

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

IN THE MATTER OF)
)
Kevin Chapple) DATE: January 23, 2009
Advisory Neighborhood)
Commissioner) DOCKET: Full Investigation 2008-103
Advisory Neighborhood)
Commission)
2C02)
438 S Street, N.W.)
Washington, D.C. 20001)

ORDER

Statement of the Case

This matter arises out of a complaint filed by Earlene Matthews (complainant A), Board Member of 2nd NW Cooperatives of 404 O Street, N.W., Washington, D.C., 20001, alleging a violation 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). Complainant alleges, inter alia, that Commissioner Chapple “violated campaign and finance law by using his elected position as the advisory neighborhood commissioner for ANC 2C-02, to publish a magazine called ‘anc 2c02 & You,’ to collect money to charge constituents, developers and politicians and business’s (sic) to publish this magazine for financial benefit[.]” specifically in contravention of D.C. Official Code §1-1106.01(b).

Also, upon Order of the Board of Elections and Ethics by request from OCF, this matter was enlarged to encompass a complaint filed by Mahdi Leroy J. Thorpe, Jr. (complainant B) of East Central Civic Association, 1704 5th Street, N.W., Washington, D.C., 20001, who alleges that respondent used his “web site to collect money to charge constituents for publication of the magazine and. . .to use the money for personal use.” Complainant B further alleges that respondent “incorporated ‘anc 2C02 & You,’ [magazine] and his website (sic) as an LLC to collect money.”

It must be noted that a 2C02 resident, Sarah Livingston, among others, questioned whether respondent may “have a website and print publication both of which bear the name of the commissioner’s Single member District and both of which sell advertising with the proceeds from those sales going into an LLC.” Inasmuch as this query emerged

during the investigation of this matter, she and others were advised that the issue would be formally resolved herein.

Issues

1. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly published a magazine entitled “anc2C02&You,” under his auspices as “Advisory Neighborhood Commissioner of ANC 2C-02”?
2. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly charged persons and other entities for advertisements, and collecting monies therefor, for his magazine entitled “anc2C02&You,” under his auspices as “Advisory Neighborhood Commissioner of ANC 2C-02”?
3. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his web site and incorporated an entity to receive funds from persons and businesses to pay for the publication of his magazine, “anc2C02&You,” under his auspices as “Advisory Neighborhood Commissioner of ANC 2C-02”?

Background

By letter to the Office of Campaign Finance (OCF) received on June 16, 2008, complainant A filed a formal complaint against respondent for violating the conflict of interest law of the District of Columbia. Upon review of the complaint in its entirety, OCF accepted the submission on June 26, 2008.

On that date, letters of acknowledgement thereof were dispatched to respondent and complainant A. Specifically, complainant A was requested to submit additional, if any, information; and, respondent was requested to appear at the OCF offices on July 22, 2008. Complainant A did not submit any additional data; however, an informal hearing was conducted by the undersigned and Senior Staff Attorney William O. SanFord with respondent on the appointed date at 10:00 a.m.

Following the informal hearing, respondent submitted affidavits and authenticated documents from the D.C. Department of Consumer and Regulatory Affairs; and, promised to supplement the record with additional papers. Many requests for extension of times within which to do so were made by respondent; respondent was not responsive.

By November 10, 2008, complainant B filed a formal complaint against respondent, also, for violating the conflict of interest law of the District of Columbia. Upon review of the complaint, OCF indeed accepted the submission. Moreover, due to the similarity of issues, the need to advise respondent of the second complaint and respondent’s lack response in the instant matter, among other things, at a meeting of the Board of Elections and Ethics, OCF sought and received an extension of time within which to produce the Order in this matter. Complainant B was also invited to submit any additional data; he did not.

The scope of the OCF investigation, which was conducted until January 13, 2009, encompassed reviewing and verifying all submitted information, in light of the OCF and ANC statutes, legal research into the specific issue of law in question, an informal hearing, interviews, and in-house meetings.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-309.10(a) reads, in part, “Each [ANC] may advise the [Council], the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area.”

D.C. Official Code §1-309.10(c)(1) reads, in part, “Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the [Council], the executive branch, or independent agencies, boards, and commissions. [E]ach agency, board and commission shall, before. . .the formulation of any final policy decision or guideline with respect to. . .requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area. . .provide. . .notice of the proposed action[.]”

D.C. Official Code §1-309.10(d)(3)(A) reads, “The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”

D.C. Official Code §1-1106.01(a) reads, “The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.”

D.C. Official Code §1-1106.01(b) reads, in 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[.]”

D.C. Official Code §1-1106.01(h)(1) defines “business” to mean “any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.”

