RULES/APPOINTMENTS SUBCOMMITTEE
July 25, 2019
Minutes

Members Present: Grebner, Sebolt, and Stivers.

Members Absent: Naeyaert.

Others Present: Peter Cohl, Becky Bennett and Beth Foster.

The meeting was called to order by Chairperson Stivers, at 6:00 p.m. in Personnel Conference Room D & E of the Human Services Building, 5303 S. Cedar Street, Lansing, Michigan.

Approval of the May 9, 2019 Meeting Minutes

MOVED BY COMM. GREBNER, SUPPORTED BY COMM. SEBOLT, TO APPROVE THE MINUTES OF THE MAY 9, 2019 RULES & APPOINTMENTS SUBCOMMITTEE MEETING.

THE MOTION CARRIED UNANIMOUSLY. Absent: Commissioner Naeyaert.

Additions to the Agenda

None.

Limited Public Comment

None.

1. Appointment Process and Board Rules - Resolution Rescinding Resolution #13-201 and Revising Certain Policies Pertaining to Appointed Advisory Boards and Commissions

MOVED BY COMM. SEBOLT, SUPPORTED BY COMM. GREBNER, TO APPROVE THE RESOLUTION.

Commissioner Sebolt proposed the following amendment:

THEREFORE BE IT RESOLVED, that citizen appointees who have 2 consecutive absences from their regular meetings shall receive a letter, from the Director of the Board of Commissioners Office, inquiring about their absences and advising that Committee meetings who miss 3 meetings out of 4 meetings, unless barred by statute, are automatically deemed to have resigned from that board or commission and appropriate steps will be taken to fill the vacancy.

(1)
This was considered a friendly amendment.

THE MOTION TO APPROVE THE RESOLUTION, AS AMENDED, CARRIED UNANIMOUSLY. Absent: Commissioner Naeyaert

2. Ethics Policy

Chairperson Stivers thanked legal counsel for working on the Ethics Policy. She further stated that it was much more specific and organized.

Peter Cohl, County Attorney, passed out a relevant handout.

Chairperson Stivers asked if January was the last time Mr. Cohl checked the State policy on email use. She further stated that her husband, a State employee, stated that the policy was very recently changed to prohibit State employees from using personal emails for government use.

Mr. Cohl stated that that was not a law coming from case law or statute, but a policy.

Chairperson Stivers stated that she would want to adopt that same policy as the State. She further stated that it was better to go above and beyond.

Mr. Cohl stated that that was certainly an option if the Commissioners wished to do so.

Commissioner Sebolt stated that there were technically two policies in front the Subcommittee and that both would need polishing before moving forward. He further stated that the one put forward by Commissioner Morgan and himself was closer to what Governor Whitmer implemented by Executive Order.

Chairperson Stivers stated that she preferred that email policy and asked if the Subcommittee should send those back to be merged together.

Commissioner Grebner stated that at some point the Subcommittee needed to decide what road they were we are going down, either the draft that was his policy edited by the County Attorney, or the Sebolt/Morgan draft. He further stated that State policy does not apply to elected officials, just employees.

Commissioner Grebner stated that he was concerned that applying a policy like the State’s to elected officials would trample First Amendment rights. He further stated that his draft did not run into First Amendment issues and expressed concern over communication with constituents and where that would fall under a policy similar to the State’s.

Commissioner Sebolt stated that Michigan does not have these requirements for elected officials which is why they get a failing grade on transparency, but that almost every other state legislature subjected themselves to some sort FOIA requirement. He further stated that the State Legislature was debating their own FOIA-like requirements for Legislators and staff to use State
emails for State business and that communications with constituents were specifically addressed as being dealt with differently.

Commissioner Grebner stated that Commissioner Sebolt was misunderstanding what he said. He further stated that he was not talking about FOIA.

Commissioner Grebner stated that he was talking about the issues surrounding a public official having to decide if an email was public business or not when they may have many that mix personal and public business.

Commissioner Sebolt asked Commissioner Grebner to point to the specific language in the Sebolt/Morgan draft where an email with combined personal and public business would be a violation of the policy.

Discussion.

Chairperson Stivers read the relevant language from page ten of the Sebolt/Morgan draft.

Commissioner Grebner stated that then it did not quite prohibit it.

Chairperson Stivers suggested softening the language by changing “must” to “should.”

Commissioner Grebner stated that he refused to segregate his thoughts into two categories and questioned why an elected official would be forced to decide.

