

DeKalb County Board of Ethics

Location: Conference Room A, Clark Harrison Building
Date of Meeting: 11/13/2014 Time of Meeting: 6:30pm

Minutes

Members Present:

John Ernst, Chair
Edwinett Murphy, Secretary
Clara Black DeLay
Susan Neugent
Robert Blackman
Bobbie Sanford
Thelma Grier

Board Affiliates Present:

Gene Chapman, Board Counsel
Jennifer Johnson, Administrative Assistant
Robert Browning, Investigator
Victor Hartman, Investigator

Attendees who signed the attendance roster:

Tony Nastri
Mark Niesse
Mike Cooper
Aja Pascale
Tom Owens
Nadine Ali
Ann H. Brown
Rhea Johnson
Viola Davis
Ruby B. Davis
T. Phillips

I. Call to Order

John Ernst, Chair, called the meeting to order at 6:40 p.m.

II. Welcome

III. Adoption of the Agenda

The Agenda was reviewed. Bobbie Sanford moved for Old Business to precede New Business as prescribed by Robert's Rules of Order. Susan Neugent seconded the motion. John Ernst called for a vote. The motion passed with a vote of 5-2. John Ernst and Robert Blackman voted against the motion. Thelma Grier proposed adding Item F to New Business, Selection and Hiring Process for Administrative Assistant, and Item G to New Business, Discussion of Budget Items while in

Executive Session. John Ernst called for a motion to approve the agenda with additions. Bobbie Sanford moved for approval and the motion was seconded by Thelma Grier. John Ernst called for a vote. The vote was 6-1 in favor of approving the agenda with additions. Robert Blackman voted against the motion.

IV. **Review and Approve Work Session Minutes and Meeting Minutes from October 13, 2014**

The Work Session Minutes from October 13, 2014 were reviewed. Clara DeLay noted that in Paragraph A, the minutes should note that she recused herself from the work session "to avoid the appearance of a conflict of interest." She also suggested that the minutes should present more detail regarding Susan Neugent's presentation regarding a framework and line items for functions the Board should perform. Thelma Grier suggested that the Board attach a copy of Susan's presentation as Exhibit A to the minutes. Clara DeLay suggested that in Paragraph B, the phrase "general consensus" was inaccurate since no votes were taken while in Work Session and that the term "discussions" more accurately reflected the facts. Bobbie Sanford noted that she had stated that the Board should proceed with due speed to hire an Integrity Officer and an administrative assistant in order to do away with the need for the Board's counsel to perform these tasks. Thelma Grier moved to table approval of the minutes and Clara DeLay seconded the motion. John Ernst called for a vote. The six members voted in favor of the motion to table approval of the minutes of the work session. Susan Neugent voted against the motion. The motion passed with a vote of 6-1.

The Minutes from the regular meeting on October 13, 2014 were reviewed. Clara DeLay noted that her comments recorded in V.A.1. should reflect that she stated that she was concerned that the complaint against an individual and the investigation process can become a fishing expedition. Typographical errors were noted in Section VI.C., which should refer to VI.B., and Sections VI. and VII., which should be Sections VII. and V.III., respectively. Thelma Grier asked that a copy of the meeting minutes from September 15, 2014 be sent to her. Susan Neugent moved for approval of the minutes with corrections. Bobbie Sanford seconded the motion. John Ernst called for a vote and the motion passed unanimously.

V. **Old Business**

A. Final hearing – complaint of Thomas Owens against Elaine Boyer. Attorney Anne Lewis, who represents Ms. Boyer, explained the response she filed the day prior to the meeting and the proposed Consent Order prepared by Mr. Chapman. As set forth in Ms. Boyer's response, she admits that she violated Section 22A(c)(4) and (7). Ms. Lewis asked the Board to vote to accept the Consent Order with certain changes; i.e. note that was dismissing the allegation regarding bribery since there was no allegation or evidence to support it; change the title of the document to "Consent Order;" and place Ms. Boyer's name on the signature line. Thelma Grier asked Ms. Lewis to explain the definition of a Consent Order. Bobbie Sanford asked why Ms. Boyer had not signed the Consent Order prior to the meeting and Ms. Lewis stated she had just received a copy that afternoon. Susan Neugent moved to approve the Consent Order and Robert Blackman seconded the motion. Further discussion took place prior to the vote. Thelma Grier asked for time to review the Consent Order prior to a vote. The Board recessed at 7:31 p.m. and reconvened at 7:39 p.m. Clara DeLay noted typographical errors in paragraphs 1 and 5. Clara also suggested changes in the first sentence to remove the inference that the Board could take action only with Ms. Boyer's consent. Thelma Grier also made suggestions to change the wording of the Consent Order. Susan Neugent moved to approve and accept the Consent Order

with the suggested changes. Robert Blackman seconded the motion. John Ernst called for a vote and the motion passed unanimously.

