

AGENDA ITEM NO. 68

CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
CITY ATTORNEY'S OFFICE

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

THROUGH: Terry M. Brechtel, City Manager

COPIES: Yolanda Ledesma, City Clerk; File

SUBJECT: Ordinance accepting recommendation of Ethics Review Board regarding SAFD Assistant Chief Alan Boozikee

DATE: December 18, 2003

SUMMARY AND RECOMMENDATIONS

This Ordinance accepts the opinion of the Ethics Review Board issued pursuant to Part H, Section 8 of the Code of Ethics of the City of San Antonio. In its opinion, the Ethics Review Board found that SAFD Assistant Chief Alan Boozikee violated Part B, Section 3(a) of the City Ethics Code in accepting tickets to Spurs games from Dailey Wells Communications, a city contractor. Further, the Board recommended that Chief Boozikee attend a course in continuing ethics education offered by the City Attorney's Office and pay a sanction of \$100. The Ethics Review Board Opinion is **Attachment 1**.

BACKGROUND INFORMATION

Daily Wells Communications is a contractor with the City of San Antonio in connection with a contract with MA/Com. MA/Com contracted with the City to provide a radio service system for uniformed and emergency personnel. The overall value of the MA/Com contract is approximately \$49 million. Dailey Wells contracted directly with the City to provide installation services for the radio system provided by MA/Com. San Antonio Police Department Captain William C. Smith and San Antonio Fire Department Assistant Chief Alan Boozikee are members of the city's evaluation team assigned to assess the performance of the equipment provided and installed under the MA/Com and Dailey Wells contracts.

On May 22, 2003, San Antonio Police Assistant Chief Tyrone Powers filed an ethics complaint against Captain William C. Smith. In the complaint, Assistant Chief Tyrone Powers alleged that Capt. Smith accepted the invitation of Dailey Wells Communications on more than one occasion to attend Spurs games at its Terrace Box at the SBC Center. Specifically, Assistant Chief Powers alleged a violation of Ethics Rule Part B, Section 3(a)(2).

Part B, Section 3(a)(2)¹ provided:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of \$100 or less at any occurrence:

(A) any individual or business entity doing or seeking to do business with the City; or

(B) any registered lobbyist or public relations firm.

The Ethics Review Board held a hearing on July 8, 2003 and heard testimony from Assistant Chief Powers, Capt. Smith and William Wood, Assistant City Attorney. After considering the testimony, the complaint and Capt. Smith's sworn response, the Ethics Review Board concluded that Capt. Smith had accepted the invitation of Daily Wells to attend a Spurs game on May 19, 2003 in that corporation's Terrace Box. Capt. Smith had also accepted other invitations from Daily Wells since 2000. By Capt. Smith's estimate, he received tickets from Dailey Wells worth \$750 in 2000, \$1000 in 2001, and "less than \$1,000" in 2002.

Based on a preponderance of the evidence, the Ethics Review Board found Capt. Smith had accepted the basketball tickets from Daily Wells in violation of Part B, Section 3(a)(2) of the Ethics Code. The matter concerning Capt. Smith is currently pending before the City Council.

During Capt. Smith's testimony at the July 8 hearing, he stated that he had observed other individuals from the evaluation team for the MA/Com and Dailey Wells contracts attending Spurs' games in the Dailey Wells Terrace Box Suite. These individuals included Alan Boozikee and Gary Moeller.

Based on that testimony, Ethics Review Board Chairman Arthur Downey, Jr. filed ethics complaints against Alan Boozikee and Gary Moeller. The Ethics Review Board dismissed the complaint against Gary Moeller after finding that Mr. Moeller, prior to attending the Spurs game for which he had been given two tickets, had written a check to Dailey Wells to pay for those tickets.

