

Office of Inspector General City of Jacksonville, Florida



JEA Sunshine Law Violation Allegations 2024-0034

10/29/2024

A handwritten signature in black ink that reads "Matthew J. Lascell". The signature is written in a cursive style and is positioned above a horizontal line.

Matthew J. Lascell
Inspector General

Executive Summary

The Jacksonville Electric Authority (JEA) held an emergency board meeting on April 15, 2024. During that meeting, board member Joseph DiSalvo was named the new board chairperson, and Chief Executive Officer (CEO) Jay Stowe formally announced his resignation. Moments after Stowe made the announcement, DiSalvo motioned for retired JEA employee and current board liaison Vicky Cavey to assume an Interim CEO role. After a brief discussion, JEA board members Ricardo Morales, John Baker, Robert Stein, and Marty Lanahan voted to approve the motion. Board member Kawanza Humphrey voted against it. Board member Dr. A. Zachary Faison viewed the discussion in an online forum but was unable to participate in the vote. Cavey's contract would later be unanimously approved at the May 2024 meeting.

The Office of Inspector General (OIG) received allegations that the board members violated Florida Sunshine Law guidelines when they communicated about JEA's transition in leadership outside of the scheduled public meetings mentioned above. OIG investigators interviewed all board members and Regina Ross, the Office of General Council attorney assigned to JEA. It was determined that some members did communicate with each other outside of publicly noticed meetings during the transition process.

A copy of this report will be provided to the State Attorney's Office to determine if any criminal violations occurred.

Background

According to statements made in interviews with the OIG, board members acknowledged that their overall relationship with CEO Stowe became tense in November 2023 when they learned several JEA projects ballooned in price, some exceeding Stowe's 100-million-dollar budget authority as outlined in the City charter. Stowe asked the board to increase his budget authority. The board denied his request and decided to audit some of the more costly projects.

In February 2024, the board requested Stowe rehire former employee Vickie Cavey as a "board liaison" and tasked her with oversight of the larger JEA projects. Cavey had previously returned to assist with the CEO transition between Aaron Zahn and Paul McElroy until Stowe was hired as a permanent CEO. Many of the board members worked with her during those assignments at JEA and felt she was qualified to complete the review.

On May 6, 2024, a JEA employee (who requested their identity remain confidential) stated the following:

- Outgoing board chairperson Robert "Bobby" Stein had grown frustrated with Stowe and wanted Cavey to replace him eventually. Stowe notified Stein of his intent to resign on April 1, 2024.
 - On April 4, 2024, Stein met with two members of the JEA leadership team (Laura Schepis and Kurt Wilson) at Southern Grounds in Avondale. Stein tasked them with
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notifying other board members about Stowe's resignation, organizing Stowe's severance package, and drafting a 3-year employment offer for Cavey as CEO.

- Stein had several private conversations with other board members to discuss the transition between Stowe and Cavey before and after Stowe resigned.

Allegations, Governing Directives, and Findings

According to Florida State Statute 286.011:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(3) (b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree.

All board members were asked about their communications relating to JEA business. Bobby Stein (the outgoing chairperson) and Joe DiSalvo (the incoming chairperson) both advised they engaged in two brief phone conversations via telephone while DiSalvo was working out of state. One conversation took place in March 2023 and centered on the need to schedule an Invitation to Negotiate (ITN) meeting for the audit of the projects that ballooned in cost. Stein advised DiSalvo that information given to the board for review needed to be simplified so members could better understand it at the upcoming meeting. The second conversation took place on April 10, 2024, where the two briefly discussed that an emergency meeting needed to be scheduled to announce Stowe's resignation and the need to appoint an interim CEO at that meeting. The meeting was set for April 15, 2024. That meeting would also be DiSalvo's first meeting as board chairperson.

Stein and John Baker also admitted to briefly discussing some JEA matters outside of a public meeting. During that conversation, Stein advised Baker that Stowe submitted his resignation and asked that he contact Stowe for more information.

Baker and Marty Lanahan also engaged in an in-person conversation in November 2023. Lanahan stated she was visibly upset with Stowe after the November board meeting. She and Baker met for lunch, and Lanahan told Baker she was considering resigning from the board. Baker encouraged her to meet with Stowe and discuss her concerns. Lanahan resigned from her position and is no longer a board member.

