

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

IN THE MATTER OF )

) DATE: July 11, 2007

Dr. Victor Vandell )  
420 57<sup>th</sup> Street, N.E. )  
Washington, D.C. 20019 )

) DOCKET NO.: OCF 2007-102

)  
Dr. Victor Vandell for Ward 7 )  
Lester Brown, Treasurer )  
1301 31<sup>st</sup> Place, S.E. )  
Washington, D.C. 20020 )

)  
The Exploratory Committee to Elect )  
Dr. Victor Vandell City Council Ward 7 )  
Lester Brown, Treasurer )  
1301 31<sup>st</sup> Place, S.E. )  
Washington, D.C. 20020 )

**ORDER**

**Statement of the Case**

On March 22, 2007, the Office of Campaign Finance (OCF) issued to Dr. Victor Vandell (respondent) and Lester Brown, Treasurer for both Dr. Victor Vandell for Ward 7 (the PCC) and The Exploratory Committee to Elect Dr. Victor Vandell City Council Ward 7 (the Exploratory Committee), an order to appear before the Director on April 2, 2007 at 10:00 a.m. and to show cause why a civil penalty should not be levied against same for apparent violations of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, specifically at D.C. Official Code §1-1103.02(a)(1)(G) (2001 Edition) and of the OCF regulations at 3 D.C.M.R. §3709 (June 1998, as amended).

It appeared that campaign signs displayed by the Exploratory Committee as early as November 28, 2006, in a not then determined vacated Ward 7 seat was apparently used by the PCC as late as March 29, 2007. As a result, the Vandell Campaign may have received funds from contributors who may have donated to the Exploratory Committee and to the Principal Campaign Committee, in contravention of D.C. Official Code §1-1102.05(a).

### **Issue**

Whether the Vandell Campaign may have received campaign funds from contributors who may have donated to both the Exploratory Committee and to the PCC, and exceeded the contribution limitations, in contravention of D.C. Official Code §1-1102.05(a)?

### **Background**

On November 28, 2006, OCF received a complaint from Gwen Rose, 3201 O Street, S.E., Washington, D.C., 20020, alleging that Dr. Victor Vandell and the Exploratory Committee to Elect Dr. Victor Vandell City Council Ward 7 violated the Act because these entities “engaged in blatant campaigning, as opposed to merely exploring a Ward 7 Council candidacy.” Ms. Rose believed, inter alia, that the entities “exceeded the purpose and intent of an exploratory committee.”

She enclosed, among other things, photographs of two (2) posters emblazoned with “Elect Dr. Victor Vandell City Council – Ward 7 ‘A Bright New Vision for Ward 7’s Future’.” See Attachment A.

On January 4, 2007, Ms. Rose was advised that OCF, by statute, is charged with monitoring “candidates” and that persons who “test the waters” for a political seat are not candidates. Ms. Rose was also informed that OCF oversight over Dr. Vandell as an “exploratory” candidate was limited to review of his literature and correspondence to determine whether he disclosed same to the public. Rule 3001.1 of the OCF regulations states that “[e]ach exploratory, draft or ‘testing the waters’ committee shall include the name of the potential candidate in the name of the committee.”

Notwithstanding the foregoing, an emergency Act of the D.C. City Council, effective April 18, 2007, and enacted as temporary legislation on February 20, 2007, imposed certain reporting requirements upon exploratory committees, and

limitations upon the contributions received during the exploratory period. See Bill 17-0013, the "Exploratory Committee Regulation Temporary Amendment Act of 2007."

So long as Dr. Vandell properly identified his literature and correspondence to an exploratory effort, his actions were within the parameters of OCF acceptance. "If that individual specifies an exploratory committee, including the individual's name somewhere on the yard sign, the act is well within the parameters of acceptable OCF activity." See Letter to Douglass Sloan of Washington, D.C., dated December 26, 2006. Although disagreeing with the tenor of the literature and the size of the posters, Ms. Rose acknowledged that Dr. Vandell made "reference, in small print, to an exploratory committee."

On January 5, 2007, Dr. Vandell filed his Statement of Candidacy with OCF; and, on, January 30, 2007, he commenced reporting with OCF by filing the January 31 Report of Receipts and Expenditures for his principal campaign committee, "Dr. Victor Vandell for Ward 7."

On February 20, 2007, Ms. Rose telephoned OCF to complain that Dr. Vandell was campaigning for the office of Member of Ward 7 with the same literature and posters that he used for his exploratory efforts. In fact, Ms. Rose stated that he never removed the posters and he was distributing the same literature. Upon further review of the allegations, OCF sought investigation of this matter by issuance of the March Show Cause Order.

