

**MINUTES**  
**SPECIAL MEETING / WORK SESSION**  
**ST. MARY'S COUNTY METROPOLITAN COMMISSION**  
**DECEMBER 1, 2010**

The meeting commenced at 2:04 p.m. In attendance were Commissioners Werner, St. Clair, Colonna, Hanson; MetCom staff Meiser, Ichniowski, Cullins, Edwards, and Comeau-Stanley.

**MOTION TO APPROVA AGENDA**

**Commissioner St. Clair moved to approve the Agenda as presented by staff. Commissioner Colonna seconded the motion and approval was unanimous.**

**DIRECTOR'S REPORT**

A. MetCom Draft Ethics Regulations

Ms. Meiser stated that the County intends to propose legislation that would require that MetCom and its employees be bound by the County's Ethics Ordinance, although MetCom clearly has always held itself to appropriate ethical standards, it has become evident that technically MetCom is not officially bound by either the County's or the State's Ethics Ordinance, which was a topic that received a lot of discussion during the public forum held on November 9 before the Board of County Commissioners. Ms. Meiser further stated that certain references were made at the meeting to cause the public to believe that MetCom has not been concerned with ethics in the past. We, the staff and Board of MetCom, knows that that is not the case and has taken up the issues of conflicts of interest and financial disclosure, however it has recently come to the forefront that MetCom is not formally bound by any particular ethics ordinance. The County's Ethics Ordinance doesn't apply because it only applies to County employees. MetCom is not a County Agency and its employees are not County employees, therefore the County's Ethics Ordinance does not apply. Likewise, while an argument could be made that the State Ordinance applies, it is not crystal clear either. MetCom is an entity that is created by the State Code, however its Board Members are appointed by the Board of County Commissioners, which creates some confusion over which would be the appropriate ordinance to apply. MetCom does not fit neatly into either ordinance. Ms. Meiser reiterated that that was a big topic of discussion at the hearing held on the November 9<sup>th</sup>.

Commissioner St. Clair noted that the Board Members of the Metropolitan Commission are bound by the St. Mary's County Ethics Ordinance and file Financial Disclosure and anyone having served on any board or committee through the County is required to and has done so. Commissioner St. Clair indicated that he wants to clear up any misconception for the general public that the Board is not adhering to any ethical ordinance. Ms. Meiser thanked Commissioner St. Clair for pointing that out and indicated that because all Board members are appointed by the Board of County Commissioners and serve on a Board or

Commission, they are required to file a Financial Disclosure Statement (FDS) under the County's Ordinance. Likewise, the current Director, as well as previous Directors of MetCom also files a FDS, but not by virtue of the fact that they serve as the Director, but because they serve on the Development Review Forum, which is a committee appointed by the Board of County Commissioners and are too required to file a FDS.

Ms. Meiser explained that the County's proposal to bring MetCom under the County's Ethics Ordinance has brought to the forefront two things; the first is that MetCom is not formally bound under the State or County Ethics Ordinance and the second is that MetCom does not fit squarely under either of the Ordinances. This board has sought the legal consult of DLA Piper on this and several other issues. Ms. Meiser stated that it is the opinion of DLA Piper that MetCom would most squarely fit under the State Ethics Ordinance, but it is also clearly stated in Mr. Fischer's letter that this conclusion is subject to some debate. Ms. Meiser further stated that MetCom is a quasi-governmental agency. It is not a State agency and is not a County agency. The Task Force, after all of its study over a nine month period, came to the conclusion that in their opinion MetCom should not become part of the County Government. MetCom was created by the Legislature of the State of Maryland and our enabling legislation is a part of the Annotated Code of Maryland, which is why our Legislative amendments to Section 113 of what has been incorporated as the County Code, requires State Legislative action. Ms. Meiser stated that we are a hybrid entity but we are not a part of the County Government. In summary, Ms. Meiser stated that we don't fit perfectly under either Ordinance.

