

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY**



COUNCIL OF THE DISTRICT OF COLUMBIA

PUBLIC HEARINGS

**AGENCY PERFORMANCE OVERSIGHT HEARINGS
FISCAL YEAR 2015-2016**

**Testimony of Robert J. Spagnoletti
Chairman
Board of Ethics and Government Accountability**

**Tuesday, February 23, 2016
12:00 p.m.
1350 Pennsylvania Avenue, N.W.
Room 500
Washington, D.C. 20004**

Good morning, Chairman McDuffie and members of the Committee. I am Robert Spagnoletti, Chairman of the Board of Ethics and Government Accountability (“BEGA” or “Board”), and I am pleased to be here to update the Committee and the public on the status of BEGA and its operations. With me today are Darrin Sobin, Director of the Office of Government Ethics (“OGE”), and Traci Hughes, Director of the Office of Open Government (“OOG”), whose respective offices comprise the BEGA agency organizational umbrella.

This has been another busy year for BEGA, and I am happy to highlight the many achievements of the Board and the staffs of both offices in carrying out our core functions over the course of the performance review period. Also, looking ahead, I will note the priorities of both offices for the balance of Fiscal Year 2016.

First, on the OGE side of the house, the administration and enforcement of the Code of Conduct has continued to be job number one. I will touch on some relevant statistics shortly, but I first must mention Bill 21-250, the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015.” The bill, which was introduced by the Board at the direction of the Council, would operate to further the Council’s longstanding intent to create an independent and unified ethics scheme by consolidating the District’s government ethics laws in one place and by standardizing practices across the legislative and executive branches. As you well know, the bill is pending before this Committee, and OGE staff stands ready to assist in moving the measure on to the full Council, hopefully, by the end of this year. The Council’s passage of Bill 21-250, along with several other pending measures that also would amend the Ethics Act, would mark a major advance in government ethics reform in the District.

Now for some statistics, which I will use to summarize OGE’s accomplishments over the past year in carrying out its principal functions of administering and enforcing the Code of Conduct, providing ethics advice and training, overseeing lobbyists and government employee financial disclosure filings, and meeting publication and reporting requirements:

- OGE continues to conduct ethics training for the 34,000 plus District government workforce, including all new employees, Councilmembers and their staffs, board and commission members, ANCs, and lobbyists. OGE also conducted specialized trainings on topics such as post-employment restrictions and the local Hatch Act. In Fiscal Year 2015, the office conducted a total of 122 trainings and, in Fiscal Year 2016 thus far, it has conducted 43. According to OGE's Performance Accountability Report issued by the City Administrator, training increased by 140% from the year before.
- The plain-language District Ethics Manual, last revised in November 2014 to reflect significant changes made to Chapter 18 of the District Personnel Manual, continues to be posted on our website and also has been very widely distributed in booklet form.
- In Fiscal Year 2015 and Fiscal Year 2016, to date, OGE issued six formal written Advisory Opinions, four based on requests, and two *sua sponte*. The opinions are detailed under Tab 17 of the responses to the oversight questions. All of the opinions are posted on our website and were published, as required, in a timely manner in the *D.C. Register*.
- Informal ethics advice to employees who called or emailed ramped up substantially in the last year. In Fiscal Year 2015, this totaled 681, and thus far in Fiscal Year 2016, 300. This advice is recorded in a BEGA internal database to ensure consistency of the informal advice-giving function. According to our Performance Accountability Report, the City Administrator tracks this at a 180% increase from the previous year.
- In Fiscal Year 2015 and Fiscal Year 2016, to date, OGE initiated 90 investigations and closed 79. Of the closed investigations, 23 resulted in negotiated dispositions, with fines ranging from \$200 to

\$15,000 and totaling \$55,200. Enforcement actions concerned matters such as misuse of government resources, including emails with signature blocks and misuse of Fleet Share vehicles, financial conflicts of interest, gifts from prohibited sources, failure to cooperate with an OGE investigation, and a Donations Act violation. The individuals involved included high level officials, such as a former agency head, a chief-of-staff, and a regulatory board member, as well as mid- and low-level employees. As required by the Ethics Act, quarterly reports list all of our investigations and include, for each, a description of the allegations, status, and any resulting dispositions. All final contested decisions, as well as negotiated dispositions, are posted on the BEGA website.

- Lobbyist registration and activity reporting continued to be handled successfully. A total of \$109,410 in registration fees for Fiscal Year 2015 and Fiscal Year 2016, to date, were recorded and deposited in the appropriate account. We also issued fines to lobbyists who filed late or failed to file required reports. To date, we have collected \$3,650 in lobbyist fines.

Our vendor updated the lobbyist electronic filing system last year, so that registrants can pay late filing fines online and receive electronic receipts for payment of fees and fines. The system now also includes training screens and FAQ links to the e-filing system, as well as a “contact BEGA” button. It also allows lobbyists to attach supplemental documents to the lobbyist activity reports. In Fiscal Year 2015, we gave out informal advice on 53 lobbyist matters.

- In terms of financial disclosure statements (FDS), in Fiscal Year 2015, OGE handled filings for 2,215 filers, and staff gave out informal advice on 64 FDS matters.

