

MEETING MINUTES

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

January 18, 2013 2:30 pm

Suite 830 South – Hearing Room

One Judiciary Square

I. Call to Order

- a. Meeting called to order at 2:33 pm by Chairman Robert Spagnoletti in Board of Ethics Hearing Room at One Judiciary Square, 441 4th Street NW, 830 South, Washington, DC 20001.

II. Ascertainment of Quorum

- a. All Board Members (Robert Spagnoletti, Laura Richards, Deborah Lathen) in attendance.
 - i. Quorum ascertained.

III. Adoption of the Agenda

- a. Laura Richards moved to adopt Agenda.
- b. Deborah Lathen seconded the motion.
 - i. Agenda adopted unanimously.

IV. Adoption of the Minutes from previous meeting – January 10, 2013

- a. Minutes will be adopted at a later date.

V. Discussion – Next steps in the preliminary investigation of Councilmember Jim Graham with regard to his conduct while serving a dual role as a sitting Councilmember and as a member of the Board of the Washington Metropolitan Area Transit Authority. Portions of this discussion may be held during a non-public Executive Session.

- a. Introduction of the matter and explanation of the proceeding by Chairman Robert Spagnoletti at 2:35 pm.
 - i. The Board previously determined that the preliminary investigation would be public.
 - ii. Councilmember Graham's attorney, William Taylor, requested to address the Board.
 - iii. Because the matter was already public, the Board acquiesced to Mr. Taylor's request.

- b. Councilmember Graham's attorney, William Taylor, began to address the Board at 2:37 pm.
 - i. Mr. Taylor introduced his colleagues, Caroline Mehta and Rachel Cotton and thanked the Board for the opportunity to be heard.
 - ii. Mr. Taylor explained to the Board that he and his client have the highest respect for ethics in the District of Columbia and the United States.
 - iii. Mr. Taylor informed the Board that his client, Jim Graham, would not be present at the hearing due to a previously scheduled medical procedure.
 - iv. Mr. Taylor presented to the Board reasons why the preliminary investigation should be terminated -
 - 1. If the matter came to an evidentiary hearing, the Board would conclude that Warren Williams' facts would be in dispute.
 - 2. Crystal Wright's version is the more correct version of events.
 - 3. Even accepting the facts in the Cadwalader report, those facts don't add up to an ethics violation.
 - 4. A full factual hearing would take too much time.
 - 5. There was no conflict in Councilmember Graham's role on the City Council and his role as a Washington Metropolitan Area Transit Authority (WMATA) Board.
 - a. Councilmember Graham did not create the system; he just acted as a public official.
 - 6. Councilmember Graham's negative views of Mr. Williams are undisputed.
 - a. Councilmember Graham made those views public at City Council hearings and to Mr. Williams' face.
 - 7. Ethics relates to honesty, integrity and financial interest, using public office for private gain and Councilmember Graham had no financial interest in this matter.
 - 8. D.C. has a system in which elected officials participate in the procurement process, which is what Councilmember Graham did.
 - 9. Councilmember Graham expressed his opinion and acted in the interest of his Ward.
 - a. The ballot box is the antidote to this situation.
 - v. Mr. Taylor concluded his presentation to the Board at 2:49 pm.
- c. Chairman Robert Spagnoletti began the Board's questioning of Mr. Taylor at 2:50 pm.
 - i. He asked Mr. Taylor if Councilmember Graham was subject to the District Personnel Manual (DPM) in 2008.
 - 1. Mr. Taylor responded that, yes, he was.
 - ii. He asked if those would have been enforced by the D.C. Board of Elections and Ethics (BOEE).
 - 1. Mr. Taylor responded, yes.
 - iii. He asked if the DPM had a statute of limitations.

1. Mr. Taylor responded that there was not a statute of limitations in the regulations.
- iv. He asked if the D.C. Office of Campaign Finance, which Mr. Taylor's response to the Board referenced, would extend to the DPM.
 1. Mr. Taylor responded that the closest analogy could be found in Footnote 9 of his response.
- v. He asked, if the Board has a 5 year statute of limitations and they enforce no greater punishment than would have been available to BOEE, would that pass constitutional muster.
 1. Mr. Taylor responded that he would not disagree.
- d. Laura Richards continued the Board's questioning at 2:56 pm.
 - i. She asked what remedies would have been available to BOEE.
 1. Mr. Taylor responded that he hadn't looked into it.
 - ii. She asked what standards a Councilmember/WMATA Board Member should apply when weighing contracts.
 1. Mr. Taylor responded that the standard is that which any reasonable purchaser would apply, looking at the vendor's history, capability, and suitable partner.
 - iii. She asked if horse trading was the issue here.
 1. Mr. Taylor responded that any trading, if the official believes that trading is done in the public interest, is fine to do.
 - a. In Mr. Taylor's view, per the quid pro quo in question, Councilmember Graham was considering his actions, not making pronouncements.
 - iv. She asked what the difference was between sharp elbowed political activity and a conflict.
 1. Mr. Taylor responded that personal gain draws the line.
- e. Deborah Lathen continued the Board's questioning at 3:05 pm.
 - i. She asked if ethics goes beyond personal gain and into the appearance of personal gain and if the proper forum for Councilmember Graham was the WMATA Board Meeting.
 1. Mr. Taylor responded that he did use the WMATA Board Meeting as a forum.
 - ii. She asked why Mr. Williams was appropriate for a lottery contract but not appropriate for city business otherwise.
 1. Mr. Taylor responded that Councilmember Graham did not view the lottery contract going to Mr. Williams positively either, but that the lottery contract would not be principally held by Mr. Williams.
 - a. In Mr. Taylor's view, the development of property involves more than running a lottery.
 - iii. She asked if Councilmember Graham's only ethical obligation was not to engage in personal gain.

