

Advisory Opinion 09-02

Question

Are members of the Seattle Police Pension Board “Covered Individuals” subject to the City’s Code of Ethics, SMC Ch. 4.16, for their actions as Board members?

Answer

Yes. Board members are subject to the Ethics Code as officers of the Police Pension Board, which is a “City agency” under RCW Ch. 4.16. All but two Board members are also subject to the Ethics Code as officers or employees of their respective City departments.

Facts

The Seattle Police Pension Board was established by state law, RCW Ch. 41.20. Among other things, Ch. 41.20 sets out the Board’s composition and duties, and creates a “police relief and pension fund” in the City. See RCW 41.20.010-41.20.040, RCW 41.20.130.

Under state law, the Board consists of seven members. They are:

- the mayor or his designated representative, who must be an elected City official and is the Board’s ex officio chair (Council Member Tim Burgess currently occupies this position);
- the City Clerk, who is the Board’s ex officio secretary;
- the City Treasurer (Finance Director Dwight Dively), who is the Board’s ex officio treasurer;
- the Chair of the City Council; and
- three active or retired members of the police department, who are elected by police department employees and retirees. Currently, one active-duty Seattle Police Department officer and two retirees occupy these posts.

RCW 41.20.010 and RCW 41.20.020. These individuals perform their Board functions “in addition to the duties now required of them... [i.e., their regular City jobs]...” RCW 41.20.010. Board members receive no additional compensation for performing Board functions. RCW 41.20.040. Legal advice to the Board is provided by the City Attorney’s office, whose client is the City as a corporate entity. See Rule of Professional Conduct (RPC) 1.13.

The Board also has several staff members, including an Executive Secretary who performs administrative functions.¹ The staff members are eligible to participate in the City’s employee retirement system and are listed in the City’s internal email directory.

Under RCW 41.20, 010, the Board is to “...provide for the disbursement of the [City’s police pension] fund, and designate [its] beneficiaries...” See also RCW 41.20.050, 41.20.060, 41.20.065, 41.20.080, 41.20.085, and 41.20.090. The board also is given the authority to judge whether disabilities qualify for pensions under RCW Ch. 41.20, and may compel testimony in

¹ The City Budget indicates that the Board has three staff members. The City Directory lists five.

connection with these and other matters related to the Chapter's administration. See RCW 41.20.060, 41.20.065, and RCW 41.20.070.

The police pension system established RCW Ch. 41.20 was replaced in 1970 by the "Law Enforcement and Firefighters Retirement System" (LEOFF, RCW Ch. 41.26). The Pension Board, however, still administers Seattle police pensions granted under the pre-1970 law. It also administers that portion of pension benefits for so-called "LEOFF 1" retirees² exceeding what they would otherwise be entitled to under the LEOFF 1 plan. See RCW 41.26.040. See also, City of Seattle 2009 Adopted and 2010 Endorsed Budget, Page 347. In addition to its duties under RCW Ch. 41.20, the Pension Board acts as a "disability board" under RCW Ch. 41.26, evaluating and acting upon disability claims by Seattle LEOFF 1 plan members. RCW 41.26.110(1) (a).

The police pension fund's obligations and the Board's administrative costs are funded almost entirely from the City's General Fund,³ and the City Council has adopted financial policies that govern the Fund. See Resolution 30379, Exhibit M. In addition, the adopted City Budget contains a separate "Police Relief and Pension Fund" budget item, called a "budget control level." The General Fund's 2009 contribution to this budget item will total more than \$20 million. This includes about \$365,000 for administrative costs, including salaries for the Executive Secretary and staff members. See City of Seattle 2009 Adopted and 2010 Endorsed Budget, at 347-351. The City Auditor is authorized to audit the Fund's records. SMC 3.40.040.

If at any time the Fund contains more money than is needed to meet the statutory purposes for which it was established, the excess funds must be transferred into the City's general fund. RCW 41.20.140.

Relevant Law

Seattle Municipal Code (SMC) 4.16.020 (A) provides that the Code of Ethics, SMC Ch. 4.16, applies to "...all officers and employees of the City, whether elected or appointed, paid or unpaid..."

SMC 4.16.030 defines "City agency" as "...any department, office, board, commission or committee of the City, or any subdivision thereof..."

SMC 4.16.030 defines "Covered Individual" as "any City officer, City employee, City contractor or City volunteer."

SMC 4.16.030 defines "City employee" as "...every individual appointed to a position of employment in any City agency."

SMC 4.16.030 defines "City officer" as "...every individual elected or appointed to an office in any City agency, whether such individual is paid or unpaid."

² The LEOFF 1 plan covers persons who retired from 1970 through September 1977.

³ About \$175,000 in funding comes from the Seattle Police Dept. auction. The remainder comes from the City's General Fund.

SMC 4.16.020(B) provides that the Seattle Code of Ethics “...shall be liberally construed in favor of protecting the public’s interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for City officers and employees.”

Analysis

The Police Pension Board is a City Agency Whose Officers Are Subject to the Ethics Code

Although the Police Pension Board was created by state law, three major factors point to its status as a City agency rather than a state or independent agency: 1. the Board’s makeup, 2. characteristics of the Fund itself, and 3. the status of Board employees.

