

MEETING MINUTES
DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Monthly Meeting of the Board

January 9, 2014, 1:00 p.m.
Room 540 South (BEGA Board Hearing Room)
One Judiciary Square

AGENDA

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:00 pm by Board member Laura Richardson in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

Board members Deborah Lathen and Laura Richards were present constituting a quorum.

III. Adoption of the Agenda

The Agenda was adopted unanimously.

IV. Acknowledgment of Adoption of the Minutes

The Minutes of the December 5, 2013, meeting were adopted unanimously.

V. Report by the Director of Open Government

a. Website

i. Soft Launch

The Director of the Office of Open Government (OOG), Traci Hughes, announced to the Ethics Board that the BEGA website has had a soft launch but has not formally been announced to the public. Director

Hughes sent out a request on January 2, 2013 to all the Boards and Commissions to update the new website with all of their meeting schedules. Director Hughes informed the Board that the majority of Boards and Commissions are complying. Director Hughes then told the Board there might need to be some amendments to the Open Meetings Act to make it mandatory for Boards and Commissions to post their meeting schedules on the BEGA website. Director Hughes anticipates that the hard launch of the website will be in about a week.

ii. Track DC

Director Hughes is working on posting the Track DC data on the new website. Director Hughes informed the Board that Track DC is a website that is maintained by the City Administrator that includes purchase data, budget data and FTE's.

b. Opinion – Housing Production Trust Fund Board

Director Hughes informed the Board that the Office of Open Government issued its first Advisory Opinion on December 12, 2013, to the Housing Production Trust Fund Board. This opinion clarified the posting of transcripts vs. the posting of meeting minutes. The opinion also addressed the posting of audio files and how they should be maintained. Director Hughes also notified the Boards and Commissions of this Advisory Opinion in case they received similar questions.

c. DC Bar Media Law Committee

Director Hughes met with The DC Bar Media Law Committee to inform them of the initiatives of the Office of Open Government and BEGA as a whole.

VI. Report by the Director of Government Ethics

**a. Update on Status of Office of Government Ethics (OGE) Operations –
Recap of Previous Month’s Activities (Statistics)**

- i. Investigations opened since the last Board meeting: 3**
- ii. Investigations closed since the last Board meeting: 4**
- iii. Open Investigations: 14**

b. Publication and Reporting Obligations

- i. Best Practices Report issued December 31, 2013**
- ii. Current on all other reporting obligations. FY 2014, first quarter report of investigations was posted on January 8, 2014.**

c. Trainings

- i. Attended by staff - none**
- ii. Conducted by staff**
 - 1. Lobbyist Training (Director of Office of Government Ethics, Darrin Sobin and Attorney Advisor, Cristina Patzelt)**
 - 2. Director Sobin and Director Hughes appeared on University of the District of Columbia television show “Sound Advice”**
 - 3. DC Public School Charter Board (Director Sobin and Hughes)**
 - 4. New Employee Orientations: 3**

d. Advisory Opinions

- i.** No requests outstanding
- ii.** No formal, written Advisory Opinions issued since the last Board meeting, but The Office of Government Ethics (OGE) responded to forty-two informal requests for advice.
- iii.** Attorney Advisor, John Grimaldi is working on a *sua sponte* Advisory Opinion on fundraising in the work place. OGE anticipates issuing an opinion on fundraising sometime in the first quarter of calendar year 2014.
- iv.** Director Sobin informed the board that the OGE is working on a Boards and Commissions memo that helps each Board and Commission identify which part of the Code of Conduct applies to them.
- v.** The Letters of Recommendation Advisory Opinion nearing completion.
- vi.** Work is about to commence on a Universal Code of Conduct with the help of a Capital City Fellow.
- vii.** The Ethics Manual is also going to have to be revised to include the new District Personnel Manual changes

e. Lobbyist Matters

- i.** Director Sobin stated the electronic registration and payment systems are now live. The electronic lobbyist activity report filing system is now live as well. Director Sobin informed the Board that an announcement was posted on the BEGA website on December 31, 2013 & emails were sent to lobbyists on December 30, 2013. Director Sobin noted that for the most part the process is running much smoother this time around, but there are still some glitches being reported. For instance, if a lobbyist/client has not registered electronically, they cannot file an activity report electronically. Also,

lobbyists/clients are unable to add more than one term of compensation for their lobbyists in the electronic filing system. In addition to this the system doesn't generate receipts for lobbyists who pay online. Director Sobin faults the vendors for these issues. As a result the OGE is considering whether to do a Request for Proposals to see if changing vendors might make sense.

ii. Updates on two previously denied waiver requests

1. Educational Services of America - - previous waiver request denied in December. The forms were filed but no registration payment was received by the OGE. The OGE will refer this matter to the Office of the Attorney General (OAG) for civil enforcement.
2. Greater Washington Board of Trade - - previous waiver request denied in November. There no response from this entity. The OGE will refer this matter to OAG for civil enforcement.

Board member Richards inquired as to whether the OGE received a lot of questions about gift giving around the Holiday period. Director Sobin informed her that they did and most of the questions were covered by a gift giving memo the OGE had already sent out. Director Sobin informed the Board that BEGA is working on a Universal Code of Conduct which would be one consistent body of ethics for District employees that would help simplify compliance.

f. Budget Matters

- i. Director Sobin predicts that BEGA will have a deficit in the amount of \$171,000. BEGA currently has approximately \$28,000 in Non Personal Service funds. This does not include BEGA's O-Type funds,

which are funds for fines and funds for lobbyists. BEGA has approximately \$54,000 in lobbyist funds which can only be spent on matters relating to lobbyists.