Commissioner Sebolt stated that he would suggest sending this to the attorneys to ask what specific county business would count as private business that would not be subject to FOIA.

Mr. Cohl referenced page two of the handout that he provided at the start of the meeting, citing case law defining a public record. He further stated that you have to know the facts of the situation and then apply the standard to the facts.

Mr. Cohl stated that it was difficult to quantify and likened this to the Supreme Court case where the question was asked what pornography was and the Justice said, “I don’t know but I know it when I see it.”

Commissioner Grebner stated that they needed to distinguish we should between public record and FOIA because they were not the same. He further stated that the problem with County business was that it was so ambiguous and further reiterated his First Amendment concerns.

Mr. Cohl stated that it was a business decision for the Commissioner as to what they wanted to do. He further stated that it was possible to use personal email and copy the County email so that there was a record.
Chairperson Stivers stated that they were digging into a hole by using Commissioner Grebner as an example and that she wanted to avoid making a rule around what works for him. She felt that for most Commissioners separating public and private emails was not that hard.

Commissioner Sebolt stated that the idea of maintaining two email accounts was second nature to him and gave an example of responding to constituent email to a government account, from a different account, outside of work if the subject of the email was in reference to a campaign. He further stated that he did not think that holding elected officials to the same standard as State employees was an unreasonable expectation.

Chairperson Stivers stated that she agreed and that she thought they were trying to specifically avoid things like conducting campaign business and County business in the same email.

Discussion.

Commissioner Sebolt read from page eleven of the Sebolt/Morgan draft, about keeping emails in perpetuity. He further stated that emailing about something like going to lunch using government email would not be a gotcha type scenario.

Commissioner Grebner stated that if that was okay it ought to be made specific.

Commissioner Sebolt stated that he thought that people could use common sense. He further stated that his problem with the Grebner ethics policy was that it needed to be more clear and concise for everyone, especially constituents, to understand.

Commissioner Grebner stated that the Subcommittee needed to decide between his version or the Sebolt/Morgan draft.

Chairperson Stivers stated that they should take the email policy separately since that was where most of the conflict was arising.

Commissioner Sebolt stated that the Sebolt/Morgan draft borrows from other municipal governments' ethics policies. He further stated that there were issues, such as disclosures and nepotism that he would like to see carried over into the new ethics policy.

Commissioner Stivers stated that she felt that the lawyers' paring down of the Grebner version was a lot more thorough and stronger on many of the points. She further stated that she would like to see the email section of the Grebner version replaced, or integrated in some way, with the Sebolt/Morgan email section.

Mr. Cohl stated that he would suggest going through each draft to see what is missing. He further discussed the limited remedies available if someone violated the email policy.

Mr. Cohl stated that the Sebolt/Morgan draft was short and sweet, while the Grebner/Attorney draft had more nuance and examples. He further stated that both policies are similar with the
major difference being the prohibition of using a private email server for County business versus not having that prohibition.

Commissioner Grebner stated that he spoke with several other Commissioners who were also concerned and did not want to convert from using private email. He further stated that his version of the Ethics Policy addresses more than email and expressed concern over what might constitute conducting County business via other communication methods such as social media.

Discussion.

Commissioner Grebner stated that they must not adopt policies that created an ambiguity that cannot be resolved.

Commissioner Sebolt asked Commissioner Grebner if he read his own policy and stated that there was so much twisting and turning, it might as well be ambiguous.

Commissioner Grebner stated that mainly the policy said either way was okay.

Commissioner Sebolt stated that if either way was okay then it was not really an ethics policy.

Commissioner Grebner stated that the reason it was an ethics policy was because it steers the County away from transactional corruption and has done so successfully for 25 years.

Chairperson Stivers stated that it was too vague to catch anyone.

Commissioner Grebner stated that it has done a darn good job for 25 years of steering people away from transactional corruption and that he was very proud of that. He further stated that no County as large as Ingham has been successful in preventing transactional corruption –

Commissioner Grebner stated that he was sorry it was subtle and hard to understand but it worked.

Commissioner Sebolt stated that he agreed they needed to steer the County away from the kinds of transactional corruption that Commissioner Grebner mentioned, but that they needed to be more clear and concise.

Discussion.

