

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF)	
)	DATE: October 29, 2002
Thomas Tucker)	
(former) Special Assistant to the)	
Deputy Chief of Staff for)	
External Affairs)	DOCKET NO.: CF 2002-14
Executive Office of the Mayor)	

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the OIG has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

In the instant case, the Inspector General has alleged that Thomas Tucker, former Special Assistant to the Deputy Chief of Staff for External Affairs (hereinafter respondent) engaged in private or personal business activity on government time and with the use of government resources on behalf of the Church Association for Community Services (hereinafter CACS), the For The Kids Foundation (FTKF), the Mayor's Prayer Breakfast and the August 2000 Democratic National Convention in violation of §§1800.1, 1803.1(e) and (f), 1803.2(A), 1803.10, 1804.1(b), (d), (e) and (i), 1805.2, and 1806.1 of the District Personnel Manual (hereinafter DPM).¹

¹ DPM §1800.1 reads as follows:

Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

DPM §1803.1(e) and (f) read as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

...

(e) Making a government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of government.

DPM §1803.2(A) reads as follows:

(A) District employees shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

(a) Has, or is seeking to obtain, contractual business or financial relations with the D.C. government;

(b) Conducts operations or activities that are subject to regulation by the D.C. government; or

(c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

DPM §1803.10 reads as follows:

An employee shall not interfere with or obstruct an investigation by a District Agency.

DPM §§1804.1(b), (d), (e), and (i) read as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include but are not limited to, the following:

...

(b) Ordering, directing, or requesting subordinate officers or employees to perform during regular working hours any personal services not related to official D.C. government functions and activities;

...

(d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee;

(e) Engaging in any outside employment, private business activity or interest, which permits an employee, or others, to capitalize on his or her official position[; and]

...

(i) Engaging in any outside employment, private business activity, or other interest which is in violation of federal or District law.

DPM §1805.2 reads as follows:

No District employee... may acquire an interest in or operate any business or commercial enterprise, which is in any way related, directly or indirectly, to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official, or otherwise.

DPM §1806.1 reads as follows:

A District employee shall not use or permit the use of government property, equipment or material of any kind... for other

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated August 26, 2002, OCF requested respondent to appear at a scheduled hearing on September 3, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the OIG Report.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of the DPM as a result of his fundraising activities, solicitation of funds for private entities and his failure to deposit solicited funds into an appropriate government account. Consequently, the OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of his responsibilities as a government employee and that this activity created the appearance of an impropriety.

than officially approved purposes.

¹ Gregory McCarthy (hereinafter McCarthy) is currently EOM Deputy Chief of Staff for Policy and Legislative Affairs. From January 1999 until August 2001, he was EOM Director of Policy Evaluation. The OIG also alleged that McCarthy violated the above referenced provisions of the DPM as a result of his role as a director for MWCBC. The OCF Director agreed and advised the Mayor, by Order, to admonish McCarthy his prohibitive conduct; and to ensure that McCarthy participates in scheduled meetings and workshops to become closely familiar with the provisions and prohibitions of the DPM Standards of Conduct.

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

On September 3, 2002, the respondent appeared pro se before the OCF at a scheduled hearing conducted by William O. SanFord, Esq., Senior Staff Attorney. Sonya Brunson-Culp, Financial Reporting Examiner, was also present.

Synopsis of Proceedings

The respondent is a former Special Assistant to the Deputy Chief of Staff for External Affairs in the Executive Office of the Mayor (hereinafter EOM). He was employed in that position from January through December 2000, when he was terminated. The government of the District of Columbia does not currently employ him.

During examination by Mr. SanFord, the respondent testified that he had reviewed the allegations against him in the OIG Report. The respondent stated that he observed employees of the Millennium Washington Capitol Bicentennial Corporation (MWCBC) working out of District government offices but denied any involvement in matters connected to that entity. The respondent further stated that during his employment with the District government, Mark Jones, EOM Deputy Chief of Staff supervised him; and that he also reported to former Chief of Staff, Dr. Abdusalam Omer. Respondent continued that Jones terminated him in December 2000.

