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William F. Conlon, Chairman
Board Members Abdul-Aleem, Andrade, Beard, Grossman, Lezama, and Trout Carr
Steven I. Berlin, Executive Director
Board of Ethics
740 N. Sedgwick St., 5th Floor
Chicago, IL 60654

Re: Board of Ethics Advisory Opinions

Dear Chairman Conlon, Members of the Board of Ethics, and Executive Director Berlin,

As you are aware, recent articles in the Chicago media have highlighted an offer made by Chicago Cubs' management to all Aldermen and the Mayor, as well as other elected officials, to purchase two tickets at face value to every Cubs home playoff game. *See, e.g., Fran Spielman, 70 percent of City Council snaps up Cubs' playoff ticket offer, Chicago Sun-Times (October 3, 2016),* <http://chicago.suntimes.com/news/70-percent-of-city-council-snaps-up-cubs-playoff-ticket-offer>. When the Office of Inspector General (OIG) learned of this offer, like many in the City, we had questions about its propriety and whether it necessitated an ethics investigation. *See, e.g., Editorial Board, Need a Cubs ticket? Beg your alderman, Chicago Sun-Times (October 5, 2016),* <http://chicago.suntimes.com/opinion/editorial-need-a-cubs-ticket-beg-your-alderman>; Editorial Board, *Let's make the most of these clouted Cubs tix for Chicago pols, Chicago Tribune (October 7, 2016),* <http://www.chicagotribune.com/news/opinion/editorials/ct-tickets-cubs-politicians-emanuel-aldermen-1008-jm-20161007-story.html>. We later learned that the Board of Ethics had issued some form of opinion to the Chicago Cubs and City Aldermen regarding this arrangement. *See, e.g., Hal Dardick, Chicago politicians warned on use of coveted face-value Cubs playoff tickets (October 6, 2016),* <http://www.chicagotribune.com/news/local/politics/ct-chicago-aldermen-cubs-tickets-ethics-met-1007-20161006-story.html>. In light of City Council's involvement in legislative decisions directly impacting the Chicago Cubs and the ticket offer's financial benefit—which is substantial, given that the market value of each ticket is exponentially greater than the \$50 single source limit as specified in the Municipal Code of Chicago (MCC) § 2-156-142(a)(2)—OIG had a compelling interest in reading this opinion. *See, e.g., Danny Ecker, About Those Bargain-Priced Cubs Playoff Tickets, Crain's Chicago Business (October 6, 2016),* <http://www.chicagobusiness.com/article/20161006/BLOGS04/161009900/about-those-bargain-priced-cubs-playoff-tickets>. Based on the publicly posted agenda for your October 19, 2016 Board meeting, we understand that you intend to discuss this advisory opinion in executive session and then receive comment on the issue in public session. While we await the outcome of the Board's further review and discussion of this matter, we wanted to take this opportunity to raise an impediment to our joint stewardship of Ethics enforcement that has been made clear by this and other recent events.

Historically, the Board of Ethics has interpreted the Ethics Ordinance to prohibit OIG from receiving information regarding the opinions and advice that Board staff has provided to City officials and employees regarding their ethical obligations under the Ethics Ordinance, absent a signed consent form from the individual. After learning that the Board of Ethics had issued an opinion on the Cubs ticket offer, OIG requested that opinion for purposes of assessing whether an investigation was appropriate. However, citing Board rules, the Board's administration refused to provide the opinion without a written waiver from the subject of the opinion and any other individual whose conduct was at issue. In this particular case, that requirement appears to mean obtaining the written consent of fifty Aldermen, among other elected officials and/or the City licensee who made the offer – in other words, the consent of the very individuals and entities who may warrant investigation. This interpretation and application of the law hinders effective and efficient ethics enforcement, and leads to absurd outcomes. For example, the Board recently referred to OIG a complaint of an ethics violation, as it has a duty to do under MCC § 2-156-380(a), but then claimed an inability to provide OIG with the benefit of any information regarding the advice that it provided the subject of the complaint as to their obligations under the law.

This problem is compounded by the fact that it is unclear what distinguishes advisory opinions that must be made public, while maintaining the requestor's confidentiality, *see* MCC § 2-156-380(l), from informal opinions, which pursuant to the Board's rules remain wholly confidential as to not only the requestor's identity, but also the inquiry and the opinion rendered. Based on the Board's rules this appears to hinge solely on whether the requestor asks for a formal opinion, not on a determination regarding the significance of the matter and whether clarity on the topic could benefit City officials and employees. This is an important point because, based on our understanding of the Board's rules, only formal advisory opinions are submitted to the Board for a vote and have possible precedential value.

Many ethics investigations hinge on an interpretation of the scope and application of provisions of the Ethics Ordinance. Given that the Board of Ethics is vested with the authority to adjudicate ethics violations under the Ordinance, its interpretation regarding what is and is not allowed can render aspects of an investigation or entire investigations moot from the start. Obviously, it is not in the City's best interests, nor in the interest of either of our organizations, for limited oversight resources to be devoted to investigations that have already been foreclosed by an opinion or advice offered by the Board of Ethics. Unfortunately, without unfettered access to the formal and informal advice given and a clear understanding of the impact of the Board's informal advisory opinions on the Board's adjudication of the Ordinance, the OIG, as the investigatory agency for ethics violations, is unable to make timely and informed decisions about the viability and prudence of pursuing certain alleged ethics violations.

Knowing that we share the common goal of using our resources strategically to strengthen the City's ethical culture, I ask that the Board consider ways to alleviate this impediment to effective investigations and that members of our respective staff schedule a meeting to discuss possible solutions.

Respectfully,



Joseph M. Ferguson
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