

**RESPONSE OF THE BOARD OF THE OFFICE OF CONGRESSIONAL ETHICS TO
THE STANDARDS COMMITTEE’S COMMENTS ON THE OCE’S REVIEW
CONCERNING REPRESENTATIVE FORTNEY “PETE” STARK**

On January 28, 2010, the Committee on Standards of Official Conduct (hereafter the “SOOC”) issued a report titled, “In the Matter of Representative Fortney ‘Pete’ Stark.”¹ The Office of Congressional Ethics (hereafter the “OCE”) had previously transmitted a matter concerning Representative Stark to the SOOC in late 2009. The following reply was unanimously adopted by the Board of the OCE on February 24, 2010.

The OCE Board fully respects the responsibility of the SOOC to decide the merits of matters referred to it by the OCE. At the same time, in adopting House Resolution 895 of the 110th Congress (hereafter, “the Resolution”), the House of Representatives established the OCE as an independent office and gave its Board exclusive authority to decide when to refer a matter to the SOOC for further review or dismissal.

The OCE Board understands its mission under the Resolution is to assist the House in upholding high standards of ethical conduct for Members and staff. In order for the OCE to fulfill its mission, the House and the public expect clarity and transparency. In that collegial spirit, and after reading the SOOC report, the OCE Board wishes to offer corrections to the public record in several important instances where the SOOC’s analysis of the OCE investigation and the Board’s decision in the present matter are inaccurate.

The SOOC claims that the OCE Board’s decision to refer this matter to the SOOC for “further review” was “in error”.² Unfortunately, in reaching this conclusion the SOOC has misconstrued both the information developed by the OCE investigation and role assigned to the OCE Board by the House. When the time allowed for the OCE investigation ended, the information available to the OCE provided a substantial basis for the OCE Board to recommend further review by the SOOC. Accordingly, it referred the matter to SOOC by a unanimous vote. The OCE Board recognizes that the SOOC, in all cases, is empowered to reach its own conclusion on the facts before it. The Board also notes that the SOOC has additional investigative authorities, does not operate under the time constraints imposed on the OCE by the Resolution and, in many instances, including this one, conducts its investigation after the OCE concludes its work and, as a result, has the benefit of additional information not available to the OCE.

In addition to the fundamental point about the respective roles and responsibilities of the OCE Board and the SOOC, four other issues require correction.

¹ The SOOC asserts that *its* report, which includes the OCE Board’s Report and Findings as an appendix, is the only “authorized” version of the OCE Board’s Report and Findings. However, the only “official” version of any report and findings of the OCE Board is the one produced by *the Board of the OCE*. The Resolution contemplates two reports (and findings)—one prepared by the OCE and one prepared by the SOOC. The SOOC’s decision to append the OCE report to its report, does not make the SOOC’s report the “official” version of the OCE Board’s report. *See* H. R. Rpt. 111-409 at 15 (2010).

² *Id.* at 9.

A. The SOOC did not address the central factual issue in the OCE referral

The central question in the OCE review was: What did Representative Stark submit to Maryland authorities regarding eligibility for the homestead tax credit, both before and after news accounts questioned credits claimed by Members of Congress?³ The SOOC concedes, in a footnote, that they opted not to “untangle” this question because, in their view, “whether Representative Stark did indeed make such a phone call [to Maryland to change his answer on whether he was registered to vote in Maryland from affirmative to negative] is immaterial in light of the totality of factual findings and conclusions reached by the Committee in this matter.”⁴ But this question was central, not “immaterial,” to the OCE review.⁵

Instead, the SOOC analyzed whether Representative Stark actually *received* the credit. However, under Maryland law it is a misdemeanor to “willfully” provide a “false answer to a property interrogatory” regardless of whether an applicant actually receives the credit. While the SOOC asserts that the answer had “no bearing on the approval of the application”,⁶ the Maryland tax official interviewed by both the OCE and the SOOC said that once Representative Stark called the Maryland Department of Assessments and Taxation (hereafter, “MDAT”) and told the MDAT that he was not registered to vote in Maryland, the MDAT revoked the credit.⁷

The inconsistencies in the information obtained from Representative Stark, from MDAT and subsequently from Representative Stark’s counsel remain unresolved and unexplained.⁸

B. The document cited by SOOC as evidence the OCE review was inadequate was never provided or available to the OCE

The SOOC claims that the OCE Board’s decision to refer this matter to the SOOC for “further review” was not “supported by the ‘information then known to the Board.’”⁹ The SOOC argues that the OCE’s investigation was “inadequate” specifically because a tax bill for bill year 2010 shows that Representative Stark did not receive the homestead tax credit for fiscal

³ The OCE review concerned the allegation that: “Representative Stark’s conduct may have violated Maryland law and the Code of Ethics for Government Service if he misrepresented information on the Application for Homestead Tax Credit Eligibility in order to prove eligibility.” See H. R. Review No. 09-9030 *Report and Findings* at 1 (2009).

⁴ H. R. Rpt. 111-409 at 7 fn. 56 (2010).

⁵ The SOOC also claims the OCE report “subject[s] Representative Stark to unfounded criminal allegations.” The OCE’s report memorialized certain factual information provided to the OCE by Representative Stark and the Maryland Department of Assessments and Taxation. The OCE Board did not opine on whether the conduct described in that information is actionable under Maryland criminal law.

⁶ *Id.* at VII.

