



Audit & Ethics Committee

Response to State Audit Findings Regarding Ethics Office

Item 6b

May 24, 2022

Overview

Today's Presentation

- Audit findings
- Audit recommendations
- Ethics Officer response
- Implementation plan

Audit Findings

Broad Finding

“MWD Has Failed to Establish an Independent Ethics Office, and Its Leadership Has Inappropriately Interfered in Some Ethics Investigations.”

Audit Findings

Finding 1

“MWD’s Ethics Office Does Not Comply With State Law or Align With Best Practices.”

- MWD has not ensured independence required by SB 60.
- Ethics Office not authorized to obtain outside legal advice.

Audit Findings

Finding I

- Lacks unimpeded access to documentation in investigations.
- Office not adequately insulated from outside influence.
- Ethics Officer's authority to interpret ethics rules unclear.
- “Collaboration” requirement for Ethics Officer threatens independence.

Audit Findings

Finding 2

“MWD Management Inappropriately Interfered in the Ethics Office’s Work on Two Important Cases.”

- Weak structure allowed MWD officials to inappropriately interfere with and influence the ethics office’s work.

Audit Findings

Finding 2

- Did not see evidence suggesting that interference is widespread.
- Opportunity for additional interference still exists.
- Any actual or perceived interference undermines ability to independently investigate ethics violations.

Audit Findings

Finding 3

“MWD Appears Unwilling to Strengthen Its Ethics Office .”

- "MWD's leadership has demonstrated a persistent unwillingness to ensure that the ethics office has the necessary resources and authority to operate independently.”

Audit Findings

Finding 3

- 2017 outside review of Ethics Office raised questions about independence, lacked transparency and accountability.
- Some directors misunderstand or may not respect Ethics Officer's duties under state law.
- Ethics Office did not independently draft recent ethics Code amendments.

Audit Findings

Other

- Retaliation for reporting safety concerns.
- Referrals to EEO Office.

Audit Recommendations

Legislative Action

“To ensure that the issues ... in this report are finally addressed, the Legislature should amend state law to include one or more mechanisms by which it can revoke or limit MWD’s authority over key ... ethics processes in the event that MWD again fails to take corrective action.”

Audit Recommendations

Amendments to State Law

- Establish Ethics Officer as sole authority for interpreting ethics rules.
- Grant Ethics Officer authority to contract for independent legal counsel.
- Authorize unrestricted access to records without waiver of privileges.
- Explicitly prohibit director and employee interference in investigations.

Audit Recommendations

Amend MWD Administrative Code

“Prohibit interested parties from participating in the office’s investigation process, except when necessary to provide information or otherwise respond to allegations.”

Audit Recommendations

Amend MWD Administrative Code

“Establish the best practices highlighted in this report for protecting the independence of the ethics office, such as ensuring that the ethics officer has sole authority to interpret MWD’s ethics rules and that the ethics office can obtain advice from outside legal counsel.”

Audit Recommendations

Retaliation Policy

- Enhance policies to formally define retaliation.
- Include specific steps responsible parties should take when performing their duties under the policies, such as protecting employees from retaliation.

Ethics Officer Response

Response to Audit Report

- Accept findings
- Support recommendations

Moving Forward

Implementation Plan

- Legislation
- Administrative Code amendments
- October deadline

Legislation

Immediate Action – Amend State Law

Implementation
Plan

Implementation Plan

Administrative Code Amendments

Policies and procedures

- Unrestricted access to records
- Non-Interference in investigations
- Independence
- Retaliation

Implementation Plan

Administrative Code Amendments

Ethics Officer Authority

- Authority/funding for independent counsel
- Authority on interpreting ethics rules
- Other