Respondent testified that, although Jones started FTKF prior to his employment, he was assigned by Jones to incorporate and obtain a tax identification number for the organization. Respondent stated that Jones instructed him to ask Cloria Canty, who was also employed by the government, for permission to use her home address as a mailing address for FTKF. Respondent also conceded that he asked Canty to sign an application for tax exempt status on behalf of FTKF. Respondent further stated that he raised money for the Mayor's 2000 Holiday Party for foster kids, but denied raising the funds on government time. According to the respondent, he was on leave when he was soliciting funds for the Mayor's Holiday Party and a reception for D.C Olympic Bronze Medallist Clarence Vinson. The respondent further stated that Mayor Williams was clearly aware of the fundraising because the mayor was briefed by Jones daily; Jones, in turn, discussed the briefings with him. Accordingly, the respondent stated that any telephone calls he made or fundraising activity in which he participated were pursuant to specific instructions from Jones. The respondent denied raising or managing funds for the Mayor's 2000 Prayer Breakfast, the Church Association for Community Services (hereinafter CACS) or for travel to the Democratic National Convention (hereinafter DNC) in August 2000. Moreover, the respondent emphatically stated that he was a subordinate who did not initiate any of the activity in question and engaged in a limited degree of fundraising as a result of being instructed to do so by his superiors.

Findings of Fact

Having reviewed the allegations and the record herein, I find:

1. Respondent, Thomas Tucker, who was the former Special Assistant to the Deputy Chief of Staff for External Affairs, Mark Jones (hereinafter Jones), in the Executive Office of the Mayor (hereinafter EOM), in 2000, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. FTKF was a non-profit organization created early in 2000 by Vivian Byrd, then Trade Development Specialist, D.C. Lottery and Charitable Games Control (DCLB), and Jones, then Deputy Director of Operations, DCLB, designed to develop and implement, under the auspices of the Mayor, civic programs for the benefit of the children of the District of Columbia. Report at 157.
3. Jones conducted the business of FTKF at his government office at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. See In the Matter of Mark Jones, Docket No. PI 2001-101 (November 7, 2001) (hereinafter Matter of Jones).
4. In April 2000, pursuant to a referral by Jones, respondent requested and obtained the signature and consent of Cloria Ann Cantey (hereinafter Cantey) on a blank IRS form and the use of her home address for FTKF.
5. The Mayor's 2000 Holiday Party for foster children was a reception administered by Jones, through Leslie Pinkston, for District foster children identified through the District of Columbia Child and Family Services Agency. Report at 161.
6. "During the 2000 Summer Olympics in Sydney, Australia, Clarence A. Vinson, a bantamweight boxer from the District of Columbia, won a bronze medal for the United States[; and t]o celebrate this accomplishment by a Washington, D.C. native, EOM hosted a reception for Vinson on November 29, 2000, at the MCI Center's National Sports Gallery." Report at 141.
7. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception were official District government events, sponsored by Mayor Anthony A. Williams (hereinafter the Mayor).
8. The respondent solicited funds for the Mayor's 2000 Holiday Party for foster children and the Vinson Reception from, inter alia, businesses doing business with the District of Columbia, on behalf of the District of Columbia.
9. Any fundraising activity conducted on behalf of the Mayor's 2000 Holiday Party for foster children and the Vinson Reception was specifically assigned to the respondent by his supervisor, Jones.

10. Respondent was not involved in any fundraising activity for the Mayor's 2000 Prayer Breakfast, the CACS, or for travel to the DNC in August 2000.

Conclusions of Law

1. Respondent was an employee of the District of Columbia government and was subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. In 2000, Jones conducted the business of FTKF, notwithstanding that it was a private, non-profit organization, out of his office at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.; and the respondent believed that FTKF business was government business.
3. Respondent used District of Columbia government time and resources to perform tasks with regard to FTKF in 2000; and, notwithstanding the fact that respondent was directed by his supervisor, Jones, to perform said tasks, it is more likely than not that the respondent was well aware that his actions violated the employee conduct regulations because respondent requested a District government employee, Cantey, to sign a blank IRS form and to allow the use of her home address for FTKF business, which was operated out of 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.
4. Respondent's assistance in the management of FTKF, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was private, corporate business.
5. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception were funded through solicitations by the respondent from businesses doing business in the District of Columbia, on behalf of the District of Columbia government. Contra Matter of Jones (Jones violated the Standards of Conduct when he solicited funds from businesses doing business in the District of Columbia, on behalf of various private, non-profit organizations.)
6. Solicitation by District government employees from businesses doing business in the District of Columbia, on behalf of the District of Columbia government, is not within the purview of the DPM Standards of Conduct.³
7. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception,

³ Whether or not this action violates the "Anti-Deficiency Act" must be determined by the Office of the Corporation Counsel or the Office of the Chief Financial Officer. Report at Specific Finding 29.

notwithstanding that they were funded through solicitations by the respondent from businesses doing business in the District of Columbia, but on behalf of the District of Columbia, were official District government events, sponsored by the Mayor, to promote the District of Columbia.