Ms. Meiser indicated that the discussion, which took place at the recent hearing The County's Ethics ordinance could be regarded as more restrictive than the State Ethics Ordinance and there were comments made to the effect that MetCom doesn't want to be held to a higher ethical standard. Ms. Meiser stated that she does not believe that to be the case for either the MetCom Board or the MetCom Staff. It is more a case that there are certain provisions in the County's Ethics Ordinance that were intended for County employees and the provisions work well for County Employees, but when applied to non-County employees, there are provisions that don't make sense.

In light of this, it occurred to staff that there are other entities that are in a similar quasi-governmental posture that have Ethics Ordinances that may not be the County's Ethics Ordinance or State Ethics Ordinance, but rather their own. The one that readily came to mind was the Board of Education, which is created as a Board in the State of Maryland; however our local Board of Education serves only St. Mary's County. Ms. Meiser stated that she contacted the Board of Education and reviewed their Ethics ordinance, which in many ways mirrors the County's Ethics Ordinance except where it doesn't make sense for an entity that is not County to have County provisions applied to it. The greatest distinction, which prompted much discussion at the recent hearing, is the provision in the County's Ethics Ordinance (paraphrasing) says that no County employee can represent a person or an entity before any County agency or board. That provision was obviously written most appropriately for the County Attorney as a County employee, who, as an attorney, may have some opportunity at some time to represent another client before a

County Agency or Board clearly poses a conflict of interest in the same way that representing two sides of the same issue. Ms. Meiser cited examples both in the County's Ordinance as well as the Board of Education's Ordinance.

Ms. Meiser went on to state that applying the County's Ethics Ordinance to MetCom in the way that the legislation proposed by the County would propose to do; it would say that no MetCom employee could represent anyone before a county agency or board, which is a part of the ordinance that arguably isn't one that makes sense. No MetCom Employee is the County Employee, so to say that a MetCom employee is precluded from representing a third party in front of a county agency or board is not a similar parallel. What would be a similar parallel and what the Board of Education Ethics Ordinance says is that no MetCom employee can represent a client before the MetCom board or before any MetCom staff on any matter relating to MetCom. All of this taken into consideration, it seems that what would be appropriate is to have MetCom adopts its own Ethics Ordinance because we don't fit nicely under the County or State Ethics Ordinance. As such, a draft ethics ordinance was prepared for your review, which was largely tailored after the Board of Education's Ethics Ordinance, which is fairly closely tailored to the County's, to the extent that the County's Ethics Commission has the authority to enforce the provisions of the Board of Education's Ethics Ordinance.

Ms. Meiser stated that she is unsure as to what steps the Board of Education took to have County's Ethics Board administer their ordinance, but it would seem appropriate that we look to have the County's Ethics Commission administer MetCom's Ethics Ordinance in the same fashion. Ms. Meiser clarified that it isn't who administers it that is a problem; it is the substance of what is being applied.

Ms. Meiser then turned things over to the Board members for discussion. Chairperson Werner asked if there were any questions on the draft ordinance already submitted for our review and then indicated that her additions includes text that would identify what action should be taken by the Board if there is a conflict of interest. Ms. Werner also indicated that under Section D, the word "Board" should be added prior to the word "members." Additionally, Ms. Werner stated that in Section G, the Director, Assistant Director and all Department Heads should be the listed positions required to file financial disclosures.

Board members took some time to review the draft document and additional minor typographical corrections were recommended.

Ms. Meiser indicated that MetCom has always required its employees to essentially follow the basic ethical requirements of both the County and State Ordinances, with respect to conflicts of interest, financial disclosure and lobbying, but it was not formally stated that we were bound by either. Ms. Meiser went on to state that this fact has not really been given consideration until recently.

Ms. Meiser further stated that she does not know what steps the Board of Education took to consult with the County's Ethics Commission to obtain their consent to administer their

ordinance. Ms. Meiser stated that there have been no discussions to date with the County's Ethics Commission on their ability to administer our independent Ethics Regulations in the same manner they currently administer the Board of Education's Ethics Regulations, nor does she know what the process was for the Board of Education to make that happen.

Ms. Meiser indicated that an oversight has been identified and that it is important to demonstrate to the County Commissioners, the Delegation, our customers, and the citizens that we are taking this seriously and taking appropriate steps to formally put in place an Ethics Ordinance that is every bit as restrictive as the County's.

