

Bainbridge Island Ethics Board
Ethics Complaint 2011-01
Preliminary Determination
September 19, 2011

On September 9, 2011, Kim Hendrickson, who has served as Secretary/Chief Examiner of the Bainbridge Island Civil Service Commission (CSC), submitted an Ethics Complaint alleging that the CSC Commissioners had met with Bainbridge city employees in violation of the Open Public Meetings Act (OPMA, RCW 42.30) and the Code of Ethics of the Bainbridge Island Ethics Program. More specifically, the Ethics Complaint alleges that the three CSC Commissioners met privately with the City Attorney on May 26, 2011, and the City Manager on May 31, 2011, to discuss reorganizing the position of the CSC's Secretary/Chief Examiner. The Ethics Complaint is directed at two Commissioners, David Hand and George McKinney, but not at Commissioner Robert Fernandez, who later self-reported the meetings, nor at the city employees who attended the meetings.

The City Clerk transmitted the Ethics Complaint to the Ethics Board for review pursuant to section III.D of the Ethics Program. This Preliminary Determination is the first stage of our review.

Reorganization of the CSC position is not directly at issue in the Ethics Complaint, which focuses - as does this Preliminary Determination - on alleged violations of state open meeting and city ethics requirements. We note, however, that any action taken at a meeting that does not comply with OPMA is null and void, *see* RCW 42.30.060, and courts have found that subsequent action in an open meeting that merely ratifies action taken in violation of OPMA (or similar legislation) is also null and void. *See* The Open Public Meetings Act (Report No. 60, Municipal Research and Services Center, May 2008, hereinafter "Report No. 60") at 27-28 and cases cited therein. Thus, a violation of open meeting requirements could affect the reorganization.

The Ethics Board is not specifically charged to enforce OPMA, but to "interpret and apply the Code of Ethics in favor of promoting the City's Core Values and Ethics Principles, protecting the public's interest in full disclosure of conflicts of interest, and promoting ethical behavior" (section III.A.1 of the Ethics Program). The Ethics Complaint under review asserts the Ethics Board's jurisdiction under section II.I of the Code of Ethics, which requires that meetings of City Commissions "be conducted in a manner that maximizes transparency of relationships among individuals or groups that could affect decision-making." This transparency requirement is directed at avoiding conflicts of interest by disclosing possible conflicts at public meetings. Thus, the requirement to conduct official business in public meetings, as evidenced by compliance with OPMA, is implicit in, and necessary to give effect to, the transparency requirement. Otherwise the transparency requirement could be frustrated simply by conducting business in private.

The basic requirement of OPMA is that:

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. (RCW 42.30.030)

As used here, "public agency" includes a city commission such as the CSC. *See* RCW 42.30.020 and Report No. 60 at 4. "Meetings" are "meetings at which action is taken" (RCW 42.30.020(4)). "Action" is

not limited to final action but also includes discussions, considerations, reviews, and evaluations (RCW 42.30.020(3)). The Municipal Research and Services Center explains the last provision as follows:

Since a governing body can transact business when a quorum (majority) of its members are present, it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members meet together and deal in any way with city, county, or special purpose district business, as the case may be. This includes simply discussing some matter having to do with agency business. (Report No. 60 at 6)

In view of the foregoing discussion and after careful review of the Ethics Complaint and relevant documents, the Ethics Board finds that the factual allegations in the Complaint are credible and the alleged private meetings between the CSC and city officials appear to have violated the transparency requirement of the Code of Ethics. Accordingly, the Ethics Board has made a Preliminary Determination that the facts stated in the complaint, if true, could potentially constitute a violation of the Code of Ethics such that further proceedings are warranted.

In accordance with section III.D of the Ethics Program, this Preliminary Determination shall be transmitted to the Respondents, CSC Commissioners David Hand and George McKinney, who may submit a written response prior to the next meeting of the Ethics Board on October 17, 2011, in which they may provide a statement of facts, supported by a declaration under penalty of perjury under the laws of the State of Washington that the statement is true and correct, in opposition to the Ethics Complaint, and any further explanation of their position on the Ethics Complaint. The Ethics Board will consider any such response in taking further action, which could include a determination that the Ethics Complaint lacks reasonable credibility, issuance of an advisory opinion on the subject of the Ethics Complaint, or a determination (which the Ethics Board may forward to the City Council for its review) that a material violation of the Code of Ethics has likely occurred.

Approved at the Ethics Board meeting on September 19, 2011, by Members Willerford, Buckles, and Yesley. Board Member Killian recused himself. Board Member Piraino was not present.



Dennis Willerford, Chair