Chairperson Stivers proposed the following merger of the Grebner/Attorney and Sebolt/Morgan Ethics Policy Email Sections:

\[(start)\]

**SECTION VII.**

**EMAIL POLICY AND COMMISSIONER COMMUNICATIONS**

(5)
Elected officials communicate among themselves, with employees of governmental units, and with private individuals. Each of these classes of communications present their own special ethical and legal problems.

All attempts to regulate communication raise First Amendment issues, which are especially heightened when the communication is from, or between elected officials. Under many circumstances, elected officials have a right to communicate privately, and to use media which avoid the creation of a permanent record. This interest in secrecy often comes into tension with a government's duty to act in a transparent way, and with the citizens' right to discover details about the processes by which the government is run and makes decisions.

It is an unrecognized fact that generally, unless a communication is somehow recorded or reduced to writing, it escapes regulation. That is, if two people speak in person, or by phone, no question arises of preserving the discussion, or of who has a right to access it, because after the conversation, nothing remains but the participants' memories. But if the exchange takes place in writing, or is captured by voicemail or other recording, even unintentionally, its legal nature is transformed into what Michigan's Freedom of Information Act calls "a writing."

Many such writings, including most voicemail, are ephemeral. They are routinely discarded or erased after they've served their primary purpose. But as long as they exist, they retain the character of public records, potentially accessible under the FOIA. (It should be noted that whether a record constitutes a writing, and whether it must be disclosed under the FOIA, are two different questions. The FOIA, and its exemptions from disclosure, are beyond the scope of this provision.)

In this complex context, there is no single comprehensive theory to guide action, but a number of principles can be enumerated:

Ingham County government should be open, transparent, and accountable to county residents. The use of private email to conduct county business is inconsistent with these objectives. Moreover, Ingham County email accounts and servers are the property of Ingham County - not the personal property of individual commissioners. As such:

**Principles**

1. Where state law provides guidance, it should be fully and generously followed, in a spirit of transparency and full disclosure.

2. Commissioners must should not use private email for the conduct of county business. All county business conducted by email must should be sent using a county email address. If a commissioner inadvertently uses private email for county business, they must forward all relevant emails to their county email address as soon as the error is discovered. Conversely, commissioners should avoid using county email for non-county activity whenever possible.
23. No elected official, or other person in position of responsibility, governed by this Ethics Policy, should deliberately employ a non-recorded channel of communication when questioning or instructing a county employee or contractor, with the purpose of concealing the existence or content of such communication. If a non-county email address is employed, the official should be careful to ensure that at least one county email address receives a copy, so the communication may later be found and provided to a requester.

34. In discussions among Commissioners conducted outside formal meetings, the requirements of the Open Meetings Act must be honored scrupulously and generously. A communication addressed to a majority of the Board, or to a standing Committee, may violate the OMA, if it amounts to "deliberation toward a decision". Even if it does not meet that standard, any such communication addressed to a majority should be made using a recorded medium subject to the FOIA.

45. Communications among groups of Commissioners which are smaller than a majority may be undertaken using either County or non-County email addresses, but the sender should not employ a subterfuge of addressing a majority by dividing the recipients into smaller groups. In general, the incidental use of County facilities for communication does not represent a material diversion of public resources to private ends, because the cost to the County is likely to be trivial. There may be exceptions in extreme cases.

56. County email, letterhead, or other media must not be used in ways which are likely to lead recipients to believe that the communication is an official statement of the County, or reflects established County policy when it does not, or where the sender does not actually have such authority.

67. Elected officials must be particularly careful to avoid the use of governmental media in a manner which improperly conveys the sense that a governmental body's resources or imprimatur have been deployed in support of a political election campaign. This applies also to misrepresentation of non-governmental media as being official.

78. Directing a public employee not to preserve a communication or to destroy an existing copy, is almost certainly an indication of impropriety. In all doubtful or discretionary cases, the County should favor retention of communications and should facilitate the process of searching for them and providing copies to persons who request them. Michigan law (MCL 399.811 and 750.491) requires that all public records be listed on an approved Retention and Disposal Schedule that identifies the minimum amount of time that records must be kept to satisfy administrative, legal, fiscal and historical needs. The State publishes Record Retention and Disposal Schedules for Local Governments, including Schedules pertaining to specific public officers and local agencies.

