

**MICHIGAN CITY ETHICS COMMISSION
MEETING MINUTES APRIL 2, 2009**

Order of Business:

Call to Order and Roll Call.

Secretary Andrea Smith called the Inaugural Meeting of the Ethics Commission to order at 5:02 p.m. Members of the Ethics Commission include and in attendance were: Cindy Gillespie (City Council Appointee, Democrat), Erik Prascak (City Council Appointee, Republican), Steve Janus (Mayoral Appointee, Democrat), and John Pavy (Mayoral Appointee, Republican).

Also noted in attendance: Shelley Dunleavy (Michigan City Personnel Director and Ethics Commission Member), John Espar (Michigan City Corporation Counsel and Ethics Commission Attorney), Michigan City Mayor Charles Oberlie and Michigan City 1st Ward Councilman Richard Murphy.

Each Commission Member introduced themselves and gave a brief description of their background and interest in serving on the Commission.

Discussion/Old Business:

None.

New Business:

Election of Officers.

Secretary Andrea Smith opened the floor up for nominations of Officers for the Ethics Commission. The first order of business was nominations for Chair of the Ethics Commission.

Steve Janus expressed his interest in serving as Chair of the Ethics Commission. Being no other interest in the position, the vote was called. The vote carries 3-0, 1 abstention (Steve Janus).

Secretary Andrea Smith opened the floor up for nominations for Vice-Chair of the Ethics Commission. Ms. Cindy Gillespie expressed her interest in serving as Vice-Chair. Being no other interest in the position, the vote was called. The vote carries 4-0.

Secretary Smith welcomed both Officers and turned the meeting over to Chair Janus.

Commission Member Limits.

Commission Members questioned whether their terms will end in January, 2010. Attorney Espar reviewed the Ordinance and could not find an answer. Attorney Espar will research and come back to the Commission with an answer at the next meeting.

Meetings.

Questions arose regarding how and why meetings would be called, timeframes and schedules of meetings.

Attorney Espar explained to Members that the Commission will only meet when called by one of the Ethics Officers or Members or on an as-needed basis if a complaint or issue cannot be resolved.

An example of one of the reasons that the Commission would called a meeting would be complaints received about or by an employee or department head in which case the issue could not be resolved during the customary personnel chain of events.

Certain departments will not come before this Commission if complaints are received. They would include the Police and Fire Departments. Each Department has their own Merit Commission.

Shelley Dunleavy wanted to remind everyone that Disclosure Forms are due in her office by May 1, 2009. Disclosure Forms need to be submitted by all elected officials, department heads or any city employee who hires, fires or makes financial decisions or purchasing decisions must completed one. If needed, Disclosure Forms can be reviewed by the Ethics Commission.

Modification to Ordinance – Section 7.d Conflict of Interest.

In addition to the regular business of the Commission, Member Pavy, as well as other Commission Members, questioned that portion of the Ordinance that seemingly prohibits any member of any board, any member of any commission, any employee of any department or any official of any office from ever conducting any business with the City of Michigan City.

The Commission was concerned that the Section 7.d of the Ethics Ordinance prevented such persons or relatives of such persons from ever conducting business with the City, even if the person or relative was the most-qualified and even if there was full disclosure of the relationship in advance of any transaction on the Uniform Conflict of Interest Statement.

Member Pavy is concerned about a potential of conflict of interest concerning himself and stated he will be a general contractor shortly and would like to bid on work for the City of Michigan City. Would this be considered a conflict of interest under this Section?

Attorney Espar and Personnel Director Dunleavy agreed that this Section as drafted would prevent any person who serves the City, whether compensated or uncompensated from doing business with the City, even if full disclosure were made in advance of such transaction. Any change to this Section would have to come from the City Council.

Members felt that with full disclosure on the Uniform Conflict of Interest Statement there should not be a prohibition against the most qualified person from doing business with the City of Michigan City.

A Motion was made by President Janus and seconded by Member Prascak to have Attorney Espar draft a letter to the City Council to modify this section of the Ordinance and address it up front.

Attorney Espar will draft a letter and have it sent to all City Council Members. Therefore the Commission will know the Council's intent.

Letters from the Michigan City Police Department Requesting Clarification.

Personnel Director Shelley Dunleavy presented to the Ethics Commission three different questions/scenarios that require clarification of the Ethics Ordinance by Members. They were:

The Board of Commanders are involved in the following activities for the department: review and endorse all Performance appraisal ratings from patrolman to assistant chief, review police vehicle crashes involving officers, on occasion and to recommend disciplinary action if necessary.