D.C. Official Code §1-1106.01(h) (2) defines “business with which he or she is associated” to mean “any business of which the person or member of his or her

household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.”

D.C. Official Code §1-1106.02(i) (2) states, “Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of §1-1106.01.”

Pursuant to 3 D.C.M.R. §3711.1, “Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]”

Pursuant to 3 D.C.M.R. §3711.2, “Fines shall be imposed as follows:

“(v) Use of official position for personal financial gain \$2000[.]”

For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.

Summary of Evidence

Complainant A relies solely upon her verified letter and its attachment, a list of persons and businesses which were allegedly charged by and paid to respondent for the publication of “anc2c02&You,” which, according to Complainant A, is respondent’s newsletter. Letter of Complainant A (LCA) at p. 1. Complainant believes that respondent “charged [the listed persons] money using his election to position to publish the magazine and earn an income.” Id.

Complainant B also relies solely upon his verified letter and its attachment, a similar list of persons and businesses which were allegedly charged by and paid to respondent for the publication. Letter of Complainant B (LCB) at p. 1. Complainant believes as Complainant A and further charges that respondent uses a corporate conduit, an LLC, to collect monies, under color of his public office, for his own personal use. Id.

Respondent relies upon his Answer to the complaints during the informal hearing of July 22, 2008. He further relies upon the documentation he submitted on August 5, 2008. RA.

Pursuant to oath, respondent testified that the publication “anc2c02&You” is an outgrowth of a “blog,” which he started before he became a commissioner. He said that he “thought that a wider audience should be aware of what’s going on at the blog [and for] community interest.”

According to respondent, he was “approached by a friend and neighbor to print the publication [because he] knew software, could design [and] could get advertisers to support costs.” The friend and neighbor was Martin Moulton and respondent continued that he became successful with production of the newsletter and the collection of

advertising dollars. When queried as to whom solicited monies from the advertisers, respondent replied that the solicitation was through a limited liability company (LLC), which he solely formed in July 2007, and that only Mr. Moulton requested payment for the advertisements.

Respondent noted, among other things, that the magazine included a segment, "The Commissioner's Corner," dedicated for his thoughts and comments, in his role as Advisory Neighborhood Commissioner for 2C02. In his opinion, the "articles [therein] did not have any bearing on his duties." Nonetheless, he averred that the magazine and the LLC failed to yield a profit, because any monies that the LLC received for the publication were plowed back into the magazine.

"At this point, this venture has not returned a profit and I don't see a profit coming," respondent said. He declared that he and Mr. Moulton contributed monies above and beyond the funds received for advertisements; and, that they do not expect to be reimbursed therefor. Moreover, he advised that no Advisory Neighborhood Commission funds had been invested in the magazine.

Respondent professed that he was a first time elected Advisory Neighborhood Commissioner with no political aspirations. He clarified that he had been living on S Street for six (6) years and he loved the neighborhood. He emphasized that he simply "wanted to do something about the problems in the neighborhood."

As a result of his testimony, respondent offered to submit additional documentation by August 5, 2008. On that date, he submitted a joint Affidavit with Martin Moulton, wherein they averred, among other things, that they "published 'ANC 2C02 & You' to disseminate news and information to the community, and not to enrich [themselves] nor to generate a profit," per the enclosed invoices and bills. RA. At the same time, he submitted a Certificate from the D.C. Department of Consumer and Regulatory Affairs, attesting to the entity of ANC-2C02 LLC, established in July 2007, with the purposes "to promote the civic, cultural, and social interests of residents of the District of Columbia and especially the residents within the Shaw community and to generate a profit in any legal manner [; and, listing t]he name of the limited liability company's registered agent in the District of Columbia [as] Kevin L. Chapple." Id. To date, respondent has offered nothing else.

In December 2008, Jean Scott Diggs, Senior Hearings Officer, interviewed Martin Moulton. Summary of Interviews. She wrote that "Mr. Moulton stated that checks for advertising from his regular clients were initially made payable to Commissioner Chapple or himself, as no bank account had been opened to deposit the funds. He further stated that in February 2007, an ANC 2C02 LLC bank account was established, with the Commissioner and himself as signatories. He stated that all checks received for advertising were held and deposited in the LLC account. Moreover, he stated that no checks were deposited in their personal bank accounts." Id.

Mrs. Diggs also interviewed Mr. Moulton on January 13, 2009. He admitted to her “that it was his idea to publish a community magazine in January 2007 due to Commissioner Chapple’s limited access to speak to his constituents. Mr. Moulton stated that Commissioner Chapple was ‘literally shut out of certain neighborhood venues’, and that it was their belief that the magazine could be a primary forum for the Commissioner to access the community.” Id.

