

**City of Birmingham
Board of Ethics Minutes
February 22, 2021
151 Martin, Birmingham
Virtual Meeting ID: 996 5685 2194**

I. CALL TO ORDER

Chair Fierro-Share called the meeting to order at 1:30 p.m.

II. ROLL CALL

Present: Sophie Fierro-Share, Chair (located in Birmingham, MI)
James Robb, Board Member (located in Birmingham, MI)
John Schrot, Board Member (located in Birmingham, MI)

Absent: None

Also Present: City Attorney Kucharek

Administration: City Clerk Bingham, Peter Gojcay - Legal Counsel from Beier Howlett

III. APPROVAL OF MINUTES

At the bottom of page one, Member Schrot recommended adding 'as personal representative' after 'on his behalf', and changing 'the estate' to 'his mother's estate'.

Members Schrot and Robb then recommended:

- Adding 'Board in drafting the' between 'inform the' and 'advisory opinion' on page three;
- In the next sentence, changing 'informing' to 'involved with';
- In the third to last paragraph on page three, changing 'a proposed approach' to 'propose an approach'; and,
- In the second to final paragraph on that page, removing 'public,'.

MOTION: Motion by Member Schrot, seconded by Member Robb:
To approve the minutes of February 15, 2021 as corrected.

ROLL CALL VOTE:	Ayes,	Member Schrot Member Robb Chair Fierro-Share
	Nays,	None

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. Consideration of Matter 2021-02: Request for Advisory Opinion (Library Board - Craft)

Library Director Craft reviewed her request for an advisory opinion.

Member Robb informed the Ethics Board that he had served as the trustee for the estate of Birmingham resident James Miller. He noted that the estate of Mr. Miller left a donation of artwork to the Birmingham Library. Member Robb explained that during his facilitation of the donation he had occasion to interact with Library Director Craft and other Library Staff. He said he did not believe those interactions represented a conflict-of-interest.

Neither Chair Fierro-Share or Member ~~Robb~~ Schrot¹ believed Member ~~Schrot's~~ Robb's² work with the Library on behalf of Mr. Miller's estate represented a conflict-of-interest.

Greg Weddell, the Library Board applicant referenced in Library Director Craft's request for an advisory opinion, withdrew his application for the Library Board position via email on February 16, 2021. That email was circulated to the Ethics Board members prior to the present meeting.

Member Robb, observing that it would have been his turn to write the advisory opinion, said he had been thinking about the matter. He said that it has been the Ethics Board's policy since its inception not to opine on hypothetical cases since each case's findings are so fact-dependent. He said this matter became a hypothetical case when Mr. Weddell withdrew his application. He said that in lieu of an advisory opinion, the Ethics Board could discuss about what aspects of City policy and ordinance might come into play in a broadly similar case.

Member Schrot concurred with Member Robb.

Member Robb stated he was not sure that Weddell, in his hypothetical appointment to the Library Board, would have qualified as a City Official per the Ethics Ordinance. He said that if the Ethics Board had chosen to proceed in writing an advisory opinion, it would have been most appropriate for the request for the advisory opinion to have been submitted by the Library Board itself.

Member Schrot concurred with Member Robb that the request would have been most appropriately submitted by the Library Board, and that it is incumbent upon the members of the Library Board to familiarize themselves with the Ethics Ordinance. Since the Library Board members would have voted on Mr. Weddell's potential appointment, Member Schrot noted the Library Board members would have had to be aware of the relevant ethical considerations and how the appointment may have affected morale or public perception. This matter may not have resulted in an inherent conflict-of-interest as long as all possible aspects were discussed by the Library Board in the course of considering the appointment.

Given that Member Robb was not sure a potential³ Library Board member is a City Official, Member Robb said he would have been concerned about the Ethics Board's jurisdiction in considering the matter. He noted that the Ethics Board does have the right to alter the rules of procedure when it is in the interest of the ordinance.

Since he was unsure about jurisdiction, Member Robb said he consulted the City Charter. He said that his reading of the City Charter, which he cautioned was not binding on the City Attorney, was that the City Charter would not have prohibited Mr. Weddell's appointment. Member Robb

¹ As corrected at the March 8, 2021 meeting.

² As corrected at the March 8, 2021 meeting.

³ As corrected at the March 8, 2021 meeting.

said he also had not seen any other City policy that would have prohibited Mr. Weddell's appointment.

Member Robb ventured that since the City's electorate would have the right to elect Mr. Weddell to the Library Board, they would also have the right to have him appointed to the Library Board.

Both Member Robb and Member Schrot agreed that the main concerns stemming from Mr. Weddell's appointment would have been the possibility, or public impression, of preferential treatment, improper influence, bias or favoritism from Mr. Weddell in his power as a Library Board Member towards his spouse who is currently an employee of the Library.

Member ~~Schrot~~ Robb⁴ said he reviewed the Library and the Library Board's policies regarding potential nepotism. He said in this matter the Library Board would have been forced to reconcile the existence of potentially competing sets of values: trying to find the most competent, loyal, and enthusiastic Board members, and the fact that people are often loyal to their family members in a way that can cause conflict with the first set of values. He said the Library Board would have needed to consider how the existence of that potential conflict would have affected the Library and the Library Board.

Member Schrot commented that both a potential conflict-of-interest in this case or the appearance of it could have minimized the effectiveness of the Library Board's ability to carry out the Library's business. While he said he found no policy or ordinance that would have precluded the appointment, he said he would recommend Library Director Craft consult with the City Attorney to find out if there would have been any conflict-of-interest or any applicable self-dealing laws. He noted that in cases where law, policy or ordinance do not prohibit something, but a matter still seems potentially nebulous, it is often appropriate to reach out to the Ethics Board for an advisory opinion on whether the action would be ethical, just as Library Director Craft had done here.

Chair Fierro-Share and Member Schrot both commented that the frequency of Ms. Weddell's working at the Library would have also factored into the Ethics Board's consideration. They agreed there might be different findings for a substitute librarian and a full-time librarian, for instance.

If Mr. Weddell had to frequently recuse himself due to this potential conflict-of-interest, it might have negatively impacted the work of the Library Board. Both Chair Fierro-Share and Member Schrot noted this was another fact the Library Board would have had to consider in terms of Mr. Weddell's potential appointment.

Chair Fierro-Share noted that the Ethics Ordinance provides no direct guidance on a case such as this.

Member Robb agreed but said such direct guidance in the ordinance may not have been necessary given the requirement of 'independent action' and other requirements of people who are appointed to City committees. He said that if a similar situation were to arise in the future, it would be appropriate for the Library Board to request an advisory opinion from the Ethics Board.

Member Robb also commended Library Director Craft for seeking out an advisory opinion in this case.

⁴ As corrected at the March 8, 2021 meeting.

Library Director Craft thanked the Ethics Board, said she would pass the information onto the Library Board, and said she would look into updating the Library and the Library Board's policies to better address similar questions in the future.

Member Robb advised Library Director Craft that she would likely have to consult the City Attorney to learn the appropriate process for altering those policies.

B. Consideration of next scheduled meeting

Chair Fierro-Share informed the Ethics Board she wanted to discuss some matters around conflicts-of-interest at the next meeting,

The Ethics Board agreed to meet on March 15, 2021 at 1:30 p.m.

VI. PUBLIC COMMENT

None.

VII. ADJOURN

Chair Fierro-Share adjourned the meeting at 2:25 p.m.



Alexandria Bingham, City Clerk