

**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: December 11, 2009
)	
Councilmember Harry Thomas, Jr.)	DOCKET NO.: FI-2009-105(a)
Councilmember for Ward 5)	
1350 Pennsylvania Avenue, NW)	
Suite 107)	
Washington, DC 20004)	

ORDER

Statement of the Case

This matter arose from a request for an interpretative opinion filed with the Office of Campaign Finance (hereinafter OCF) by Abigail Padou on June 5, 2009, in which she alleged that Councilmember Harry Thomas, Jr. and Victoria Leonard-Chambers of his Council staff engaged in activity involving the Ward 5 Business Council which could be in violation of the District of Columbia Campaign Finance and Conflict of Interest Act of 1974 (the Act) as amended by D.C. Official Code §§1-1101.01 et seq (2001 Edition). Pursuant to a review of the allegations, OCF converted the request into a complaint on June 26, 2009. Ms. Padou's request included the following allegations:

1. Mr. Thomas created the Ward 5 Business Council, a non-profit corporation, and appointed the organization's three board members, one of whom is his staff member Victoria Leonard-Chambers;
2. Mr. Thomas and Ms. Leonard-Chambers used their official positions with the D.C. government to conduct business for the Ward 5 Business Council (the organization) and secured a \$55,000.00 payment to the organization from a developer indentified as EYA. EYA was seeking support from Councilmember Thomas and approval from the DC Zoning Commission for its project;
3. In exchange for the developer's promise to pay the Ward 5 Business Council \$55,000.00, Mr. Thomas wrote a letter of support for the developer's project to the DC Zoning Commission.

Issues

1. Whether Councilmember Thomas engaged in any activity with the Ward 5 Business Council that violated the provisions of D.C. Official Code §§ 1-1106.01 (b)(c)(d) and (g).
2. Whether Councilmember Thomas engaged in any activity with the Ward 5 Business Council that violated the provisions of the District Personnel Manual §§ 1804.1(b), (c) and (e) (Standards of Conduct).

Background

On June 5, 2009, OCF received a request for an Interpretative Opinion from Abigail Padou, 1335 Lawrence Street NE, Washington, DC, 20017, regarding the appropriateness of the alleged past and current actions of Ward 5 Councilmember Harry Thomas, Jr. and his staff member Victoria Leonard-Chambers concerning the Ward 5 Business Council, a non-profit corporation based in Ward 5. Ms. Padou stated that her research indicated that Councilmember Thomas and Ms. Leonard-Chambers might have violated several provisions of the District of Columbia Campaign Finance and Conflict of Interest Act and the District Personnel Manual. She enclosed documents which were obtained through a FOIA request that included:

1. A copy of the Articles of Incorporation for the Ward 5 Business Council;
2. 16 e-mails from Councilmember Thomas and Ms. Leonard-Chambers regarding activities related to the Ward 5 Business Council;
3. An Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code;
4. News articles published in the Brookland Heartbeat (Community Newsletter); and
5. Schedules and Agenda for meetings of the Ward 5 Business Council.

On June 17, 2009, Ms Padou was advised by OCF General Counsel, Kathy S. Williams, that based upon the nature of her concerns, her request for an “interpretative opinion” would be reviewed to determine whether an investigation was warranted.

Pursuant to a review of the documents provided to OCF, Ms. Padou’s request was converted to a complaint which was deemed to have established reasonable cause, in accordance with 3DCMR §3704.1, for an investigation. On June 26, 2009, OCF issued letters to Ms. Padou (hereinafter complainant), Councilmember Thomas (hereinafter respondent) and Victoria Leonard-Chambers advising that a full investigation had been initiated to determine whether any violations of the D.C. Campaign Finance and Conflict of Interest Act and its implementing regulations had occurred.

By September 9, 2009, it became apparent that additional time was required to complete the investigation in this matter, pursuant to D.C. Official Code §1-1103.02(c). Accordingly, the Director requested and was granted by the Board of Elections and Ethics, an extension until November 30, 2009, to complete the investigation of this matter.

