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COOK COUNTY BOARD OF ETHICS

69 W. WASHINGTON STREET, SUITE 3040
CHICAGO, ILLINOIS 60602
312/603-4304 OFFICE
312/603-3760 FAX 312/603-1011 TT/TDD

11 I 0001(I) AND 11 I 0001(II)
ORDER DENYING REQUEST FOR RECONSIDERATION

The Cook County Board of Ethics has fully considered the arguments raised in Respondent's Request for Reconsideration. For the reasons set forth below, the Request for Reconsideration is hereby denied.

I. Background

On December 29, 2010, the Cook County Board of Ethics ("Board" or "Board of Ethics") hand-delivered to the Office of the Cook County Assessor Joseph Berrios ("Assessor" or the "Respondent"), a Notice of Investigation.¹ This Notice was in response to a Request for Investigation which was filed by Mr. Joseph R. Scott, and received by the Board on December 23, 2010. The Request alleged violations of the Cook County Ethics Ordinance ("Ordinance"), specifically, Sections 2-571 - Fiduciary Duty and 2-582 - Employment of Relatives.

On January 24, 2011, Board staff spoke with Assessor Berrios on the telephone. The Assessor indicated to staff that he would not be participating in the Board's investigation, that he did not believe that the Board of Ethics had any authority regarding the hiring of relatives in the Office of the Assessor, and that he was seeking an opinion to that effect from the Office of the Cook County State's Attorney. Although the Board submitted written requests for documents and information pertaining to this investigation, no documentation or information was received from the Office of the Assessor.

On February 8, 2012, the Board received a letter from Attorney Steven Puiszis of the law firm of Hinshaw and Culbertson. The letter advised the Board that Mr. Puiszis "had been appointed a 'Special State's Attorney' to represent Joseph Berrios in connection with an investigation by the Board of Ethics." Attached to this letter was a copy of a Cook County Circuit Court Order dated April 5, 2011, entered by Judge Richard J. Billik in case number 11CH0713 appointing Steven Puiszis as Special State's Attorney for the Assessor.² This letter also requested a one week extension of time, or until February 16, 2012, to respond to the Board's request for information and records from the Office of the Assessor. On February 16, 2012, the Board received a second letter from Special State's Attorney

¹ The Notice of Investigation was hand-delivered to the Office of the Assessor on December 29th, the Notice was signed for by W. Davis, at 1:53 p.m.

² 55 ILLCS 5/3-9005 governs the circumstances in which it is appropriate to petition the court for the appointment of a Special State's Attorney. In pertinent part, the statute states "... in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which said case or proceeding is pending may appoint some competent attorney." The statute also provides that a Special State's Attorney shall be paid by the County he serves.

Puiszis. This letter also referenced Mr. Puiszis' appointment as a Special State's Attorney, and stated that the Assessor, for the reasons articulated in the letter, declined to provide the requested documents.³

The Board completed its investigation based on information available from official Cook County public records, other information in the public domain, and public statements by Assessor Berrios. On June 22, 2012, the Board issued and served Respondent Assessor Berrios, in accordance with the Ordinance and the Rules and Regulations, with copies of the Board's Investigation Reports and Notices of Finding of Violation (Investigation Reports and Notices of Finding of Violation 11 I 0001 (I) and (II)).⁴ Based on the undisputed facts and the clear language of the Ethics Ordinance, the Board determined that the Assessor hired his sister, Carmen Berrios, and his son Joseph E. Berrios (Report and Notice 11 I 0001 (I)), and directly supervised the continued employment of Vanessa Berrios, his daughter (Report and Notice 11 I 0001 (II), who was already employed at the Office of the Assessor, all in violation of the Cook County Ethics Ordinance. The Board recommended that the Assessor take corrective action, and also determined that this matter warranted the imposition of fines in accordance with Section 2-602(d) of the Ethics Ordinance.

Pursuant to the Board's Rules and Regulations, on July 19, 2012, the Assessor filed a timely Request for Reconsideration of the Board's determination in matters 11 I 0001 (I) and 11 I 0001 (II). The Request for Reconsideration, in pertinent part, re-asserts the arguments previously raised in Special State's Attorney Puiszis' February 16, 2012 letter contesting the jurisdiction of the Board over the Office of the Assessor. The Request also asserts that the Board did not properly follow its own rules and procedure.

II. Discussion

The Rules and Regulations governing the Cook County Ethics Ordinance provide that "after the Board has issued its investigation report and recommendation in cases where a violation is found, the respondent may within thirty (30) days of receipt of the investigation report and recommendation, file with the Board a request for reconsideration." The Rules also state that the "request shall be granted only in limited circumstances, such as but not limited to, the discovery of new, relevant evidence." For the reasons stated herein, the Board finds no basis upon which to grant Respondent's Request.

