

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
ETHICS COMMISSION**

**ANNUAL REPORT  
JULY 2010 – JUNE 2011**



ETHICS COMMISSION  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

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

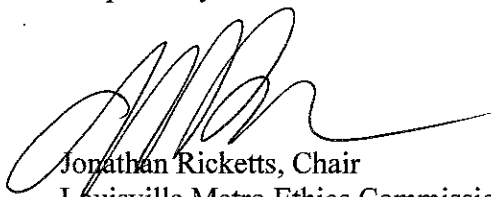
It is with great pleasure that we present the first Annual Report on the activities of the Metro Ethics Commission since passage of major amendments to the Ethics Ordinance in March 2010.

This first year has presented the Ethics Commission with many opportunities and challenges in implementing these changes, 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 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. Vickie Tabler  
Ms. Terri Todd  
Ms. Enid Trucios-Haynes

## **Introduction**

Louisville Metro Ordinance §21.05(I) requires the Louisville/Jefferson County Metro Government Ethics Commission to prepare and submit an annual report to the Metro Council summarizing the activities, decisions and advisory opinions of the Commission no later than July 31 of each fiscal year. The annual report is to be made available on the Metro Website accompanied by a statement that financial disclosure statements are available from the Commission for public inspection.

In accordance with the Ordinance, this annual report includes recommendations for changes to the Ordinance by the Commission after holding at least one public hearing under the 2010 amendments. In the course the Commission's work over the last year, the Commission discovered that amendments to the Ordinance were necessary to improve the procedures for the conduct of hearings on complaints and the overall administration of the Ordinance in other areas.

After competitively filling the position of Legal Counsel to the Commission, as mandated by the Ordinance, the Commission directed Counsel and administrative staff to prepare this report for immediate submission.

This report details 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

Any recommended amendments to the Ordinance are addressed within these sections.

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

LMO §21.05(H) directs the Ethics Commission to conduct at least one annual training and review session for all Metro Officers, and others from time to time as requested by the Metro Mayor or Metro Council. Metro Officers at the time of the 2010 amendment were required to attend one training session during the following calendar year, and newly elected or appointed officers are required to attend training within 12 months of appointment or election. Thereafter all Metro Officers must attend training and review sessions at least once every 24 months.

While the Commission's administrative staff keeps records of all participation in training sessions, neither the staff nor the commission members conduct these training sessions. The training sessions are conducted by Metro Government Human Resources Training Division on behalf of the Commission. Therefore, the Commission recommends that the Ordinance be amended to reflect this arrangement.

The Training Division has held eighteen workshops during FY2011 for Metro Officers. Class sizes range from 1 to 35. In all 251 Metro Officers have attended training as of November 16, 2011.

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 8 regularly scheduled meetings, and twice in special meetings, in FY2011. 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 FY2011 were as follows:

January 19, 2011	July 21, 2011
February 17, 2011	August 18, 2011
March 17, 2011	September 15, 2011
April 21, 2011	October 20, 2011
May 19, 2011	November 17, 2011
June 16, 2011	December 15, 2011

## **ADVISORY 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 10 requests for advisory opinions, three from agency directors and seven from Metro Council Members. A brief synopsis of the opinions is listed below. The synopsis is not intended to be precedential in nature.

### **Opinion 10-D-001**

It was not a violation of §21.0(B) and (E) to award a professional services work contract to a board member of a non-profit organization that supports services provided by the agency granting the contract. The Commission decided that, as the contract was awarded through a public, open bidding process, based on price, availability and services that there did not appear to be a conflict of interest

### **Opinion 10-D-002**

It was a violation of §21.02(A) and (D) to accept an offer for consulting work and attend conferences paid for by a sponsor of non-profit program initiated by Metro Government with private funds as such may create the appearance of a conflict of interest and influence the Metro Officer in the conduct of his/her duties.

### **Opinion 10-D-003**

It was not a violation for a Metro Officer appointed to a board by a previous mayor to continue to serve on that board following the election of the Officer's family member to the office of Mayor.

### **Opinion 10-C-001**

It was not a violation §21.02(E) to accept an invitation to a reception following a performance for which the Metro Officer purchased tickets. The value of the reception invitation exceeded the \$25 in §21.02 (B). The Commission decided that §21 .02 (E) permitted a Metro Officer to accept the tickets because there was no basis to infer that the award and tickets were offered for the purpose of influencing such officer in the discharge of his/her official duties or gaining access to the Metro Officer.

