

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



INVITATION FOR PUBLIC COMMENT

September 12, 2013

The Board of Ethics and Government Accountability (“BEGA”) invites public comment on whether lobbyists should be prohibited from serving on District of Columbia government boards and commissions. BEGA staff conducted research on the issue of lobbyists on boards and commissions, and the BEGA board discussed the issue at public meetings on April 4, May 2, June 6, and June 20, 2013.¹

For purposes of this Invitation, the term “lobbyist” means only those who are required to register as a lobbyist, pursuant to D.C. Official Code § 1-1162.27(a), and not persons who might undertake non-paid lobbying activities (*e.g.*, lobbying DCPS as a parent to take a particular action on behalf of his or her child’s school).

Board and commission members serve a variety of important functions for the District of Columbia government. Most are appointed by the Mayor, and some require full Council confirmation. Most members serve part-time and are compensated with small stipends or limited hourly wages; other boards and commissions have members who serve full-time and are compensated as full-time employees. Some boards and commissions serve the entire population of the District of Columbia, such as the Human Rights Commission, while others have a specific mission that impacts a relatively small portion of the population, such as the Board of Chiropractic. All members of District of Columbia boards and commissions serve an important function in the District of Columbia government, and the District appreciates their public service.

Many significant District government functions are performed under the supervision and control of 174 boards and commissions.² Some boards and commissioners perform a purely advisory role, while others may have a quasi-judicial, regulatory, enforcement, and/or rulemaking function. For example, the Historic Preservation Review Board advises the Mayor on applications for taking certain actions regarding historic landmarks and districts in the District. The Alcoholic Beverage Control Board issues licenses to persons who meet the requirements

¹ Minutes of those public meetings are available on BEGA’s website (<http://bega.dc.gov>).

² See Attachment 1, List of Boards and Commissions, which contains those boards and commissions whose members require confirmation by the Council. Further, information about all the various boards and commissions, including links or citations to their respective enabling statutes or Mayor’s Orders, can be found by visiting <http://obc.dc.gov/page/district-of-columbia-boards-and-commissions>, or by calling the Office of Boards and Commissions at (202) 727-1372.

contained in the D.C. Code on alcoholic beverage control. The Commission on Fashion Arts and Events applies for and receives grants to fund its program activities. The Boxing and Wrestling Commission promulgates rules and regulations to promote the District as a location for boxing, wrestling and martial arts events, and to regulate boxing and wrestling within its jurisdiction. The Public Employee Relations Board conducts hearings and takes testimony under oath on any matter falling within its jurisdiction.

All those appointed to serve on the boards and commissions are “to perform a trust” on behalf of the government. D.C. Official Code § 1-603.01(2). Assuring the successful performance of that trust requires the work of the boards and commissions to reflect a balance between public and private interests. Current District law, codified at D.C. Official Code § 1-1162.31(f), attempts to strike that balance by providing as follows:

No public official [defined to include the members of those boards and commissions listed in Attachment 1] shall be employed as a lobbyist while acting as a public official, except as provided in [D.C. Official Code] § 1-1162.28.³

Some sister jurisdictions operate differently. At least one state prohibits lobbyists from serving on a specified commission within a year of the time they de-register as lobbyists. Another prohibits lobbyists from serving on boards and commissions at all. Yet another prohibits them from serving on particular types of boards or commissions.

The current federal administration prohibits the heads of executive departments and agencies from making any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. While the Presidential Memorandum that announced the policy acknowledged that lobbyists sometimes play constructive roles by communicating information to the government, it also stated that lobbyists’ “service in privileged positions within the executive branch can perpetuate the culture of special interest access.” The Memorandum is available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions>.

BEGA is responsible for enforcing the provisions of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (D.C. Law 19-124; D.C. Official Code § 1-11601.01 *et seq.*) that pertain to lobbyists. Given the important roles played by boards and commissions in the District government – and the public’s right to be confident that those roles not be undermined by undue influence by lobbyists or by any other source – BEGA invites public comment on the following issues:

³ D.C. Official Code § 1-1162.28(a) provides that a person need not register as a lobbyist if the person is: (1) a public official, or an employee of the United States acting in his or her official capacity; (2) a publisher or working member of the press, radio, or television who, in the ordinary course of business, disseminates news or editorial comment to the general public; (3) a candidate, member, or member-elect of an Advisory Neighborhood Commission; or (4) an entity specified in D.C. Official Code § 47-1802.01(4), whose activities do not consist of lobbying, the result of which shall inure to the financial gain or benefit of the entity.

- (1) whether lobbyists should be prohibited from serving on all District government boards and commissions;
- (2) whether lobbyists should be prohibited from serving on some boards or commissions, depending on the duties or functions of the particular board or commission or the nature of its membership. Relevant criteria might include whether the board or commission serves an advisory role, adopts rules, conducts enforcement actions, authorizes grants, engages in significant contracting, employs full-time (as opposed to part-time) members, or engages in quasi-judicial activities;
- (3) whether lobbyists should be prohibited from serving on boards and commissions within a given time period after lobbyist de-registration; and
- (4) whether lobbyists should not be prohibited from serving on any District government boards and commissions.

Comments received will assist BEGA in gauging public opinion on these issues and, in turn, better prepare it to make informed recommendations to the Council and Mayor about what form, if any, amending legislation might take.

Please be advised that BEGA will decline to publish any comment that:

- contains obscene or vulgar language, personal attacks of any kind, or offensive terms that target a specific race, color, sex, sexual orientation, national origin, ethnicity, age, religion, or disability;
- promotes commercial services or products (relevant non-commercial links are not per se prohibited);
- is off-topic; or
- makes unsupported accusations.

Comments will be accepted or rejected in whole. BEGA will not edit comments or remove objectionable content.

Please provide written comment of no more than 10 pages by October 15, 2013, to BEGA. Comments may be submitted electronically by emailing bega@dc.gov; include PUBLIC COMMENT in the subject line. Comments may also be mailed to BEGA (Attn: PUBLIC COMMENT) at 441 4th Street, N.W., Suite 830S, Washington, D.C. 20001. All comments will be posted on the BEGA website.

Alternatively, you may appear in person to offer comment at BEGA's Best Practices Symposium on October 3, 2013, at 6:00 p.m. The Symposium will be held at 441 4th Street, N.W., Suite 540S, Washington, D.C. 20001.

If you have questions regarding this Invitation for Public Comment or submission of public comment, please call (202) 481-3411.