By the close of this investigation, pursuant to the March Show Cause Order, the PCC was required to file its June 10, 2007 Report of Receipts and Expenditures; and, it failed to do so. Whereupon, the matter of that failure to file is incorporated herein.

### **Relevant Statutory and Regulatory Provisions**

Section 3 of D.C. Council Bill 17-0013, the "Exploratory Committee Regulation Temporary Amendment Act of 2007," (the Amendment) provides for informational reports of receipts and expenditures from exploratory committees:

- (a) Each exploratory committee shall file an informational report with the Office of Campaign Finance that lists the following:

- (1) Each contributor's full name and the contribution received by the committee;
  - (2) Itemized expenditures by category, including polling, travel, office rent, and administrative costs; and
  - (3) The balance of the exploratory committee fund.
- (b) The informational report shall be filed semiannually, on January 31<sup>st</sup> and July 31; provided, that within 12 months of an election for the office that is the subject of the exploratory committee, reports shall be filed on the last day of each month.

Section 4 of the Amendment states:

- (a) Any balance in the exploratory committee may be transferred to an established principal campaign committee, political committee, or charitable organization in accordance with the [tax code].
- (b) Exploratory committee fund balances shall not be deemed the personal funds of any individual, including the individual seeking elective office.

Section 5 of the Amendment requires an exploratory committee for the office of Ward Councilmember to receive no more than a \$500 contribution per person.

Section 6 of the Amendment states, in part:

When an individual decides to run for office and becomes a candidate, contributions received during the exploratory period, beginning June 2, 2006, shall apply to the campaign contribution limits for the candidate[.]

D.C. Official Code §1-1101.01(6) (A) defines "contribution" to mean, in part:

- (i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the campaign [and]

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose[.]

D.C. Official Code §1-1101.01(8) defines “person” to mean “an individual, partnership, committee, corporation, labor organization, and any other organization.”

D.C. Official Code §1-1102.06(a) requires, in part, “the treasurer of each political committee supporting a candidate. . .and each candidate [to] file with the Director. . .reports o receipts and expenditures on [among other dates] the 10<sup>th</sup> day of. . .June[.]”

D.C. Official Code §1-1131.01 states, in part:

(a) No person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate for election to public office, including both the primary and general election or special elections, exceeds:

. . .

(3) In the case of a contribution in support of a candidate for member of the Council elected from a ward[,], \$500[.]

At 3 D.C.M.R. §3711.1 (March 2007), it states:

Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party, in the following manner:

- (a) Each allegation shall constitute a separate violation; and
- (b) A fine shall attach for each day of non-compliance for each violation.

At 3 D.C.M.R. §3711.2, fines shall be imposed for the following:

- (dd) Failure to disclose required information on reports and statements, \$50.00 per day;
- (f) Failure to file R&E [Receipts and Expenditures] Reports[, ] \$50.00 per day; [and]
- (o) Accepting contributions in excess of contribution limitations, \$2000.00.

At 3 D.C.M.R. §3711.3, it provides that “[t]he aggregate of the penalties imposed pursuant to the Director’s authority. . . may not exceed two thousand dollars (\$2,000) for each violation.”

At 3 D.C.M.R. §3711.4, it provides that “[i]n calculating the time period for delinquencies, Saturday, Sundays, and holidays shall not be included.”

At 3 D.C.M.R. §9900.1, “[i]n-kind contribution” is defined as “a contribution of goods, services or property by the contributor to a political committee[.]”

### **Summary of Evidence**

The OCF General Counsel, Kathy S. Williams, reviewed anew the photographs and literature submitted by Ms. Rose. Additionally, on Thursday, February 22, Tuesday, March 20 and Thursday, March 29, 2007, Ms. Williams inspected, on Benning Road and Pennsylvania Avenue, S.E. and Alabama Avenue and Good Hope Road, S.E., posters generally proclaiming “Dr. Victor Vandell City Council – Ward 7,” as directed by Ms. Rose. Ms. Williams noted that the posters were imprinted with language indicating that they were paid for by the Exploratory Committee to Elect Dr. Victor Vandell City Council Ward 7.

In accordance with the March Show Cause Order, on April 2, 2007, respondent appeared at the OCF offices, on behalf of the PCC and the Exploratory Committee, for a recorded interview. The interview was conducted by Ms. Williams; and, William O. SanFord, Senior Staff Attorney, assisted as necessary.