Mrs. Diggs also interviewed spokespersons of several businesses alleged by complainants A and B to have advertised in respondent’s newsletter. She spoke with Gwendolyn Wynn Fields, the owner of Halcyon Hair Salon; Dawn Cromer and Michael Price of the Committee to Re-elect Kwame R. Brown, Carl Wilson and Cary Silverman of Cary for Council, Drew Porterfield of Longview Gallery; Payam Kakhage, a Realtor with Long & Foster; Cheryl Lofton of Cheryl Lofton & Associates and Chaudre Custom Clothing; Joel Martin, a Realtor with ReMax; and, Dennis Bass with Evans 2008. All averred, among other things, that Martin Moulton collected advertisement costs, not respondent; and, that their submissions were properly timely published in the magazines. Id.

Findings of Fact

Having reviewed the allegations and the entire record in this matter, I find:

1. Prior to 2007, respondent was the author of a “blog,” a web-based column, for community interests within Single Member District (SMD) 2 of Advisory Neighborhood Commission (ANC) 2C. Respondent Testimony (RT) at Informal Hearing.
2. By 2007, respondent was appointed Commissioner for ANC 2C02 through the vacancy filling procedure; and, is currently serving his first elected term. Records of the D.C. Board of Elections and Ethics (BOEE Records).
3. In January 2007, respondent commenced the publication of a magazine, “anc2c02 & You,” (magazine) “an outgrowth of [the] ‘blog’,” to “speak” to his constituents in ANC 2C02. RT; Summary of Interviews (Summary at Moulton).
4. During January 2007, respondent solicited for advertisements for the newly established magazine; and collected, or authorized the collection of, by his friend and neighbor, Martin Moulton, advertisement monies to fund the magazine. Id.
5. In February 2007, respondent established a bank account, ANC 2C02 LLC, to deposit funds collected for the magazine advertisements. Id.
6. By July 2007, respondent created a limited liability company, ANC-2C02 LLC, “to promote the civic, cultural, and social interests of residents of the District of

Columbia and especially the residents within the Shaw community and to generate a profit in any legal manner”; and, solely listed himself as the organizer and registered agent. RA.

7. Upon creation of ANC-2C02 LLC, the magazine was subsumed there under and provided a vehicle for respondent as Advisory Neighborhood Commissioner for ANC 2C02 to address his constituency because, throughout its various publications from 2007 through 2008, his by-line is listed therein as “Commissioner” or “Advisory Neighborhood Commissioner” Chapple; and, there is a segment therein, “Commissioner’s Corner,” dedicated for him to reach out to his ANC 2C02 constituency.
8. On at least one occasion in May 2008, respondent, simultaneously as organizer and registered agent of ANC-2C02 LLC and as Advisory Neighborhood Commissioner for ANC 2C02, solicited and collected monies from persons and other businesses for advertising in the magazine in an effort to, among other things, “generate a profit” from the magazine especially because respondent used his ANC letterhead. RT; Summary of Interviews (Summary at Moulton); Invoice for advertisement in ANC2C02&YOU! Magazine on ANC 2C02 letterhead of Advisory Neighborhood Commissioner Kevin L. Chapple, dated May 22, 2008.
9. On at least one occasion in July 2008, respondent, simultaneously as organizer and registered agent of ANC-2C02 LLC and as Advisory Neighborhood Commissioner for ANC 2C02, authorized Martin Moulton, as publisher of the magazine, to solicit and collect monies from persons and other businesses for advertising in the magazine in an effort to, among other things, “generate a profit” from the magazine especially because respondent used his ANC letterhead. Id.
10. The expense of printing and publishing the magazine far exceeds the revenue generated from paid advertisement; the publication has not generated a profit for respondent or Martin Moulton; and, if any profit had been generated, all proceeds would have been donated to the ANC 2C02 community fund for benefitting grants thereto. Affidavit of respondent and Moulton; magazine Rate Card/Winter 2006-2007.

Conclusions of Law

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. As a public official of the District of Columbia, Respondent is subject to the Act’s conflict of interest statute at D.C. Official Code §1-1106.01.
2. As an Advisory Neighborhood Commissioner in the District of Columbia at public meetings of his Advisory Neighborhood Commission, respondent is required to take action on proposed District policy regarding, inter alia, planning

and streets; and, that the resulting recommendation from the ANC must be strongly considered by the concerned District agency, in accordance with D.C. Official Code §1-309.10(a).

