

### **Statement of Jurisdiction**

Other local ethics commissions specifically set forth the jurisdiction of the commission. This provision is important for many reasons but is essential to establishing the ability to discuss certain matters in executive session if deemed necessary. The following is proposed language for discussion:

**Jurisdiction:** The Ethics Commission shall have jurisdiction over elected officials, appointed officials, officers and employees of the City of Muncie with respect to the interpretation and enforcement of the City of Muncie Code of Ethics. However, a complaint or investigation before the Ethics Commission may be stayed if the matter is subject to pending litigation or the Commission has been notified by law enforcement that a criminal investigation is underway.

### **Commission Authority**

For purposes of discussion, the following is a draft provision setting forth the authority that may be provided to the Ethics Commission. The issue of sanctions and remedial action is discussed in a later section, but issuing penalties (monetary or otherwise) is likely beyond the scope of Ethics Commission authority. However, the findings and conclusions will be public, and the entire process will bring these issues to light (which is the primary goal of this process). In addition, the Ethics Commission can recommend corrective action and refer the matter to Corporation Counsel for the initiation of ordinance violation proceedings.

Further research needs to be conducted to ensure that Ind. Code § 36-1-4-12 provides the Ethics Commission with the authority to compel evidence and testimony. If not, the City Council has the authority to issue subpoenas to produce evidence and compel testimony pursuant to Indiana Code § 36-4-6-21, and this section could be amended to state that the Ethics Commission can request City Council issue subpoenas to produce evidence and compel testimony.

**Authority:** The Ethics Commission may do any of the following upon a majority vote of its Members:

- Issue an advisory opinion upon request as to the application of the Code of Ethics to a specific situation.
- Initiate and conduct investigations of complaints alleging violations of the Code of Ethics.
- Dismiss complaints alleging violations of the Code of Ethics without investigation.
- Following an investigation, issue public findings and conclusions on alleged violations of the Code of Ethics.
- Refer alleged violations of the Code of Ethics to an appropriate law enforcement agency.
- Upon a finding of a violation of the Code of Ethics, refer the matter to Corporation Counsel for enforcement proceedings in accordance with Chapter 36 of the City of Muncie Code of Ordinances and Ind. Code § 36-1-6-11.

- Compel the production of documents and other evidence.
- Compel the attendance and testimony of witnesses.
- Adopt rules to implement the Code of Ethics and provide for its enforcement.
- Prepare and/or provide any forms or other documents necessary for compliance with the Code of Ethics.
- Request the assistance of the Corporation Counsel and/or Legal Counsel for the Common Council to investigate a complaint alleging violations of the Code of Ethics and to issue findings and conclusions.
- Inform individuals of a failure to file any document required by the Code of Ethics.
- Receive, review and file any document required by the Code of Ethics.
- Recommend appropriate corrective action and/or sanctions for a violation of the Code of Ethics.

### **Public Records and Public Meetings**

Both the Indiana Access to Public Records Act and Indiana Open Door Law will apply to Ethics Commission proceedings. The concern raised at the last meeting was protecting the confidentiality of those subject to frivolous complaints that could be dismissed without further investigation or action by the Ethics Commission. The concern can likely be addressed through the use of an executive session for initial discussion of complaints and certain exceptions to the right to access public records that could be applied to those complaints that are dismissed immediately.

Indiana Code § 5-15-1.5-6.1(b)(2)(6) states that an executive session may be held “with respect to an individual over whom the governing body has jurisdiction: (A) to receive information concerning the individual’s alleged misconduct...” No formal action can be taken in an executive session. However, the Ethics Commission could review all complaints initially in executive session and then hold a public meeting to formally vote whether the complaint will be investigated further or dismissed. If complaints are initially identified by Complaint #, the decision to dismiss could be made while protecting the identity of the subject of a frivolous complaint. Once a decision is made to proceed with further investigation, however, that anonymity would be lost.

Indiana Code § 5-14-3-4(b) sets forth certain public records that shall be excepted from disclosure *at the discretion of the public agency*. The list of records in this section includes: (1) certain personnel files of public employees; and (2) records specifically prepared for discussion or developed during discussion in an executive session. If an executive session is used for an initial discussion of a complaint, and that complaint results in a dismissal with no further action, the complaint can likely be excluded from public access to protect innocent persons from disclosure of a frivolous complaint. However, if the complaint proceeds to an investigation, the complaint and most of the documents compiled in the investigation (unless subject to another exception to public disclosure – especially for current employees) will be public records and subject to disclosure.

With the Committee's permission, I would like to contact the Indiana Public Access Counselor to discuss this process as well and get advice as to how we may protect the identity of those subjected to frivolous complaints. That being said, the following is proposed language on this issue for discussion:

**Public Records and Public Meetings:** Generally, all meetings of the Ethics Commission shall be open to the public provided, however, that all complaints submitted to the Ethics Commission may be initially reviewed in executive session pursuant to Indiana Code § 5-15-1.5-6.1(b)(2)(6). All records received or created by the Ethics Commission are subject to the Indiana Access to Public Records Act and shall be either disclosed or withheld in accordance therewith. Complaints received by the Ethics Commission that are dismissed without further investigation after being reviewed in executive session may be withheld pursuant to Indiana Code § 5-14-3-4(b).

### **Complaint Procedure**

We should discuss whether we should set forth a detailed complaint procedure, or whether that duty is delegated to the Ethics Commission once it is established. Regardless, a complaint procedure should include specific filing instructions, timing of a required disclosure to the subject of the complaint, deadline for initial review of a complaint, deadline for a decision as to whether the complaint will be further investigated or dismissed, and a timeline of the investigation and issuance of findings and conclusions for cases that proceed for further investigation. Indianapolis and Allen County are both good examples of a detailed complaint procedure.

### **Violations**

As stated above, the Ethics Commission does not have the authority to issue penalties or impose discipline to employees, elected officials, or appointees. However, the findings and conclusions will be public, and the Ethics Commission can recommend corrective action and refer the matter to Corporation Counsel for the initiation of ordinance violation proceedings. In addition, this Committee can propose specific penalties for violations that would be set forth in the Ethics Code. Generally, the City has the power to prescribe a penalty of a fine of up to \$2,500 for a first violation of an ordinance. Many ordinances (parking, animal control, etc...) set forth specific fines for specific conduct. Other ordinances just generally state that a violation is subject to a fine of up to \$2,500 and leave the amount up to the judicial system. For discussion, there are essentially three (3) options for the enforcement provision beyond the recommendations that can be made in the findings and conclusions:

1. Propose a specific fine for each potential violation of the Code of Ethics;
2. Generally state that a violation of the Code of Ethics may be subject to a fine of up to \$2,500; or
3. Omit a specific fine for violating the Code of Ethics and, instead, rely primarily on the public findings, conclusions and recommendations as the enforcement mechanism.