OCG Attorney Ross administers annual Sunshine Law and Public Records Laws training for JEA board members and management-level employees in the spring of each year. She explained that the State of Florida's Sunshine Law prohibits two or more members of the same board from discussing business, which should be limited to publicly noticed meetings. Staff are prohibited from acting as "go-betweens" to relay messages between board members. Topics prohibited by this law include any items that could potentially be subjected to a board vote or that have already been voted on by board members because there is always potential for reconsideration.

When asked about Baker and Lanahan's conversation, Ross believed it did not violate the sunshine laws because the board does not take any action when a member resigns, nor does it consider filling member vacancies; the mayor or City Council appoints candidates. She further noted that Lanahan expressed her frustrations with Stowe and some of his staff openly and at length in many board meetings before her lunch with Baker. Simply reiterating that she was still frustrated would not be a violation.

Ross also stated that the CEO's resignation was not something the board would vote on or discuss further. Notifying other board members of Stowe's decision to resign would not be a violation. She added that Stein can delegate assignments to other board members as the outgoing board chairperson without violating sunshine laws. She would normally advise against delegating assignments via phone, but if that was all that was said between Stein and Baker and Stein and DiSalvo, she believed the conversations did not rise to the level of a sunshine violation.

Recommended Corrective Actions

Institute an enforceable policy against Sunshine violations.
Continue Sunshine Law training for board members.

Management's Response

The OIG provided a copy of the draft report of investigative findings to Chief Legal Counsel for JEA Regina Ross. The OIG provided Ross with an opportunity to submit a written explanation or rebuttal to the findings in the draft Report of Investigation. Ross submitted a response to the report within the requested timeframe (see attached).

Inspector General Standards

This report/review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles and Quality Standards for Investigations.

"Enhancing Public Trust in Government Through Independent and Responsible Oversight"

225 North Pearl Street
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October 25, 2024

Katie Turner, Inspector, CIGI
Office of Inspector General
231 East Forsyth Street, Suite 4710
Jacksonville, Florida 3222
By Email: KatieT@coj.net

Re: JEA Management Response to OIG Investigation #2014-0034

Ms. Turner:

Enclosed, you will find JEA's Management Response to Investigation 2024-0034. On behalf of JEA, I would like to thank you and your team for your hard work and professionalism in disposing of this matter.

If there is any additional information that I may provide, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Regina D. Ross".

Regina D. Ross
Chief Legal Counsel for JEA
City of Jacksonville, Office of General Counsel



JEA Management Response

(Office of Inspector General Investigation #2024-0034)

Overview

The City of Jacksonville, Office of Inspector (OIG) received an anonymous complaint, alleging that members of the JEA Board of Directors (Board) violated Florida's Government in the Sunshine Law ("s. 286.011, F.S." or "Sunshine Law") by holding private discussions related to JEA's transition in leadership in April 2024. In response, the OIG initiated Investigation 2024-0034, where investigators interviewed each JEA Board member and Regina D. Ross (Ross), the Office of General Counsel attorney assigned to serve as JEA's Chief Legal Officer. Following its investigation, the OIG determined that certain members of the Board engaged in private conversations. However, absent from the report is any determination as to whether the communications constitute a violation of the Sunshine Law. On September 4, 2024, the OIG provided JEA a draft copy of its report and directed that JEA provide a management response within 10 business days. Accordingly, this management response is provided in support of JEA's position that none of the communications described in the OIG's report constitute a violation of the Sunshine Law and to dispute certain facts alleged in the report (and to clarify information as needed). It is important to note that JEA has not been provided with a copy of the anonymous complaint nor has JEA been privy to any of the Board member interviews. This response therefore is based solely upon review of the information recounted in the OIG's draft report.

Background

During late 2023 through early 2024, Board members increasingly began publicly voicing concerns and frustration over a number of issues, including JEA's spending, the need for improved communications from staff to aid in Board decision-making, and the level of transparency and project management surrounding capital projects. The extent of the Board's concerns and frustrations appeared noticeably evident in February 2024, when on or about February 12, 2024, Marty Lanahan, the Board's Vice-Chair, provided notice of her intent to resign from the Board. In her resignation letter, Lanahan noted that her business commitments had become an impediment to her ability to effectively serve on the Board but reiterated concerns she had previously expressed over JEA's spending and need for better engagement from staff to aid in Board decision making. In the letter, Lanahan emphasized her concerns by including statements such as "JEA must show discipline around expenses during a time where they have to raise rates" and "this Board is not intended to be a 'rubber stamp.'" Lanahan went on in the letter to suggest that an independent party be engaged to review JEA's capital plans.