8. Respondent used District of Columbia government time and resources to plan and organize the Mayor's 2000 Holiday Party for foster children and the Vinson Reception; and, respondent did not violate any employee conduct regulations because the respondent was engaged in government business.
9. Respondent used District of Columbia government time and resources to plan and organize the Mayor's 2000 Holiday Party for foster children and the Vinson Reception; and, respondent did not violate any employee conduct regulations because the respondent was directed in these tasks by his supervisors, Jones and Omer.

Recommendation

Had Thomas Tucker remained an employee, it would have been my recommendation that the Director advise his supervisor to take disciplinary action against Thomas Tucker based upon his violation of the Standards of Conduct to include a change in his assigned duties, corrective or adverse action, his disqualification for a particular assignment, pursuant to DPM §1801.2.

It should be noted that prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the Standards of Conduct.

Because Thomas Tucker is no longer a District government employee, and, because the Mayor of the District of Columbia has taken steps to definitively and thoroughly inform each EOM staff member as to provisions and prohibitions of the Standards of Conduct, I hereby recommend that the Director advise the Mayor to be always cognizant of this responsibility.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

The circumstances surrounding the instant misconduct involved an employee who believed that his conduct was within the parameters of his job description. But, Thomas Tucker is no longer a District government employee, and, the Mayor has taken appropriate measures, by appointing an EOM Ethics Counselor and conducting extensive workshops, to apprise and re-apprise his staff of the provisions and prohibitions of the Standards of Conduct. Thus, the Mayor has taken appropriate measures to ensure the integrity of government. I advise the Mayor to remain ever vigilant in this regard.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

Thomas Tucker
111 Massachusetts Avenue, N.W.
Washington, D.C. 20005

Charles Maddox, Esq.
Inspector General
Office of the Inspector General
717 14th Street, N.W., 5th Floor
Washington, D.C. 20005

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, NW, Washington, D.C. 20009.

OVERVIEW OF ORDERS

These matters came before the Director of the Office of Campaign Finance upon the referral on March 28, 2002 by the Office of the Inspector General (OIG) of General Recommendation #5 and Specific Findings #1 – #19, enumerated in the “Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)” (the “Investigative Report”) (OIG Control Number 2001-0188(S)).

The Inspector General recommended that the Office of Campaign Finance (OCF) take disciplinary action, as appropriate, against “current District government employees” for purported violations of ethics standards. The Office of Campaign Finance did not limit its review of the Investigative Report to “current District government employees”, but also considered the allegations of wrongdoing involving former government employees.

It should be noted that Specific Findings #16 and #17, which allege violations of the Personnel Regulations by Mark Jones, former Deputy Chief of Staff, EOM, were addressed by Order of the Director in In The Matter of Mark Jones, Deputy Chief of Staff, Office of the Mayor, OCF Docket No. PI 2001-101 (November 7, 2001), and will not be revisited herein.

The District of Columbia Government Comprehensive Personnel Act of 1978, approved March 3, 1979 (D.C. Law 2-139; as codified in D.C. Official Code, Sections 1-601.01 et seq. (2001 Edition) (the “Merit Personnel Act”)), imposes upon the District of Columbia Board of Elections and Ethics the responsibility for the enforcement of the D.C. Personnel Regulations governing “Employee Conduct” of all public officials subject to the disclosure requirements of D.C. Official Code, Section 1-1106.02. The D.C. Personnel Regulations at Chapter 18, “Employee Conduct”, of the District Personnel Manual (the “DPM”), prescribe standards of ethical conduct and performance for all employees of the District Government. The “Employee Conduct” Regulations aim to guarantee the proper and fair conduct of government business, upon which the residents of the District of Columbia deserve to rely with confidence.

By correspondence dated April 26, 2002, the Office of Campaign Finance (OCF) advised the Inspector General of its intent to independently evaluate the Investigative Report, to solicit additional information from sources deemed necessary, and to extend the opportunity to present evidence to parties who may be the subject of enforcement proceedings. Further, recognizing the entitlement of the citizens of the District of Columbia to a final determination in this matter, OCF committed to resolve all issues within its jurisdiction with due diligence and dispatch.

