

**City of Birmingham  
Board of Ethics Minutes  
June 23, 2023  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Robb called the meeting to order at 9:00 a.m.

**II. ROLL CALL**

Present: James Robb, Chair  
John Schrot, Board Member

Absent: None

Staff: City Clerk Bingham, City Attorney Kucharek

The Chair noted the Board had a quorum and provided introductory comments.

**MOTION:** Motion by Chair Robb, seconded by Mr. Schrot:  
To adopt the agenda as drafted.

VOICE VOTE: Ayes, Chair Robb  
Mr. Schrot

Nays, None

**III. APPROVAL OF MINUTES**

A. Approval of minutes of May 15, 2023

**MOTION:** Motion by Chair Robb, seconded by Mr. Schrot:  
To approve the minutes of May 15, 2023 as submitted.

VOICE VOTE: Ayes, Chair Robb  
Mr. Schrot

Nays, None

The Chair thanked the City Clerk and her Staff for the minutes.

**IV. UNFINISHED BUSINESS**

**V. NEW BUSINESS**

A. Consideration of advisory opinion request 2023-02 by Commissioner Clinton Baller regarding the potential establishment and management of a private, non-profit community foundation (the Foundation) in Birmingham

Commissioner Baller presented his request and answered informational questions from the Board.

CA Kucharek provided brief comment regarding the Michigan Ethics Act and its potential relevance to this situation. She said she would have her intern index the Ethics opinions.

Board discussion was as follows:

- The number of people on the Foundation's board would influence the appropriateness of a Commissioner serving on the board;
- A principal concern would be the possibility of financial gain or interest in the Foundation or in any funding associated with the Foundation;
- The Foundation would not be an entity of the City, would be separate and distinct from the City, and would interact with the City, NEXT, and other community organizations;
- The City itself would not be a fiscal agent of the Foundation;
- There would be no fiduciary duty on behalf of the City in association with the operation of the Foundation in any respect. That eliminates to an extent potential concerns with respect to oversight, the City's obligations for transparency, and/or insurance and indemnity concerns beyond any other community organization;
- The Foundation would not be asking for priority versus any other community organization that holds events in Birmingham;
- A number of aspects of the Ethics ordinance could become relevant depending on the specific circumstances of the Foundation;
- The overriding potential concern would be the issue of financial benefit to a City official participating as a community advisor to the Foundation;
- Being an elected City official, the State of Michigan Ethics Act may also come into play in this situation. It would be necessary to look at both the City's and State's Ethics provisions in this case;
- Ethics Case 2016-03 referenced the Michigan Ethics Act and is instructive regarding this situation;
- If the Foundation is formed, it would be appropriate for it to have its own Code of Ethics and Business Conduct Policy;
- If a Commissioner were to serve on the board of the Foundation, it could be their obligation to ensure that a quorum of Commissioners was not in attendance at a Foundation board meeting;
- There would be some concern that a Commissioner serving on the Foundation board would have competing fiduciary duties between the Foundation and the City;
- A Commissioner serving on the Foundation board would be ineligible to participate in Commission deliberation and voting on Foundation matters that would appear before the Commission;
- If a different organization wanted to hold an event in the City with the Foundation's support, a Commissioner on the Foundation's board would have to disclose their involvement and potentially recuse from the Commission's consideration;
- A City official limits their ability to carry out their official City duties if they take on other fiduciary duties to other organizations;
- Considerations of potential private gain or benefit and possible revelation of confidential information would be relevant;
- If one has taken on the responsibility to be a City official, that should be the priority versus other potential responsibilities to other organizations;
- A loan given by a City official to an organization would pose more challenges than a donation. A loan represents more financial involvement and obligation for repayment whereas a donation would not represent an ethical concern or issue;
- A City official would have to be careful when speaking in regards to another organization they participate in;

- A City official may be able to participate in the Foundation without accepting a fiduciary duty;
- There would be no formal or legal partnership between the City and the Foundation;
- The City would not create, operate, or manage the Foundation;
- A Commissioner serving on the Foundation board would likely be tasked with fundraising for the Foundation. It would be possible that a donor to the Foundation might expect favor in an unrelated matter before the Commission if they donate to the Foundation. Said Commissioner would have to be vigilant to avoid such a situation. Even if there was no expectation on the part of the donor there could be the appearance of an expectation, which could represent a conflict of interest;
- It would be wise for the Foundation not to reserve a seat on its board for a Commissioner;
- The more involved a Commissioner would be with the Foundation, the more there may be opportunities for conflicts of interest;
- If a member of the City's Parks and Recreation board were to participate in the Foundation, it would be necessary to consider the Ethics implications of that situation as well;
- It would be appropriate for the board members of the Foundation to be made aware of the relevant City and State Ethics considerations;
- It is important that Commissioners participate and vote whenever possible because that is what they are elected to do. The presumption is that they should not recuse themselves whenever possible because doing so can deprive the electorate of Commissioners' expertise, point of view, and vote;
- Not every conflict of interest is a disqualifying conflict of interest. Some can be waived by the Commission or the body in question so long as the disclosure is made; and,
- It would be in the City's best interest if a Commissioner or other official does not put themselves in a situation where recusal might be required. Any alternatives that could reduce the potential for a conflict of interest or the potential appearance of a conflict of interest should be considered.

It was determined that Mr. Schrot would write the opinion.

Commissioner Baller requested that the opinion include some hypothetical examples of when a conflict of interest may or may not require recusal.

## **VI. INFORMATION ONLY**

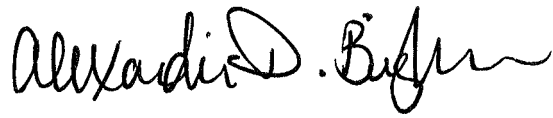
The white paper [Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder](#) from the Institute for Local Government was referenced as useful to the discussion.

The Chair and CC Bingham reported on their attendance at the Detroit Ethics Conference on May 16, 2023.

## **VII. PUBLIC COMMENT**

## **VIII. ADJOURN**

No further business being evident, the Board adjourned the meeting at 10:58 a.m.

Handwritten signature of Alexandria Bingham in black ink.

Alexandria Bingham, City Clerk

Handwritten signature of Laura Eichenhorn in black ink.

Laura Eichenhorn, City Transcriptionist