Shortly thereafter, on February 22, 2024, during a meeting of the Board's Finance, Governance and Audit Committee, former JEA Chief External Affairs Officer, Laura Schepis (Schepis), presented an agenda item requesting that the Board ratify execution of 4 contracts and approve execution of an additional contract, each totaling more than \$100,000,000.¹ In her presentation, citing to JEA's "Large Contract Process," Schepis briefed Committee members that

¹ As a point of clarification, the CEO/Managing Director's signature authority is provided in the JEA Delegation of Authority and Responsibility Policy and the JEA Energy Market Risk Management Policy rather than the JEA Charter.

“staff recognized the need to provide the Board more information on significant projects and obtain required approvals for projects that are expected to exceed \$100,000,000.” The Board ultimately approved the contracts but openly expressed its dissatisfaction with oversight and management of capital project costs.

The Board’s concerns and frustrations were compounded later in February 2024, following news reports on sizeable employee pay increases, out-of-state executives, and impacts of an organization restructure. A number of Board members publicly expressed dissatisfaction with learning of these events from news media outlets and phone calls from concerned City officials, rather than being informed in advance by Jay Stowe (Stowe), then CEO/Managing Director.

Citing the need to make informed decisions over capital expenditures and a review of JEA’s operations, during its meeting on March 26, 2024, the Board took action to approve soliciting a consultant to develop a comprehensive plan aimed at optimizing JEA’s operations and capital efficiencies. The Board also approved hiring Vickie Cavey (Cavey) as Board Advisor, who was tasked with facilitating better communications between staff and the Board and assisting the consultant in completing its scope of work. The March 26, 2024 meeting also marked the last regularly scheduled meeting where then-Board Chair Bobby Stein (Stein) would preside. Stein’s term as Board Chair ended on March 31, 2024.

On or about April 1, 2024, Stowe began verbally notifying Board members and certain members of staff of his intent to resign from his position. Because of the potential conflicts of interest in staff determining how the matter would proceed before the Board, Ross advised that she would limit her communications on the matter to, and receive directions solely from, Lieutenant General, U.S. Army (Retired) Joseph DiSalvo, who was the newly-elected Board Chair.² Shortly thereafter, DiSalvo and Ross began meeting to discuss scheduling a special public meeting where Stowe would resign and Board members could discuss: (1) terms and conditions of a proposed Separation Agreement between JEA and Stowe³ and (2) appointment of an interim CEO/Managing Director. On April 15, 2024, the Board conducted a Special Meeting where Stowe resigned, the Board approved terms and conditions of Stowe’s Separation Agreement, and appointed Cavey to act as Interim CEO/Managing Director.

The Sunshine Law

The Sunshine Law provides each member of the public a right of access to governmental proceedings at both the state and local levels. The Sunshine Law is equally applicable to elected and appointed boards, and generally applies to any gathering (whether formal or casual) of two or more members of the same board or committee to discuss some matter which will foreseeably come before that board or committee for action. In short, and relative to this matter, members of the same board may not engage in private communications with each other regarding matters that require board action. Possible consequences for failure to comply with requirements of the Sunshine Law include civil action, criminal penalties and removal/suspension from office. Additionally, because

² DiSalvo was appointed to the Board on April 14, 2020, and elected by the Board to serve as its Chair during the Board’s February 27, 2024 meeting (see Board February 27, 2024 Minutes). His term as Chair began on April 1, 2024, and is scheduled to end on March 31, 2025 (unless re-elected to serve a second term).

³ The terms and conditions contained in the proposed Separation Agreement had been negotiated by Ross and engaged outside counsel at the direction of DiSalvo.

the Sunshine Law should be construed so as to frustrate all evasive devices, courts have held that action taken in violation of the law is void *ab initio*.⁴ Courts have also recognized, however, that a violation of the Sunshine Law may be cured by a full open hearing where the board takes “independent final action in the sunshine.”⁵