It is a highly unusual circumstance for completed investigations to be referred to the Office of Campaign Finance for enforcement. During the normal course of business for this Office, the Office of Campaign Finance initiates investigations upon the receipt of complaints from members of the public, referrals by the Board of Elections and Ethics or other District Agencies, and complaints initiated by OCF. Review rights before the Board of Elections and Ethics attach to Orders of the Director disposing of OCF investigative matters by any party adversely affected thereby. Because of the potential for recommended adverse actions herein, OCF declined to proceed with enforcement actions based upon the OIG Investigative Report without affording affected current and former employees the opportunity to be heard. The Office of Campaign Finance held informal hearings to gather testimony and evidence. The informal hearings also enabled OCF to assess the credibility of the parties whose testimony, for the most part, was not under oath before the Inspector General.

For thirteen months, the OIG investigated the fundraising activities employed by the EOM to finance several civic events through engagement of the private sector. The OIG did not make specific recommendations with respect to its specific findings relating to the alleged violations of the Standards of Conduct. The OIG deferred to OCF the determination as to whether the circumstances surrounding these matters warrant disciplinary action. In several instances, the OIG suggested the failure of a District government employee to adhere to certain legal requirements while soliciting donations on behalf of the District Government may shift the employee into a private capacity, and thereby subject the employee to application of the DPM Standards of Conduct. The OIG opined it was not within the jurisdiction of the OIG to render a legal opinion on this issue, and forwarded the issue to the OCF and the Office of the Corporation Counsel.

Briefly, the following OIG Findings were referred to the Office of Campaign Finance:

MILLENNIUM WASHINGTON EVENTS

Specific Finding #1: Sandy McCall as well as current and former EOM senior level and subordinate employees violated D.C. Official Code, Section 1-618.02 and DPM Section 1803.1(f) because they failed to ensure that all of Millennium Washington Capital Bicentennial Corporation's (MWCBC) financial obligations were satisfied while they served as officers/board members of this non-profit.

Specific Finding #2: McCall, as well as current and former EOM senior level and subordinate employees, violated D.C. Official Code, Section 1.618.02 and DPM Sections 1804.1(d), 1805.2 and 1813.1 because these individuals maintained a private relationship with MWCBC (served as an officer/director) while affecting MWCBC's interests as District government employees.

Specific Finding #3: Dr. Abdusalam Omer, "Sandy" McCall, and Mark Jones, and other former and current EOM employees violated DPM Sections 1804.1(b) and 1806.1, by conducting MWCBC business during official duty hours and out of their offices at 441 4th Street, N.W.

Specific Finding #4: Dr. Omer and McCall violated DPM Section 1804.1(c), in managing MWCBC's finances, when they directed subordinate employees to perform personal services unrelated to official government functions, during working hours.

Specific Finding #5: McCall violated DPM Section 1804.4(e) through his position as president of MWCBC, which permitted him to capitalize on his official government position, when during his fundraising activities on behalf of MWCBC, he represented himself in his official capacity.

Specific Finding #6: McCall violated DPM Section 1803.2 by soliciting donations on behalf of MWCBC from private entities which have business relationships or are regulated by the District Government.

PRAYER BREAKFAST/ECONOMIC CONFERENCE EVENT

Specific Finding #7: Dr. Omer and Jones, as well as two former EOM employees and one current District Government employee, violated DPM Sections 1800.1, 1803.1(e), and 1803.1(f), by engaging in conduct during the course of their government employment which adversely affected the confidence of the public in the integrity of the District government, and

taking official action well outside of official channels which further impugned upon governmental integrity.

Specific Finding #8: Dr. Omer, Jones, and a current government employee violated DPM Section 1803.10, by exhibiting a lack of candor during the course of the OIG questioning concerning this event.

Specific Finding #9: Dr. Omer, Jones, and two former and one current government employee violated DPM Sections 1804.1(b), (c), and (i), by conducting activities on behalf of CACS on government time and/or with government resources, and directing subordinates to do the same; and by engaging in fundraising activities for CACS as part of their government employment, but failing to follow mandatory accounting and disclosure procedures.

RNC/DNC MAYORAL EVENTS

Specific Finding #10: Because Mayor Anthony Williams and Council Member Harold Brazil did not comply with certain legal requirements when soliciting contributions directly from private entities that conduct business with the government or are regulated by the government, this issue was referred to OCF to determine whether these public officials violated DPM Sections 1800.1, 1803.1(f), and 1803.2.

Specific Finding #11: Jones violated DPM Section 1803.2(a) when he accepted a contribution from a District contractor to finance a breakfast event for the Mayor at the DNC while he was on leave, and was therefore, acting in his private capacity at the time.

CONGRESSIONAL BLACK CAUCUS RECEPTION

Specific Finding #12: Mark Jones and a former EOM employee violated D.C. Official Code, Section 1-619.01 and DPM Sections 1800.1, 1803.1(e), and 1803.1(f), when aggressive fundraising tactics were used to solicit private entities with business interests with the city. These actions constituted official actions taken well outside of official channels, placed the government in a negative light, and impugned the integrity of government.

