in these types of situations.

Vice Chair Carol Lane:

- May not think to ask for an opinion.
- Part of the Ethics Board's responsibility is to educate people.

Clint Johnson:

- That is what the Ordinance is.
- Can provide a copy to anyone.

Chair Todd Ashley:

- Took a consensus from the Board on whether they all agreed that "solicit" means the person must personally ask for money or use a straw man to solicit.
- Only the candidates can solicit.

Kristin White:

- If anyone has questions after reading the Ordinance they should be directed to Board and the Board can give an opinion.

Vice Chair Carol Lane:

- Asked Joe Whitley if he agreed with the education portion.

Joe Whitley (via conference call):

- Need to achieve some sort of balance.
- Fine line between what is obvious from reading and the Board confusing the issue with the education.
- Believed it would be better to let the document speak for itself.
- There will be certain situations that may warrant getting an advisory opinion.
- Should probably right now on focusing on getting the document together and moving on and not worry at this point about education.

Chair Todd Ashley:

- Asked if there had been the inclusion of language about the "intent" standard.
- Did not remember if that had been finalized.
- What are the Board's standards regarding this?
- Was there a decision made regarding "knowingly?"

Kristin White:

- Did not think they addressed it.

Board discussion about meaning of "knowingly."

Chair Todd Ashley:

- Referenced on page 7, Article Four, Section 1.

Joe Whitley (via conference call):

- Should perhaps read *no city official or employee shall "knowingly" engage in.*
- If it was something they had no control over it would be "not knowingly."

Attorney Paul Frickey

- Stated if that was the intent of the Board he thought the word should be inserted.
- Would not want to interpret it in.
- Said that any of the Article Four requirements or violations must be "knowing" violations.

Board discussion about the different areas in the Ordinance where the word "knowingly" should perhaps be inserted.

Chair Todd Ashley:

- That might entail the Board sitting on this Ordinance another month having to go through and find every place "knowingly" would have to be inserted.
- Do not want to do that.

Joe Whitley (via conference call):

- Suggested under Article Six, Miscellaneous, you could have something added there or wherever Mr. Frickey thinks the Board should put it in.

Attorney Paul Frickey:

- Sees each one of these sections as a separate violation.

Chair Todd Ashley:

- Could it be added as a definition?

Attorney Paul Frickey:

- Does not apply to every situation quite honestly.
- May have to go through and see which ones apply.

Chair Todd Ashley:

- May just be best to leave it as it is.
- Stated he was reviewing the complaints for form.

Howard Drobos:

- Agreed it should stand as it is.

Chair Todd Ashley:

- Took a consensus on where the Board was on abandoning the discussion regarding the "knowingly" language.
- Interpreting it on a case-by-case basis.

Clint Johnson:

- Could always assume that intent enters into it and if it is there.
- Could then determine if it was truly a mistake or not.

Chair Todd Ashley:

- Shared with Board a criminal jury instruction used in Georgia for years.
- Intent does not mean intent to violate the law.
- It means the intent to do the act which results in the violation.

Joe Whitley:

- Believes the Board as a group can review the matter and make that determination.
- There will be situations where someone may be grossly negligent and will not bother to look at the Ordinance and chose to ignore it.
- The Board will not reward that behavior by ignoring their conduct.
- We should not limit ourselves.
- Agree to close the loop and abandon this portion of the discussion.

Board agreed to abandon the necessity of inserting "knowingly" into the Ordinance.

Chair Todd Ashley:

- Referenced Article Five, Section 2, Part C on page 13.
- Qualifications of the members of the Boards of Ethics.
- Discusses eligibility.
- States that person should not hold any elected or fulltime appointed office.
- He personally holds a fulltime appointed office.
- Technically he is not qualified to sit on this Ethics Board.
- Question had been raised with attorney Mark Scott two years ago.
- Ruling was that did not refer to "me."
- Mr. Scott stated that was intended for either city office or federal employees.
- Reiterated that he was told it did not apply to him.
- Plain language as it is written makes him ineligible to sit on the Board.
- He is a member of the State Executive Branch of the government.
- He is fulltime appointed by the District Attorney who is an elected position.
- Wants to be on the right side of what they are doing.

Clint Johnson:

- When he served on the Library Board, they had to swear that they were not appointed to any fulltime position to serve.

Chair Todd Ashley:

- It needs to be made clear because somebody will hold one of your chairs after me.

Joe Whitley:

- As a suggestion for possible language, *does not hold any elected office and is not a candidate for...* and remove the *appointed positions* language.
- Would this be going to for?

Clint Johnson:

- Would like to check to see if this is really a state law.
- Perhaps it is *per board* language.
- Board language is often written specifically for the individual boards.
- If not state law, take it out.

Chair Todd Ashley:

- Do not want to slow this process down.
- Getting the sense the elected officials are wanting to see the finished product.
- Reluctant to drag this matter out.

Attorney Paul Frickey:

- Cannot give someone authority to sit on this Board that does not have the authority pursuant to state law.
- Can limit the number of people more strictly.
- If state law says you cannot do it, just because it is left in the Ordinance does not mean you can.

Clint Johnson:

- Always had questions about this.
- Four people on the Library Board held elected offices.

Attorney Paul Frickey:

- Would have to look into this specific issue.
- If state law says that someone who serves on an elected or fulltime appointed office, taking it out of your Ordinance would take change the fact that it is not allowed.
- You can cross it out either way.
- Either the state law will allow it or not.

Chair Todd Ashley:

- Assured everyone that he did not intend to violate the ethics ordinance.
- Just followed the advice of Milton's former City Attorney.
- Attorney Mark Scott said that this paragraph did not apply to me.
- Thought his reason was this paragraph was meant to apply to federal employees.