OCF interviewed the respondent and Ms. Leonard-Chambers on September 28, 2009. Co-incorporators Andre Tyler and James Grayton were interviewed on November 2, 2009.

Relevant Statutory and Regulatory Provisions

D.C. Official Code § 1-1106.01(b) states in pertinent part: “No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official.”

D.C. Official Code § 1-1106.01(c) states : “No person shall offer or give to a public official or a member of a public official’s household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official’s action or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to § 1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.”

D.C. Official Code § 1-1106.01(d) states in pertinent part: “No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official’s employment or relating to his or her employment.”

D.C. Official Code § 1-1106.01(g) states in pertinent part: “Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest shall:

- (1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;
- (2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the “Board”), and to his or her immediate superior, if any;
- (3) If he or she is a member of the Council of the District of Columbia or a member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists.”

D.C. Official Code § 1-1106.01(i) (1) states: “Public official” means any person required to file a financial statement under § 1-1106.02.

D.C. Official Code § 1-1106.02(a) states in pertinent part: “... the Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Home Rule Act... shall file annually with the Board” an FDS form.

DPM § 1804.1 states in pertinent part: “An employee may not engage in any outside 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) Using government time or resources for other than official business, or approved or sponsored activities, except that a District employee may spend a reasonable amount of government time and resources on such projects, reports, and studies as may be considered in aid of other government jurisdictions (local, state, federal), provided the work so performed is within the scope of the individual’s regular assignments as a District employee;

“(c) Ordering, directing or requesting subordinate officers or employees to perform during regular working hours any personal service not related to official government functions and activities;” and,

“(e) Engaging in any outside employment, private business activity, or interest which permits an employee, or others, to capitalize on his or her official title or position.”

Summary of Evidence

On September 28, 2009, pursuant to a Notice of Hearing, Statement of Violations and Order of Appearance, dated September 16, 2009, respondent appeared accompanied by David W. Wilmot, Esquire (hereinafter counsel). During questioning by William O. Sanford, OCF Senior Staff Attorney, respondent through counsel emphatically denied the allegations.

Respondent stated that the Ward 5 Business Council was “set up” by his office after he consulted Brian Flowers, General Counsel for the Council of the District of Columbia, who assured him that assisting in the formation and incorporation of the organization would not present a conflict of interest. ¹

He additionally stated that his office provided technical advice to the members of the Ward 5 Business Council on how to start a formal organization as an extension of his efforts to assist the business community in Ward 5. Respondent further stated that after meeting with several business leaders in the Community between the winter of 2007 and much of 2008, he assigned his community liaison, Victoria Leonard-Chambers, to assist in formulating the Ward 5 Business Council.

Respondent also asserted that the organization was modeled after two existing Business Councils in Wards 7 and 8. Respondent further stated that following several meetings between Ms. Leonard-Chambers and members of the community, the organization was incorporated by Ms. Leonard-Chambers, Andre Tyler and James Grayton. Respondent contended that on most occasions Ms. Leonard-Chambers took leave to work on matters involving the organization but on occasion, there were times when her duties overlapped because her daily functions included providing services to constituents.

Counsel asserted that any duties Ms. Leonard-Chambers performed for the Ward 5 Business Council were within her job description which entails serving as liaison between the Respondent and community-based organizations. Counsel continued that as a liaison Ms. Leonard-Chambers provided the organization a template that served as a basis for the articles of incorporation that were filed with the Superintendent of Corporations to incorporate the entity.

¹ By memorandum dated May 2, 2009, Brian Flowers, General Counsel for the Council of the District of Columbia, advised the respondent that “Ms. Leonard’s service as Treasurer of the Ward 5 Business Council would be a conflict of interest only if she is assigned to work for the private entity either by her superior, she engages in the activity during working hours, or it involves the use of government property.”

Counsel additionally stated that Ms. Leonard-Chambers only engaged in activity during business hours that is not in conflict with the statute.