### **Opinion 10-C-002**

It was not a violation of §21.02(E) to accept an award, and complimentary tickets for himself, his wife and legislative aide, to a dinner event where the award will be presented. The value of the tickets exceeded the \$25 in §21.02 (B). The Commission decided §21.02 (B) did not apply, and that §21 .02 (E) permitted a Metro Officer to

accept the tickets because there was no basis to infer that the award and tickets were offered for the purpose of influencing such officer in the discharge of his/her official duties or gaining access to the Metro Officer

**Opinion 10-C-003**

The definition of Metro Officer written in §21.01(B) (10) included Metro Council Caucus staff members and all staff members that report to either or both Caucuses of the Louisville Metro Council, including all staff members that work for the Council, the Business Office, Common staff, and part-time legislative aids, and all are subject to ethics training requirements.

**Opinion 10-C-004**

It was not a violation of §21.02(B) and (E) to accept free airline tickets won in a random drawing open to all attendees at a conference.

**Opinion 10-C-005**

It was not a violation of §21.02 (J) to vote on a general ordinance affecting services used in a Councilmembers normal course of private business, as there was no evidence from which it may be inferred that the any advantage created by the ordinance will accrue to the Councilmember.

**Opinion 10-C-006**

It would not be a violation of §21.02(E)(F) to accept tickets to a GLI Legislative Dinner.

**Opinion 11-C-001**

It was not a violation of §21.02(B) and (E) to grant funds to a charitable organization to which a Metro Officer belongs, if the Metro Officer does not benefit from the grant or serve on the organization's board.

## **HEARINGS AND DECISIONS**

The Commission conducted three hearings on claims of violations of the Ethics Ordinance.

### **Complaint # 10-P-002, Koellner v. Welch.**

A complaint was filed against Councilwoman Welch on September 20, 2010 and answered on October 15, 2010. A hearing on the alleged violation, conducted by Hearing Officer Charles J. Cronan, IV was held before the Commission on November 18, 2010. The Hearing Officer recommended the claim be dismissed for lack of clear and convincing evidence of violation on December 27, 2010, and the commission adopted the recommended order at its next regular meeting on January 5, 2011.

### **Complaint # 11-P-001, Barker v. Green**

A complaint was filed against Councilwoman Green on January 8, 2011 and answered on February 2, 2011. A hearing conducted by Hearing Officer Judge Tom McDonald was scheduled for March 31, 2011, and rescheduled for April 28, 2011 on motion of complainant. The Hearing Officer submitted a recommended order to the Commission, and the Commission issued its final order finding intentional violation of the Ethics Ordinance, issuing a letter of censure and recommending removal from office June 10, 2011.

### **Complaint # 11-P-002, Springston v. Green**

A complaint was filed against Councilwoman Green on March 25, 2011 and answered on April 7, 2011. A hearing before the Commission was conducted by Hearing Officer Judge Tom McDonald on May 23, 2011. The Hearing Officer submitted his recommended order to the Commission, and the Commission issued its final order finding intentional violation of the Ethics Ordinance on July 5, 2011.

## **RECOMMENDATIONS**

The Commission hereby recommends several amendments to the Ethics Ordinance based on its experience in conducting these hearings.

First, the requirement that the Commission render a final decision on a complaint within 30 days of the conclusion does not recognize the legal and procedural steps that take place after hearing ends. The Commission or its hearing officer may request or allow further written arguments to be submitted post-hearing, and the Commission must order transcripts of written testimony after the hearing ends before it can begin deliberation. Therefore, the Commission recommends an amendment that the Commission render its decision within 30 “of the closing of the record of the hearing” so that post-hearing transcripts and pleadings be made a part of the record before it deliberates and issues the final ruling.

The Commission also recommends changes regarding the service of appeals to its final decisions, such that any appeal “be served on the Commission’s Legal Counsel.” The Commission further recommends the Council clarify a Metro Officer’s right to representation by an attorney on contract with the County Attorney and whether that right extends to appeals.

The Commission has also determined that, in order to ensure due process of a complaint, it may be necessary to appoint an attorney to represent the complainant. While this should be a rare occurrence, if the intent of the ordinance is to ensure a complete and fair hearing is held on each complaint, the lack of counsel for a complainant may lead to procedural faults that require dismissal before any evidence has been submitted. Otherwise the burden of retaining counsel remains with the complainant, and this may have a chilling effect on complainants who know they cannot adequately represent themselves in a hearing.

The Commission also recommends that certain sections requiring a dismissal with prejudice of complaints for failure to meet procedural deadlines be amended to allow the Commission to enlarge deadlines upon a showing of good cause.

Thus far, the most challenging problem facing the Metro Ethics Commission in carrying out its mission has been the lack of subpoena power. The Commission believes the lack of subpoena power is ultimately a question of state law, and that the General Assembly must address it. We therefore recommend that the Metro Council support an effort to seek an amendment of KRS 65.003, the statute requiring all local governments to adopt and enforce codes of ethical conduct, to extend subpoena power to bodies such as the Metro Ethics Commission.