Kristin White:

- When she worked in the Attorney General's Office she could not have served on this Board.
- She knew that when she worked there.

Clint Johnson:

- Two people are affected by this provision.
- Thought Joe Whitley was appointed to a federal position.
- Current Chair, Todd Ashley.

Joe Whitley (via telephone conference):

- Was previously and would have been affected as well.
- No longer involved in that capacity.

Chair Todd Ashley:

- So we will say *does not hold any elected and strike or fulltime appointed*.

Clint Johnson:

- Should just strike all of paragraph C.

Chair Todd Ashley:

- Deferred to Attorney Paul Frickey.
- Could you do some research and get back with the Board in 72 hours or would that not be realistic?

Paul Frickey:

- Stated he felt he could.
- Does not currently know what is out there.

Vice Chair Carol Lane:

- Asked if they could vote to exclude this phase with the understanding that if it is in the Georgia law then it is kept.

Chair Todd Ashley:

- I would then resign if it is in there.

Paul Frickey:

- If you do not want it in there, then take it out.
- State law may say you cannot sit on the Board.
- Not required to have it in your Ethics Ordinance.

Chair Todd Ashley:

- Practically very little difference between B and C.
- Suggest striking C in its entirety unless it conflicts with state law.
- In that case Attorney Paul Frickey will advise if I can continue to serve as Chairman of the Board or if I have to resign.
- The agenda will then change for next month.

Vice Chair Carol Lane:

- We can still pass it as it is and move on tonight.

Chair Todd Ashley:

- Need to vote on striking C from the Ordinance.

Motion and Second: Howard Drobos made a motion to strike Section Two, Paragraph C from the Ethics Ordinance. Seconded by Clint Johnson. There was no further discussion. Vote: 5-0-1, with Joe Whitley voting via conference call. Motion unanimously carried.

Chair Todd Ashley:

- Defer the final word to Mr. Frickey.
- If it is determined to be state law then I will resign.
- Ms. D'Aversa will appoint someone else.
- If not, we remain as we are.

Paul Frickey:

- State law will not change what you do with this Ordinance.
- Would just affect you as the Chair personally.

Kristin White:

- Could not see any conflict.

Chair Todd Ashley:

- What if I had to prosecute somebody in the City of Milton?
- That would not be good.
- State of Georgia would be the complainant.
- I could be construed as the State of Georgia's lawyer.
- Would deal with attorney conflict.

Attorney Paul Frickey:

- If there is a law out there that prohibits you from sitting on a board, does not matter what we do with this Ordinance.
- This is the Board expressing its will as to what their desires are regarding elected and appointed officials.

Board discussion about the complaint form being kept separate from the presentation of the Ethics Ordinance and it being reviewed and discussed at next meeting.

Howard Drobos:

- Discussed with Board whether an index of the Ordinance might be helpful.

Attorney Paul Frickey:

- Could be useful reference but did not think necessary.

Chair Todd Ashley:

- Asked board members if they were ready to vote.

Joe Whitley:

- Thought everyone did a great job.
- Believed it was ready to go to the next City Council Work Session.

Chair Todd Ashley:

- Called for a motion to approve with the changes the Board discussed and agreed upon.

Motion and Second: Clint Johnson made a motion to approve the Ethics Ordinance with the changes discussed and agreed upon by the Board tonight for the City Councils review, consideration and adoption. Kristin White seconded the motion. There was no further discussion. Vote: 5-0-1, with Joe Whitley voting via conference call. The motion unanimously carried.

Attorney Paul Frickey:

- Will make the discussed changes.

Chair Todd Ashley:

- Asked Carol Lane to email the City Clerk to get this placed on City Council's next Work Session Agenda.
- Determine how presentation should be made to City Council.
- Advised Board he thought it would be good if all members could attend that Work Session.
- Call the next agenda item, Old Business.

Board discussed that they would start working on the By-laws.

Chair Todd Ashley:

- Called the next agenda item, New Business.

Board discussed the different complaint forms that Ms. Lane had sent to them to review. Most all board members liked Tennessee's form the best. Agreed they would discuss at their next meeting.

Chair Todd Ashley:

- Called the next agenda item, Next Meeting Date.

NEXT MEETING DATE

- Board discussion about next meeting date.

It was decided the Board would meet on Monday, October 20, 2008 at 6:00 p.m.

Chair Todd Ashley:

- Called the last agenda item, Adjournment.

ADJOURNMENT:

Motion and Second: Clint Johnson made a motion to adjourn. Seconded by Carol Lane. There was no discussion. Vote: 5-0-1, with Joe Whitley voting via conference call. There was no discussion. The motion unanimously carried.

After no further business, the Ethics Board Work Session meeting adjourned at 7:40 p.m.

Date Approved: _____

Approved By:

Francesca Ivie
City Clerk's Office

Todd Ashley, Chairman

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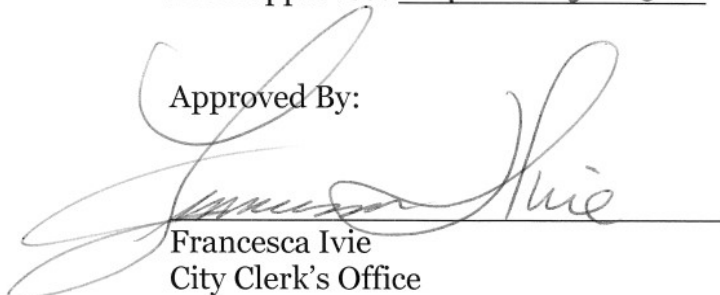
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Date Approved: 10-20-08

Approved By:



Francesca Ivie
City Clerk's Office



Todd Ashley, Chairman