

BEFORE THE DIRECTOR  
OF THE  
OFFICE OF CAMPAIGN FINANCE  
D.C. BOARD OF ELECTIONS AND ETHICS  
2000 14<sup>TH</sup> STREET, N.W., SUITE 420  
WASHINGTON, D.C. 20009  
(202) 671-0547

IN THE MATTER OF )  
)  
**Jack Evans** ) DATE: November 20, 2008  
**Councilmember – Ward 2** )  
**Council of the District of** ) DOCKET: OCF FI 2008-104  
**Columbia** )  
**The Wilson Building** )  
**1300 Pennsylvania Avenue, N.W.** )  
**Washington, D.C. 20001** )

**ORDER**

**Statement of the Case**

This matter arises out of a complaint filed by David J. Mallof, Ronald Cocome, John D. Hanrahan, and Elizabeth B. Elliott (complainants), of Washington, D.C., 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). Complainants allege that Councilmember Jack Evans (respondent) “improperly used his own Council office to take photographs of himself with Police Chief Cathy Lanier while she was on duty and in official uniform and then, subsequently – with or without her knowledge – used one of those photos in a campaign advertisement published in The Current newspapers on August 13, 2008 [and t]he ad, seeking votes for Respondent Evans in the September 9 Democratic primary, implied a clear endorsement of Evans by Chief Lanier, in violation of DCMR and applicable personnel rules.”

**Issue**

Whether respondent violated D.C. Official Code §1-1106.51 when he allegedly used government resources for campaign related activities by allowing Evans 2008, his campaign committee for the September 9, 2008 Primary Election, to place in The Current newspapers a photograph of himself posed with Police Chief Cathy Lanier, in her official Metropolitan Police Department (MPD) uniform, under the heading of “Working Together for Ward 2” and noting, among other things, “Vote Jack Evans on September 9”?

**Background**

By letter (Exhibit A) to the Office of Campaign Finance (OCF) received on August 28, 2008, complainants filed a formal complaint, with attachments, against respondent for

violating the campaign finance law of the District of Columbia. It is significant that on August 19, 2008, complainants attempted to file a complaint upon respondent for the instant allegation and the complaint was rejected by OCF due to defect.<sup>1</sup> The correspondence is an attachment (Exhibit B), and incorporated by reference, to the latter filing; a copy of Wednesday, August 13, 2008, The Dupont Current (Exhibit C), is also attached thereto.

It must be noted that, upon being notified by complainant, and others, including members of the Fraternal Order of Police, of the campaign advertisement in The Current newspapers, and upon OCF's independent review of the picture, OCF requested respondent to discontinue the use thereof. On August 28, 2008, OCF was assured by respondent's counsel, N. William Jarvis of Washington, D.C., that respondent's committee had ceased use of all of the ads depicting respondent with Chief Lanier.

Whereupon, on September 5, 2008, OCF initiated a full investigation as to whether respondent may have used government resources for political purposes, in contravention of D.C. Official Code §1-1106.51. Respondent was soon advised thereof and was requested to answer the allegations no later than Friday, October 1, 2008. On that date, respondent submitted his Answer (Exhibit D)<sup>2</sup>. On October 24, 2008, pursuant to a request from the undersigned to MPD, a notarized Statement concerning the photograph in question was received from MPD Chief Cathy L. Lanier. Exhibit E.

The scope of the OCF investigation, which was conducted until November 14, 2008, encompassed reviewing and verifying all submitted information, in light of the OCF and ANC statutes; research; and in-house meetings.

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

D.C. Official Code §1-1106.51(a) reads, in part, "No resources of the District of Columbia government, including, the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, telephones and other utilities, shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan[.]"

Pursuant to 3 D.C.M.R. §3300.2, "The use of a government resource for a campaign-related purpose occurs when a person draws upon a service of the District of Columbia government for any campaign matter, pursuant to this title."

Pursuant to 3 D.C.M.R. §3300.4, "For the purposes of the use of a government resource for a campaign-related purpose, this chapter shall apply to all persons."

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<sup>1</sup> The August 19, 2008 letter was not verified under oath. See 3 D.C.M.R. §3701

<sup>2</sup> The Answer was received by OCF as "Confidential & [Privileged]." Upon issuance of the instant Order, and in accordance with OCF policy, the Answer is open for review within the record.