JEA’s obligation to comply with the requirements of the Sunshine Law is emphasized in the Charter, Article 21, which provides that the JEA Board members are subject to Chapter 286, Florida Statutes, and advises that the Board “should hold its meetings in the most open and transparent manner practicable for the benefit of the public and citizens of the City of Jacksonville.”⁶ “To the greatest extent feasible, JEA is encouraged to adhere to best practices and recommendations regarding openness and transparency contained in the latest published edition of Florida’s *Government-in-the-Sunshine Manual*.”⁷ Additionally, Section 21.09 of the Charter requires that all senior-level employees, including the managing director and senior-level officers, directors and managers of JEA annually participate in Sunshine Law training provided by the Office of General Counsel. To ensure that both JEA Board members and employees are aware of their obligations under the Sunshine Law, Ross provides such annual training and advises on specific questions/issues as needed. Coincidentally and relevant to this matter, on March 8, 2024, Ross emailed all Board members in recognition of Sunshine Week 2024 and reminded them of their obligations to avoid engaging in private discussions with each other about matters that required Board action.

Anonymous Complainant Allegations and Disputed Facts

According to the report, an unidentified JEA employee alleged that, on April 4, 2024, Stein met with Schepis and Kurt Wilson (Wilson), then JEA Vice-President of Government Affairs, at Southern Grounds coffeeshop in Avondale. The unidentified employee further alleged that Stein tasked Schepis and Wilson with notifying other Board members about Stowe’s resignation, organizing Stowe’s severance package, and drafting a 3-year employment offer for Cavey to serve as JEA’s CEO/Managing Director. While Wilson was not interviewed by the OIG as part of its investigation of this matter, he maintains that the anonymous complainant’s allegations are false. According to Wilson, he and Schepis met briefly with Stein for coffee. During their meeting, Stein gave the two no directions, but simply inquired about employee morale following notice of Stowe’s

⁴ *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that “where officials have violated section 286.011, the official action is void ab initio.” See *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void ab initio and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city’s approval of minutes is null and void ab initio); and *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closed door mediation sessions which resulted in changes to pension benefits of city employees in certain unions).

⁵ See *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice meeting under s. 286.011). See, e.g., *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981).

⁶ See Section 21.03(e) of the City Charter.

⁷ *Id.*

intent to resign. Wilson recalls that Stein concluded the meeting by thanking Schepis and Wilson for their hard work and offering to be available to assist as needed.

Alleged Board Member Communications

According to the report, all Board members were asked about their communications “relating to JEA business.” The report states that Stein (as outgoing Board Chair) and DiSalvo (as incoming Board Chair) had two brief conversations regarding what appears to be related to Board administrative procedures. In sum, the report states that Stein and DiSalvo discussed scheduling meetings and providing Board members with sufficient information in a simplified manner to facilitate a better understanding of meeting agenda items. Based on the information contained in the report, it is JEA’s position that such communications do not constitute violations of the Sunshine Law because the conversations were not about matters that would foreseeably come before the Board for action, but instead related to administrative procedures for facilitating Board meetings as well as the duties and responsibilities of the Board Chair. For instance, it is the duty of the Board Chair to preside over meetings, coordinate with the CEO/Managing Director to create tentative Board meeting agendas, and (in some instances) call special meetings. Here, the conversations described in the OIG’s report simply appear to be efforts by Stein (as the outgoing Board Chair) to effectuate a smooth transition by advising DiSalvo (as the incoming Chair) on the duties and responsibilities of the position.

With respect to the conversation between Stein and Baker described in the report regarding Stowe providing verbal notice of his intent to resign, again, it is JEA’s position that the communication does not constitute a violation of the Sunshine Law because Stowe’s decision to resign is not itself a matter that requires Board action. Likewise, the conversation described between Baker and Lanahan regarding Lanahan’s decision to resign from the Board does not violate the Sunshine law because such resignation is not a matter for Board action, as Board approval is not required for a member to resign and the Charter does not assign the Board any role in filling vacancies.

OIG Recommended Corrective Actions

While the OIG report provides no determination that JEA violated applicable provisions of the Sunshine Law, JEA takes no issue with the recommended corrective action. In fact, collectively, members of the JEA Board and staff recognize the importance of the Sunshine Law and their respective ongoing obligations to comply. Ross and other members of the Office of General Counsel will continue to provide Sunshine Law training for Board members and JEA staff as well as provide advice and guidance on open government issues as needed. Additionally, in accordance with the JEA Charter, the Board will continue to review and update its governing documents including the JEA Board Policy Manual, which includes provisions regarding compliance with the Sunshine Law.