- ii.** Director Sobin informed the Board that the supplemental request of \$171,000 from the Executive Office of the Mayor still hasn't been approved. Director Sobin noted that, the Mayor's budget staff reported on Tuesday that BEGA can expect to hear from their office in mid to late January. Director Sobin informed the Board that the problem may be that the Council did not approve the Mayor's requested reprogramming which takes funds from the District's Health exchange system.
- iii.** On December 17th BEGA provided their request to the Mayor's Budget Office for enhancements to the FY15 Budget, which will soon be drafted. BEGA requested a staff assistant to help out with lobbyist and Financial Disclosure matters which will be shared with the Office of Open Government, an IT specialist and an attorney for OOG. These enhancements would total \$356,884.
- iv.** Director Sobin informed the Board that the next time BEGA will get to speak on their budget likely will be at a DC Council meeting in April.

g. BEGA Legislation

- i.** Director Sobin stated to the Board that BEGA is hoping to schedule meeting with Councilmember Kenyan McDuffie to speak about pending legislation from the last Best Practices Report (BPR) and to discuss any new legislation from current BPR. Director Sobin plans to meet with the Council Members on the Government Operations Committee to push this legislation through.

**h. New District Personnel Manual Published by DCHR/Executive –
Proposed Rulemaking Published in the D.C. Register January 3 –**

Director Sobin informed the Board that this proposed rulemaking would bring significant changes to the District's Code of Conduct. He also let the Board know that over the past several years, efforts have been made to revise the District Personnel Manual (DPM). Shortly after BEGA began operations, they began participating in the revision process. Director Sobin stated that these changes took on added importance once the Ethics Act came into effect because of several inconsistencies that resulted. BEGA was particularly concerned that the DPM did not include requirements to report and cooperate with BEGA and did not prohibit retaliation against employees who made reports to BEGA.

Director Sobin noted the importance of the new DPM which brings greater consistency to the standards imposed on the DC Council and its staff and employees of the Executive Branch. This new DPM also better clarifies the gift rules, which changed some of the provisions that have been widely criticized and problematic from an enforcement perspective. For instance, gifts between employees are no longer determined by salary, but by direct line Supervision. In the past, an employee who made even one penny more than a co-worker could not receive a gift from that co-worker even if there was no supervisory relationship. Director Sobin let the Board know that, this is no longer the case and only gifts to supervisors are impermissible under the new rules. Director Sobin also noted that, currently no gifts are allowed between employees for recurring occasions such as birthdays and holidays (exceptions were retirement or marriage). Director Sobin told the Board that as of now, gifts to supervisors will be permitted on occasions during which gifts are traditionally exchanged as long as they are under \$10.00. This will include recurring occasions such as holidays.

Director Sobin informed the Board that BEGA, OAG, DC Human Resources (DCHR), and others, worked for months to revise the DPM. Director Sobin believes that further revisions took place by the Executive Office of the Mayor and DCHR on January 3, 2014, when the revised DPM was published in the DC Register as a proposed rulemaking. The DPM is now open for comment for a thirty day period and Director Sobin recommended to the Board that BEGA should provide a few comments. Director Sobin then listed a few things that may merit comment on the new DPM:

- *The revised DPM does not mention donations to the District.

- *The District of Columbia Employee Ethics Pledge is not defined.

- *The definition of "prohibited source" in a couple of sections of the DPM includes those "conduct[ing] activities regulated by the employee's agency." In contrast, the Ethics Act definition is more expansive - "conduct[ing] operations or activities that are subject to regulation by the District government."

- * The DPM contains two sections (1803.5 (d) & (e)) that address situations in which employees attend events to participate as speakers or on panels. Director Sobin noted that these sections should be consistent with similar sections in the Council Code of Conduct and may vary regarding the number of persons required to qualify as a "widely attended event" and gifts of free attendance.

Director Sobin informed the Board that BEGA intends to review the revised DPM in more detail and may propose submitting written comments to DCHR during this comment period addressing the areas of concern to BEGA.

i. Non-Confidential Investigations

i. #AI-007-12 – Steven Allen - - update regarding \$1,900 fine imposed. General Counsel, Stacie Pittell informed the Board that a demand letter was sent to Mr. Allen on December 18, 2013, with demand for payment by January 3, 2014. As of January 3, 2014 the OGE has not received any payment from Mr. Allen. Ms. Pittell told the Board that this matter was sent to OAG for further enforcement action.

ii. #1087-001 – Ron Moten - - update regarding fine imposed. A demand letter was sent to Mr. Moten on January 9, 2013 and if a payment isn't received by the OGE then this matter will be sent to OAG.

iii. #AI-017-13 –Larry Hicks - - update from Ethics Board. The Board met in a closed session the morning of January 9, 2013 and reached a decision that will not be disclosed until the opinion is issued.

iv. #1122-001 – Deitra Bryant - - negotiated disposition for consideration.
(See link)

VII. Opportunity for Public Comment

No comment from the public. The Open Meeting ended at 1:50 pm.

VIII. Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

IX. Resumption of Public Meeting

a. Discussion of any remaining public items

The closed Ethics Board meeting ended at 3:47 pm. The public meeting was reopened at 3:49 pm. Ethics Board Member Laura Richards read a summary of the Irshad Shaikh negotiated disposition, indicating that the Ethics Board approved the negotiated disposition, which includes a \$16,000 fine.

X. Adjournment

Having no further business and there being no comments from members of the public, the open meeting was adjourned at 3:50 pm.