

MEETING MINUTES

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

December 5, 2013, at 1:00 pm

Hearing Room 540 South

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:01 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

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

III. Adoption of the Agenda

The Agenda was adopted unanimously. An addition to the agenda was made regarding the schedule of Board Meetings in 2014.

IV. Acknowledgment of Adoption of the Minutes

The Minutes of the November 7, 2013, meeting were adopted unanimously.

V. Report by the Director of Open Government

a. Trainings

- Sentencing and Criminal Code Commission (Freedom of Information Act training (FOIA))
- Fire and Emergency Medical Service Department (FOIA training)
- State Board of Education (FOIA training)
- District of Columbia Public Schools (FOIA training)
- DC Housing Finance Agency (FOIA and Open Meetings Act training (OMA))
- Police Officers Standards and Training Board (OMA training)

b. Website

The Director of the Office of Open Government, Traci Hughes, stated that the website was on track and that the vendors are working on the back end profile information needed for Boards and Commissions to submit board/commission profile information and meeting dates.

c. OCTO Wiring of BEGA Hearing Room

Director Hughes informed the Ethics Board that she and the Director of Government Ethics, Darrin Sobin were informed on Monday of this week that the Executive Office of the Mayor (EOM) has programmed the remaining funds for transfer to the Office of the Chief Technology Officer (OCTO) to begin work on wiring the hearing room. Director Hughes informed the Board that as of today, OCTO has not begun procurement because the funds are not yet available. The Board inquired how long it will take to complete this project and Director Hughes estimated that it will take about two months.

d. Executive Office of the Mayor(EOM) Government/Transparency Issue

Director Hughes told the Board that the comment period on the Mayor's Open Government and Transparency Initiative has been extended to December 10th. She informed the Board that she has been meeting with the Mayor's General Counsel, Brian Flowers on a monthly basis to get updates and to review the comments that have been submitted. Director Hughes also informed the Board that she is reaching out to other jurisdictions that have open government/transparency guidelines in place to get a sense of the how their plans were put into place.

Board member Laura Richards asked Director Hughes what the status of the FOIA Xpress system is and if every agency will have access to the system. Director Hughes informed Board member Richards that she is waiting for OCTO to create a server for FOIA Xpress and that every agency will have access to the system and training as well. Board Member Richards also inquired about a matter

involving Fire and Emergency Medical Services (Fire and EMS) regarding unprocessed FOIA requests. Director Hughes informed the Board that she has responded to this matter and will check back in with Fire and EMS in six months when FOIA Xpress is up and running.

VI. Report by the Director of Government Ethics

a. Update on Status of OGE Operations – Recap of Previous Month’s Activities

- Investigations Opened: 1
- Investigations Closed: 1

b. Publication and Reporting Obligations

All quarterly reports & advisory opinions are up to date.

c. Trainings

i. Attended by staff – none.

ii. Conducted by staff

- University of the District of Columbia Law School Panel Discussion entitled: *“Political Influence: Clout, Corruption or Democracy in Action?”*(Director Sobin spoke on the Panel)
- Office of Administrative Hearings (Ethics Training)
- Hatch Act Trainings
 - a. Agency Ethics Counselors
 - b. DC Council
 - c. Executive Office of the Mayor (EOM) (2)
- New employee orientation (2)

d. Advisory Opinions

- i.** No requests outstanding
- ii.** Director of Government Ethics, Darrin Sobin informed the Board that there was no formal, written Formal Advisory Opinions issued since the last Board meeting but the Office of Government Ethics (OGE) did send out holiday guides to both the Executive and the Legislature.

Director Sobin noted that the guide was essentially a restatement of existing law covering gift giving and receiving inside and outside of the DC Government holiday parties and holiday decor.

