

**CITY OF LEWES
BOARD OF PUBLIC WORKS
WORKSHOP MEETING MINUTES
MARCH 22, 2017**

The March 22, 2017 workshop meeting of the Lewes Board of Public Works was held at 12:00 P.M. in the Lewes Board of Public Works upstairs meeting room.

Board Members Present:

D. Preston Lee, P.E.
A. Thomas Owen
Jack Leshner
Robert J. Kennedy, III

Board Member Not Present:

C. Wendell Alfred

Ex-Officio Member Present:

Darrin Gordon, General Manager

Others Present:

Austin Calaman, Assistant General Manager
Kristina Keller, BPW
City Councilman Rob Morgan
City Councilman Dennis Reardon
Jackie Doherty, Recording Secretary

In the absence of President Alfred, Mr. Lee called the meeting to order at 12:00 P.M.

Board of Ethics and Governance Training: Presenter Michael Hoffman

Mr. Hoffman stated discussion today would include highlights on the Code of Ethics and Freedom of Information Act with a question-and-answer session following.

Mr. Hoffman explained how the power and authority of the Board comes from the General Assembly through the Charter which states the powers, duties, obligations and specific charges from the State. As a public body, the Board is also bound by the regulations and responsibilities of public officials which is the Code of Ethics and Freedom of Information Act.

Freedom of Information Act (FOIA)

Discussion included:

- Attorney General's office must provide an update of the key issues every other year
- Emails with no commentary are not considered a FOIA violation
- Best Practices standpoint advises no email dialog

- Provisions are applied liberally to protect the rights of the public to information
- FOIA does not require public participation, only that the process be open to observation
- Public participation requires First Amendment concerns
- Public records standards, request requirements process, FOIA coordinator
- Board to be aware of what records are being requested and provided and which documents are considered public or considered an exception
- Emails are also considered public documents including personal emails that contain business discussions; security considerations; length of time emails need to be saved; keeping personal and business emails separate
- FOIA requests to the City of Lewes forwarded to BPW need a response or will be considered a violation, response time is 15 business days from date you are aware of the request

Mr. Hoffman discussed the franchise fee as stated in the Charter through the General Assembly.

Mr. Kennedy questioned if it is a violation of the Charter for the Mayor to serve as ex-officio of the Board as a member without a vote, which is stated in the BPW bylaws. Also, is it required that the BPW and the City of Lewes have the same counsel. Mr. Hoffman stated the Charter calls for an ex-officio member of Council to be on the Board. The Charter also states the Board can hire their own counsel or independent counsel.

FOIA discussion continued:

- Email discussions on public-matter business can be considered a meeting and any decisions could be subject to reversal on the basis of FOIA violation; exchange of a quorum of the Board is interpreted as a meeting and includes discussions at social events
- Penalties for FOIA violation include the public embarrassment, all decisions are void, Attorney General can ask for remediation to require review of all agendas and meeting minutes for one year
- Description needed of the section to identify subject of the executive session
- Forms to be submitted requesting public records and the right to charge for the records
- Explanation of what is considered to be an email serial meeting

Code of Conduct

Discussion included:

- Board is bound by the State Statutes and Regulations pertaining to conflicts of interest
- State Code of Conduct applies to local municipalities unless the municipality adopts their own that is at least as strict as the State, which has been done by the City of Lewes
- Does the BPW come under Lewes Code of Conduct and subject to their Board of Ethics or is the Board considered a separate political subdivision
- The Lewes Code of Conduct is the same as the State of DE
- If the Board member, or close relative, has a financial interest of greater than 10% in the issue being discussed, he should recuse himself and leave the room

Mr. Kennedy stated there needs to be a review of the bylaws.

Public Body vs. Investor-Owned Utility

Discussion included:

- Investor-owned utilities are regulated by the Public Service Commission and public municipal utilities are not
- The charge of the Board, as elected officials and as stated in the Charter, is to the public, to run a sound operation to maintain bond ratings and comply with utility laws
- BPW answers to customers, is subject to open-meeting laws, FOIA and public elections with a different charge, mission and layer of review than an investor-owned utility
- Does the Charter give the Board the authority to make decisions that would raise rates but benefit customers in other ways

Mr. Lee adjourned the meeting at 2:00 P.M.

Respectfully submitted,
Jackie Doherty, Recording Secretary
Lewes Board of Public Works