Specific Finding #13: Jones and a former EOM employee violated D.C. Official Code 47-130 when they solicited and accepted contributions on behalf of the District Government, but failed to ensure that the requirements of both federal and district law were met.

VINSON RECEPTION

Specific Finding #14: Dr. Omer, a former EOM employee, and Jones violated D.C. Official Code, Section 47-130 by failing to adhere to the accounting and disclosure requirements of this statute when they solicited donors to pay the costs of this reception, and the donors paid the vendors directly.

MAYOR'S HOOP CORNER

Specific Finding #15: Jones and a current government employee violated D.C. Official Code, Section 47-130, when they solicited tickets and food for this program and failed to adhere to the accounting and disclosure requirements of this statute.

FOR THE KIDS AND URBAN ASSISTANCE FUND EVENTS

Specific Finding #16: Jones violated DPM Sections 1803.1(a), (e), and (f); 1803.2(b); 1804.1(b), (c), (e), and (i); and 1806.1, by engaging in FTK's activities on government time and directing subordinates to donate their government time to FTK activities; using his official title to solicit donations on behalf of FTK from private entities; and by failing to adhere to accounting and disclosure requirements of D.C. Official Code, Section 47-130.

Specific Finding #17: Jones violated DPM Section 1800.1 by adversely affecting the confidence of the public in government integrity when as the treasurer of the private non-profit lacking tax-exempt status (FTK), Jones used the non-profit with tax-exempt status (UAF) as a conduit for fundraising in order to attract donors.

Specific Finding #18: A former EOM employee and a current District Government employee violated DPM 1803.2(b), by soliciting contributions from private entities regulated by the District government on behalf of FTK at Jones' instruction; and the former employee violated DPM Section 1804.1(e) by using their official positions in furtherance of the solicitations.

Specific Finding #19: Three former EOM employees and one current D.C. government employee violated DPM Sections 1804.1(b) and 1806.1 by using government time and/or resources to conduct activities on behalf of FTK.

JURISDICTIONAL DETERMINATION

OIG Specific Findings # 13 – 15, and #16, in part, allege failure on the part of current and former District government employees to adhere to the requirements of D.C. Official Code, Section 47-130. The Office of Campaign Finance is without statutory authority to enforce the provisions of D.C. Official Code, Section 47-304.

DISCUSSION

Financing of Official Events

The OIG Investigative Report, at pages 16 through 24, appropriately recognizes that the financing of official events is generally accomplished through the use of funds appropriated for a specific purpose in accordance with a Congressional appropriations act; funds generally appropriated for a purpose compatible with the event; or funds allotted to an existing statutory fund.

Otherwise, official events may be financed through the Mayor's Constituent Services Program, which is authorized to solicit and accept donations, pursuant to D.C. Official Code, Section 1-1104.03; the Mayor's gift acceptance authority as provided in annual appropriations acts; and private entities, such as non-profit corporations, which raise and spend funds (independently of the government) to support government activities and programs. Funds raised through a political committee organized to promote or oppose a candidate for nomination, or election to office, may solely be expended for that purpose. See D.C. Official Code, Section 1-1101.01, et seq.

The Office of Campaign Finance did not find any evidence to suggest that the Mayor's Constituent Services Fund was used to solicit contributions for any of the events reviewed herein, or that the events were used to solicit campaign contributions.

Over the years, the U.S. Congress has authorized the Mayor of the District of Columbia to receive and use gifts for authorized governmental activities. Most recently, Section 115 of the Fiscal Year 2002 Appropriations Act for the District of Columbia, authorized the acceptance of gifts or donations by a District Government entity during Fiscal Year 2002 where certain conditions

were met. First, the Mayor was required to approve the acceptance and use of the gift, and second, the gift or donation must be used to carry out the authorized functions or duties of the entity. The Appropriations Act requires the entity to maintain accurate and detailed records of the acceptance and use. These records must be made available for audit and public inspection. The Council is also authorized through annual appropriations acts to accept and use gifts, but without the prior approval of the Mayor.

Section 450 of the Home Rule Act, as codified in D.C. Official Code, Section 1-204.50, provides that all money received by any agency “.... be paid promptly to the Mayor for deposit in the appropriate fund.”