Two of the Commanders have specific relationships with another member of the Department. The scenarios are as follows:

- A. *The Patrol Shift 1 Commander is the father of an officer who is assigned to the Investigative Division as a School Liaison Officer. Is it an ethical violation for the Commander to participate in the Endorsement of the Officer's past performance Appraisal Rating? Also may the Commander review their relative's work product, including case or arrest reports, if it is not tied to a promotion or disciplinary action?*

All Commission Members agreed that if the Commander (father) participates in the Past Performance Appraisal Rating of this Officer (his son) this would be a clear violation of the Ethics Ordinance under Section 12. Commission Members made it clear that abstention is the only form of action that could be taken in this particular situation, pursuant to the definition in Section 3(y), as it pertains to this particular request. Member Pavy made a Motion which was seconded by Vice-Chair Gillespie denying this Commander (father) who is in a position of authority to participate in the Past Performance Appraisal Rating of this Officer (son). The Motion carries 4-0.

In regards to reviewing work product, this is also restricted based on Section 7h 1)(d) of the Ordinance. Therefore this Commander cannot review the work product. A Motion was made by Chair Janus and seconded by Vice-Chair Gillespie and Member Prascak not to allow this Commander (father) to review or participate in the Past Performance Appraisal Rating of this Officer (son). The Motion carries 4-0.

- B. *The Patrol Shift 2 Commander is the uncle of an Officer who is assigned as a Patrol Officer. Is it an ethical violation for Patrol Shift 2 Commander to participate in the Endorsement of this Officer's Past Performance Appraisal Rating? Also may the Commander review their relative's work product, including case or arrest reports, if it is not tied to a promotion or disciplinary action?*

All Commission Members agreed that the Commander (uncle) can participate in the endorsement of this Officer's Past Performance Appraisal rating because this relationship is not included in the Section 3.y of the Ordinance. Member Pavy made a Motion which was seconded by Chair Janus and Vice-Chair Gillespie to allow this Commander (uncle) to participate as this is not covered in the Ordinance. The Motion carries 4-0.

In regards to reviewing work product, this is not restricted based on Section 7h 1)(d) of the Ordinance. Therefore this Commander can review the work product. A Motion was made and seconded to allow this Commander (uncle) to review participate in the Past Performance Appraisal Rating of this Officer (nephew). The Motion carries 4-0.

Exceptions to this would include the language set forth in Section 2.f below:

Any employment, appointed position or contractual relationship that exists prior to adoption of this ordinance shall not be a violation of this ordinance.

Therefore there will be occasions wherein a specific situation will fall under this section (i.e., grandfathering). If these particular Officers held those positions before the passage of the Ordinance, then it does not violate the Ordinance because they were 'grandfathered' in. If the Officers were moved into those positions after the Ordinance then it would be a violation of the Ordinance.

As a side note, Attorney Espar stated that the violator would not be the one who is auditing or reviewing the work or the one who's work is being audited or reviewed, *but* the official who promoted that person and placed, transferred or hired them into that position.

Member Pavy made a Motion, which was seconded by Chair Janus that if those positions were held prior to the acceptance of the Ordinance, then it is not a violation of the Ordinance because they were 'grandfathered in.' The Motion carries 4-0.

Attorney Espar also stated that the Ordinance cannot have retroactive application citing *ex post facto* law.

- C. *An employee is seeking approval of the Ethics Commission to purchase a used vehicle from a vendor that the City currently buys and trades vehicles with. The vehicle title and registration will be handled by the vendor.*

Commission Members stated that this is a prohibited act under the Ordinance and this employee can no longer purchase vehicle(s) from this vendor. A Motion was made Chair Janus and seconded by Member Pavy that this type of purchase can no longer be transacted. The Motion carries 4-0.

Comments:

Member Prascak expressed interest in not receiving his \$50.00 Commission allowance. Attorney Espar stated he could donate that money to an organization of his choice instead.

Attorney Espar reiterated to Commission Members he will draft correspondence to the City Council suggesting the Commission's changes as well as clarification. Members will receive a copy of the letter.

Attorney Espar also suggested that Commission Members have time to digest this Ordinance, allow the process to work and warrant clarification to sections if needed.

The next Meeting will be held at 5:00 p.m. on June 4th in the Mayor's Conference Room. Secretary Smith will send out notices and reserve the conference room.

Adjournment:

Chair Janus adjourned the meeting at 6:35 p.m.

Respectfully submitted,

Andrea Smith, Secretary