



SECOND ANNUAL REPORT OF THE DEKALB COUNTY ETHICS OFFICER

**TO: DEKALB BOARD OF ETHICS
BOARD OF COMMISSIONERS
CHIEF EXECUTIVE OFFICER**

FROM: Stacey Kalberman, Ethics Officer

DATE: February 7, 2018

The DeKalb County Ethics Code, Section 22A, requires the Ethics Officer to provide an annual report outlining the activities of the Ethics Officer in the previous year and reporting on the ethical health of DeKalb County. Below is the second of these annual reports.

The second year of the Ethics Office can only be described as one of fits and starts. In both our education and prosecution efforts we began to earnestly pursue our goals, but were often delayed or thwarted in our efforts – mostly as a result of pending litigation and pressing county matters. On balance, however, 2017 was a year of positive change and growth in areas that impact ethics.

Activities of the Ethics Office

Personnel: In April of 2017, LaTonya Wiley joined the Ethics Office as Deputy Ethics Officer. LaTonya previously served as County Attorney for Henry County in addition to her many years of experience as a litigator. Her background in municipal law and litigation have been a tremendous asset to the Ethics Office. LaTonya has taken primary responsibility for the prosecution of ethics complaints.

Education: The Ethics Office has continued education efforts throughout the County. In 2017, ethics classes were taught to an additional 18 divisions which completed our first round of ethics classes to over 95% (??) of all County divisions. This year we began to teach classes to the various DeKalb boards and commissions who are within our jurisdiction. We were able to schedule classes with 8 DeKalb boards and we will continue our efforts through 2018. New

classes are being developed for 2018 and our hope is to hold in person classes with each division once every 12 to 18 months.

Last year I reported on our intent to use electronic education as a tool to reach our 6,000 employees on a more frequent basis. Our belief is that ethics cannot be addressed once per year, but must be an ongoing discussion to reach our goal of ethics as a cultural norm. While the Ethics Office was not able to get funding for this project in 2017 and we have been informed that funding is not a priority for the 2018 budget, I am still hoping to bring electronic education to the County. Electronic classes are a necessary component in any educational program for a large organization and computer based classes resonate particularly well with younger employees who are accustomed to various forms of electronic education.

In recent years we have seen the growth of new city governments within DeKalb County. While the Ethics Board does not have jurisdiction over city public officials and employees, I have spoken to and encouraged the public officials of the DeKalb Municipal Association to use the Ethics Office and the Board as a resource for education and advice regarding conflicts of interest in government. We look forward to partnering with DeKalb cities to assist them in establishing ethical government practices.

Survey: In March of 2017 we requested that all DeKalb employees participate in an ethical culture survey. The purpose of this survey was to benchmark ethical and cultural improvements made over time. The survey was developed and conducted by the Center for Ethics at the University of North Georgia. The Center for Ethics has conducted these services for large and small organizations throughout the country.

While we had hoped for greater participation by employees in completing the survey, we gained valuable information in terms of workplace culture and employee engagement. Employee engagement is an important factor in the success of an organization, but the level of employee engagement is also a significant indicator of the ethics risk inherent in an organization's culture. The feedback from the survey indicated a heightened level of awareness of ethics within the County, which is a good sign, but the survey also suggested some significant areas for improvement:

- Open and honest two-way communication
- Building trust in leadership
- Addressing feedback from employees and valuing the employee contribution
- More clarification of the County's values and acceptable behaviors for all employees
- Consistency in acceptable behaviors that support our values

We have discussed the results of the survey with the county leadership and public officials and are in the process of disseminating the information gathered from the survey to DeKalb

employees. While this process has taken longer than expected due to scheduling conflicts, we are currently working with our consultant on strategies that will improve the engagement of our employees leading to improvements in workplace culture. CEO Thurmond's administration has joined in these efforts and we hope to continue to partner with his administration in using the survey results as a catalyst for improvement.

Legislation: In the 2017 legislative session the Ethics Board requested that the Ethics Officer draft changes to the Ethics Code for consideration by the General Assembly. The changes included not only amendments to the Ethics Board appointment process (which is explained in the Litigation section below), but also included changes to strengthen enforcement under the Ethics Code. While the passage of the proposed ethics bill initially seemed likely, amendments to the bill were added which eroded the effectiveness of the Code and made the appointment process too politicized. Ultimately the bill was stopped in the Senate Committee.

Hotline: One of the duties of the Ethics Officer is to administer the Ethics Hotline which permits employees to report ethics complaints anonymously and without fear of retaliation (65% of all complaints reported on the hotline are anonymous). Since the inception of the hotline in July of 2014, 128 complaints have been reported. In 2017, 63 new cases were reported on the Ethics Hotline and the Ethics Office also closed 48 matters from current and prior years. Cases are dismissed for lack of jurisdiction or failure to find a violation based on the facts presented or the investigation conducted. Cases which remain open continue to be investigated by the Ethics Office and will likely be brought before the Ethics Board.

