

**Louisville/Jefferson County  
Metro Government  
Ethics Commission**

**Annual Report**  
**July 2012-June 2013**

**To Mayor Greg Fischer and the Louisville Metro Council**

The members of the Louisville Metro Ethics Commission respectfully present the third Annual Report on the activities of the Metro Ethics Commission since passage of major amendments to the Ethics Ordinance in March 2010.

This third year has presented the Ethics Commission with new opportunities and challenges, and we have strived to carry out the policies and procedures mandated by the Ethics Ordinance to the best of our abilities. We believe we have met the Metro Council challenge to handle complaints and hearings in a fair and timely way, ensuring the credibility of the Commission as we move into the future.

We are proud to support the Metro Council's aspirations to make Metro Government an organization worthy of the trust and confidence of its citizens, and Mayor Fisher's dedication to transparency and accountability in all the actions of our government officials. We look forward to building on the work of the Metro Mayor and Metro Council to make the Ethics Commission an effective and integral part of good government in the Louisville Metro community.

We thank you for your continuing support.

Respectfully submitted

Jonathan Ricketts, Chair  
Louisville Metro Ethics Commission

Ms Thelma Clemons  
Mr. Terry Conway  
Mr. Skip Daleure

Ms. Susan Rhodes  
Ms. Vickie Tabler  
Ms. Enid Trucios-Haynes

## **Introduction**

Fiscal Year 2012-2013 was a challenging year for the Ethics Commission, defined primarily by the work associated an ethics complaint against Councilwoman Barbara Shanklin in July 2012. The Commission investigated the allegations made in the complaint and on August 22, 2012 found probable cause to believe violations of the Ethics Ordinance had occurred. On August 28, 2012 the Commission issued a Notice of Hearing describing its charges and setting three days for the hearing in November. Those proceedings concluded on August 1, 2013.

During the hearing the Commission ceased its work on routine matters until the conclusion of the Metro Council removal trial and the appeal of the Commission's ruling.

In FY 2013-14 the Commission will resume work on amendments recommended in last year's report and presented to the Council last year. These changes and other issues that have arisen in the past year will be described in the Commission's recommendations for the coming year following reports on the activities of the Commission within its four major duties:

1. Training metro officers and filing financial disclosures
2. Conducting regular and special meetings
3. Issuing advisory opinions
4. Hearing and deciding complaints

## **TRAINING OF METRO OFFICERS AND FINANCIAL DISCLOSURES**

The Commission's administrative staff keeps records of all participation in training sessions, but Metro Government Human Resources Training Division on behalf of the Commission, conducts the training. The Commission recommended in its 2011 Annual Report that the Ordinance be amended to reflect this arrangement, and the Council agreed.

In addition to tracking compliance with training requirements, the Commission staff also monitors the filing of financial disclosure statements. Staff is currently working to provide access to requested disclosures on-line, and to amend its regulations regarding timely disclosure.

The Commission has not encountered any significant problems in obtaining compliance from Metro officials with training and disclosure requirements.

## **MEETINGS OF THE COMMISSION**

The Commission established its regular meeting date as the third Thursday of each month. The Commission met in 7 regularly scheduled meetings, and 6 special meetings in FY 2012-2013. There was a quorum present for all Commission meetings, and no member has been absent without excuse from more than two meetings.

The meetings dates of the Commission during FY2012-2013 were as follows:

|                                      |                                     |
|--------------------------------------|-------------------------------------|
| July 26, 2012                        | December 20, 2012                   |
| August 22, 2012                      | February 21, 2013 (Special Meeting) |
| September 13, 2012 (Special Meeting) | March 6, 2013 (Special Meeting)     |
| September 20, 2012                   | March 14, 2013 (Special Meeting)    |
| October 25, 2012                     | May 13, 2013 (Special Meeting)      |
| October 30, 2012 (Special Meeting)   | May 16, 2013                        |
| November 15, 2012                    |                                     |

In addition to regular and special meetings, the Commission also met to hear 12-C-14 over three days on November 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup>.

## **OPINIONS**

Advisory opinions are requested of the Commission in accordance LMO §21.05(B)(2). A form for requesting these opinions is available on the Commission's web site. Advisory opinions are issued based upon the information provided on the form by the requestor and can be tabled for a future meeting for further inquiry if all facts are not presented or known. Advisory opinions are addressed in open meetings, and the opinion is based upon a decision of a majority of Commission members present at the time the matter is heard. The request, discussion and opinion are reflected in the minutes of the Commission for the month in which the matter is heard.