9. Commissioners' emails that pertain to county business should be retained in perpetuity by the county's IT department. Commissioners are entitled to a complete archive of their own emails upon request, including upon leaving office.
This Ethics Policy rejects the idea that a clear distinction can be made between communications which involve county business and those which do not. Of course, many communications fall clearly into one class or the other, but others will consist of a mixture of public and private matter, possibly inextricably blended. Whether an exchange is public or private may be subject to interpretation, or may appear different depending on circumstances. A particular communication channel may be chosen as a result of minor short-range convenience or happenstance, without improper motive. This Policy does not attempt to control the incidental use of County communication channels, where no significant cost is involved and no one is likely to be materially misled. [To be discussed]

Throughout this Ethics Policy, the focus has been to prevent the creation and continuation of transactional corruption, rather than the formulation of hard-and-fast rules which can be used to judge specific events. It will often prove sufficient in case of a single non-egregious transgression to educate those involved. The focus should be on preventing the development of patterns of ongoing conduct which threaten to conceal the workings of County governmental from public scrutiny.

(end)

Discussion.

MOVED BY COMM. GREBNER, SUPPORTED BY COMM. SEBOLT TO ADOPT THE GREBNER/ATTORNEY DRAFT ETHICS POLICY, INCLUDING THE CHAIRPERSON’S PROPOSED MERGER/CHANGES TO THE EMAIL SECTION.

Commissioner Grebner stated that he would probably ask for modifications at County Services. He further stated that he could see some consistency issues that would need to be addressed and discussed adding some of his original language back in.

Chairperson Stivers stated that she would resist that strongly.

Commissioner Sebolt stated that between the two draft versions there are some differences in the way gifts were handled.

Discussion.

Chairperson Stivers proposed the following merger of the Grebner/Attorney and Sebolt/Morgan Ethics Policy Gift Sections:

(start)

SECTION VI.
GIFTS OTHER THAN POLITICAL CONTRIBUTIONS
Even with all the problems of political fund raising, the fact that a gift to a public official is made in the form of a contribution to a campaign makes the gift comparatively easy to deal with because there are formal systems for regulating and reporting such gifts, and because they play a fairly well defined role in our system of government. A gift to a candidate or official which is NOT a political campaign contribution is generally more troublesome to deal with.

A Commissioner shall not solicit or accept a gift or loan of money, goods, services, benefits, privileges, favors or any other thing of value which may or tends to influence the manner in which the Commissioner performs official duties. This Section is not violated if a Commissioner takes prompt and reasonable action to donate or return a prohibited gift. Questionable situations should be referred to Corporation Counsel for review. The following does not apply to the above:

Rules Regarding Gifts

- These rules apply only to gifts made by a person with some sort of financial interest in the actions of County government. No problems arise from the receipt of gifts which are completely unrelated to the holding of public office.

1. Any direct gift of more than $100 value from a person with a financial interest in the actions of County government is generally improper, unless the specific circumstances offer a convincing alternative explanation.

2. One exception would be where a superseding relationship provides a convincing explanation for the gift. Such superseding relationships include relations by blood or marriage, friendships which predate original election to the Board, close professional relationships, and similar ties which are understood generally to occasion gift giving. (For example, a Commissioner accepts the gift from the County Treasurer, whose compensation is set by the Board. But the Treasurer is his mother.)

3. The propriety of a gift whose value lies between $25 and $100 depends upon the attendant circumstances. In the absence of any explanation, receipt of such a gift is improper.

4. If a gift is received in connection with an event which makes it seem unexceptional, somewhat more latitude may be allowed. (For example, a wedding gift.)

5. A Commissioner, as a member of an organization, or in connection with employment or a professional practice, may receive a gift, provided that the gift does not seem exceptional and does not appear to have been made to influence County actions.

6. If a gift is made by a governmental or quasi-governmental body is a matter of public record, is part of a continuing practice and offered equally to similarly situated individuals, and falls within the body’s ordinary course of business, it is unlikely to be improper.
72. The fact that a Commissioner requests or suggests a gift, or that the giver is reluctant, suggests impropriety.

83. Any indication of attempt to conceal or disguise a gift is evidence that the gift was improper.

94. Impropriety is suggested by resort to procedurally or financially irregular actions by a business or corporate body.

105. If a gift of any significant value is provided in direct exchange for a County action, it is almost certainly improper. If a Commissioner believes or suspects that the person making the gift expects or hopes it will influence a County action, it should be refused or returned.

116. If the person or organization making the gift has a clear private financial interest in a specific County action, greater suspicion is appropriate.

127. Any significant gift which appears to have a direct tie to the date, amount, or other detail of a County action is almost certainly improper.