A. Appointment of a Special State's Attorney

The Board of Ethics recognizes that in certain circumstances, the appointment of a Special State's Attorney may be appropriate and warranted. However, the Board believes that any such appointment must follow the statutory requirements for such appointment.

³ In pertinent part, Mr. Puiszis opined that the Cook County Ethics Ordinance provisions of Section 2-572 Fiduciary Duty, and 2-582, Employment of Relatives do not apply to the Assessor or his Office.

⁴ On June 22, 2012, Respondent's counsel was served with these documents via certified U.S. Mail return receipt requested, appropriate postage prepaid.

According to the Petition for Appointment ("Petition"), which was filed on February 24, 2011, the Deputy State's Attorney represented to the Circuit Court of Cook County that in 2011, Joseph Berrios was served with a subpoena to appear and testify before the Cook County Ethics Board. The Petition further stated that Mr. Berrios is an employee of Cook County and the subpoena related to Mr. Berrios' employment with the County. The Petition also asserted that the State's Attorney had determined that a conflict of interest with respect to the above-referenced subpoena precluded the State's Attorney's representation of Joseph Berrios at the Cook County Board of Ethics. The Petition requested that the Court appoint Steven Puiszis of the law firm of Hinshaw and Culbertson as Assessor Berrios' Special State's Attorney. Attached to the Petition was an affidavit by Patrick T. Driscoll, Jr., Chief of the Civil Actions Bureau of the Office of the Cook County State's Attorney, in which Mr. Driscoll averred that he had "personal knowledge of relevant facts which give rise to the conflict of interest precluding representation of Joseph Berrios before the Cook County Board of Ethics."

The Petition seeking the appointment of a Special State's Attorney in this matter was premised upon Assessor Berrios receiving a subpoena to appear and testify before the Cook County Board of Ethics. The Board of Ethics issued no such subpoena to the Assessor or anyone else in this case. Furthermore, pursuant to the Rules and Regulations, a hearing in the context of an ethics matter is discretionary, and in fact, no hearing was requested, no hearing was scheduled, and no hearing was held in this case.⁵ Rather, in accordance with the Ordinance and the Rules and Regulations, the Board issued a Notice of Investigation to Assessor Berrios (December 29, 2010), and a Request for Documents and Information to Ms. Victoria LaCalamita, Director of Human Resources for the Office of the Assessor.

The Petition for Appointment also stated that the State's Attorney had determined that a conflict of interest existed; however, nowhere in either the Petition or the Affidavit supporting the Petition is the basis of the conflict set forth. Furthermore, a plain reading of the statute authorizing the appointment of a Special State's Attorney, 55 ILCS 5/3-9005, permits the appointment of a "Special" when a civil or criminal matter is proceeding in a court of law, and the State's Attorney has both an interest in the cause or proceeding, as well as a duty to prosecute or defend said cause or proceeding. In this case, this matter was proceeding in an investigatory posture before the Cook County Board of Ethics, and not in a court of law. Therefore, it is not clear that the State's Attorney had a conflict of interest at that time. Moreover, a recent check of court records indicates that on June 18, 2012, the court case in which Attorney Puiszis derived his authority as Special State's Attorney was dismissed for want of prosecution. The Request for Reconsideration filed on behalf of the Assessor, was filed by Attorney Puiszis on July 19, 2012, after the court's jurisdiction ended. Nevertheless, the Board considers Mr. Puiszis as the attorney of record for Assessor Berrios in these matters and will address the issues he raised in the Petition for Reconsideration.

B. Jurisdictional Arguments

First, Attorney Puiszis again contends that the Cook County Board of Ethics lacks jurisdictional authority to issue notices of violation of the County's Ethics Ordinance involving the Assessor and his Office. The Request for Reconsideration argues that prior opinions of the Cook County State's

⁵ Section 5.15 of the Rules and Regulations states, in pertinent part, that, "At its discretion, the Board may determine in the course of an Investigation that a hearing is necessary to aid it in its fact finding function." [Emphasis added.]

Attorney's office and court decisions limit the enforcement of the Ethics Ordinance when applied to independently elected County public officials.⁶ The opinions relied upon by Attorney Puiszis focus on the issue of whether the Cook County Board exceeded its home rule authority in enacting the Ethics Ordinance and whether the Board of Ethics application of the Ethics Ordinance to the Office of the Assessor was beyond the government and affairs of Cook County, or whether Ethics Ordinance as applied to the Assessor's Office constitutes an unauthorized change in the form of government.⁷ The Cook County Board of Ethics respects the office of the State's Attorney, and recognizes that State's Attorney opinions provide guidance for the actions of public officials and public agencies, but the opinions relied upon by Attorney Puiszis neither specifically or accurately address the authority given to the Board of Ethics by the Cook County Board, nor are they legally binding.