Pursuant to 3 D.C.M.R. §3301.8(a), “District of Columbia Government resources shall be prohibited from use to support or oppose. . .a candidate for elected office, whether partisan or nonpartisan[.]”

Pursuant to 3 D.C.M.R. §3301.9, “Resources of the District of Columbia Government shall include, but not be limited to, the following: (a) [t]he personal services of employees during their hours of work; and (b) [n]onpersonal services.”

Pursuant to 3 D.C.M.R. §3301.10, “Nonpersonal services shall include, but not be limited to, the following: (a) [s]upplies; (b) [m]aterials; (c) [e]quipment; (d) [o]ffice space; (e) [f]acilities; and (f) [u]tilities[.]”

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:

...

“(kk) Using District government resources for campaign related activities \$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.

The District Personnel Manual (DPM) at Chapter 18, “Employee Conduct” states, in part:

1802.1 The provisions of this chapter shall apply to all District employees. . .except that enforcement for [each Member of the Council] shall be the responsibility of the D.C. Board of Elections and Ethics [through its Office of Campaign Finance].

1803.1(a) An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:

...

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

1804.1 An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following:

...

(b) Using government time or resources for other than official business[.]

1806.1 A District employee shall not use or permit the use of government property, equipment, or material of any kind, including that acquired through lease, for other than officially approved purposes. Any employee has a positive duty to protect and conserve government property, including such equipment, supplies, materials, and other items as may be issued or entrusted to him or her. Nothing in this subsection, however, shall serve to prohibit the following:

- . . .
- (c) The use of government facilities or equipment under circumstances which do not increase the maintenance cost of such resources; for example, the use of existing library materials or government-purchased books is not prohibited[.]

“Resources” is defined as “[m]oney or any property that can be converted to meet needs; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind.” Black’s Law Dictionary 1178 (5<sup>th</sup> ed. 1979).

### **Summary of Evidence**

Complainants rely upon their verified letter and its attachments. As noted earlier, one of the attachments is a copy of the affected newspaper which contains a color display of the campaign ad.

Complainants write in their August 19, 2008 letter, an attachment to the verified letter, they believe that the campaign advertisement (campaign ad) in The Dupont Current issue of Wednesday, August 13, 2008 was placed all of the Ward 2 editions of same and that the campaign ad may have reached more than those who lived within the ward.

According to complainants, “The photograph in the advertisement implies a clear endorsement by the Chief of Police Lanier, but nevertheless also was produced by Mr. Evans for campaign purposes on D.C. government property in the Wilson Building, likely on government (in daylight and with the chief in full uniform on duty), and with the full powers, ‘brand,’ and directly implied resources of the D.C. Council and MPD Office of the Chief of Police fully projected in the campaign ad targeted to the September 9<sup>th</sup> election, and entitled ‘Working Together for Ward 2.’”

Complainants state, “As one final but pivotal point, we hope your office will properly interpret the term ‘resource’. The good name of the MPD and its brand image of civic trust are very hard to win and more than easily to tarnish. Any company would view its brand as a major resource and a financial asset. In this case, taking the image of the Chief of Police in uniform was an illicit and clearly premeditated use of a precious and fragile government resource of the highest order – for a political campaign. That the photograph may have been taken on another day for another supposed or even more casual reason is of no matter. The campaign subsequently used the resource of that moment and the brand of MPD illicitly.”

Complainants add, “[e]ven if the Chief of Police was unaware of the advertisement being run or the possible further use of the photo, Mr. Evans and campaign nevertheless clearly used government time, the huge cloak and patina of her mission-critical Office of the Chief of Police, and the full projection of D.C. government authority and its resources, illegally.”

Complainants augment their response in the August 28, 2008 verified letter with the following, “The top half of the [campaign ad] page was devoted to a color photograph of Respondent Evans with Chief Lanier, under the headline ‘Working Together for Ward 2’. The headline-photo combination clearly implied that Chief Lanier was endorsing Respondent Evans in his reelection campaign. The photo was taken in his official D.C. Council office in the John Wilson Building during working hours, when Chief Lanier was on duty and in the official uniform of the Chief of Police.”

Complainants aver that respondent “drew upon the services of Chief Lanier for a campaign-related purpose when he had her photograph taken with him, while she [was] on duty and wearing the District of Columbia’s official Police Chief uniform, and then subsequently used the photo in a campaign ad[, that respondent] used resources of the District of Columbia for his campaign-related benefit – to wit, the personal services during her hours of work of Chief Lanier, and that respondent] used his official office space for a campaign-related purpose when he had a photograph taken there that was subsequently used in a campaign ad.”