- iii. Director Sobin informed the Board that Senior Attorney-Advisor Jack Grimaldi has just started working on a *sua sponte* Advisory Opinion on fundraising by employees for outside entities in the work place. OGE anticipates issuing an opinion on fundraising sometime in the first quarter of calendar year 2014.
- iv. Director Sobin then told the Board that OGE anticipates issuing an Advisory Opinion for Boards and Commission members regarding what part of the Code of Conduct applies to them depending on their role in the Board or Commission.
- v. Director Sobin then informed the Board that OGE is working on a Letters of Recommendation Advisory Opinion. This advisory Opinion would discuss whether a DC employee can have their public office on their letter head.

e. Lobbyist Matters

i. Update on Electronic Lobbyist Registrations and Electronic Fee Payments

Director Sobin informed the Board that OGE is working with the vendor, DataNet and just tested the various modules, including the electronic fee payments and registration module. OGE expects that the Electronic Lobbyist Registration systems will go live this week. Director Sobin told the Ethics Board that letters, with log-in information, were sent to the lobbyists on Wednesday. The OGE has a training scheduled for Lobbyists on Friday, December 20th to teach lobbyists how to use the system.

ii. Filing Issues & Refund Requests

Attorney-Advisor, Cristina Patzelt notified the Board that Educational Services of America (ESA) requested a waiver because it says it did not realize, as the client, that it had to register and file a Lobbyist Activity Report. ESA stated in its November 21, 2013, request, that it will file the necessary forms and pay the registration fee. Ms. Patzelt confirmed that ESA did indeed file all the necessary forms and paid the registration fee. However ESA has not paid the late penalty fee for the Activity Report because it has requested a waiver. Ms. Patzelt also informed the Board that their Lobbyist Carmen Group filed a registration and activity report. Ms. Patzelt recommended to the Board

that they shouldn't waive the fee because there was no good cause shown and the Board concurred.

f. Budget Matters

- Director Sobin informed the Board that BEGA is in better financial shape than they were since the last meeting. Director Sobin informed the Board that the main reason they are in better financial shape is because an \$80,000 charge from OCTO has been voided by EOM. BEGA still has budget needs and has a supplemental request into the Executive Office of the Mayor.
- Director Sobin informed the Board that BEGA is in the process of doing a Budget enhancement request. Director Sobin stated that he is going to request at least one more investigator and one additional admin person to help with financial disclosure and lobbying reports. Director Hughes and Director Sobin have agreed that OGE and the Office of Open Government can share the admin. person. Director Hughes also informed the Board that she has requested an extra \$28,000 for the IT position to make the position more competitive.
- Director Sobin told the Board that BEGA has some money in their Other-Type funds and that should help with the budget issues, but BEGA doesn't yet have authorization to spend the fine money and they are working with the Office of the Chief Financial Officer to remedy this situation. However BEGA can spend the Lobbyist Registration money but only on issues regarding lobbyists. Board member Lathen inquired as to whether BEGA can put their money in interest bearing accounts and Director Sobin informed her that was not possible.

g. BEGA Legislation

- Director Sobin informed the Board that on December 3, 2013, a member of Councilmember McDuffie's staff informed the OGE that the permanent BEGA (alternative sanctions and negotiated dispositions) and Hatch Act bills were adopted unanimously by the Council on December 3, 2013. In addition, the Congressional Review Emergencies, which provide the gap approval until the permanent bills become law, also were adopted unanimously by the Council on December 3, 2013.
- Director Sobin informed the Board that there will now be a 30-day public comment period for *sua sponte* Advisory Opinions. Now the Advisory Opinions must be published first in the D.C. Register. Director Sobin told the Board that this does not apply to requests from individuals.

- Director Sobin expressed concern on one of the changes which changed the Hatch Act language from “**asking**” a subordinate to work on a campaign to “**coercing**” an employee. Director Sobin told the Board that proving coercion will be harder to prove depending on the definition of “**coerce**”.

h. Non-Confidential Investigations

- i.** #1087-001 – Ronald Moten. Awaiting issuance of Board’s opinion & order. **(Link to be added)**

- ii.** AI-017-13 – Larry Hicks. Findings of Fact & Conclusions of Law submitted by Respondent and OGE on November 15, 2013. The Ethics Board is in the process of deliberating on this matter.

