

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)	
)	DATE: April 3, 2009
Karl Jentoft)	
Member)	DOCKET NO.: Full Investigation 2009-102
Public Charter School Board)	
)	

ORDER

Statement of the Matter

On December 14, 2008, the Washington Post newspaper of Washington, D.C. reported that Karl Jentoft (respondent), as Member of the D.C. Public Charter School Board (Board), used his official position to obtain a contract as a consult on two (2) charter school projects and paid him \$14,000 per month.

Upon inquiry of the Office of Campaign Finance (OCF), pursuant to 3 D.C.M.R. §3702.2 (2008, as amended), it is alleged, pursuant to the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974, as amended (Act), D. C. Official Code §§1-1101.01 et seq. (2001 Edition, as amended) that respondent sought, through official actions on matters before the Board, employment with Charter Schools Development Corporation of Hanover, Maryland, on two (2) charter schools: Potomac Lighthouse Public Charter School (Potomac Lighthouse School) and Yu Ying Public Charter School.

Issues

1. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in a September 2008 vote by the Board to approve, among others, a contract over \$25,000 for Washington Yu Ying Public Charter School, because the Charter Schools Development Corporation (CSDC), for which respondent serves as a paid consultant, developed their space at Brady Hall?

2. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in a June 2008 vote by the Board to approve contracts over \$25,000 for, among others, the Potomac Lighthouse School and the Ying School because the CSDC, for which respondent serves as a paid consultant, developed their space at Brady Hall?

3. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in a May 2008 vote by the Board to approve the request of Potomac Lighthouse School to operate in a new location, Brady Hall, with Yu Ying School, because the CSDC, for which respondent serves as a paid consultant, developed Brady Hall?
4. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in a May 2008 vote by the Board to approve, among others, a contract over \$25,000 for Washington Yu Ying Public Charter School, because the CSDC, for which respondent serves as a paid consultant, developed their space at Brady Hall?
5. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in an April 2008 review by the Board of the Potomac Lighthouse Public Charter School because the CSDC, for which respondent serves as a paid consultant, developed their space at Brady Hall?
6. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Member of the D.C. Public Charter School Board,” in a February 2008 vote by the Board to approve, among others, a contract over \$25,000 for Washington Yu Ying School, because the CSDC, for which respondent serves as a paid consultant, developed their space at Brady Hall?

Background

On December 14, 2008, the Washington Post issued, “Public Role, Private Gain.” ^{1/} Upon review by the Office of Campaign Finance (OCF), it was decided, pursuant to its regulatory authority to initiate an inquiry through the media, that the article warranted a query thereby.

Due to the nature of the allegations, on January 9, 2009, a letter issued to Karl Jentoft (respondent), Member of the Board, advising that OCF had initiated a full investigation as to whether respondent may have misused his position to obtain financial gain for himself or any businesses with which he is associated. Furthermore, statements and documents, especially Board minutes, pertaining to all listed matters were requested, and the majority received, by February 13, 2009.

The scope of the OCF investigation, which was conducted until March 31, 2009, encompassed reviewing all submitted information, in light of the OCF and statutes; related regulations; and, in-house meetings.

^{1/} A second related article, “Credit Committee’s Actions Benefited Associates,” concerns an OCF determination as to whether members of the subject entity are each required to file the Financial Disclosure Statement (FDS). The issue will be addressed in a determination to be issued by OCF no later than Friday, April 10, 2009.

Relevant Statutory and Regulatory Provisions

D. C. Official Code §1-1106.01(b) states, 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(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 official actions 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(g) states, “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 a 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 [(Board)];

“(3) [I]f he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists[.]”

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.

At 3 D.C.M.R. §3709.1, it reads: “The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30-37 of this title.”

At 3 D.C.M.R. §3709.12, it reads: “Any party adversely affected by any order of the Director may obtain review of the order by filing, with the Board of Elections and Ethics, a request for a hearing de novo.”