3. As an Advisory Neighborhood Commissioner in the District of Columbia at public meetings of his Advisory Neighborhood Commission, respondent has an obligation, pursuant to D.C. Official Code §1-309.10(a), to apprise his SMD of proposed Advisory Neighborhood Commission action on District policy; and, an Advisory neighborhood Commissioner may advise the affected SMD by an ANC-SMD web site or magazine. In the Matter of Lucretia Hockaday, PI-001-06 (OCF February 14, 2007).
4. Respondent's use of the name of the affected ANC-SMD on the web site or magazine, created by respondent to apprise the affected ANC-SMD of any ANC action (proposed, current or future) on District policy is not prohibited by D.C. Official Code §1-309.10; compare Id.
5. In contravention of D.C. Official Code §1-1106(b), solicited and received funds for his limited liability company, in his position as Advisory Neighborhood Commissioner of 2C02 because he used letterhead imprinted with his name and status as Advisory Neighborhood Commissioner of 2C02; the magazine was titled in the name of the SMD such that it appeared to be the mouthpiece of the SMD; he and his friend solicited and collected monies therefor; and, most importantly, the residents of ANC 2C02 believed the magazine to be the magazine of ANC 2C02.
6. Pursuant to D.C. Official Code §1-1106.01(h)(1), respondent's limited liability company of ANC 2C02 LLC is a "business" because the by-laws therefor state that, among its purposes, is "to generate a profit in any legal manner." Compare In the Matter of Wilhelmina Lawson, OCF FI 9805A (OCF, December 30, 2005) wherein respondent properly accepted a donation from a petitioner, at a prior ANC meeting, in her capacity as president of a non-profit entity, and thus, not a "business."
7. Pursuant to D.C. Official Code §1-1106.01(h)(2), respondent's limited liability company of ANC 2C02 LLC is a "business with which he is associated" because respondent is, among other things, an officer and owner of ANC 2C02 LLC.
8. Notwithstanding that the expenses of respondent's limited liability company outweighed the funds received and that respondent's altruistic intent was to return any profits to the community, respondent realized personal gain, pursuant to D.C. Official Code §1-1106.012(b), because he purposed to do so when he established the limited liability company.

9. Respondent violated D.C. Official Code §1-1106.01(b) when he used his official position of Advisory Neighborhood Commissioner of ANC 2C02 to solicit and collect monies for advertisements for his magazine to obtain financial gain, through a purposed generation of profit, through his limited liability company, ANC 2C02 LLC, a business with which he is associated inasmuch as he serves as president and owner.
10. The penalty established at 3 D.C.M.R. §3711.2 (v) for use of official position for personal financial gain is a fine of \$2,000.
11. For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.

Recommendation

I hereby recommend that the Director impose upon Advisory Neighborhood Commissioner Kevin Chapple a fine of \$2,000 for using his official position and office to solicit and receive funds for his limited liability company through advertisements in his affected ANC 2C02 magazine where ANC 2C02 residents believed the magazine to be the magazine of ANC 2C02.

I hereby further recommend, nonetheless, that the Director suspend such fine because although respondent created the offending ANC 2C02 LLC “to generate a profit in any legal manner,” the overriding sole purpose of this venture was “to promote the civic, cultural, and social interests of residents of the District of Columbia and especially the residents within the Shaw community”; and, the intent was to use any proceeds, and none were realized, above paying expenses for the publication of the ANC 2C02 community magazine for projects to benefit the Shaw community; Provided that, respondent cease and desist the publication of the magazine for profit, in any way, within ten (10) days of this Order.

Finally, in light of respondent’s actions, I recommend the Director to admonish respondent that “[n]o public official shall use his or her official position 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,” pursuant to D.C. Official Code §1-1106.01(b).

1/23/09

Date

KSWms

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that a fine of \$2,000 be imposed upon Advisory Neighborhood Commissioner Kevin Chapple for using his official position and office to solicit and receive funds for his limited liability company through advertisements in his affected ANC 2C02 magazine where ANC 2C02 residents believed the magazine to be the magazine of ANC 2C02.

IT IS FURTHER ORDERED that such fine shall be suspended because although respondent created the offending ANC 2C02 LLC “to generate a profit in any legal manner,” the overriding sole purpose of this venture was “to promote the civic, cultural, and social interests of residents of the District of Columbia and especially the residents within the Shaw community”; and, the intent was to use any proceeds, and none were realized, above paying expenses for the publication of the ANC 2C02 community magazine for projects to benefit the Shaw community; **Provided That**, respondent cease and desist the publication of the magazine for profit, in any way, within ten (10) days of this Order.

IT IS FINALLY ORDERED that respondent is admonished that “[n]o public official shall use his or her official position 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,” pursuant to D.C. Official Code §1-1106.01(b).

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

1/23/09

Date

CECM

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order to complainant, respondent and other interested parties on Friday, January 23, 2009.

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (March 2007, as amended), 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 433, 2000 14th Street, N.W., Washington, D.C., 20009.