⁷ H. R. Review No. 09-9030 *Report and Findings* at 23 (2009).

⁸ In a footnote counsel concedes that “[w]e can offer no explanation for his discrepancy [the Maryland record showing Representative Stark called to change his answer] other than to speculate that media inquiries relating to his matter may have prompted a state official to review and amend the record.” See H. R. Rpt. 111-409 at 98 fn. 2 (2010).

⁹ *Id.* at 9.

year 2010.¹⁰ The SOOC further claims that a “search of the internet” would have produced this document and that it was otherwise “publicly available.”¹¹

These assertions by the SOOC are not correct. The document cited by SOOC is a bill that apparently was mailed to Representative Stark in November or December 2009, more than two months after the end of the OCE review. Representative Stark did not provide this bill or any previous bill to the OCE. Nor, contrary to the SOOC’s claim, was the document publicly available. The only publicly available document for bill year 2009 was Representative Stark’s assessment notice which shows that he received or would receive the homestead tax credit. At the conclusion of the OCE’s review, this was the latest publicly-available document concerning property taxes on Representative Stark’s Maryland home, and it was included in the OCE’s review. While the SOOC characterizes this document as “irrelevant,” it is in fact the official record maintained by Anne Arundel County for a Representative Stark’s property and forms the basis for his tax bills.¹² In addition, at the time of his interview, and presently,¹³ Representative Stark evidently maintains he is eligible for the tax credit.

As will often happen, additional information appears to have come to light after the end of the OCE review. Such information should be used to enhance the accuracy of the SOOC’s report, but does not reflect on the adequacy of the OCE investigation.

C. Representative Stark was not treated “inconsistently”

The SOOC argues that “the OCE treated Representative Stark inconsistently with the way they treated four other Members of Congress with similar situations whose cases were properly dismissed.”¹⁴ That is not the case. Three of the four other Members that the OCE reviewed did not apply for the homestead tax credit. The fourth individual applied for the credit but did not certify that s/he voted in Maryland. Thus, the information developed by the OCE regarding Representative Stark was unique among this group.

The SOOC incorrectly states that the OCE found in its reviews of other Members that the homestead credit application was unclear.¹⁵ The OCE found certain *questions* on the Maryland application were ambiguous. However, the OCE did not find the question central to this review to be ambiguous, namely, the question as to whether the applicant voted in Maryland. Here, the

¹⁰ *Id.* at VI & 33.

¹¹ *Id.* at VI.

¹² The SOOC claims that because the Real Property Data Search results for bill year 2009 indicate that Representative Stark’s home was not a “principal residence” the OCE should have concluded that Representative Stark did not receive the credit in bill year 2009. *See Id.* at 15. However, the same document, accessed on-line during the OCE review for the bill years when Representative Stark received the tax credit, also indicates it was not his principal residence. Thus, this document is not proof that he did not receive the credit in bill year 2009, and the OCE could not have relied on it to reach that conclusion.

¹³ In a letter from Representative Stark’s Counsel dated December 1, 2009. *See Id.* at 97.

¹⁴ *Id.* at VI.

¹⁵ *Id.* at 11.

form plainly asks, “[i]s this the real property address the location from which the homeowner(s) are registered to vote, if registered?”

The SOOC notes that “the OCE’s observations regarding the ambiguity on the application were omitted from the interview memorandum of the MDAT officials only in Representative Stark’s matter”¹⁶ The OCE conducted interviews with several Maryland tax officials concerning a number of Members. In order to protect the confidentiality of the other Members then under review, the OCE included only the information relevant to each Member in the memorandum of interview appended to that Member’s findings.

D. The Resolution does not prescribe when the OCE board must vote on a referral

Representative Stark’s counsel asserts (and the SOOC seems to credit his assertion) that the Resolution requires the OCE Board to vote on referring a matter to the SOOC before the end of the time allowed for the second-phase review; *i.e.*, within 89 days.¹⁷ The Resolution provides that the Board is authorized to “complete a second phase review” within 59 days (45 days plus an additional 14-day extension).¹⁸ Under separate heading, the Resolution directs that the Board transmit to the SOOC a recommendation that a matter requires further review. Had the House intended the Board vote to occur within the 59 day period for second-phase review, the Resolution would have said so explicitly, as it does, for example, in requiring that a vote to move to second-phase occur within the 30-day preliminary review.¹⁹

For the Board to have to vote on a referral before the second phase period ends would require it to make a decision before the end of the limited time afforded for an investigation and so to compress the second-phase investigative process into fewer than the 59 days allowed. Gathering information in many instances is a time-consuming process and the time allowed for OCE reviews is very short. In many instances, Members and third parties provide information to the OCE near the end of the second-phase review. Requiring a premature vote on a referral would result in a less complete and accurate factual record.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 4.

¹⁸ H. Res. 895 provides that the Board is authorized to:

“(2)(A)(i) Except as provided by item (ii), complete a second-phase review within 45 calendar days or 5 legislative days, whichever is later, after the board commences such review.

(ii) Extend the period described in subparagraph (A) for one additional period of 14 calendar days upon the affirmative vote of a majority of its members, a quorum being present.

(B) Transmit to the Committee on Standards of Official Conduct a recommendation that a matter requires further review only upon the affirmative vote of not less than 4 members of the board.”

¹⁹ H.R. Res. 895. 110th Congress § 1(c)(1)(C).