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:

- “^{...}(w) Accepting, soliciting or giving anything of value to influence official government actions \$2000,”
- “^{...}(z) Failure to disclose potential conflicts of interest 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.

At §1801.2 of the Standards of Conduct , it reads, in part, “When, after consideration of the explanation of the employee, the Board of Elections and Ethics [Office of Campaign Finance]. . .decides that remedial action is required regarding any matter covered under this chapter, appropriate action shall be immediately taken or ordered. Remedial action[1] may include, but shall not be limited to, the following:

- “(a) Changes in assigned duties;
- “(b) Divestment by the employee of his or her conflicting interest;
- “(c) Corrective or adverse action pursuant to D. C. Code §1-617.1(d) (1981); or
- “(d) Disqualification for a particular assignment.”

At §1802.1, it reads, in part, “In accordance with D. C. Code §1-619.3(e) (1981), enforcement of this chapter shall, consistent with the regulations set forth herein, be the responsibility of each agency head, except that enforcement for the following persons shall be the responsibility of the D. C. Board of Elections and Ethics [Office of Campaign Finance]:

¹ “Remedial action”, within the rubric of sanctions for violations of the Standards of Conduct, does not include the imposition of penalties and fines.

“(a) The Mayor, the Chairman and each member of the Council, the President and each Member of the Board of Education, members of boards and commissions as provided in subsection (a) of Section 602 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act[.]”

At §1803.1, it reads, “An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of. . . (f) [a]ffecting adversely the confidence of the public in the integrity of government.”

Summary of Evidence

OCF relies upon the minutes of the Board from February 25, 2008 through September 15, 2008; and, the notarized statements of respondent; the Board Executive Director, Josephine Baker; and Frank Riggs, President and CEO of Charter Schools Development Corporation. OCF also relies upon the Board’s list of persons required to file FDS statements with OCF and the FDS statement filed by respondent in 2008.

Findings of Facts

Based upon my review and consideration of the record, and the allegations herein, and in reliance upon the evidence indicated, I find:

1. The seven (7) member Public Charter School Board is charged with, among other things, research about and experience in evaluation of and accountability in successful schools; and, the operation of a financially sound enterprise including the budgeting and accounting skills critical thereto. Notarized Statement of Josephine Baker, Board Executive Director (Baker Statement).
2. Respondent was appointed to the Board on June 27, 2007 and he resigned after September 15, 2008. OCF Records.
3. Since respondent’s appointment through September 2008, he and the Board have made over 150 decisions regarding, among other things, the quality, the viability, the location, and the financing of each public charter school in the District of Columbia, under its jurisdiction. Board Minutes (Minutes).
4. At its September 15, 2008 meeting, the Board voted 4-0 to approve, among others, a contract over \$25,000 for Washington Yu Ying School; and, respondent recused himself. Id.
5. During the time of the September 15, 2008 vote regarding Yu Ying School, respondent disclosed on his 2008 Financial Disclosure Statement (FDS) that he held the position of consultant/contractor to CSDC; notwithstanding that, respondent was not required to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.

