

New D.C. Ethics Agency Gets Tough With D.C. Councilmembers Over Gifts, Conflicts of Interest

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Although the District of Columbia's newly created Board of Ethics and Government Accountability (BEGA) has been in existence for only a little over a year, it has already become a force to be reckoned with in a city that has experienced more than its fair share of ethics scandals. Recently, two major matters involving BEGA and two D.C. Councilmembers came to a close. In the first matter, BEGA ultimately prevailed in a lawsuit filed against the agency by a reprimanded councilmember seeking to challenge the agency's authority. In the second, BEGA levied its most significant fine to date, sending a clear signal that it will strictly enforce the city's ethics law. Both of these matters are discussed in greater detail below.

D.C. Superior Court Upholds BEGA's Authority

In July 2013, the D.C. Superior Court denied a petition for review filed by Councilmember Jim Graham challenging BEGA's authority to issue a letter of public reprimand without providing him the opportunity to review investigatory materials and present evidence in his defense. The lawsuit stems from a February 2013 opinion in which BEGA publicly reprimanded Councilmember Graham for violating D.C. ethics law by intervening in a 2008 government contracts dispute. According to BEGA, Councilmember Graham offered to support a businessman's bid for a D.C. lottery contract in exchange for the businessman's withdrawing his bid from an unrelated real estate deal involving land owned by the Washington Metro Area Transit Authority (WMATA). At the time, Graham not only was a D.C. Councilmember, but also served on WMATA's board of directors.

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

Given that the conduct at issue took place in 2008—several years before the District's current, more stringent ethics law was enacted—BEGA opted not to formally investigate or sanction Councilmember Graham out of concern that such actions would violate the *ex post facto* clause of the U.S. Constitution. Instead, BEGA voted to publicly reprimand Councilmember Graham by issuing a 27-page opinion on the matter. The issuance of this opinion prompted the D.C. Council to separately reprimand Councilmember Graham shortly thereafter under the body's own rules.

In response to BEGA's opinion, Councilmember Graham filed a lawsuit against BEGA in D.C. Superior Court asking for a temporary restraining order to prevent BEGA from publicly issuing its opinion and petitioning for review of BEGA's authority to issue the opinion. Councilmember Graham alleged that BEGA acted contrary to the law and its own rules by issuing the public reprimand, and violated his due process rights by failing to provide him the opportunity to review the investigative documents and present evidence to BEGA prior to its issuance of the opinion.

Although the D.C. Superior Court immediately denied Councilmember Graham's motion for a temporary restraining order, it only recently ruled on the underlying issues of whether BEGA had the authority to issue the public reprimand and denied Councilmember Graham's due process rights. The D.C. Superior Court ultimately ruled in favor of BEGA on both issues. This decision is widely considered to be a major victory for BEGA, and it further legitimizes the fledgling agency.

BEGA Levies \$13,600 Fine for Gift Rule Violation

In July 2013, BEGA censured and fined D.C. Councilmember Marion Barry \$13,600 for accepting gifts from city contractors in violation of the District's ethics law. Although Councilmember Barry disclosed the gifts on a recent personal financial disclosure report, he reportedly did not disclose the gifts to the D.C. Council and did not abstain from voting on two matters before the council related to these city contractors in further violation of D.C. ethics law. The D.C. Council subsequently censured Councilmember Barry under its own rules for accepting these gifts.

BEGA's fine, which represents twice the value of the illegal gifts received, is the largest fine that the agency has levied thus far. D.C. ethics law prohibits city officials and employees from soliciting or accepting gifts from any person who has or is seeking contractual or other business or financial relations with the District. The law also establishes certain conflict-of-interest rules, which likely would have prevented Councilmember Barry from voting on the matters concerning the two city contractors at issue, even if the gifts were legal.

For his part, Councilmember Barry has agreed to pay the fine and recently recused himself from voting on two contract modifications concerning one of the city contractors involved.

As these two matters demonstrate, BEGA intends to rigorously enforce the District's ethics laws. BEGA also appears to be taking proactive steps to prevent future ethics scandals, as demonstrated by the agency's recent issuance of an advisory opinion detailing how elected officials and their staff may assist their constituents within the bounds of D.C. ethics law. City contractors and lobbyists should be mindful of the new agency's enforcement stance and, when in doubt, seek guidance concerning the District's gift and conflict-of-

interest rules.