On September 16, 2003, a panel of the Ethics Review Board of the City of San Antonio convened to consider the complaint against Chief Boozikee. The panel convened for further consideration on September 30, 2003. On that date, the panel issued an opinion finding that Chief Boozikee had violated Part B, Section 3(a)(1) and (2) and recommending attendance at an extended ethics code training course by the City Attorney's Office and sanction of \$400. On October 21, 2003, Alan Boozikee filed a written request for reconsideration. On November 18, 2003, the Ethics Review Board reconvened and granted the request for reconsideration. At that meeting, the board also held a hearing to receive additional information and testimony. Following its review, the board sustained its finding that Alan Boozikee had violated Part B, Section 3(a)(1) and (2), but recommended a reduced sanction of \$100. The board again also

¹ The complaint was reviewed under the May 2001 version of the Ethics Code, which was in effect at the time of the alleged violations. The gift provisions of the Ethics Code were amended by City Council on May 29, 2003, by Ordinance No. 97711.

recommended attendance at extended ethics training. The board noted that Chief Boozikee attended and completed the recommended extended ethics training course September 4, 2003.

Pursuant to Part H, Section 8(b), the Board's opinion and recommendation for sanctions are forwarded to the Council for action. The Council may accept, reject, modify or recommit the matter to the board for further proceedings.

POLICY ANALYSIS

The objective of the Ethics Code is to impose standards of conduct upon the officials and employees of the City of San Antonio to not only prevent the existence of conflicts of interest, but also to "minimiz[e] the risk of any appearance of impropriety." Ethics Code Part A, Section 1 (Statement of Purpose). The Ethics Review Board reasoned that even where there is no improper influence, the acceptance of gifts from those doing or seeking to do business with the City has the potential to create the appearance of influence. The board further noted that it may also unconsciously affect the recipient's ability to carry out his or her responsibilities to the City in an objective and impartial manner.

The Board concluded that Chief Boozikee had not been improperly influenced in his responsibilities to the city. It also found that he had misunderstood the application of the gift provision of the Ethics Code. The Board recommended that Chief Boozikee be required to pay a sanction of \$100 and to attend extended ethics training.

The City Attorney's Office now forwards the Ethics Review Board's opinion for consideration by the City Council. As noted above, Chief Boozikee on his own initiative has completed the recommended training. Therefore, if the Council accepts the recommendations of the Ethics Review Board, then it may also find that he has already complied with the direction.

FISCAL IMPACT

There is no fiscal impact associated with this Ordinance.

COORDINATION

The City Attorney's Office has coordinated this item with the City Clerk's Office and the Ethics Review Board.



ANDREW MARTIN
City Attorney

APPROVED:



TERRY M. BRECHTEL
City Manager

IN THE MATTER OF:

§ BEFORE A PANEL

ALAN BOOZIKEE

§ OF THE ETHICS REVIEW BOARD

§ OF THE CITY OF SAN ANTONIO, TEXAS

**OPINION OF THE PANEL
OF THE ETHICS REVIEW BOARD**

ON MOTION FOR REHEARING

On August 22, 2003, Arthur Downey, Jr. filed a complaint alleging a violation of the City of San Antonio Ethics Code, Part B, Section 3(a)(1) and (2) against San Antonio Fire Department Chief Alan Boozikee and Gary Moeller. Part B, Section 3 establishes limitations on the receipt of gifts by city officials and employees. On September 16, 2003, a panel of the Ethics Review Board of the City of San Antonio convened to consider the complaint against Chief Boozikee.

The panel convened for further consideration on September 30, 2003. On that date, the panel issued an opinion finding that Chief Boozikee had violated Part B, Section 3(a)(1) and (2) and recommending a sanction of \$400. On October 21, 2003, Alan Boozikee filed a written request for reconsideration. On November 18, 2003, the Ethics Review Board reconvened and granted the request for reconsideration. At that meeting, the board also held a hearing to receive additional information and testimony. Following its review, the board sustained its finding that Alan Boozikee had violated Part B, Section 3(a)(1) and (2), but recommended a reduced sanction of \$100.

Allegation of the Complaint

In the complaint filed August 22, 2003, Arthur Downey, Jr. alleged that Alan Boozikee and Gary Moeller accepted the invitation of Dailey Wells Communications on more than one occasion to attend Spurs games at its Terrace Box at the SBC Center. Dailey Wells is a contractor with the City of San Antonio in connection with a contract with MA/Com. The value of the contract with MA/Com has been valued at approximately \$49 million. Specifically, Arthur Downey alleged a violation of Ethics Code Part B, Section 3(a)(1) and (2).