6. Also, at its September 15, 2008 meeting, the Board voted 4-0 to approve the request of Potomac Lighthouse School to operate in a new location, Brady Hall; and, respondent recused himself. Minutes.
7. During the time of the September 15, 2008 vote regarding Potomac Lighthouse School, respondent disclosed on his 2008 FDS that he held the position of consultant/contractor to CSDC; notwithstanding, that respondent was not required to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.
8. During the time of the September 15, 2008 vote regarding Potomac Lighthouse School, CSDC was the developer for the joint site of both Yu Ying School and Potomac Lighthouse School. Respondent's Statement; Statement of Frank Riggs, President and CEO of Charter Schools Development Corporation (Riggs' Statement).
9. Respondent did not submit to the Public Charter School Board, to the D.C. Board of Elections and Ethics and to OCF any writing to specify the reasons behind the two (2) recusals or to constitute notice to either Agency of said recusals at the September 15, 2008 meeting.
10. At its June 16, 2008 meeting, the Board voted 6-0 to approve a contract over \$25,000 for, among others, the Potomac Lighthouse School and the Yu Ying School.
11. During the time of the June 16, 2008 vote regarding Potomac Lighthouse School and Yu Ying School, respondent disclosed on his 2008 FDS that he held the position of consultant/contractor to CSDC; notwithstanding that, respondent was not required to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.
12. Respondent did not submit to the Public Charter School Board, to the D.C. Board of Elections and Ethics and to OCF any writing to specify the reasons behind the recusals or to constitute notice to either Agency of said recusal at the June 16, 2008 meeting.
13. At its May 19, 2008 meeting, the Board voted 6-0 to approve the request of Potomac Lighthouse School to operate in a new location, Brady Hall, with Yu Ying School; and, respondent recused himself. Minutes.
14. During the time of the May 19, 2008 vote regarding the request of Potomac Lighthouse School to operate in a new location, Brady Hall, with Yu Ying School, respondent disclosed on his 2008 FDS that he held the position of consultant/contractor to CSDC; notwithstanding that respondent was not required

to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.

15. During the time of the May 19, 2008 vote regarding the request of Potomac Lighthouse School to operate in a new location, Brady Hall, with Yu Ying School, CSDC was the developer for the joint site of both Yu Ying School and Potomac Lighthouse School. Respondent's Statement; Statement of Frank Riggs, President and CEO of Charter Schools Development Corporation (Riggs' Statement).
16. Respondent did not submit to the Public Charter School Board, to the D.C. Board of Elections and Ethics and to OCF any writing to specify the reasons behind the recusal or to constitute notice to either Agency of said recusal at the May 19, 2008 meeting.
17. At its April 21, 2008 meeting, the Board voted 5-0 to approve, among others, a contract over \$25,000 for Potomac Lighthouse School; and, respondent recused himself. Minutes.
18. During the time of the April 21, 2008 vote regarding Potomac Lighthouse School, respondent disclosed on his 2008 FDS that he held the position of consultant/contractor to CSDC; notwithstanding that, respondent was not required to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.
19. During the time of the April 21, 2008 vote regarding Potomac Lighthouse School, CSDC was the developer for the joint site of both Yu Ying School and Potomac Lighthouse School. Respondent's Statement; Statement of Frank Riggs, President and CEO of Charter Schools Development Corporation (Riggs' Statement).
20. Respondent did not submit to the Public Charter School Board, to the D.C. Board of Elections and Ethics and to OCF any writing to specify the reasons behind the recusal or to constitute notice to either Agency of said recusal at the April 21, 2008 meeting.
21. At its February 25, 2008 meeting, the Board voted 5-0 to approve, among others, the overall review of school contracts, which included Yu Ying School lease; and, respondent recused himself. Minutes; Respondent's Statement.
22. During the time of the February 25, 2008 vote regarding the Yu Ying School lease, respondent disclosed on his 2008 FDS that he held the position of consultant/contractor to CSDC; notwithstanding that, respondent was not required to disclose his relationship with CSDC on his 2008 FDS because CSDC is a non-profit organization. 2008 FDS.

23. During the time of the February 25, 2008 vote regarding Yu Ying School, CSDC was the developer for the joint site of both Yu Ying School and Potomac Lighthouse School. Respondent's Statement; Statement of Frank Riggs, President and CEO of Charter Schools Development Corporation (Riggs' Statement).
24. Respondent did not submit to the Public Charter School Board, to the D.C. Board of Elections and Ethics and to OCF any writing to specify the reasons behind the recusal or to constitute notice to either Agency of said recusal at the February 25, 2008 meeting.