B. Requests for advisory opinions.

1. Anthony Nastri. The Board considered action on Mr. Nastri's request for an advisory opinion. Anthony Nastri was present at meeting and gave his explanation of his request. The members of the Board discussed the issue and asked questions for Mr. Nastri to answer. Mr. Nastri withdrew his request for advisory opinion.
2. David White. The Board noted that advisory opinions are for prospective conduct and Mr. White's request made allegations of past conduct. Robert Blackman moved to decline to issue an advisory opinion and Clara DeLay seconded the motion. The Board voted unanimously in favor of the motion.
3. Discussion regarding proposed advisory opinion pertaining to selection of new members. Members questioned the need for an alternative for the current selection of new members and also suggested that the organizations set forth in the proposed advisory opinion was not acceptable. Susan Neugent moved to table the discussion and Clara DeLay seconded the motion. The motion passed unanimously.

C. Tree Creek Condominium Association complaint against Burrell Ellis and Joel Gottlieb. Robert Browning reported that he is still seeking to identify a person or persons who actually ordered the meter to be replaced prior to the performance of the independent inspection. Susan Neugent suggested that the Board make the statement to the Watershed Department that a wrong was done to TCCA and that it should make a good faith gesture to TCCA in the form of a credit to the account and restore TCCA to its old billing cycle. Bobbie Sanford made a motion that the Board should write a letter to the Watershed Department to do the right thing. There was no second to the motion. Thelma Grier moved to table the matter to get additional information. Susan Neugent seconded the motion. John Ernst called for a vote. The motion passed with a vote of 5-2. Bobbie Sanford and Robert Blackman opposed the motion.

D. Status reports – pending matters

- a. - m. Gene Chapman reported that these matters are still being investigated and the investigators should be ready to report at a preliminary hearing in the near future. Edwinett Murphy asked what was being done in the investigations. Vic Hartman reported his activities in the matters. The question arose as to whether the Robert Lundsten matter could be ready by mid-December. Mr. Hartman stated that he was still in conversations with Mr. Lundsten's attorney and he would be able to make that determination shortly.

VI. **New Business**

- A. Discussion – conflicts per Section 22A(i)(1). Gene Chapman brought this matter to the attention of the Board to discuss the part of the Code of Ethics which prohibits the appointment of a person to serve on the Board of Ethics if he/she has, or has had, within the immediately preceding two-year period, any interest in any contract, transaction, or official action of DeKalb County. Gene indicated that members of the public had questioned whether any of the members were in violation of this prohibition. Gene also indicated that his research had showed that the original author of the legislation had opined to an earlier Board of Ethics that the prohibition applied only to those being considered for a position on the Board rather than to the ability of current members to serve concurrently on a board or authority in addition to the Board of Ethics. Clara DeLay suggested that all members complete a disclosure form which the Board has approved.

- B. Discussion – proposed advisory opinion regarding BOE clarifying seats and terms. Gene Chapman presented the BOE with a proposed advisory opinion to address the issue of identifying the seats and applicable terms of individual members. During the discussion of the issues, Bobbie Sanford stated that she occupies Seat 5, Edwinett Murphy stated that she occupies Seat 6, John Ernst stated that he occupies Seat 7, and Susan Neugent indicated she would occupy Seat 3. Thelma Grier stated that her term expires on 12/31/16 per the letter she possesses. Thelma Grier moved to table the consideration of the advisory opinion and Bobbie Sanford seconded the motion. John Ernst called for a vote and the Board voted 3-3-1. Clara DeLay, Bobbie Sanford, and Thelma Grier voted in favor, Robert Blackman, John Ernst, and Susan Neugent voted against, and Edwinett Murphy abstained. Susan Neugent moved to adopt the advisory opinion. The motion was not seconded.
- C. Elections. John Ernst turned the Chair over to Gene Chapman to conduct the election of the Chair. Gene Chapman called for nominations for Chair. Bobbie Sanford nominated Clara DeLay. Robert Blackman nominated John Ernst. Gene Chapman asked for other nominations. Thelma Grier stated her opinion that John Ernst should recuse himself from voting. There being no other nominations, Gene called for a vote for Clara DeLay as Chair. Clara DeLay, Thelma Grier, and Bobbie Sanford voted for Clara. Gene Chapman called for a vote for John Ernst as Chair. Robert Blackman, Edwinett Murphy, Susan Neugent, and John Ernst voted for John. John Ernst was elected Chair. John Ernst called for nominations for Vice-Chair. Bobbie Sanford nominated Clara DeLay. Susan Neugent nominated Thelma Grier, but Thelma declined the nomination. John Ernst called for a vote and Clara was elected Vice-Chair by unanimous vote. John Ernst called for nominations for Secretary. John Ernst nominated Edwinett Murphy and Bobbie Sanford nominated Thelma Grier. There being no other nominations, John Ernst called for a vote. Robert Blackman, Edwinett Murphy, Susan Neugent, and John Ernst voted for Edwinett. Clara DeLay, Thelma Grier, and Bobbie Sanford voted for Thelma. Edwinett Murphy was elected Secretary.
- D. Schedule for meetings in 2015. The Board proposed the dates for its quarterly meetings to occur on 2/12/15, 5/14/15, 8/13/15, and 11/12/15. Robert Blackman moved to approve the dates and Edwinett Murphy seconded the motion. The motion passed with a vote of 6-0-1, with Bobbie Sanford abstaining.
- E. New complaints
1. Two complaints against Board of Ethics by Rhea Johnson. Gene Chapman reported that the complainant alleges the Board of Ethics violated the Code of Ethics by utilizing a county employee from the County Attorney's Office as its administrative support person. The Board also considered Mr. Johnson's complaints against the Board for allowing its records to be maintained in the County Attorney's Office by its administrative support person. The members of the Board recused themselves from considering the complaints so the question of jurisdiction of the complaints failed for lack of a motion.
 2. Complaint against John Ernst by Robert Lundsten. John Ernst recused himself and left the room. Gene Chapman reported that the complainant alleged that John Ernst had participated in media interviews and made statements that indicated he had prejudged Mr. Lundsten's pending matter. Gene stated that if the allegations are true, Mr. Ernst will need to recuse himself from presiding over Mr. Lundsten's matter. Gene also stated that subject matter jurisdiction over the complaint is a very close question because there is nothing in the text of the paragraph Mr. Lundsten alleges Mr. Ernst violated that applies to the facts Mr. Lundsten alleges. Vice-Chair DeLay asked to hear from Mr. Lundsten. Mr. Lundsten made