Mr. Downey stated in his complaint that he based his allegations against Chief Boozikee and Mr. Moeller on testimony from San Antonio Police Department Captain William C. Smith during an Ethics Review Board hearing on July 8, 2003. Captain Smith testified at that hearing that he and other city personnel, including Chief

Boozikee and Mr. Moeller, had accepted tickets to Spurs games from Dailey Wells Communications.

Ethics Code

Part B, Section 3(a)(1), at the time of the alleged violations, provided:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:

(A) that reasonably tends to influence or reward official conduct; or

(B) that the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

Part B, Section 3(a)(2) of the Ethics Code, at the time of the alleged violations, provided:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of \$100 or less at any occurrence from:

(A) any individual or business entity doing or seeking to do business with the City; or

(B) any registered lobbyist or public relations firm.

Findings of Fact

After consideration of the sworn complaint, the response and information provided at the November 18, 2003 hearing, the panel makes the following findings of fact based upon the preponderance of the evidence:

- 1) Dailey Wells is under contract with the City of San Antonio in connection with a larger contract with MA/Com. MA/Com contracted with the City to provide a radio service system for uniformed and emergency personnel. The value of the contract is \$49 million. Dailey Wells contracted directly with the City to provide installation services in connection with the MA/Com contract.

- 2) Chief Boozikee, as a member of the San Antonio Fire Department, is a member of the team assigned to evaluate the performance of the equipment provided and installed pursuant to these contracts;
- 3) Chief Boozikee accepted the invitation of Dailey Wells Communications to attend a Spurs game in that corporation's Terrace Box on approximately nine (9) occasions during the 2002-03 season;
- 4) Chief Boozikee stated in his sworn response that he attended the games, believing that such gifts were permissible;
- 5) Inquiry by the panel found it is difficult to set an exact value on the admission to a Spurs game hosted in a Terrace Box at the SBC Center. The panel, concluded, though, that the value of such admission was not nominal, and found a value of not less than \$50.00 each.
- 6) Chief Boozikee made no effort to contact the City of San Antonio Ethics Compliance Officer or the Ethics Review Board to determine whether it was permissible under the Ethics Code to accept the offer of free seats at the Spurs Games from the City contractor.
- 7) Chief Boozikee attended an extended Ethics training course offered by the City Attorney's Office on September 4, 2003.

Conclusions of Law

Based on a preponderance of the evidence, the panel makes the following conclusions of law:

- 1) That Dailey Wells Communications is an entity doing business with the City as that term is used in Part B, Section 3(a) of the Ethics Code.
- 2) That at the time of the alleged violations, Part B, Section 3(a)(1) of the Ethics Code prohibited any City official or employee from accepting gifts that the official or employee knows or should know is being offered with the intent to influence or reward official conduct.
- 3) That at the time of the alleged violations, Part B, Section 3(a)(2) of the Ethics Code prohibited any City official or employee from accepting gifts of more than nominal value from any entity doing or seeking to do business with the City.

- 4) That Chief Boozikee, in violation of Part B, Section 3(a), accepted gifts with greater than nominal value in the form of admission to Spurs games at the invitation of Dailey Wells Communications.

Opinion of the Ethics Panel

The panel concludes that Chief Boozikee violated the City's Ethics Code in accepting admission to the Spurs games on nine occasions at the invitation of Dailey Wells. Chief Boozikee in his sworn response that he believed at the time that it was permissible to accept the tickets because their value was within acceptable limits. Chief Boozikee's understanding of these limits is incorrect. The Ethics Code, as it provided in the time frame relevant to this inquiry, limited City personnel to accepting only gifts of nominal value. The \$100 limit applied only to the acceptance of meals.¹

The objective of the Ethics Code is to impose standards of conduct upon the officials and employees of the City to not only prevent the existence of conflicts of interest, but also to "minimiz[e] the risk of any appearance of impropriety." Ethics Code Part A, Section 1 (Statement of Purpose). Even where there is no improper influence, acceptance of gifts by those doing or seeking to do business with the City has the strong potential to create the appearance of close-handed dealing. It may also unconsciously affect the recipient's ability to carry out his or his responsibilities to the City in an objective and impartial manner.

