

DATE: August 26, 2014

TO: Chairman Steve Brown
Fayette County Board of Commissioners

FROM: Chairman Buzz Ahrens
Chair, ARC Bylaws Sounding Board

Chairman Brown:

Your comments concerning the ARC Bylaws revision have been received and reviewed. The ARC Bylaws Sounding Board offers the following responses, in the order they appear in your letter.

Point 1

In Article VI, Section A – Composition, Subsection 2. a. Members at Large – A CID board member cannot act as a Member at Large, providing that “Members at large may hold no elective or appointed public office nor be employed by any of the political subdivisions of the Area.”

You assert that a CID board member cannot serve as a member-at-large. However, this does not align with current legal opinions on this matter, as we are aware. Attached are the Attorney General’s legal opinion and an Ethics Commission legal opinion from several years ago, concerning the very question of whether CIDs’ constitute public bodies and whether their board members are considered to be public officials. These opinions hold that CIDs are not public agencies, nor are their board members considered public officials.

Until there is a new Attorney General opinion, new case law, or a new law which alters this status, the Atlanta Regional Commission should adhere to the standing opinions that CID’s and their board members are not public agents; and therefore, CID board members may serve as members-at-large on the ARC Board of Commissioners.

Point 2

In Article VI, Section G, Subsection 1.a. Chair – The region suffers a significant loss of accountability by having a Member at Large as the Chairman of the ARC. The region’s citizens have no recourse with a Member at Large as Chairman. Lack of trust is already a crucial issue.

Whether or not a member-at-large serving as Chairman leads to a loss of accountability is a matter we would expect board members to consider when they cast their votes for chairman. The regions’ citizens’ recourse regarding the performance of anyone serving as chairman is vested in the board members, both public and private, who elect the chairman every two years.

We would expect that the members will act responsibly to select a chairman (or a new chairman, if need be), who will comport himself or herself in a professional, responsible, and ethical manner. We are certain that is the case when our current chairman was selected. We should also point out that in the long history of the agency, it is only the previous chairman and the current chairman who have been members-at-large. Prior to this, the ARC chair has been a county commission chairman.

Point 3

In Article VI, Section G, Subsection 1.d. Duties – The power is too consolidated around the Chairman. We could have a scenario where the Chairman, other officers and the committee chairmen could be comprised of a majority of Members at Large, creating significant constituent accountability issues.

We remind you the Chairman **can only appoint officers and committee chairmen with the approval of the full board.** This has been true in the current version of the bylaws. This requirement is maintained in the proposed revised version. Furthermore, the Chairman is urged to seek a balance of county, city, and at-large members in his appointments.

“The Chair shall strive to seek a balance of county, city, and at-large Board members in his or her appointments to committees. Not later than the second Board meeting after the Chair is elected, the Chair shall submit his or her officer and committee chair recommendations to the full Board for consideration and approval.”

A Board Chairman cannot “pack” officer or committee chair appointments with members of any type, unless the board concurs with this action in the form of approving his or her nominees.

Point 4

In Article VI, Section H, Subsection 5. Citizen Input – I was astound [sic] when I found out that the region’s citizens could not automatically address the ARC Board.

It has been an ARC practice that public comment is heard during board committee meetings, rather than board meetings. We are not aware of the reason why the Board adopted this practice many years ago, but it did. If the Board wishes to change this practice, it can certainly do so.

Point 5

In Article VI, Section I, Subsection 1.e. 4) Quorum under Transportation and Air Quality Committee – I find it astonishing that we would ever consider a quorum of 40% of the members present.

The Transportation and Air Quality Committee is the largest committee of the Board, consisting of 33 voting members, most of them assigned to the committee as a matter of law. Given that many of these members represent counties outside of the 10-county ARC region; and given that it is not unusual for them to have difficulty making it to Atlanta regularly for TAQC meetings: in the past it became a matter of practical necessity to lower the quorum from 50% to 40%, in order to be able to act on matters before the committee.

You suggest this lower quorum requirement causes issues of trust and accountability. We would offer another perspective. To allow continued inaction on matters that come before the committee, because of the lack of a quorum would call into question the board's ability to manage affairs of regional importance. We fail to see how 17 people acting on a matter rather than 13 makes for a more trustworthy situation. The ARC Board made the decision years ago to change the TAQC quorum from 50% to 40% of committee members. The ARC Board can change it again, should it choose to do so.

Point 6

In Article VI, Section I, Subsection 1. a. Governance Committee – Please DECENTRALIZE the power. All of the members of the governance committee are appointed by the Chairman. The past several years, our Chairman has no direct accountability to our region's citizens. This sends the wrong message to our constituents.

Please refer to our response on Point 2, for the primary response here. In addition however, you assert that in the past several years the Chairman has had no direct accountability to the region's citizens. You assert that this is the case because the Chairman has been a member-at-large, not a local elected official. However, we disagree with your premise for two reasons. Reason one: if an ARC Chairman is an elected official, he or she is accountable only to the electorate in his jurisdiction, not the region's citizens in total. To assert that an elected official serving as chair is accountable to the region's citizens is inaccurately broad in description. Reason two: all members-at-large are selected and elected to the board solely by the public members. It is solely the public members who can reelect them to the board. If the public members – acting as the elected representatives of the region's citizens -- feel a citizen member is failing to uphold his/her responsibilities, they can remove him/her.

Point 7

It was brought to my attention that the enabling legislation as defined in HB 1216. According to the provisions on page 13, Section (e) states, “Each regional commission council shall elect from among its council members a chairperson, vice chairperson, and secretary or treasurer who shall serve for a term of two years and until their successors are elected and qualified.” It appears we have been in NON-COMPLIANCE for years.

Your citation of the Code of Georgia is correct as it applies to other regional commissions. However, the General Assembly passed a law creating ARC as a Metropolitan Area Planning & Development Commission (MAPDC), O.C.G.A. 50-8-80. In passing this law regarding the Atlanta Regional Commission, the General Assembly made it clear that where the MAPDC code may be in conflict with the regional commission code, the former supersedes the latter. O.C.G.A. 50-8-88 states how we select our officers. It is shown below for your reference.

§ 50-8-88. Election of officers; compensation of officers and members
A commission shall elect such officers as it deems necessary for the conduct of its affairs, including a secretary and treasurer, who need not be members of the commission, and shall be compensated as determined by the commission. Each member of a commission, other than the chairman, may be paid a per diem compensation not to exceed \$44.00 for each meeting which he attends and additional compensation for such other services as are specifically authorized by the commission, and may be reimbursed for his actual expenses. No commission member, other than the chairman, shall receive compensation in excess of \$2,400.00 per year.

As you can see, we have not been in a non-compliance status. We hope this relieves your concerns on this.

Point 8

I have personally faced the wrath of the previous ARC Chairman, a CID board member with no accountability to the region’s citizens, being told that my opposition to a regional proposal would make things difficult for me. The thought of no citizen recourse to remove such ARC board members along with the enhanced centralization of power of the ARC Chairman is indefensible to any person claiming to want fairness and accountability in the system.

We cannot comment on your relationship with the prior Chairman. However, if you believe that any current or future Chairman is acting in an unethical or illegal manner, the agency’s bylaws enable any member to bring an ethics complaint against that individual. Removal of an ARC member-at-large for unethical or unbecoming conduct is a matter which the General Assembly has delegated to the ARC board to adjudicate.