- iii.** AI-007-12 – Steven Allen.
General Counsel, Stacie Pittell discussed the respondent’s time to file an appeal of the Board’s order, issued November 7, 2013, and served November 8, 2013. Ms. Pittell informed the Board that Mr. Allen’s time to file an appeal expired on November 29, 2013. No notice of appeal has been served to the OGE or the Ethics Board. Ms. Pittell informed the Board that Allen has not paid the \$1,800 fine, pursuant to the Board’s order or contacted the OGE regarding a payment plan. Ms. Pittell told the Board that Mr. Grimaldi attempted to contact Mr. Allen’s union representative, who BEGA has been communicating with and hasn’t heard anything back. Director Sobin told the Board that he intended to go forward with enforcement procedures to collect the fine which the Board agreed with.

- iv.** #1097-001 – Robbie Smith.
Director Sobin informed the Board there was a negotiated disposition with a \$500 fine. Director Sobin told the Board that Mr. Smith paid the fine right away. Ms. Pittell informed the Board that Robbie Smith, an IT Specialist with OCFO, had been using a handicapped parking placard that belonged to his wife. He used this placard seven times to secure handicap parking in front of his office. Ms. Pittell informed the Board that Mr. Smith had a medical condition which affected his walking and he secured his own parking placard shortly after being disciplined which OGE took into consideration when lowering his fine. The Board approved of this decision.

- v.** #1122-001 – Deitra Bryant-Mallory.

Director Sobin discussed another disability parking placard investigation by the Office of the Inspector General (OIG). This investigation was referred to the OGE by the OIG on October 25, 2013. The OGE requested records from OIG on October 28, 2013 (the next work day). OGE sent a reminder on November 27, 2013 and received records on December 3, 2013. Director Sobin stated that this investigation is now under way.

The Board also discussed the schedule of the Board meetings for 2014 and agreed to meet the first Thursday of the Month at 1:00pm. The Board Meeting will be moved to the second Thursday in January, July and August.

i. Best Practices Report - - A Draft BPR Report was Sent to the Board for Review and Comment.

The Ethics Board commended the Office of Government Ethics and the Office of Open Government on their outstanding work on their draft of the Best Practices Report. The Board then discussed the two remaining items which need to be added to the Best Practices report which were lobbyists serving on Boards and Commissions and increasing the size of

The Board first discussed moving to a five member Board. Board member Richards stated she believes if BEGA could justify adding more members then it should be considered. She also stated a five member Board makes it easier to have a quorum if a board member is absent and also helps in avoiding stalemates. Chairman Spagnoletti expressed concern over not being able to move quickly on matters with a five member Board. However Chairman Spagnoletti also stated that an increased board size could make it easier to communicate over the phone since it would take more members (three) to constitute a quorum. Since there are only three members on the Board as of now, every time two board members speak on the phone, it is considered a meeting under the OMA, so the board is forced to exchange lengthy emails. Board member Lathen recommended that BEGA should consider moving to a larger Board once the agency grows and the workload increases. The Board agreed that a larger five member Board is not necessary at this time.

The Board then discussed lobbyists serving on Boards and Commissions. The Board discussed the public comments in regard to this matter. Chairman Spagnoletti stated that the public seemed to think that there shouldn't be a blanket exclusion from Boards and Commissions for lobbyists. The Board decided that lobbyists may be able to serve on certain Boards and

Commissions if the conflict of interest is at a minimum. However a follow up letter will be sent to the Council to further clarify this decision.

Chairman Spagnoletti also recommended that we should ask EOM to modify the Ethics Act to allow BEGA not to have to answer the same question every year and that previous answers could be included in yearly Best Practices reports. Board member Richards recommended that BEGA having the power to recommend whether a councilmember should be expelled should be removed from the Best Practices Report.

VII. Opportunity for Public Comment

No comment from the public. The Open Meeting ended at 2:33 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).

The Executive Session meeting began at 2:53 pm and ended at 3:50 pm.

IX. Resumption of Public Meeting

The Open Meeting resumed at 3:51 pm.

X. Adjournment

Having no further business, the Meeting adjourned at 3:51 pm.