- On October 15, 2015, the Board held its fourth annual public symposium. The symposium, entitled “Follow the Money: Improving Ethics Oversight of Contracting with the District Government,” was again held at the University of the District of Columbia David A. Clarke School of Law and moderated by Dean Shelley Broderick. The panelists, in addition to Director Sobin, were Daniel Lucas, D.C. Inspector General, George Schutter, the District’s Chief Procurement Officer, and Patrick Madden, an investigative reporter for WAMU. We also received useful input from those in attendance.
- On December 31, 2015, the Board issued its annual Best Practices Report (“BPR”). The report, which is required by the Ethics Act, is posted on our website along with all the previous BPRs, but last year took a different tack for two reasons. First, given the number of pending bills that incorporate many of the Board’s earlier BPR recommendations that have yet to see Council action, we decided simply not to repeat them. Second, playing off the theme of the fall symposium, the report served to forecast BEGA’s future role in government contracting as the subject of this year’s BPR.
- On the personnel front, we want to thank the Council for fully funding our requests for an additional attorney and administrative professional in recent budgets. We recently experienced the unanticipated departure of an attorney, whose responsibilities included local Hatch Act matters and coordinating ethics training requests. Given the proximity to an election and our demand for ethics training, we will be filling this position promptly. During Fiscal Year 2016, we will be increasing our examination and auditing of lobbyist activity and financial disclosure filings. It is too soon to determine whether our existing staff will be able to absorb the increased workload that typically comes with such additional scrutiny, which, depending upon the findings, may trigger the need for further investigation.

- The Board held its twelve statutorily required monthly meetings in calendar year 2015 and, thus far in calendar year 2016, has held two. In addition, the Board held one special meeting which was convened to conduct a contested hearing in a case that was ultimately resolved with a negotiated disposition.

For the rest of Fiscal Year 2016, OGE has identified the following priorities:

- Support the passage of Bill 21-250 and, after that, begin implementation of the Comprehensive Code of Conduct (“CCC”), to include training all ethics counselors, revising and republishing the District Ethics Manual, and modifying the OGE database of formal advice opinions to ensure consistency with the CCC.
- Improve and expand all aspects of ethics training, to include producing a training video for employees, developing remote access training modules, further increasing the library of ethics presentations to include specialty topics such as post-employment and outside activities, and focusing on train-the-trainer efforts intended to allow ethics counselors to provide ethics training directly to agency personnel.
- Increase to at least ten the number of audits of lobbyist activity report, using a recently implemented auditing protocol designed by an OGE employee.
- Actively enlist the assistance of agency officials to further increase compliance with employees’ financial disclosure requirements and consider auditing those agencies thought to be deficient in their designation and reporting obligations.
- Establish an internal searchable database of informal advice given in the past, so that OGE legal staff will be better able to provide advice quickly and consistently.

As for OOG during the review period, the office issued a binding opinion requiring the Deputy Mayor for Education to make public the meetings of the Cross-Sector Collaboration Task Force. The Deputy Mayor had originally announced that the meetings of the task force would not be open to the public, but the opinion called for a reversal of course. Meetings of the task force are now listed on the BEGA general calendar.

OOG issued a FOIA opinion finding DCRA out of compliance with the mandatory disclosure provisions of FOIA. However, on a positive note, the agency immediately sought FOIA training and also is reviewing internal policies as recommended in the opinion.

OOG is called upon regularly via the Department of State to advise officials about open government best practices. In Fiscal Year 2015, for example, Director Hughes met with international delegations from Thailand and Sao Paulo, Brazil. The Department of State also arranged an interview of Director Hughes with the program 24 News Macedonia for a documentary on open government best practices. Additionally, Director Hughes met with transparency advocates from the Ukraine, as well as corporate executives from Japan who were seeking to learn more about OOG.

And, on a more personal level, Director Hughes was chosen to present her paper entitled *District of Columbia Advancements in Government Transparency and Recommendations for a Sustainable Shift to Openness* at the Smart City Expo World Congress in November of 2015. The Congress is a yearly gathering of the world leaders in innovation and open government.

For the balance of Fiscal Year 2016, OOG's main priority will be to begin enforcement proceedings against public bodies for violations of the Open Meetings Act ("OMA"). Since 2013, OOG has been educating members of the District's public bodies on the requirements of the OMA and providing the members with the means to comply with the law, especially through a central calendar maintained by the office on its website for the posting of all meetings notices, including agendas, records, etc. Director Hughes and OOG's newly hired Attorney Advisor will now start to conduct random audits of public body meetings and, with the hoped for passage of Bill 21-577, the "Strengthening Transparency and Open Access to Government Amendment Act of 2016," initiate enforcement actions without the necessity of a complaint by a member of the public.

In sum, OGE and OOG have accomplished much in the past year and look to do even more over the rest of Fiscal Year 2016. However, it will take a joint effort with the Council to ensure that those offices can continue to meet their many responsibilities. Key to that effort is the passage of Bill 21-250 and Bill 21-557, and, on behalf of the Board, I pledge BEGA's organizational commitment to assist the Council, where needed, to see that those measures become law. Clearly, such a result would better equip OGE and OOG – and BEGA as a whole – to work toward a more open and accountable District government.

Thank you. I am pleased to answer any questions the Committee may have, as are Directors Sobin and Hughes.