Complainants argue that, “[w]hatever his intention may have been the day the photograph was taken is irrelevant [as h]e subsequently used that photograph for a political purpose – to wit, the newspaper ad with its implied endorsement of Mr. Evans by the Chief, and such use constituted a flagrant violation of [the campaign finance laws and regulations].”

Respondent answers, through counsel, N. William Jarvis, Esq. of Washington, D.C., that the photograph belongs to him. Respondent stated that “throughout his professional life, [he] has engaged in a routine practice of taking his photograph with friends and colleagues as way of recording – for his own personal accord – highlights and relationships from his time in both the private and public sectors. These photographs include [him] with his colleagues at the Securities and Exchange Commission, with fellow attorneys in private practice, as he crosses the finish line during local marathons, at social engagements in and out of Washington, D.C. with the likes of Mick Jagger and Ethel Kennedy, and at many political events, including events at both The Clinton and Bush White Houses [and that he] displays over 300 of these photographs – a majority, but not all, of those taken over the years – on the walls of his Council offices.”

Respondent clarifies that “[t]he photographs are usually taken with an instamatic camera that also belongs to [him] personally, with film that [he] purchases and pays to have developed out of his personal funds [and that w]hen [he] ends his service as the Ward 2

Councilmember at some time in the future, and leaves the Wilson Building, each and every one of these photographs will leave with him as part of his personal belongings.”

Respondent emphasizes that the photograph of him with Chief Lanier was taken in the manner described, the purpose for which to “archive a memento of his working relationship” with her; and, that it “is one of the photographs currently adorning his Council walls.”

Respondent next argues that “Chief Lanier did not pose for a campaign photograph. She posed for a photograph with Jack Evans to be used for his personal collection [and] Chief Lanier has not engaged in any campaign or election activity for [him].” Respondent believes that “[i]t is standard procedure for almost all candidates for public office to show their ‘law and order’ bona fides by including in their campaign literature photos of themselves with uniform police officers.” In support thereof, Respondent appended photographs of candidates posing with police and fire personnel.<sup>3</sup>

MPD Chief of Police Cathy L. Lanier submits, by notarized Statement, dated October 23, 2008, that “the photograph in question was taken while present in the office of Councilmember Evans for a standard meeting to discuss crime issues existing within Ward 2. As is customary, the Councilmember had several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries. For that reason and under the belief the photograph would be used only for legitimate personal display, I agreed to appear in a photograph with Councilmember Evans. There was never any reason for me to believe that the photo would be used for an improper or prohibited purpose and there was no intent on my part to participate in any such activity. At no time was I made aware that my appearance would be used – under any circumstances – to gain an improper benefit. Any such activity was done without my knowledge and consent.”

### **Findings of Fact**

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

1. Respondent is a District of Columbia employee who is a member of the Council of the District of Columbia for Ward 2, and has represented that ward therein for over 16 years. Records of the D.C. Board of Elections and Ethics (BOEE Records).
2. Throughout Respondent’s District government service, he regularly and consistently photographed himself with, among notable others, friends, colleagues, public leaders and entertainers, in his District government office at the Wilson Building; displays them therein; and considers same part of his personal possessions. Exhibit D.

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<sup>3</sup> The photographs include Mayor Adrian Fenty, At-large Councilmember Carol Schwartz, At-Large Councilmember Kwame Brown and Ward 2 Council Candidate Cary Silverman.