Notwithstanding the gift acceptance authority found in congressional appropriations acts, Mayor’s Memorandum 91-11 (March 5, 1991), by John Payton, then Acting Corporation Counsel, entitled “Restrictions on Accepting Donations from Private Sources and Using Them for Government Activities”, recognizes that “[p]rivate entities (such as non-profit corporations) may, on their own, raise and spend funds to support or complement government activities or activities jointly sponsored by the government and the private entity, if such funds are not at any point in the possession or control of a District officer, employee or agency”.

Consistent therewith, it has been the long standing policy of this Office that the D.C. Campaign Finance Act does not preclude a group of citizens from forming a committee, foundation or corporation, to host an event, and inviting the support of public officials, where the activity is not coordinated out of the public official’s office, and the public official does not control the fundraising operations or the funds contributed. For example, see OCF Interpretative Opinions No. 01-02b and 99-11. Conduct to the contrary by public officials would compel disclosure of the contributed funds.

Of significance, Mayor’s Memorandum 91-11 confirms that the District may also explore private sources for the donation of tangible personal property and volunteer services.

EOM Financing of Official Events

OCF’s review of the fundraising activities of the Executive Office of the Mayor (EOM) determined that several means were employed to fund the questioned civic events. Elizabeth Berke-Valencia, Cloria Ann Canty,

Marie Drissel, Alfonza Fitzgerald, Jones, McCall, Gregory McCarthy, Lisa Marie Morgan, Omer, Thomas Tucker and Hyong Yi were found to have used government resources to conduct business on behalf of the private entities, FTK, CACS, UAF, MWCBC, and EFG, during government hours; and solicited contributions from businesses doing business with the District Government to fund activities hosted by these entities. This constituted private activity by these employees in violation of DPM Sections 1800.1, 1800.1(f), 1803.2(A) and 1804.1(b). Because the employees engaged in fundraising on behalf of the private entities, the activity was outside the permissible scope for which private entities may be used to support government activities and violated the standards of conduct. Further, Drissel, McCall and McCarthy were officers or directors of the non-profit organization MWCBC, and this conflicted with their official responsibilities where official action was taken which affected the interests of the non-profit. We did find, however, that Canty, Fitzgerald and McCarthy acted at the direction of their superiors, and were credible in their belief that, as a consequence, they acted on behalf of government.

To fund the CBC Mayoral Reception, the Clarence Vinson Reception, and the Mayor's Hoop Corner, employees solicited contributions directly on behalf of the District Government on government time and for government purposes. The fundraising activities for these civic events did not involve an intermediary non-profit entity. The Inspector General did not cite violations of DPM Section 1803.2 in those instances where he found the requirements for the acceptance of a gift under the appropriations act were not met to fund these civic events "... because the application of law to this scenario is unclear".

Financing of RNC/DNC Events by Mayor Anthony Williams and Council Member Harold Brazil

Similarly, the solicitation of Lockheed by Mayor Williams, on behalf of the District Government, and the solicitation of Verizon by Council Member Brazil, also on behalf of the District Government, to fund events at the 2000 Republican and Democratic National Conventions did not involve an intermediary non-profit entity.

OCF Rejects the OIG Theory of the Shift from “Official Capacity” to “Private Capacity” by EOM Employees in Implementing Official Events

The Inspector General queried “whether an employee’s failure to ensure an accounting of funds (as required by the Appropriations Act), when the funds are solicited during the course of government employment, shifts the employee’s fundraising outside his/her official capacity, thereby becoming a private activity”, which would then subject the employee to violations of the Standards of Conduct.

We reject adoption of the OIG’s shift theory to move an employee from “official capacity” to “private activity”, where the employee clearly acted in an official capacity to implement the directives of superiors and fund government sponsored events. We cannot conclude that the failure of an employee to adhere to the legal requirements governing the acceptance of a gift by government changes the character of the activity engaged in from “official” to “private”.

The actions of these employees were in furtherance of the informal delegation by the Mayor of gift acceptance authority, albeit the solicitation and acceptance of the gifts did not conform to the provisions of the appropriations act. The Mayor purportedly delegated his gift acceptance authority to Dr. Omer, who then sub-delegated the gift acceptance authority to Jones.

The CBC Reception

First, Mayor Williams hosted a reception to honor Members of the Congressional Black Caucus (CBC) during their 30th Annual Legislative Conference, and to acknowledge leaders who also supported the revitalization of the District Government. The event was held at the Black Entertainment Television (BET) Jazz Club. Mark Jones, former Deputy Chief of Staff for External Affairs, and Joy Arnold, then Confidential Assistant to Mayor Williams, were responsible for logistics, which included securing the funding source for this event.