The Cook County Ethics Ordinance was initially passed by the Cook County Board of Commissioners in 1993. The Ordinance has been amended on numerous occasions, in 1999, 2004, 2007, 2009, 2010, 2011, and again in 2012. In spite of numerous amendments to the Ethics Ordinance, the Ordinance contains no limiting or exclusionary language as to its applicability, or lack thereof, to certain elected Cook County officials. There has been no ruling by a court or an opinion by the State's Attorney finding that the County has no authority to enact and apply, through the Cook County Board of Ethics, a Cook County code of ethical conduct to elected Cook County officials. The Board of Ethics is authorized to interpret the provisions of the Ordinance, apply the provisions of the Ordinance, identify violations of the Ordinance, and recommend corrective action and fines. By fairly and responsibly exercising the authority given to it, the Board of Ethics promotes the best interests of the citizens of Cook County, and supports a more transparent and accountable form of County government. As authorized by the Cook County Board, the Board of Ethics has no power to impose mandatory sanctions or corrective action, including discharge of employees, and does not usurp or control the affairs of any elected official.

The Request also asserts that in response to an opinion by the State's Attorney in 2011, the Board withdrew its investigation of certain matters pertaining to Assessor Berrios. Attorney Puiszis states that the Board of Ethics "withdrew a prior attempt to enforce the Ethics Ordinance against the Assessor and that this withdrawal was in recognition that the Ethics Ordinance could not be applied to the Assessor." Attorney Puiszis mischaracterizes the Board's action in this matter.

Section 2-585 (Campaign Finance Limitations) of the Ethics Ordinance was amended in 2011 to remove attorneys and tax representatives who appear before the Assessor, Cook County Zoning Board, Zoning Administrator and the Board of Review from the campaign finance limitations imposed upon

⁶ In pertinent part, Attorney Puiszis argues that it is inappropriate for the Cook County Board and the Board of Ethics to attempt to assert jurisdiction over the Office of the Assessor because the Assessor and his employees are not Cook County employees. However, the Petition for Appointment for the Special State's Attorney filed with the Circuit Court contains a statement made by the Cook County State's Attorney to the contrary, the Petition in pertinent part states, "...Mr. Berrios is an employee of Cook County and the subpoena relates to Mr. Berrios' employment with the County."

⁷ The State's Attorney Opinions to which Attorney Puiszis refers to, appear to contain inconsistent conclusions. For example, a January 5, 1994 Opinion states in pertinent part, that it is within the County's government and affairs to place limitations on the amounts of contributions on any person doing business with the County, while a more recent opinion, February 8, 2011, makes an inapposite conclusion.

those “doing business” with the County.⁸ The Cook County Board of Commissioners unequivocally indicated that it no longer intended for tax representatives or attorneys appearing before certain Cook County agencies and elected officials, including but not limited to the Assessor, to be subject to the campaign contribution limitations of Ordinance Section 2-585. Therefore, because the Ordinance was amended, the Board of Ethics closed its investigation (10 I 0001 - 0005) into alleged campaign finance violations involving the Assessor. The Board did not cease its investigation because it believed that the Ethics Ordinance did not apply to the Office of the Assessor.

In fact, in a General Advisory Opinion issued on this matter, the Board of Ethics stated “it shall not pursue any further action against those attorneys or tax representatives, or against those elected officials, who may have received letters of notice of potential violation or notices of investigation from the Board of Ethics for alleged over-contributions. The Board of Ethics has determined that a more judicious use of the Board’s resources is to enforce Section 2-585 of the Ethic Ordinance as amended, and to focus on other on-going ethical concerns and issues.”

The Board of Ethics is charged with the application of the Ethics Ordinance as adopted and amended by the Cook County Board of Commissioners. The Board of Ethics strictly and vigorously applies the provisions of the Ethics Ordinance; and, accordingly, proceeded with the investigation of this case. Neither the Ordinance nor any provisions, nor the authority given to the Board of Ethics, has ever been determined by a court of law to be unconstitutional or inapplicable to a particular Cook County elected official. Therefore, the Board of Ethics will continue to enforce all provisions of the Ordinance – to do otherwise would be a dereliction of the duties and responsibilities entrusted to the Board of Ethics by the Cook County Board of Commissioners.

C. Process and Procedure

The Request for Reconsideration next asserts that the Board violated the Assessor’s constitutional rights and its own procedural rules. The Board followed its rules and procedures, without any violation of the Assessor’s constitutional rights in this case.

Hearing

Attorney Puiszis asserts that the “Board proceeded to hold a hearing and assess penalties against the Assessor, without providing any notice to the Assessor, or me, that the Board was moving forward with a hearing.” Attorney Puiszis’ understanding of the process and procedure before the Board of Ethics and his characterization that the Board failed to comply with fundamental principles of due process is inaccurate.