Close to half of all reports made through the Ethics Hotline were reported in 2017 alone. We believe that this increase in the number of reports is primarily due to the visibility of the Ethics Office and the increased trust that the employees of the County feel in an independent Ethics Office and Board. The Ethics Hotline is one of the most valuable tools for discovering unethical conduct.

Litigation:

Litigation in Superior Court

When the DeKalb County Board of Ethics was initially created in 1990 to regulate the conduct of the DeKalb CEO and the seven County Commissioners, the Commissioners themselves were entrusted with appointing the panel responsible for overseeing their behavior. Given that inherent conflict of interest, House Bill 597 was enacted (and made effective on May 12, 2015) to remove the appointment power from the Commissioners, and instead placed the appointment authority, in part, in the hands of concerned, impartial DeKalb community organizations. The legislation required that four of the seven Ethics Board members be appointed by the following DeKalb private organizations: the DeKalb Bar Association, the DeKalb Chamber of Commerce, Leadership DeKalb and the Universities located in DeKalb.

Even prior to the formation of the new Ethics Board under the 2015 legislation, former Commissioner Sharon Barnes Sutton initiated a lawsuit in DeKalb Superior Court, challenging the constitutionality of this appointment process. (*Commissioner Sharon Barnes Sutton v. Clara Delay et al.*, Civ. A. File No. 15-CV-11243). Last April, DeKalb Superior Court Judge Asha Jackson ruled that the Georgia Constitution would not permit the delegation of a government appointment to a private organization even though 92% of voting DeKalb citizens approved the appointment process via a ballot referendum. The Board of Ethics has appealed Judge Jackson's ruling and the case will be docketed and heard by the Georgia Supreme Court in 2018.

Prior to the inception of the lawsuit, Ms. Sutton requested a Temporary Restraining Order from the Superior Court to prevent the Ethics Board from hearing three ethics cases brought against Ms. Sutton herself. The restraining order is still in place, but the Board has continued to hear other matters pending the outcome of the appeal to the Georgia Supreme Court.

In March 2017, and before entry of Judge Jackson's Order regarding the constitutionality of the appointment process in the 2015 Lawsuit, Ms. Sutton initiated a second lawsuit in DeKalb County Superior Court, raising many of the same issues as before (*Sharon Barnes Sutton v. Stacey Kalberman et al.*, Civ. A. File 17-CV-3557-5).

Matters Before the Ethics Board

As discussed above in the Legislation section, the Ethics Board requested that the Ethics Officer draft legislation to resolve the disputed appointment process of the Ethics Board. Legislation drafted by the Ethics Office and approved by the Ethics Board was introduced in the 2017 General Assembly, but was not passed.

Representative Vernon Jones and others, who were opposed to the 2017 ethics legislation, then brought ethics complaints against the Ethics Board members as well as the Ethics Officer for lobbying without proper registration and for engaging in "political activity" prohibited by the Ethics Code. These violations brought by Representative Jones were alleged to have occurred as a result of the Ethics Board and Officer attempting to amend the DeKalb Ethics Law. The Board could not hear ethics cases brought against itself, so a hearing officer was hired under a procedure outlined in the Ethics Rules.

On January 24, 2018, the Hearing Officer, Justice Leah Ward Sears, dismissed all the ethics complaints against the Ethics Board and Officer by stating that, "there was no probable cause to believe that the Respondents violated HB 597.... as none of the four complaints identify an ethical prohibition in either state or local law which bars the activity in which they contend the Ethics Officer engaged."

Ethical Health of DeKalb County

As I stated in my 2107 assessment, I find the majority of the employees of DeKalb County eager to be part of an ethical culture and workplace and in 2017 we found more employees willing to report violations. The Ethics Office views this as a very positive change in the culture. If we are going to succeed in having a culture where ethical violations are not tolerated, we must have employees willing to report them. Equally as important, we must ensure employees that they will not be retaliated against when reporting violations in good faith.

Patterns of practice do not change overnight and employees must feel that their leadership is leading the way. While we participated in some very constructive conversations with the leaders in County Administration this year, we feel the need for greater collaboration with those who set the direction for DeKalb employees. It is the responsibility of the Ethics Office to teach and advise public officials, but we cannot succeed without a partnership with the Administration.

In the course of our investigations we are still seeing some troubling practices. The most common of these is lack of established procedures and lack of adherence to procedures. Both of these factors can be and have been major contributors to misappropriation of funds, inappropriate awarding of contracts, time abuses, travel expense abuses and other conflicts of interest. The Ethics Office will bring complaints this year which will discuss the above issues. Nearly every single one of the above abuses could have been prevented by having the appropriate procedures in place and ensuring those procedures are followed and audited.

As I stated earlier, patterns and culture do not change overnight and we do not believe that DeKalb citizens should be alarmed by these comments. The Independent Auditor, strong relationships with the new leadership, procedures and guidelines (which are already being established) and a functioning Ethics Board which can hear violations will lead to a successful and ethical government for DeKalb.