138. It is not proper for a Commissioner to permit a private party with any substantial interest in County business to routinely and repeatedly pay for meals, travel, entertainment or lodging. It may be proper—for example, paying a single restaurant check—if it appears the motivation was primarily to entice a Commissioner to find time to hear the private party’s concerns, and the value is not so great as to suggest the Commissioner remains obligated. And of course there may be no impropriety if there is a superseding relationship between the Commissioner and the party.

14. In the absence of unusual circumstances, such as a series of gifts, the receipt of a gift of insignificant value for the purposes of this Policy, less than $25 is not improper.

169. It is inadvisable to allow a private party with an interest in County business to pay for alcohol or sexually-oriented entertainment, regardless of the value involved.

10. Some possible exceptions include:

(a) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(b) Anything for which the Commissioner pays fair market value.

(c) A gift from a relative or family member. A relative or family member is defined as: spouse, children, parents, siblings, grandparents, grandchildren, aunts,
uncles, first cousins, nieces and nephews (this definition includes "step", "adoptive", "half" and "in-law" relations).

(d) Any contribution that is lawfully made or event that is lawfully held under the Campaign Finance Laws of the State of Michigan.

(ed) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position of the recipient and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other Commissioners.

(f) Food or refreshments not exceeding $100.00 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.

(ge) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Commissioner), if the benefits have not been offered or enhanced because of the official position of the Commissioner, and are customarily provided to others in similar circumstances.

(hf) Meals or beverages provided to the Commissioner by a non-profit organization or a non-governmental organization during a meeting related to official County business.

(i) Expenses, including but not limited to admission fees, lodging, meals or transportation, that are waived or paid for by an entity other than the County related to attending a conference, convention, presentation, or speaking engagement in the Commissioner's official capacity.

(jg) Admission, regardless of value, to a charitable or civic event to which the Commissioner is invited in his or her official capacity where admission is waived or paid for by an entity other than the County.
- If a Commissioner receives a gift under circumstances which are ambiguous, the best course of action is to return it, perhaps explaining that the County has a stringent Ethics Policy. Another approach, particularly where it is impossible to return the gift, would be to disclose it along with any relevant circumstances, in a letter to the Board, where it will be listed as a communication, recorded in the minutes, and indexed and filed by Board staff.

(end)

Discussion.

Mr. Cohl suggested a redraft including the compromises to be looked at and discussed from there.

Discussion.

Commissioner Sebolt stated that he was concerned that there was a member of the minority party missing from the meeting and he did not want to seem like they were excluding them from making meaningful contribution to the ethics policy.

Commissioner Stivers stated that she was not worried about that.

Discussion.

Call a vote to merge the full policy with the merges as proposed by the chair,

MOVED BY COMM. GREBNER TO MAKE THE AMENDMENT/MERGER OF THE GIFT SECTIONS OF THE TWO DRAFT ETHICS POLICIES AS PROPOSED BY CHAIRPERSON STIVERS.

Commissioner Sebolt stated that he would not vote in support of moving the Ethics Policy out of the Subcommittee tonight. He further stated that he would prefer to first see the changes as merged into one document to be read in context.

Discussion.

Becky Bennett, Board of Commissioners Office Director, stated that a merged copy could be sent out tomorrow for review.

Commissioner Sebolt stated that he thought the Subcommittee would discuss the Ethics Policy tonight and have at least one more meeting. He further stated that he thought the goal was to have it done by the end of the year and that he wanted to see it and read it before passing it out to Committee.

Chairperson Stivers stated that she appreciated Commissioner Sebolt’s desire to make sure the Subcommittee approached this with due diligence and she would agree with having the merged document before the Subcommittee before voting it out.
The amendment was considered a friendly amendment.

MOVED BY COMM. SEBOLT, SUPPORTED BY COMM. GREBNER, TO TABLE THE MOTION REGARDING ADOPTION OF GREBNER REVISED ETHICS POLICY AS AMENDED, INCLUDING THE MERGED EMAIL SECTION AND THE PROPOSED MERGED GIFT SECTION, UNTIL THE NEXT SUBCOMMITTEE MEETING.

THE MOTION CARRIED UNANIMOUSLY. Absent: Commissioner Naeyaert.

Announcements

None.

Public Comment

None.

Adjournment

The meeting was adjourned at 7:53 p.m.

BARB BYRUM, CLERK OF THE BOARD