Darlene Taylor, former Director for Intergovernmental Affairs, assumed the primary role for securing financial support by communicating with potential donors, and circulating letters directly from the Office of the Mayor

requesting sponsorship. Because Ms. Taylor's job responsibilities included management of national, congressional and council affairs for Mayor Williams, she viewed the planning of this event as within the purview of her Office. The CBC was one of her assigned constituency groups.

There were no bank accounts or non-profits involved with this effort. Contributors were advised to make their checks payable to BET. Taylor and Arnold served as points of contact for BET, and conducted business exclusively with Kathleen Shields, Special Events Coordinator for the Restaurant. Darlene Taylor reported directly to Omer and Jones, but never indicated that she had authorization from either to solicit funds for the BET event.

In many instances, either Taylor or Arnold delivered the checks of the contributors to BET. The cost of the event was \$28,513.50, and the contract was signed by Arnold, with Mayor Williams as the client/organization. After the receipt by District Government employees of funds in the total sum of \$24,000 to support this event from various contributors, including Bank of America, Fannie Mae Foundation, Federal Express, CACS, LTE (made as a loan), and PEPCO, the balance due BET was \$4,513.50.

Mayor Williams advised in the OIG Investigative Report, that he informally delegated his gift acceptance authority to Dr. Omer, who sub-delegated to Jones, to further his public-private partnerships. Mayor Williams noted that it was his understanding that Dr. Omer and Mark Jones would ensure that they adhered to the appropriate legal requirements in implementing the solicitation and receipt of donations on behalf of the EOM. Yet, what did Mayor Williams do to ensure that Dr. Omer and Mark Jones adhered to the appropriate legal requirements in implementing EOM solicitation and receipt of donations? OCF has not been able to identify any specific actions, if any, that the Mayor undertook to ensure that Dr. Omer and Mark Jones adhered to the appropriate legal requirements. This is a responsibility that remained with the Mayor.

The Vinson Reception

Second, the Office of the Mayor hosted a reception on November 29, 2000 for Clarence A. Vinson, a D.C. Boxer, to celebrate the Bronze Medal won by Vinson at the 2000 Summer Olympics in Australia. By e-mail dated October 23, 2000, Dr. Omer asked Joy Arnold to form a committee

responsible for the planning of the Vinson event. The committee was comprised of EOM staff members Arnold, Lawrence Hemphill, Thomas Tucker, Gwendolyn King, Lamont Mitchell and Jones. On October 26, 2000, the committee identified three potential sponsors, the Sports Commission, the Boxing Commission, and the MCI Center. Mark Jones was assigned to coordinate the overall sponsorship for the event. Arnold contacted Abe Pollin's Office to secure MCI for the location of the reception, which MCI provided at no cost. EOM also needed to identify funds for the catering and entertainment costs, and Arnold signed an agreement with the Levy Restaurant (the MCI Caterer) for \$9,523.

The actual donors for the Vinson Event were the Sports Commission (an independent District Government Agency) and the 2012 Coalition (a 501-(c)(3) Maryland non-profit). Dr. Omer contacted Warren Graves, Director of External Affairs for the Sports Commission concerning the Agency's participation as a sponsor. By correspondence dated November 26, 2000, Omer solicited the Sports Commission, and indicated \$25,000 was needed to host the event. On November 16, 2000, the Sports Commission Board of Directors declined to act on the request without more details; and on November 22, 2000, Jones directed correspondence to the Commission providing greater details and requesting \$7,500. Both Tucker and Jones solicited the 2012 Coalition; the non-profit paid \$2,100 directly to the vendor. The Sports Commission paid catering costs of \$10,199 directly to the vendor, and 2012 paid directly MCI Center (\$500), Rancom Photo, Inc. (\$844.87), and Kyle Baker (\$800) for band.

The HOOP Corner Program

Third, Mark Jones, then DCLB Deputy Director, developed a program in the Fall of 1999 with the MCI Center to address the concerns of the Mayor about the high cost of tickets for children to attend sports events. Vivian Byrd, a DCLB employee, initiated the concept of the HOOP Corner Program at the request of Jones for her assistance in the design of the program to benefit underprivileged children. Byrd designed the program to be a joint venture or partnership between the District Government and WSE, the Event Management Company for MCI Center. Byrd met with Judy Holland, Senior Vice President, Community Relations and Washington Mystics Operations, WSE, on November 16, 1999 to discuss this initiative. Holland agreed to donate 100 tickets per game for select Wizards games, and for the donation of food and beverages. Later, Leslie Pinkston, an EOM employee, assumed

responsibility for the Mayor's Hoop Program, and coordinated ticket disbursement. The Department of Parks and Recreation was responsible for the transportation.