The Commission responded to requests for advisory opinions, one from agency directors (D) and 6 from Metro Council Members (C). A brief synopsis of the opinions is listed below. The synopsis is not intended to be precedential in nature.

### **Advisory Opinion 12-C-001**

Appointment of a Councilmember's spouse to a District Police Citizen Board by the district commander would not violate the Ethics Ordinance because spouse's service on the board would not be a direct benefit to the Councilmember.

### **Advisory Opinion 12-C-002**

Accepting a cash award from a non-profit in recognition of leadership on issues is not a violation of the Ethics Ordinance as §21.02(F) states: "No Metro officer shall be prohibited from giving or receiving an award publicly presented in recognition of public service."

### **Advisory Opinion 12-C-003**

Councilmember's employment of a grandfather and grandson does not violate §21.02, the anti-nepotism section because the related employees do not supervise each other but are instead both supervised by the Councilmember.

### **Advisory Opinion 12-C-004**

An opinion was requested regarding acceptance and distribution of tickets to a dramatic performance to constituents by Councilmembers who funded the performance. Discussion tabled pending further information.

### **Advisory Opinion 12-C-005**

It would be a violation of the Ethics Ordinance for a Councilmember to solicit employment based on experience and knowledge obtained through use of the Councilmember's office under §21.02 (D) and (I).

### **Advisory Opinion 12-C-006**

It is not a violation of the Ethics Ordinance to submit a letter of recommendation for the son of a friend seeking employment from Metro Government that will occasionally have business before the Metro Council.

**Advisory Opinion 12-D-001**

It is not a violation of the Ethics Ordinance if a Metro Officer directs federal grants funds to an organization governed by a board on which the Officer serves if the terms of the grant require funds pass-through to that organization, and other entities have an opportunity to participate in the federal program.

**COMPLAINTS 2012**

**Complaint 12-P-001, 12-P-002, 12-P-003, 12-P-004, 12-P-005 and 12-P-006** were dismissed as untimely.

**Complaint 12-P-007, 12-P-008, 12-P-009, 12-P-010, 12-P-011 and 12-P-012** were dismissed for lack of probable cause under the Ordinance.

**Complaint 12-P-013** was dismissed for lack of probable cause, and referred to the Commonwealth Attorney as the complaint may have been filed in bad faith or with malice.

**Complaint 12-P-014** is discussed below.

**HEARINGS AND DECISIONS**

The Commission heard one complaint in FY 2012-13, Complaint 12-P-14. The complaint was filed on July 11, 2012 by Richard Beliles of Common Cause, and alleged that published reports describing actions by Councilwoman Barbara Shanklin could be violations of the Ethics Ordinance. After requesting and receiving an extension of time to file a response to the complaint, Respondent Shanklin filed a motion to dismiss, arguing that citizen complaints must be based on first-hand personal knowledge and observation of the actions constituting violation.

The Commission overruled the motion to dismiss, and conducted a probable cause investigation of the complaint. After response from the Complainant, the Commission found probable cause to believe the Councilwoman's actions may have violated LMO §21.02 (B), (C), (D), §21.03(C), and §21.04(B) and (C). The Commission issued a Notice of Hearing setting a date for hearing the complaint, and appointing Hon. Ann Sheadel to serve as Hearing Officer and attorney Jim Earhart as prosecutor.

Shanklin then moved that the Commission recuse itself from the hearing, citing a hearsay report of a prejudicial comment from a Commission member, lack of response to a phone call to the Chair on a holiday weekend, and a three-day delay in mail service of a document read into the Commission record in a meeting attended by Respondent counsel. The Hearing Officer denied the motion, stating that Shanklin had failed to produce sufficient evidence to warrant an argument on the motion.

The hearing commenced on November 6, 2012 and continued for three days as seven witnesses testified and 30 documents were admitted into evidence. All members of the Commission were

in attendance, while Councilwoman Shanklin left the proceedings when called upon to testify. She returned the following day, but relied on constitutional protection against self-incrimination to decline answering all but a few questions.