Board members in agreement that we need to have our own Ethics Ordinance. Further discussion ensued on Chairperson Werner's text additions as well as the need to look further into Section J. If in fact our Ethics Ordinance is intended to be administered by the County's Ethics Commission, then the appropriate steps need to be taken to make that happen, and so the applicable law could be that whatever sanctions apply under the County's Ordinance. Ms. Meiser further stated that in her conversations with Kurt Fischer of DLA Piper, he continues to believe that MetCom is bound by the State Ethics Ordinance. Ms. Meiser went on to state that to the extent that this is more restrictive, then MetCom can adopt whichever ethics regulation it desires, but we could not adopt an ethics regulation that is less restrictive than the State Ordinance. Ms. Meiser stated that if this board elects to adopt an independent ordinance which is structured in that way, much like the Board of Education, it may choose to set up a separate MetCom Ethics body. Ms. Meiser stated that what has been presented in the way of a draft MetCom Ethics Ordinance is not intended to imply that MetCom must do what the Board of Education has done; it simply was a working model that existed and was acceptable for the County's Ethics Commission to administer. Ms. Meiser stated that having the County's Ethics Commission administer our independent Ethics Ordinance simply means that they ensure that the ethics are adhered to and enforced, but it does not mean that the County would set the rules.

Discussion ensued amongst the Board members on who is best to administer the Ethics Ordinance; State or County. Commission Chair Werner recommends we check with the State to see if they would consent to allowing the State Ethics Commission to administer our Ethics Ordinance. In response to questions posed by Board members, Ms. Meiser indicated that Mr. Fischer believes that when push comes to shove and we did nothing to adopt an Ethics Ordinance, then the State Ethics Ordinance would apply. Unless and until it is challenged and there is some finding made by a court of law, that is the best thing that we have to go on. Now, if the County is successful in having its legislative proposal approval, then that would make MetCom be included in County employees, therefore the County's Ordinance would apply. If MetCom as a Board wanted to challenge the legality of that it in court of law to obtain a legal opinion from a judge as to whether should be rightfully come under the County's Ethics Ordinance or not, clearly that would be more binding than that of an attorney. Ms. Meiser said that all that she is suggesting is that by the adoption of an independent set of regulations that, in the eyes of the legislature and the County, mirrors closely enough the County's regulations and places some rules on

MetCom with respect to the ethics, that may be sufficient to avoid going through the court system to determine an ultimate answer.

Additional discussion ensued amongst the Board members on the importance of having an objective third party to administer the Ethics Ordinance.

Ms. Meiser announced that the next meeting with the Board of County Commissioners, which is a public forum, will take place on Tuesday, December 7, at 6:30 p.m. in the Chesapeake Building. Mr. Ichniowski reminded the Board members that Mr. Fischer will be attending that meeting. Ms. Meiser also announced that the next MetCom meeting is scheduled for Thursday, December 9. Board in agreement that Kurt Fischer should speak with Delegate Tony O'Donnell in advance of the public hearing.

Board members noted some of the changes, additions and deletions to the text of the draft MetCom Ethics Ordinance. Ms. Meiser indicated that she would make the requested changes and present a revised version out to the Board for review prior to the next meeting.

Commissioner St. Clair asked if this was going to come up at the public forum on Tuesday night. Ms. Meiser stated that it may come up and she believes that is important that we advise the new County Commissioners of the steps we are taking. Ms. Meiser further stated that the one thing made crystal clear in this process is that we don't fit perfectly under either the State or the County Ethics Ordinance. The creation of an Ordinance that pertains directly to MetCom without compromising the stringency of it is an appropriate action and that is why we are headed where we are headed. Commissioner Werner indicated that even if they do move forward with the Legislative changes, they would not go into effect until next year sometime, so it would allow us to have something in place for now. Ms. Meiser advised the Board that she spoke to Delegate Bohanan and advised him that this effort is underway.

A brief discussion ensued amongst the group on the discussion topics at the upcoming forum.

#### **COMMISSION MEMBERS' TIME**

#### **ADJOURNMENT**

There being no further business, **Commissioner Colonna moved to adjourn at 2:52 p.m. Commissioner Hanson seconded the motion and approval was unanimous.**