⁸ In addition, this amendment also addressed recent state legislation in the area of campaign finance. The Illinois Election Code, 10 ILCS 5/9-1 et seq., was amended to include for the first time, campaign finance limitations. The Code set the ceiling for campaign finance for elected officials in the State of Illinois. However, nothing in the Code prohibited units of local government, such as Cook County, from having more restrictive campaign finance limitations. The Ordinance amendment to Section 2-585(a) clarified the issue of applicability of Section 2-585 to Cook County elected officials, specifically, to the Cook County Board President; Cook County Board Commissioners; Cook County State’s Attorney; Cook County Sheriff; Cook County Clerk of the Circuit Court; Cook County Assessor; Cook County Treasurer; Cook County Board of Review Commissioner; Cook County Clerk; and Cook County Recorder of Deeds.

Contrary to Attorney Puiszis' characterization, the Board proceeded in accordance with Ordinance Section 2-591(6)-(9) and its Rules and Regulations, Sections 5.3, 5.5, and 5.11. As stated previously, a Notice of Investigation was hand-delivered to the Assessor's Office on December 29, 2010, advising the Assessor in detail of the identity of the Complainant, the substance of the investigation, the applicable sections of the Ordinance, the investigation procedure and of his duty to cooperate in the investigation. In addition, a Request for Documents and Information was issued to Ms. Victoria LaCalamita, Director of Human Resources for the Office of the Assessor. In response to the Notice and the Request for Information, the Assessor verbally and by letter from his attorney indicated his refusal to cooperate in the investigation and to provide any documentation.

Section 5.15 of the Rules and Regulations states in pertinent part, that, "at its discretion, the Board may determine in the course of an Investigation that a hearing is necessary to aid it in its fact finding function." Most cases before the Board of Ethics, due to the nature of the allegations at issue in Ethics investigations, proceed without a fact finding hearing – facts are gathered through witness interviews and document production and review. The relevant facts – the hiring by Assessor Berrios of his son-in-law and his sister, and his direct supervision and promotion of his daughter were admitted by Assessor Berrios in numerous news reports, and Assessor Berrios does not claim that the Board's findings as to these facts are incorrect. No hearing was needed to determine the relevant facts. No hearing was requested by the Assessor, no hearing was scheduled and no hearing was held.

The Board of Ethics followed its process and procedure. The Board rendered its decisions on these matters based upon a review of the undisputed facts, the information and evidence available to the Board, and the applicable Ordinance provisions.

Fines

The Request also asserts that the fines assessed against the Assessor are arbitrary and that the Board was incorrect in its conclusion that the Assessor "knowingly violated any provision of the Ordinance." The fines assessed were derived from careful consideration and deliberation on the facts in this case and the public statements of the Assessor, as well as on the determination that there were multiple violations of the Ethics Ordinance. The Assessor chose not to cooperate or participate in the investigation, despite being aware that the Board of Ethics believed it was compelled to proceed. The fines are not arbitrary and will not be reconsidered by the Board.

Recommended Corrective Action

Finally, the Request for Reconsideration argues that the Board's recommendation that Assessor Berrios remove Carmen Cruz, Joseph E. Berrios and Vanessa Berrios from their positions at the Office of the Assessor is unfair because they are performing their jobs.⁹ Work performance was not at issue in this case. Rather, the only basis for the Board's recommendation for corrective action is the finding that their hiring and continued employment in the Office of the Assessor by Assessor Berrios is a violation of Section 2-582, Employment of Relatives, of the Ethics Ordinance. Anything short of recommending a separation of employment for these individuals from the Office of the Assessor would

⁹ It should be noted that the Board has only the authority to recommend corrective action, and that the carrying out of such recommendations in this case lies solely within the purview of the Assessor.

essentially be sanctioning a continuing violation of Section 2-582. As stated in the Notices of Finding, the Board recognizes that a recommendation to remove an individual from employment is its most serious recommendation. However, the Ethics Ordinance is clear; it places the interests of the taxpayer first, it holds elected officials accountable to a code of ethical conduct, and it advances the goals of an open, accountable and transparent County government. The Request for Reconsideration provides no new facts for reconsideration of the Board's recommendation for corrective action regarding the termination of employment of the Berrios relatives.

III. Conclusion and Order

As stated at the outset of this Order, in accordance with Section 5.19(C) of the Rules and Regulations of the Board of Ethics, "Requests for Reconsideration shall be granted only in limited circumstances, such as, but not limited to, the discovery of new, relevant evidence." For the foregoing reasons, the Board finds that the Assessor has not submitted any new evidence or legal precedent which provides a basis for Reconsideration of its prior determinations. Accordingly, the Board **DENIES** Respondent's Request for Reconsideration. This matter is now considered a final determination of the Cook County Board of Ethics.

COOK COUNTY BOARD OF ETHICS

BY:

Roseann Oliver
Roseann Oliver, Chair

DATE:

8-10-12