The respondent stated that he had not derived any personal financial benefit from the Ward 5 Business Council and indicated that the extent of his relationship with the organization was that of Ward 5 Councilmember. When asked whether he and Ms. Leonard-Chambers facilitated the Ward 5 Business Council's receipt of a \$55,000.00 payment from the developer in exchange for his support for a project involving the developer, respondent stated that he "absolutely, unequivocally" denies the allegation. Counsel stated that the complaint is without foundation and baseless because there is no indication or documentation that suggests that a payment was requested by the respondent and made to the organization. Counsel further asserted that he has reviewed the organization's bank records and saw no evidence that indicates that the organization ever received a payment of \$55,000.00. Counsel argued that without any tangible evidence of the transaction the complaint is completely without merit.

On November 2, 2009, OCF interviewed James Grayton, co-incorporator of the Ward 5 Business Council. Grayton appeared pro se. Grayton stated that he is a "founding member" of the Board of Directors and current vice president of the Ward 5 Business Council. He stated that the organization was founded by Andre Tyler and himself in 2008, to promote and support business in Ward 5. He further stated that they coordinated efforts to establish the organization with the respondent's Council office.

Grayton additionally stated Ms. Leonard-Chambers participated as the respondent's community liaison and served as a co-incorporator with Andre Tyler and himself. He also stated that Ms. Leonard-Chambers currently serves as treasurer and has continued to play a supportive role in the organization through the respondent's office by arranging for speakers to address the organization's membership meetings.

Grayton stated that the respondent had provided minimum support for the organization since its inception. He continued that the respondent does not wield any influence over the membership and his interactions are based upon his position as the incumbent councilmember. He stated that he believes the respondent has arranged for the organization to hold meetings at a D.C. Public Library in Ward 5; and, in his capacity as Councilmember for Ward 5, generally addresses the membership at the conclusion of meetings.

Grayton rejected the allegation that the respondent had somehow negotiated a \$55,000.00 contribution to the organization from EYA in exchange for his support for a matter the developer was pursuing before the D.C. Zoning Commission. He emphatically stated that no such transaction ever occurred. Grayton further stated that the organization has never

received a contribution from EYA or other entity that he is aware of; and as the vice president, he has access to all of the organization's financial records.

On November 2, 2009, OCF interviewed Andre Tyler, co-incorporator of the Ward 5 Business Council. Tyler appeared pro se. Tyler stated that he is the current president and a member of the Board of Directors of the Ward 5 Business Council which he helped create. Tyler additionally stated that he contacted Councilmember Thomas initially and suggested forming a business council in the ward. Tyler also stated that participation in the organization is completely voluntary.

Tyler further stated that he was referred to the councilmember's community liaison, Ms. Leonard-Chambers who assisted with the incorporation and signed as a co-incorporator with James Grayton and himself. Tyler further stated that Ms. Leonard-Chambers serves as treasurer for the organization but neither she nor any other member derives any financial benefit from the organization. Tyler stated that he was aware of the allegations that the complainant had leveled at the respondent and Ms. Leonard-Chambers because the complainant published and distributed a newsletter within Ward 5 that included the charges. Tyler continued that he disagreed with the complainant's characterizations.

Tyler also stated that the respondent had attended several of the organization's meetings but his primary contribution to the organization was arranging for government officials including himself to address the membership regarding matters of interest to the business community and to provide advice and technical support.

Tyler stated that the complainant's allegation that the respondent arranged for a \$55,000.00 contribution from a developer in exchange for the respondent's support for a matter before the D C Zoning Commission is frivolous because no such transaction ever occurred. He contended that the organization relies on dues payments from the membership to cover expenses; therefore, the coffers have always been scarce. Thus, had they received a \$55,000.00 contribution, he as president surely would have known about the transaction.

By letter dated December 4, 2009, Jack Lester, Vice President for Land Acquisition and Development with EYA, denied that either the respondent or any member of his staff ever negotiated an agreement in which the respondent would provide support for a matter before the Zoning Commission in exchange for a contribution to the Ward 5 Business Council (Attachment 1).