The Board’s Makeup

The Board, which is the Pension Fund’s decision-making body, is (and by law must be) comprised entirely of City officials, employees and retirees. RCW 41.16.010. These persons sit on the Board solely because of their status with respect to the City. Furthermore, three of the Board’s members—including its chair—are among the City’s chief decision-makers: the mayor or another elected official appointed by the mayor, the city council president, and the finance director. Furthermore, RCW 41.20.010 states that Board members’ duties are “*in addition to the [City-related] duties nor required of them,*” rather than characterizing the Board as an independent agency [emphasis supplied]. Finally, the City Attorney’s office, whose client is the City, provides legal advice to the Board.

The Board’s status as a City agency is supported by the Washington Supreme Court’s decision in Martin v. City of Spokane, 55 Wn.2d 55 (1959). The issue in Martin was whether the Police Pension Board members acted as trustees of the Fund. In holding that they did not, the Court looked to two sections of the applicable pension law that were virtually identical to those in RCW Ch. 41.20. One section, like present-day RCW 41.20.010, stated that Board members performed their Board duties “in addition to the duties now required of them.” The other section, like present-day RCW 41.20.140, stated that excess money from the Police Pension Fund was to be transferred to the general fund of the city. The Martin Court said that:

An examination of these two sections makes it clear that the duties of the board of trustees are strictly statutory, *acting in the capacity of officials of the city to carry out their duties as directed by statute, in behalf of the city*, with no relation of trust to the fund [emphasis supplied].

Martin, 55 Wn.App. at 56.

Characteristics of the Fund

The nature of the Fund created by RCW Ch. 41.20 also points to the Board’s status as a City agency.

The City Council sets the financial policies that govern the fund, and the City Auditor has the authority to audit Fund records. In addition, the Fund is maintained by the City, the City's general fund finances virtually all of the Fund's obligations, and excess money from the Fund goes back to the City general fund. As the Martin court observed:

The city has absolute control over the fund to the extent of using the surplus for general city purposes, not inconsistent with the interests of the members of the police department.

Martin, *supra*. In a 1982 written opinion the Seattle City Attorney's office also concluded that the City has decision-making authority with respect to money deposited *from* the general fund into the Police Pension Fund, stating that:

Because virtually all of the funds annually deposited into the Police Pension Fund are derived from the General Fund, it is logical to conclude that the City Council has total control over such General Fund allocation [consistent with its obligations to the Pension Board and Fund recipients]."

Letter of June 29, 1982 from Assistant City Attorney Gordon Davidson to City Council President Jeanette Williams concerning "Proposed Consolidation of Staffs for Uniformed Employees' Pension Boards," at 12.

The Status of Board Employees

The status of Board employees also supports the conclusion that the Board is a City agency. Although the City Budget states that Board staff members are not on the City's "position list," the City funds the salaries and benefits of the Board's administrative staff, and staff members are eligible to participate in the City's retirement system.

In addition, the City Council may exercise authority over Board staffing. In the June 29, 1982 opinion, the City Attorney's office noted that RCW Ch. 41.20 did not statutorily vest in the Board authority concerning staffing decisions. The opinion said:

In our view the staff of the Police Pension Board is no different from the staff of any other municipal agency, office or administrative board; *the number and functions of such staff members and their compensation may be increased as the City's legislative authority determines*, subject to [a legal obligation not to frustrate the implementation of RCW Ch. 41.20 and RCW 41.26].

Letter of June 29, 1982 at 7 [emphasis supplied].

For these reasons, we conclude that the Police Pension Board is a city agency as that term is defined in SMC 4.16.030, and that Board members are subject to the Ethics Code as its officers.

Five of the Seven Police Pension Board Members Are Also Subject to the Ethics Code as City Employees

Of the Police Pension Board's members, all but two are officers or employees of other Seattle City agencies, and are subject to the Ethics Code in that capacity as well.

The Board's ex officio Chair (Council Member Tim Burgess) and City Council President Richard Conlin are both officers in the City's Legislative Department. See Seattle City Charter, Art. IV Sec. 1A.; Art. XIX, Sec. 1. The City Clerk is likewise a City officer within the Legislative Department. City Charter, Art. VIII, Sec. 3. The Finance Director, who functions as the City Treasurer, heads the City's Department of Finance. City Charter, Art. VIII, Sec. 16; SMC 3.38.010, 3.38.020, and 3.38.060. Finally, one of the three remaining Board members is an active-duty Seattle police officer, classified under the City Charter as a "subordinate police officer" in the Seattle Police Department. City Charter, Art. VI, Secs. 1 and 2.

These persons are appointed to the Board by virtue of their status as an officer or employee in these City agencies, and fall under the Ethics Code's application by virtue of that status as well. SMC 4.16.020 (A).

Conclusion

The Seattle Police Pension Board is a City Agency as that term is defined in SMC 4.16.030, and all Board members are officers of that agency. In addition, five of the seven Board members are officers or employees of other City agencies, and are members of the Board by virtue of that status. Thus, SMC Ch. 4.16, the Seattle Ethics Code, applies to all Board members.