In considering the issue of sanctions, the panel concludes that Chief Boozikee acted under a misunderstanding of the application of the Ethics Code and with a lack of sensitivity for the potential for the appearance of impropriety. Accordingly, the

panel recommends to the City Council that Chief Boozikee be required to attend the City's Ethics Code course.² The panel would note that if such a sanction is approved, Chief Boozikee has already attended the recommended training. Further, the panel recommends a monetary sanction. In considering the degree of the sanction, the panel observed that Chief Boozikee accepted nine (9) highly valuable Spurs tickets, eight of which were to play off games, from a City contractor whose contract it was Chief Boozikee's direct responsibility to oversee.

In considering the issues raised by the complaints against Mr. Moeller and Chief Boozikee and the original complaint against William Smith, the Ethics Review Board encountered difficulty in ascertaining the fair market value of the tickets offered by Dailey-Wells Communications. The board concluded in its opinions regarding William Smith and Gary Moeller that admission to events such as professional sports games is clearly more than nominal in value. Such tickets have an imprinted price, but this reflects only the cost to the suite holder to obtain the extra tickets.

In order to have the opportunity to purchase the tickets, the suite holder must first lease the suite itself, an investment that costs no less than several thousand dollars and which varies depending on an organization's individual agreement with the SBC Center. The benefit of access to purchase additional admission to the suites is not available to the general public and therefore the fair market value of these tickets is difficult to ascertain. The board recognizes that the fair market value of the tickets is uncertain because they are not available to the general public and because the cost of

¹ The panel also notes that the Ethics Code was amended on May 29, 2003. Specifically, Part B, Section 3, the gift provision, was amended to allow the acceptance of entertainment up to a value of \$500 in a calendar year.

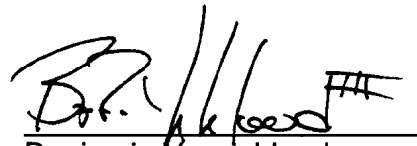
² The panel notes that the Mayor's Committee on Integrity and Trust In Local Government recently recommended that all City personnel attend ethics training on a yearly basis.

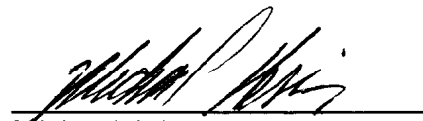
the underlying investment in the suites can vary. However, this panel finds that the fair market value of suite-access tickets is not only more than nominal, but is also substantially more than the imprinted face values. Each of the nine (9) tickets accepted by Chief Boozikee was therefore more than nominal in value.

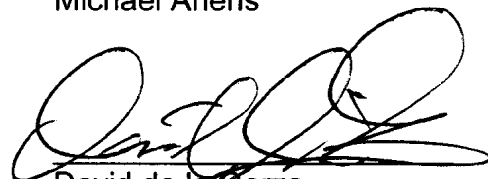
The board recommends a sanction of \$100 for the receipt of these tickets in violation of Part B, Section 3(a) of the City's Ethics Code.

Chief Boozikee argued in his request for rehearing that he should not be sanctioned for his failure to report the acceptance of the tickets because the report for transactions in 2003 is not due until 2004. The Ethics Review Board notes that the Ethics Code Violation found is the acceptance of the tickets, not the failure to report the gratuity. It is the act of accepting the gift of more than nominal value from the City contractor that gives rise to liability for Chief Boozikee. Failure to report is a separate violation under the Ethics Code and the Ethics Review Board does not find reporting violation against Chief Boozikee at this time.

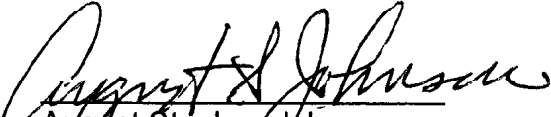
Signed the 18th day of November 2003.


Benjamin Youngblood
Panel Chairman



Michael Ariens


David de la Garza

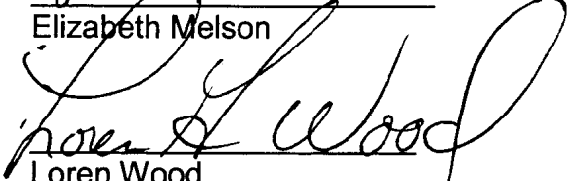
Steven Gengenbacher



August Stephen Johnson



Elizabeth Melson



Loren Wood