When both attorneys and the Hearing Officer filed their recommendations for Findings of Fact, Conclusions of Law and Final Orders, thereby closing the record of the hearing, the Commission began deliberations. The Commission met in four separate adjudicative sessions, and issued its 54-page ruling on March 14, 2013. The Commission found unanimously that, based on the evidence presented, Councilwoman Shanklin had intentionally violated LMO §12.02(B), (C), 21.03 (C) and §21.04(C). The Commission's final order recommended that the Metro Council begin removal procedures.

Councilwoman Shanklin sought relief from the Circuit Court through a variety of procedural issues during the Commission's deliberations and after the final order was issued. She first sought an injunction against the Commission to stop deliberations and re-open the Commission proceedings. The Motion failed. Councilwoman Shanklin then filed an appeal of the Commission's ruling, and moved the court to stay the Metro Council removal proceedings until the appeal was decided. The Court declined to do so, and the appeal was later dismissed when Councilwoman Shanklin was unable to cite a single error in the Commission proceedings.

The Shanklin case afforded an opportunity to test recent amendments to the Ethics Ordinance in 2012 that gave the Commission more discretion in balancing the need for timely action with the need to ensure due process. As it turned out, these amendments came just in time for contentious litigation on almost every step in the hearing process. With these amendments in place, the Commission was able to keep the process on schedule despite repeated effort to derail it.

It is worth noting here that, despite continued and vociferous challenges to the Ethics Ordinance before the Commission, the independent Hearing Officer, and the Circuit Courts for lack of due process, no objection or motion for relief was sustained.

## **WEBSITE**

The Commission is aware of the need to provide more public outreach and education on the work of the Ethics Commission. In the coming year the Commission will work closely with staff in Human Resources to develop the Commission website as a resource to citizens and professionals seeking information. The Commission will develop materials explaining the process and the requirements for filing complaints, post all Commission findings, decisions and actions taken in recent hearings, and compile advisory opinions in such a way that opinions can be easily searched.

## RECOMMENDATIONS

In its FY2012-2013 Annual Report, the Ethics Commission made recommendations for amendments to the Ethics Ordinance that were favorably received by the Metro Council and adopted in March 2012. During the amendment process, in meetings with the Government Accountability and Ethics Committee, the Commission heard the Council's concerns about the high number of frivolous and incompetent complaints, and offered to create an administrative review process to review such complaints before they were accepted.

The Commission immediately began working with the County Attorney's Office on draft language, but put this and other changes aside in July 2012 when allegations of ethical violations were made against a Metro Council member. With the conclusion of the Council trial, the Commission has resubmitted its drafts to the County Attorney for review and the Council for consideration. The Commission has also offered draft language to clarify the difference between using public resources for "political" activity, which could include the legislative process, and "electioneering", which is more narrowly interpreted as applying to campaigning for political office.

New issues for the coming year, however, depend on or react to state legislation. First, the recent passage of HB 1 requiring all independent taxing districts to adopt their own Ethics Codes may require amendments to the Ethics Ordinance. The County Attorney and Mayor have determined that the Metro Ethics Commission will not be required to enforce those codes as it enforces the Metro Louisville Ethics Ordinance, so the Commission should not need additional resources to meet that challenge. The Commission will continue its discussions with the Mayor's office on amendments necessary to comply with HB 1.

Second, members of the Jefferson County Legislative delegation intend to reintroduce legislation to grant subpoena powers to the Metro Ethics Commission. While such action was recommended by the Commission a year before the Shanklin case began, the progress of the case demonstrated the importance of subpoena power to the Commission. While the Commission was able to discover facts freely from public documents and Metro officials, many questions raised in the hearing could not be answered because the Commission could not compel witnesses to appear and testify.

As a result, when the Commission recommended to the Council that a removal trial be held, the Commission specifically cited the Metro Council's subpoena power as necessary to complete the fact-finding process. Using those powers, the Metro Council was able to sustain charges the Commission could not find evidence to support.<sup>1</sup>

It is obvious that this situation can, and most likely will, arise in the future. If it happens with a Metro officer *not* subject to removal, the Commission will not have to resort to another body with subpoena powers. And if it happens with a Councilmember, the Metro Council will once again be forced to discover and re-try the facts that should have been presented at hearing before the Commission.

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<sup>1</sup> While the Metro Council fell one vote short of removal, a majority of the Council did find violations of the Ethics Ordinance.

If the Ethics Commission is granted this power, the Commission will work closely with the Council on amendments to the Ordinance and new regulations on use of subpoena power.