Respondent stated under oath that, as of November 21, 2006, he was in “exploratory mode” for the prospective Ward 7 Council Member seat, to be vacated by Vincent Gray, who was the successful candidate for the seat of D.C.

City Council Chairperson, at the November 2006 General Election. Respondent collected contributions, issued posters and distributed flyers. Through Armstrong Custom Signs of Washington, D.C., respondent ordered, among other things, banners, posters, and yard signs totaling \$4,525.00 to boost his exploratory effort. See Attachment B.

Respondent specifically queried as to who authorized the placement of the two (2) street signs in the ward. Respondent replied that he reviewed all of the signs, posters and literature for the exploratory and principal campaign effort. He said that he was a novice "as a campaign candidate because [he] never ran for office in D.C."

Although the sign at Alabama Avenue and Good Hope Road, S.E. was no longer standing (at the time of the interview), respondent admitted that the sign at the other location, Benning Road and Pennsylvania Avenue, S.E., was still in place. He averred that both signs were posted during the exploratory stage of his effort to gauge the opinion of the community as to his potential candidacy.

Ms. Williams informed respondent that his principal campaign committee actually received an in-kind contribution from the exploratory committee because the former used the street signs created and paid for by the latter. She advised him to revise his reports of receipts and expenditures to reflect same by April 9, 2007.

Respondent was cooperative and appeared credible. He answered all queries in a straightforward manner and candidly declared that he may have erred during this process due to his inexperience in the political arena.

### **Findings of Fact**

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

1. As a result of the November 2006 General Election, the office holder of the Ward 7 Councilmember seat was elected Chairperson of the D.C. City Council.
2. Whereupon, respondent sought the seat of the Ward 7 Councilmember as early as November 28, 2006, in an exploratory effort for office.

3. As early as November 28, 2006, respondent organized the Exploratory Committee and collected contributions and made expenditures.
4. On December 4, 2006, respondent placed an order with Armstrong Custom Signs of Washington, D.C. for the creation of, among other things, street signs to boost his exploratory effort. See Attachment B.
5. Respondent soon received the street signs and authorized their use at Benning Road and Pennsylvania Avenue, S.E. and Alabama Avenue and Good Hope Road, S.E., to promote his exploratory effort because the signs bore the language of "Paid for by The Exploratory Committee to Elect Dr. Victor Vandell City Council Ward 7." See Attachment A.
6. On or about January 2, 2007, the seat of the Ward 7 Councilmember was officially certified vacant.
7. On January 5, 2007, respondent filed with OCF a Statement of Candidacy for the seat of the Ward 7 Councilmember.
8. On or about January 5, 2007, respondent organized his PCC and collected contributions and made expenditures.
9. In pursuit of his campaign for the seat of the Ward 7 Councilmember, respondent used the street signs, previously purchased under the auspices of the Exploratory Committee created and used for his "testing the waters" effort for the seat of the Ward 7 Councilmember.
10. By April 2, 2007, respondent had not included, at least, the use of the street signs, previously purchased under the auspices of the Exploratory Committee, created and used for his "testing the waters" effort for the seat of the Ward 7 Councilmember, as a donation from the Exploratory Committee, in any of the reports of receipts and expenditures submitted by the PCC.
11. Respondent was advised to amend, by April 9, 2007, the reports of receipts and expenditures submitted by the principal campaign committee to reflect, at least, the prorated cost of the street signs for his principal campaign effort as a receipt of an in-kind donation from the Exploratory Committee.

12. Respondent timely submitted the amendments to reflect, at least, the use of the street signs for his principal campaign effort as a receipt of an in-kind donation; and, did not reflect the contributor as the Exploratory Committee.

13. Respondent PCC was also required to file its June 10, 2007 Report of Receipts and Expenditures on June 11, 2007; and, it failed to do so.

### **Conclusions of Law**

Based upon the record and evidence herein, I therefore conclude:

1. Respondent received an in-kind contribution, pursuant to D.C. Official Code §1-1101.01(6)(A) and 3 D.C.M.R. §9900.1, when respondent's PCC used the street signs at Benning Road and Pennsylvania Avenue, S.E. and Alabama Avenue and Good Hope Road, S.E. in pursuit of the certified vacancy in the Ward 7 Councilmember seat; and, which street signs had been ordered and purchased by the Exploratory Committee for his prior "testing the waters" effort for the seat of the Ward 7 Councilmember.