Summary: Employees Who Solicited on Behalf of Government at the Direction of Their Superiors to Fund Civic Events Did Not Violate the Standards of Conduct.

It is clear that Joy Arnold, Leslie K. Pinkston, and Darlene Taylor acted at the directive of their superiors, and did not act independently to develop or fund government-sponsored events in pursuit of purported public-private partnerships. The record is devoid of any evidence that any personal or private gain inured to the benefit of any employee. In most instances, donations of goods, services or funds were used for the purpose intended.

Under these circumstances, it is unreasonable for the Inspector General to suggest that government employees who solicit from a prohibited source on behalf of Government during the course of their official duties, but fail to properly account for the donation or channel the monies into a government fund, then operate in a personal capacity, subject to the standards of conduct. Based on the foregoing, we could not conclude that those employees who solicited on behalf of government at the direction of their superiors to fund civic events violated the Standards of Conduct.

The Office of Campaign Finance is without jurisdiction, however, to address the ramifications of the purported failure by these employees to comply with the requirements of the pertinent congressional appropriations act. In this regard, the Inspector General referred the issue of noncompliance with the conditions set forth by Congress for the acceptance of gifts by the District government to the Chief Financial Officer and the Office of the Corporation Counsel for a determination as to whether an Anti-Deficiency Act violation occurred.

CONCLUSION: THE MAYOR MUST BEAR FULL RESPONSIBILITY FOR THE FAILURE OF DISTRICT GOVERNMENT EMPLOYEES TO CONFORM TO THE DPM LEGAL REQUIREMENTS

With respect to the Mayor's knowledge of the fundraising activities in the Executive Office of the Mayor, the Inspector General found that the "breadth of the Mayor's knowledge, or lack thereof, of the activities of

Millennium Washington and MWCBC is also significant because, as JONES makes clear, MWCBC fundraising set the “template” or pattern for future fundraising activities by the EOM.... that the weight of the evidence suggests that the Mayor, as well as Dr. Omer, knew or should have known that the EOM was creating and using 501(c)(3) and other kinds of non-profits to raise tens of thousands of dollars from corporations, many of which had economic relationships with the District Government, in order to support civic, ceremonial, and social events”.

The Office of Campaign Finance also cannot conclude that the Mayor, as the Chief Executive of the District government, lacked knowledge of the particulars of the numerous fundraising schemes conducted by Berke-Valencia, Canty, Drissel, Fitzgerald, Jones, McCall, McCarthy, Morgan, Omer, Tucker and Yi, under the auspices of the EOM; but, even if the Mayor did not have knowledge of these schemes, at a minimum, the Mayor should have inquired. Further, it is clear that Jones, McCall, Morgan, Omer and Yi, who directed subordinates to act on the behalf of non-profits to solicit contributions from businesses doing business with the District, or to conduct business on their behalf using government resources, were acutely aware that the fundraising activities were outside of the permissible scope of official conduct.

The fundraising schemes were developed to execute programs introduced by the Mayor. The Mayor must bear full responsibility for the failure of District Government employees to conform the performance of their responsibilities or duties to the legal requirements of law. It was within the institutional control of the Mayor to provide public accounting and disclosure of the funds solicited.

For the most part, the Mayor asserted he relied upon his subordinates to execute their responsibilities in accordance with the requirements of law. Hindsight demonstrates that this reliance was misplaced. As the Chief Executive of the District government, it was incumbent upon the Mayor to guarantee compliance with the appropriate procedures.

To his credit, the Mayor has implemented procedures, which will govern the solicitation and acceptance of gifts on behalf of the District Government. Further, the Mayor, through the Office of Personnel, was provided extensive training on the Standards of Conduct, which involved the participation of

OCC, OCF, and the Office of Special Counsel. Had such procedures been in place prior hereto, these problems may not have occurred.

SOLICITATIONS BY THE MAYOR AND BRAZIL WERE NOT INAPPROPRIATE

Lastly, we found that both Mayor Williams' solicitation of Lockheed and Council Member Brazil's solicitation of Verizon were in furtherance of the utilization of public-private partnerships to fund civic events. The private entities controlled the fundraising for the events. Neither Mayor Williams nor Council Member Brazil controlled the funds donated for these events. Consequently, the Office of Campaign Finance could not conclude that Mayor Williams and Council Member Brazil violated the Standards of Conduct in their respective communications with Lockheed and Verizon.

ISSUED BY:

Cecily E. Collier-Montgomery
Director

DATE: _____