1. Mr. Taylor responded that Code provisions apply and that his response spoke to that.
 - a. In Mr. Taylor's view, it wasn't clear what the violation would have been.
- iv. She asked, if the 3 year statute of limitations applying to the DPM applied to BEGA, would BEGA not have jurisdiction over conduct older than 3 years.
 1. Mr. Taylor responded that, yes, that is how they read the law.
- v. She asked if vagueness was an issue.
 1. Mr. Taylor responded that this proceeding was punitive, so clear notice standards apply.
 - a. In Mr. Taylor's view, the language, "reflect discredit upon" is too vague, reasonable people can disagree.
- f. Chairman Robert Spagnoletti continued the Board's questioning at 3:17 pm.
 - i. In response to Mr. Taylor's concerns about vagueness, he pointed out that the same language in question was adopted word for word by the City Council into their Code of Conduct, with Councilmember Graham as a voting member at its time of adoption.
 - ii. He asked why Mr. Williams was good enough for the lottery contract but not good enough for the WMATA contract and if LaKritz Adler stood to benefit from Mr. Williams not receiving the WMATA contract.
 1. Mr. Taylor responded that someone always stands to benefit from someone else not receiving a contract.
 - iii. He asked if, in Councilmember Graham's words, Mr. Williams was unfit, was their not a conflict?
 1. Mr. Taylor responded that that is not what is meant by conflict, if you draw the line there, compromise would be lost.
 - iv. He asked if the compromise here was between D.C. and WMATA and if it occurred in a back room.
 1. Mr. Taylor responded that the record states that Councilmember Graham "would consider supporting" Williams for the lottery contract.
 - a. In Mr. Taylor's view, this was not unethical.
- g. Laura Richards continued the Board's questioning at 3:25 pm.
 - i. She asked if Councilmember Graham decided the lottery contract on its merits and, if not, if it should have been decided on its merits.
 1. Mr. Taylor responded that it would be a desirable system, but that there was no answer to that question in the record and that Councilmember Graham though he was doing the right thing.
 - a. In Mr. Taylor's view, the case presents no evidence of a conflict that the D.C. Code prohibits.
- h. Deborah Lathen continued the Board's questioning at 3:30 pm.
 - i. She asked if they were seeking a dismissal based on the merits or based on jurisdiction.

1. Mr. Taylor responded that Councilmember Graham would say the merits.
- i. Laura Richards continued the Board's questioning at 3:31 pm.
 - i. She asked if subjective good faith was the standard to apply.
 1. Mr. Taylor responded that the line between politically criticized behavior and ethical behavior is drawn by intent to profit.
- j. Deborah Lathen continued the Board's questioning at 3:32 pm.
 - i. She asked if political muscle is sometimes a motive for gain.
 1. Mr. Taylor responded that such behavior is not an ethical violation.
 - ii. She asked if Councilmembers are considered D.C. government employees.
 1. Mr. Taylor responded that he could not reach any other conclusion.
- k. Chairman Robert Spagnoletti concluded the questioning at 3:35 pm.
 - i. He thanked Mr. Taylor and his staff on behalf of the Board.

VI. Discussion – BEGA enforcement of “Local Hatch Act” legislation – proposed penalties and other amendments.

- a. Presented by Director Darrin Sobin at 3:36 pm.
 - i. What role should BEGA play?
 1. Currently, the federal government enforces, the question is whether BEGA should enforce locally.
 - ii. Director Sobin's recommendation –
 1. After speaking with many members of government, yes, Local Hatch Act enforcement would most logically fall under BEGA.
- b. Chairman Robert Spagnoletti responded to Director Sobin's recommendation at 3:37 pm.
 - i. BEGA is already providing training, might as well provided Local Hatch Act training as well.
 - ii. BEGA already has jurisdiction over other ethical violations
 1. The Board instructs Director Sobin to make the recommendation that Local Hatch Act enforcement fall under BEGA.

VII. Adjournment

- a. Laura Richards moves to adjourn.
- b. Deborah Lathen seconds the motion.
 - i. Board Meeting adjourned at 3:38 pm by Chairman Robert Spagnoletti.