

Board of Ethics and Government Accountability

Symposium on Government Ethics and Transparency

Statement of Thorn Pozen

Partner, Goldblatt Martin Pozen LLP

October 3, 2013

Chairman Spagnoletti, Board Members Richards and Lathen, Directors Sobin and Hughes, and BEGA staff, my name is Thorn Pozen and I am a partner in the law firm of Goldblatt Martin Pozen LLP, here in Washington. I am very sorry that a family commitment prevents me from presenting this statement in person. I am hopeful, though, that it will be placed in the record of these proceedings and that it may be of some assistance to you.

Please know that these comments are my own and they aren't those of my law firm or our clients.

As part of your Symposium on Government Ethics and Transparency this evening, I would like to comment on what I believe BEGA has done well during its first year of operation and what issues it has taken on about which I do not agree.

First, as for things I think BEGA has done right; the list is long.

Most significantly, and not to be understated, BEGA is here, it's in full operation, it's doing its job. Under Councilmember Muriel Bowser's leadership, the Council acted in short order to establish the framework for a strong, independent body empowered to take on the daunting task of enforcing, clarifying, and streamlining the District's government ethics and transparency regimes, and educating both government officials and the public about that work. That, however, was only the first part of the job. It was then left to you on the Board, and then to Mr. Sobin, your wise choice for Director of Government Ethics, and then to the experienced Ms. Hughes as Director of Open Government, to actually stand up the office, to get the rest of your quality staff in place, and to actually begin working. To do all this with extremely limited

resources, in a short time period, and in a way which has begun to reestablish the trust and confidence of the public in their government is a very important accomplishment and cannot go unnoted.

As part of setting the initial tone of the new office, I believe BEGA should be commended for immediately taking tough stands on high-profile matters involving several sitting Councilmembers. In those matters, BEGA's decisions reflected flexibility and a willingness to come to an appropriate and fair negotiated solution where possible and a firmness and commitment to the highest levels of public integrity and accountability where necessary. None of that was inevitable and it was right.

I note these accomplishments not just as an attorney in the District and former District government official, but as someone who served previously as the District's Ethics Counselor and chief FOIA Officer, who saw and experienced the greatly challenged ethics and open government systems in place before BEGA's arrival. I also worked to assist with the drafting of Councilmember Bowser's bill establishing BEGA and I can tell you that my real concern after that bill passed the Council and before the Board and staff were put in place was that all of those good intentions would go for nothing if the implantation work of the new office was flawed. So, from a very personal perspective, I am extremely pleased to see the office up, running, and successful.

Additionally, BEGA has begun to take on another issue I believe is particularly noteworthy. As someone who has previously served as a chief of staff and counsel to a Councilmember and Special Counsel in two District mayoral administrations, I've seen firsthand the difficulties and pressures government officials face regarding constituent service matters. I believe that the thorough and thoughtful guidance BEGA offered on August 29, entitled "Constituent Services by Elected District of Columbia Government Officials," is an excellent first step in what needs to be a continuing dialog on what's ok and what's not ok when it comes to helping individual constituents. From experience, I know that, in the past, there was often a lack of thought on what actions a government official may – usually with the best of intentions – appropriately take to help a constituent in real need. This guidance sets parameters and

guideposts and allows government officials the opportunity to think more clearly about what may be ok, and, of equal importance, to frame and facilitate questions to work through specific and difficult situations. I don't see this guidance as the end of BEGA's work. Going forward I see the need for greater clarification regarding particular scenarios and the addition of some helpful definitions. But overall, I think the constituent service guidance is extremely helpful and BEGA should be commended for beginning to take on this very challenging and complicated set of issues.

Finally, on the less publicly facing side, I know from government employees who have gone through it that BEGA's training program is going well, and I am heartened that newly established Office of Open Government is hard at work streamlining and improving the way the whole District government handles and shares internally and with the public the vast amount of information which needs to be made available publicly. I look forward to seeing the continued progress on those fronts in this next fiscal year.

I also believe, however, that there are some areas in which BEGA's actions and plans require some improvement. Specifically, I think progress needs to be made in the financial disclosure and gift-reporting processes and I think the Board needs to move away from the idea of possibly limiting registered lobbyists' ability to sit on District boards and commissions.

In the course of my private practice I have received a fair number of complaints from District government officials about the financial disclosure system BEGA has now inherited from the Board of Elections. I understand there have been some changes in what information must now be made public. I recognize that public disclosure of significant financial interests is both an important part of government transparency and is required by District law. I believe, however, BEGA should work in the next year to ensure that those important and necessary disclosures are properly balanced with protecting the legitimate privacy interests of government employees.

With regard to disclosing and reporting gifts to government officials, I note a difference between how employees are treated in the District's legislative versus executive branches. I

suggest that both the treatment of receiving gifts and how those gifts are reported should be reconciled as between the Council and the Executive.

Finally, I need to address a question BEGA has raised concerning registered lobbyists' ability to serve on boards and commissions in the District. Please know that I am a registered lobbyist in the District. Nonetheless, my objection to any partial or full categorical ban on lobbyist service comes not from my status (and note that I don't serve on any District boards), but from the idea that the city needs to be sure it has the best and most qualified people as possible serving in these important positions. Categorical restrictions or an outright ban on allowing lobbyists (or even former lobbyists) to serve – even in instances when no conceivable conflict of interest can be shown – only serves to limit getting the best people on those boards. Of course, if, in a particular instance, a proposed board or commission member, lobbyist or not, has a possible conflict of interest, that potential conflict should be carefully examined and an independent and impartial determination should be made as to the appropriateness of the person's service. Eliminating the possibility of that person's service in advance of such an independent and impartial determination, indeed in advance of there even being a need for such a review and determination, is nonsensical and counterproductive to the District's best interests. I urge the Board not to take such action.

In conclusion, although I see some areas in which BEGA could benefit from additional thought, BEGA's progress this year has been phenomenal. From standing up the office, to prosecuting high-profile ethics violations, to providing expanded training, working toward increased transparency, to giving much needed guidance, BEGA has done a great deal to begin the process of bringing honor and integrity back to the District and, most importantly, to restore the public's trust and faith in their government. Especially if the Council is able to implement the enhancements BEGA has sought through its last Best Practices Report and continues to provide the resources BEGA needs, I see BEGA well positioned to continue the successes of this year into next year.

I appreciate the opportunity to present these comments to you this evening and I stand ready to help BEGA as needed, to discuss these matters more fully, and to answer any questions you may have at your convenience.