Conclusions of Law

Based upon the record and 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 and the District's Standards of Conduct at 18 D.P.M., as enforced by the D.C. Office of Campaign Finance.
2. Respondent failed to adhere to the notice requirements of D.C. Official Code §1-1106.01(g) when a public official must take an action that would affect financial interests directly or indirectly; and respondent did follow the steps with regard to the Potomac Lighthouse School and the Yu Ying School.
3. Notwithstanding respondent's failure to adhere to the notice requirements of D.C. Official Code §1-1106.01(g), in accordance with the ultimate purpose of the provision, i.e., the removal of influence over a matter by a conflicted official, respondent recused himself in 2008 in September, June, May, April and February regarding Potomac Lighthouse School and Yu Ying School.
4. Respondent did not violate D.C. Official Code §1-1106.01(b) when he allegedly used his official position of "Member of the D.C. Public Charter School Board" to collaborate with Charter Schools Development Corporation because Charter Schools Development Corporation is a legal entity through which business is not conducted for profit, pursuant to D.C. Official Code §§1-1106.01(h)(1)-(2).

Recommendation

I hereby recommend the Director of the Office of Campaign Finance to dismiss this complaint.

I hereby further recommend the Director to admonish respondent for his failure to submit a writing, detailing the nature of the five (5) recusals herein regarding Potomac Lighthouse School and Yu Ying School, to the Chairman of the Public Charter School Board, to the D.C. Board of Elections and Ethics and to the Office of Campaign Finance. By ignoring

these steps, respondent brought an unnecessary cloud over his transactions in these matters and lessened the level of transparency.

Finally, I advise respondent to complete and dispatch to the D.C. Office of Campaign Finance a final FDS form listing his 2008 termination of service as a Member of the Board.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

The Office of Campaign Finance recognizes the tremendous contributions made by private citizens who volunteer their time and serve as public officials, in many instances without pay, on the various Boards and Commissions of the District of Columbia. Nonetheless, to serve the public is a public trust, and public officials must adhere to all laws and regulations which govern the ethical execution of their responsibilities. To ensure the integrity of government and the transparency of official conduct, the "Campaign Finance Reform and Conflict of Interest Act" proscribes certain steps that a public official must take when, in the discharge of their official duties, the public official 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 a business with which he or she is associated[.]" See D.C. Official Code §1-1106.01(g) (2001 Edition), and as fully implemented by §3303, Title 3, "Elections and Ethics" of the District of Columbia Municipal Regulations (March 2007, as amended). Foremost, in this process to achieve removal from influence, is the requirement to provide notice of the conflict of interest. The public official must prepare a written statement describing the matter on which there is the potential for a conflict of interest, and provide copies of the statement to the Board of Election and Ethics, the Director of the Office of Campaign Finance, and the immediate supervisor or superior-designate, if any, of the public official.

In this case, the respondent, Karl Jentoft, failed to provide written notification of the potential conflicts of interest he faced as a Member of the Public Charter School Board to the Chairman of the Public Charter School Board, to the Board of Elections and Ethics and to the Director of the Office of Campaign Finance. The Director of the Office of Campaign Finance is responsible for the administrative operations of the Board pertaining to the Campaign Finance Act, and for the enforcement of the campaign finance laws of the District of Columbia. Notwithstanding his failure to provide the requisite notice, the Respondent did remove himself on the public record before the D.C. Public Charter School Board from taking votes on those matters on which the potential conflicts of interest existed. Hence, the respondent, Karl Jentoft, did not engage in conduct prohibited by the Conflict of Interest Statute.

Therefore, the respondent, Karl Jentoft, is hereby admonished for his failure to provide written notification of the potential conflict of interest with respect to each transaction to the Chairman of the Public Charter School Board, to the Board of Elections and Ethics and to the Director of the Office of Campaign Finance; and

Further, the respondent, Karl Jentoft, is strongly advised to complete and dispatch to the D.C. Office of Campaign Finance a final Financial Disclosure Statement form listing his termination of service as a Member of the Board.

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

Cecily E. Collier-Montgomery
Director

Date

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order to respondent and other interested parties on Friday, April 3, 2009.

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (March 2008, 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 420, 2000 14th Street, N.W., Washington, D.C., 20009.