a statement in which he alleges John Ernst violated the Code of Ethics, he should recuse himself from all proceedings with the BOE, and he should be removed from his seat on the BOE. After further discussion, Thelma Grier moved to accept jurisdiction of the complaint and Bobbie Sanford seconded the motion. Clara DeLay called for a vote. The motion passed with a vote of 4-1. Susan Neugent, Clara DeLay, Thelma Grier, and Bobbie Sanford voted in favor of the motion and Robert Blackman voted against the motion. Edwinett Murphy did not participate in the vote as she had to leave the meeting at 9:35 p.m. John Ernst did not participate in the vote.

- F. Selection/hiring process of administrative assistant – Thelma Grier expressed her concern that the Board had circumvented its procedures in hiring its administrative assistant. Gene Chapman stated his recollection that the Board had asked him to screen applicants and bring candidates to a committee of Thelma, Edwinett, Robert, and Jay. Due to schedules and conflicts, only Robert and Edwinett had been able to attend the interviews. Thelma reiterated her displeasure that the procedures had not been followed. John Ernst called for a motion to ratify the committee's action. Robert Blackman so moved and Susan Neugent seconded the motion. John Ernst called for a vote and the motion passed by a vote of 5-0-1. Thelma Grier abstained and Edwinett Murphy was absent.
- G. Discussion of dispute as to propriety of discussion in Executive Session. Thelma Grier expressed her opinion that the Board had improperly discussed a budget item while in Executive Session. In particular, she thought the discussion regarding counsel's increase in compensation was a budget item which the Board should discuss in public. John Ernst expressed his opinion that the issue of compensation was a personnel matter and was properly discussed in Executive Session. Counsel for the Board indicated that the issue of compensation was a budget item which would be a public discussion. Thelma Grier moved to rescind the increase in compensation to Counsel until a public discussion and a vote could be taken in public. Bobbie Sanford seconded the motion. John Ernst called for a vote and the vote was 3-3. Thelma Grier, Bobbie Sanford, and Clara DeLay voted in favor of the motion and John Ernst, Robert Blackman, and Susan Neugent voted against the motion. Edwinett Murphy was absent. The motion did not pass. Thelma Grier asked to review a copy of Executive Session minutes and meeting minutes to determine whether a vote was taken. Executive Session minutes were not available. Meeting minutes did not reflect a vote regarding compensation so an increase in counsel's compensation should not take effect until there is public vote. Thelma stated that the minutes of Executive Session should be made public. John Ernst proposed placing the item on the next agenda.

VII. **Closing Remarks**

Edwinett Murphy had to leave the meeting at 9:35 p.m. Robert Blackman voiced his concern about the significant delay in resolving pending complaints. Clara DeLay stated that the integrity of the Board's proceedings required deliberate discussion of all the issues.

VIII. **Adjournment**

There being no further business, the Chair called for a motion to adjourn. Robert Blackman moved for adjournment and Bobbie Sanford seconded the motion. The motion passed with a unanimous vote of 6-0. The meeting was adjourned at 10:10 p.m.

Chair 

Date 2/27/15