Further, OCF reviewed bank statements for the Ward 5 Business Council from May 2008 through November 2009 and found no transactions which indicated that the organization had received a \$55,000.00 contribution from EYA, or any other entity (Attachment 2).

Findings of Fact

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

1. At all times pertinent herein, the respondent was classified as a “public official” in accordance with D.C. Official Code § 1-1106.01(i) (1) and subject to the provisions of D.C. Official Code § 1-1106.02

2. The Ward 5 Business Council was incorporated as a non-profit organization on May 14, 2008 by Andre Tyler, James Grayton and Victoria Leonard-Chambers.

3. Ms. Leonard-Chambers was employed as a full-time member of the respondent’s Council staff when she served as a co-incorporator and treasurer for the organization.

4. The respondent authorized Ms. Leonard-Chambers to serve as a co-incorporator and to perform functions on behalf of the organization while she was employed as a full-time member of his Council staff.

5. On at least 16 occasions Ms. Leonard-Chambers transmitted and received e-mails and correspondence regarding the Ward 5 Business Council in the respondent’s Council office by using equipment in the office.

6. Use of the equipment for non-governmental purposes constitutes the improper use of government resources.

7. Respondent authorized the use of government resources for non-governmental purposes.

8. No evidence was presented to support complainant’s allegation that the respondent might have used his official position for personal gain.

9. No evidence was presented to support the complainant’s allegation that the respondent facilitated a \$55,000.00 contribution to the Ward 5 Business Council in exchange for his support for a matter EYA was pursuing before the D.C. Zoning Commission.

Conclusions of Law

Based upon the record provided by OCF, I therefore conclude:

1. The respondent did not violate D.C. Official Code § 1-1106.01(b).

2. The respondent did not violate D.C. Official Code § 1-1106.01(c).
3. The respondent did not violate D.C. Official Code § 1-1106.01(d).
4. The respondent did not violate D.C. Official Code § 1-1106.01(g).

5. By authorizing Ms. Leonard- Chambers to engage in activity on behalf of the Ward 5 Business Council during regular business hours, the respondent violated DPM § 1804.1(b), which prohibits "... using government time or resources for other than official business, or approved or sponsored activities, except that a District employee may spend a reasonable amount of government time and resources on such projects, reports, and studies as may be considered in aid of other government jurisdictions (local, state, federal), provided the work so performed is within the scope of the individual's regular assignments as a District employee[;]"

6. By authorizing Ms. Leonard-Chambers to engage in activity on behalf of the Ward 5 Business Council during regular business hours , the respondent violated DPM § 1804.1 (c), which prohibits " ... ordering, directing or requesting subordinate officers or employees to perform during regular working hours any personal service not related to official government functions and activities."

Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director of the Office of Campaign Finance admonish the respondent for his violation of the provisions of the DPM §§ 1804.1 (b) and (c) (Standards of Conduct). I further recommend that the Director order the respondent to review the District's "Employee Conduct" rules DPM § 1803.1 (a) to ensure that he remains vigilant concerning his responsibility to "avoid action whether or not specifically prohibited by [the] chapter which might result in or create the appearance of...[a]ffecting adversely the confidence of the public in the government."

Date

William O. SanFord
Hearing Officer

Concurrence

In view of the foregoing, I hereby concur with the Recommendations.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the respondent be admonished for his violation of the provisions of the DPM §§ 1804.1 (b) and (c) (Standards of Conduct).

IT IS FURTHER ORDERED that the respondent review the District' "Employee Conduct" rules DPM § 1803.1 (a) to ensure that he remains vigilant concerning his responsibility to "avoid action whether or not specifically prohibited by [the] chapter which might result in or create the appearance of...[a]ffecting adversely the confidence of the public in the government."

Date

Cecily Collier-Montgomery
Director

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

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on Councilmember Harry Thomas, Jr. by regular mail, on December 11, 2009.

NOTICE

Pursuant to 3DCMR §3711.5 (March 2007), 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, N.W., Washington, D.C. 20009.