2. The Exploratory Committee must file a consolidated informational report by July 31, 2007, pursuant to the Exploratory Committee Regulation Temporary Amendment Act of 2007, because it remained viable through January 29, 2007, as an exploratory committee which made, at least, an in-kind contribution of street signs to respondent's PCC; and, it must report each contributor's full name and the contribution received by the committee; each itemized expenditure by category, including polling, travel, office rent, and administrative costs, including the pro rated cost of the in-kind contribution of street signs to respondent's PCC; the balance of the exploratory committee fund; and, the transfer of that balance to the PCC.

3. Respondent PCC violated D.C. Official Code §1-1102.06, when it failed to file its June 10, 2007 Report of Receipts and Expenditures on the required deadline date of June 11, 2007.

4. The penalty established at 3 D.C.M.R. §§3711.2(f) and 3711.4 for failure to timely file the Report is a fine of \$50.00 per day for each business day subsequent to the due date.

5. The PCC must amend its Reports of Receipts and Expenditures by August 10, 2007, especially in light of the failure of the PCC to submit its June 10, 2007 Report of Receipts and Expenditures, pursuant to D.C. Official Code §1-1102.06, to accurately reflect the transfer of funds from the Exploratory Committee to the PCC and the pro rated cost of the in-kind contribution of street signs, pursuant to D.C. Official Code §1-1101.01(6)(A); and, the PCC shall report the transfer on Schedule A indicating that the contributor is the "Exploratory Committee to Elect Dr. Victor Vandell for Ward 7."

6. The penalty established at 3 D.C.M.R. §§3711.2(dd) and 3711.4 for failure to disclose required information on reports is a fine of \$50.00 per day for each business day subsequent to the due date.

7. Whether or not the Vandell Campaign may have received excessive campaign funds from contributors who may have donated to the Exploratory Committee and to the Principal Campaign Committee, in contravention of D.C. Official Code §1-1102.05(a), cannot be determined until "The Exploratory Committee to Elect Dr. Victor Vandell for Ward 7," files, with the Office of Campaign Finance, in accordance with the Exploratory Committee Regulation Temporary Amendment Act of 2007, a listing of each contribution received and expenditure made during the exploratory period.

8. The penalty established at 3 D.C.M.R. §§3711.2(o) and 3711.4 for making contributions in excess of the contribution limitations is a fine of \$2,000.00.

9. 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 find.

### **Recommendation**

I hereby recommend the Director to order respondent to cause to file an information report, pursuant to the Exploratory Committee Regulation Temporary Amendment Act of 2007, of the Exploratory Committee, by close of business on Tuesday, July 31, 2007.

I hereby further recommend the Director to order respondent to cause to file a consolidated report of all receipts and expenditures, especially in light of the

failure of the PCC to submit the June 10, 2007 Report of Receipts and Expenditures, pursuant to D.C. Official Code §1-1102.06, of the PCC, by close of business on Monday, August 13, 2007, to accurately reflect the transfer of balance from the Exploratory Committee, and the pro rated cost of the in-kind contribution of street signs.

I hereby finally recommend the Director to impose a fine of \$1,500.00 upon the PCC; and, suspend such fine; Provided, that respondent file the required PCC report of receipts and expenditures by Monday, August 13, 2007.

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Date

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Kathy S. Williams  
General Counsel

**ORDER OF THE DIRECTOR**

IT IS ORDERED that respondent cause to file an information report, pursuant to the Exploratory Committee Regulation Temporary Amendment Act of 2007, of the Exploratory Committee, by close of business on Tuesday, July 31, 2007.

IT IS FURTHER ORDERED that respondent cause to file a consolidated report of all receipts and expenditures, especially in light of the failure of the PCC to submit the June 10, 2007 Report of Receipts and Expenditures, pursuant to D.C. Official Code §1-1102.06, by close of business on Monday, August 13, 2007, to accurately reflect the transfer of balance from the Exploratory Committee, and the pro rated cost of the in-kind contribution of street signs.

IT IS FINALLY ORDERED that a fine of \$1,500.00 be imposed upon the PCC; and, that such fine be suspended; Provided, that respondent causes the filing of the required PCC report of receipts and expenditures by Monday, August 13, 2007.

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

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Date

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Cecily E. Collier-Montgomery  
Director

**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 July 11, 2007.

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**NOTICE**

Pursuant to 3 D.C.M.R. §3711.5 (March 2007), any fine imposed by the Director shall become effective on the 16<sup>th</sup> 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20009.