



December 26, 2013

Robin Kash  
1806 Grande Avenue SE  
Cedar Rapids, IA 52403

Dear Mr. Kash:

The Cedar Rapids Board of Ethics received your two ethics complaints filed with the City Clerk on November 21, 2013. They are captioned "Ron Corbett, et al" and "James Flitz, et al." This is the Board's response after fully considering and discussing your complaints in open session on December 20, 2013.

I. The Complaints

A. Ron Corbett, et al

In Ron Corbett, et al, you claim there were four Conflict of Interest Actions committed by the Mayor on October 22, 2013, and November 19, 2013: (1) official action involving a private financial interest, (2) acceptance of disallowed gifts, (3) acting in a private capacity on matters dealt with as a public official, and (4) disallowed use of confidential information.

Your claims relate to an alleged "lack of transparency involved in adopting the resolution and ordinance . . . providing that Bowling Street Flex Storage LLC may develop under provisions of an Urban Revitalization Area with certain tax benefits." You say that "without knowing the investors in BSFS . . . [it is] impossible to know[] whether Council members have a conflict of interest."

B. James Flitz, et al

In James Flitz, et al, you claim that, during Mr. Flitz's employment as City Attorney and his assignment as legal advisor to the Ethics Board, he has committed a Conflict of Interest Action of official action involving a private financial interest.

You allege "Mr. Flitz has been the legal advisor to the Board of Ethics through numerous years. He is the City Attorney and serves at the pleasure of the [City] Council. He represents the council in legal actions involving the City. In as much as he represents the Council and advises the Board of Ethics he has a conflict of interest whenever a complaint involving the Council or one of its members comes before the Board of Ethics. The Board of Ethics should be advised and counseled by someone independent of City Council jurisdiction or influence."

Your complaint also states: "[t]he complaint is general and addresses no specific action by Mr. Flitz, only that the nature of his dual role compromises his ability to render fair and impartial advice to the Board of Ethics. The Board of Ethics is itself compromised in matters involving conflicts of Council members in so far as it is itself appointed by the Council."

## II. The Board's Review Procedure

Under Cedar Rapids City Code § 6.22(f), a multi-step review process exists for any filed complaint. First, the Board conducts a screening inquiry under § 6.22(f)(3). "If the screening fails to establish that provisions over which this Board has jurisdiction have been violated, the inquiry will be terminated and the complainant and the person who is the subject of the inquiry will be notified."

If a complaint passes the screening process, and "the Board determines that an initial investigation is necessary, the Board shall give written notice of the start of such initial investigation to the complainant and the person who is the subject of the complaint, and may request a response from the subject of the complaint within 30 business days. If, after 30 business days from the receipt of any requested response, the Board finds that a Conflict of Interest Action has not occurred, the investigation will be terminated and complainant and the person who is the subject of the inquiry will be notified." City Code § 6.22(f)(4).

Next, "[i]f an initial investigation by the Board establishes that a Conflict of Interest Action has occurred, a full investigation will be initiated. The subject of the investigation will be notified and provided with a general statement of the alleged violation(s) and of the identity of the complainant. The Board will notify the complainant within three (3) business days of the commencement of the investigation. In carrying out such investigation, the Board shall be authorized to exercise the powers granted to it hereunder. Absent extenuating circumstances, such investigations shall be completed within ninety (90) business days of their commencement." City Code § 6.22(f)(5).

Depending on the results of the full investigation, there may be a hearing under City Code § 6.22(f)(7).

As required by City Code § 6.22(f)(3), the Board has conducted a preliminary screening of your two complaints. After that screening, the Board finds each complaint “fails to establish that provisions over which this Board has jurisdiction have been violated.”

### III. Application of City Code § 6.22(f)

City Code § 6.22(f)(2) says a complaint is to set out “a description of the facts that are alleged to constitute a violation.” Code § 6.22(f)(10) says: “[c]omplaints directed to the Board must be based on fact . . .” Section B of the complaint forms you filed says: “Describe in detail the facts supporting your allegation.” The Certification you signed includes language that says: “Complaints directed to the Board must be based on fact . . .”

In order to pass an initial screening, a complaint must allege facts that, if accepted as true, would indicate the commission of a Conflict of Interest Action by a person covered by the provisions of § 6.22. Both of your complaints are deficient.

First, each complaint refers to “et al.” As you know, this means “and others.” However, you name no others. Therefore, the Board has considered your claims only as against the named individuals.

#### A. Mayor Ron Corbett

As to Mayor Corbett, you allege no facts to support any of the four claimed violations. You allege no private financial interest he may have, no gift he has accepted, no action in a private capacity, and no use of confidential information. In fact, you say it is “impossible” to know if there is a conflict of interest. Absent any allegations to support your claims, the inquiry into Mayor Corbett’s unspecified actions is terminated.

#### B. City Attorney James Flitz

As to City Attorney Flitz, you allege no facts to support the claimed violation of taking official action involving a private financial interest. Indeed, you state: “The complaint is general and addresses no specific actions by Mr. Flitz . . .” Absent any allegations to support your claim, the inquiry into City Attorney Flitz’s unspecified actions is terminated.

As an aside, you also claim: “The Board of Ethics is itself compromised in matters involving conflicts of Council members in so far as it is itself appointed by the Council.” This misapprehends the scope of City Code § 6.22.

As noted in the Board’s Advisory Opinion #3 dated November 24, 2008 (available at <http://www.cedar-rapids.org/government/boardsandcommissions/regulatoryaffairs/boardofethics/Pages/default.aspx>):

The Cedar Rapids Board of Ethics is responsible for issuing advisory opinions, training, and enforcement of the City's ordinance regarding financial conflicts of interest. The ordinance applies to City Officials. Other ethical questions regarding non-financial conflicts of interest or ethics are not within the scope of responsibility of this Board.

It is not apparent how the mere fact of appointment to an unpaid volunteer advisory Board position involves a financial interest, and the issue you raise does not fall within any of the definitions of a Conflict of Interest Action covered by City Code § 622(c)(6).

#### IV. Decision of the Board

Your two complaints filed November 21, 2013, are dismissed. However, they are dismissed with this advisory caution.

The Board of Ethics was established by, and receives its powers and duties from, the City Charter and City Ordinances. It has only the powers bestowed by those documents. Under City Code § 622(f)(10), “[c]omplaints directed to the Board must be based on fact . . .” Section 6.22(f) makes it clear the Board can act on a filed complaint only if the complaint contains “a description of the facts that are alleged to constitute a violation.”

The Board is not to be used to conduct “fishing expeditions” or as a means to air general disagreements with City government. It is designed to address specific facts related to specific instances covered by the City Code. In this regard, you are reminded of both the spirit and the language of City Code § 622(f)(10):

**Wrongful Use of Board of Ethics.** The purpose of the Board is to endeavor to maintain a high standard of ethical behavior by City officials. This will be most effective when City officials and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact and have the intent to improve the ethical climate of the City. Wrongful use of the Board is defined as the filing of a false complaint in a grossly negligent manner without any reasonable basis in law or fact. Wrongful use of the Board is prohibited. The Board may utilize the Complaint and Investigation Procedure contained herein to consider alleged wrongful use of the Board. Persons found to have committed wrongful use of the Board may be subject to administrative fines and such cases may be referred for criminal prosecution.

As a final matter, the City Attorney's Office was not involved with the Board's decisions on your complaints.

We invite you to attend future Board meetings as you have done in the past in hopes the Board's role will be clarified for you.

Sincerely,



Robert L. Teig, Chair  
For the Board.