3. On an occasion when the Chief of the District's Metropolitan Police Department, Cathy L. Lanier (Chief Lanier), met with respondent during "a standard meeting to discuss crime issues existing within Ward 2," she observed "several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries"; and, she acquiesced to his request to pose with her for a photograph because she believed that the resulting "photograph would be used only for legitimate personal display." Exhibit E.
4. Respondent's photograph with Chief Lanier was taken with his personally owned camera and all expenses associated with the processing of photographs emanating from this camera were borne by respondent; however, it is more probable than not that a District government employee actually captured the picture of respondent and Chief Lanier in respondent's office on the occasion of their meeting. Exhibit D.
5. Prior to August 13, 2008, respondent shared the personal photograph, depicting respondent posed with Chief Lanier, with his Primary Election campaign committee, Evans 2008, to embed in a campaign advertisement. Id.
6. On August 13, 2008, respondent's personal photograph, depicting respondent posed with Chief Lanier, appeared in a campaign advertisement for respondent's bid for Primary Election Ward 2 Councilmember Democratic candidate in The Current newspapers. Exhibit C.
7. Respondent sought to exhibit, through the August 13, 2008, use of respondent's personal photograph, depicting respondent posed with Chief Lanier, in a campaign advertisement for respondent's bid for Primary Election Ward 2 Councilmember Democratic candidate in The Current newspapers, that he was a "law and order" candidate. Exhibit D.
8. Chief Lanier was unaware of the August 13, 2008, use of respondent's personal photograph, depicting respondent posed with her, in a campaign advertisement for respondent's bid for Primary Election Ward 2 Councilmember Democratic candidate in The Current newspapers. Exhibit E.
9. Chief Lanier never had any reason to believe that on the occasion when she met with respondent during "a standard meeting to discuss crime issues existing within Ward 2," and posed with him for a picture, the resulting photograph would be used as a campaign advertisement for respondent's Primary Election bid for Ward 2 Democratic candidate. Id.

**Conclusions of Law**

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

1. As an employee and public official of the District of Columbia, Respondent is subject to the Act's campaign finance statute, at D.C. Official Code §1-1106.51; and, the District's personnel rules on "Employee Conduct," DPM Chapter 18. See also 3 D.C.M.R. §3300.2.
2. For the purposes of D.C. Official Code §1-1106.51, any resource or service, personal or nonpersonal, of the District of Columbia government used for campaign-related purposes is that item, person, entity or thing belonging to and governed by the District of Columbia government. See also 3 D.C.M.R. §3301.8(a) & Black's Law Dictionary 1178.
3. On the occasion when Chief Lanier met with respondent during "a standard meeting to discuss crime issues existing within Ward 2"; observed "several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries"; and, acquiesced to his request to pose with her for a photograph because she believed said picture would be for respondent's personal display, the resulting photograph was taken with respondent's personally owned camera, where all expenses associated with the processing of photographs emanating from this camera were borne by respondent, the resulting photograph was not a resource of the District of Columbia government used for a campaign-related purpose because it was a personal possession of respondent. See D.C. Official Code §1-1106.51; see also 3 D.C.M.R. §3301.9.
4. Assuming, en arguendo, that on the occasion when Chief Lanier met with respondent during "a standard meeting to discuss crime issues existing within Ward 2"; observed "several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries"; and, acquiesced to his request to pose with her for a photograph because she believed said picture would be for respondent's personal display, the resulting photograph was taken with respondent's personally owned camera, where all expenses associated with the processing of photographs emanating from this camera were borne by respondent, if the resulting photograph was nonetheless deemed a resource of the District of Columbia government, used for a campaign-related purpose, such would not be the case because, at the time, the resulting photograph was taken for respondent's personal display and not for a campaign-related purpose. Id.
5. Because it is more probable than not that a District government employee actually captured the picture of respondent and Chief Lanier in respondent's office on the occasion of their "meeting to discuss crime issues existing within Ward 2" and Chief Lanier acquiesced thereto because she believed the resulting photograph



would be for respondent's personal display, that District government employee's service spent thereon was not a prohibitive use of government personnel because the District government did not expend any additional resources for that individual's act; in other words, the District government employee, who more probably than not captured the photograph, was at work for District government purposes and the District government was not charged additional resources for that employee time to capture the picture of respondent and Chief Lanier. See DPM 18, "Employee Conduct," §1806.1(c).

6. Also, on the occasion when Chief Lanier met with respondent during "a standard meeting to discuss crime issues existing within Ward 2"; observed "several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries"; and, acquiesced to his request to pose with her for a photograph because she believed said picture would be for respondent's personal display, the resulting photograph was taken with respondent's personally owned camera, where all expenses associated with the processing of photographs emanating from this camera were borne by respondent, her appearance – as the District's Chief of Police with the visage of the utmost integrity and honesty -- in the resulting photograph was not a resource of the District of Columbia government used for a campaign-related purpose because Chief Lanier believed that she was posing for a photograph that would be used only for legitimate personal display. See D.C. Official Code §1-1106.51; see also 3 D.C.M.R. §3301.9.
7. Further, on the occasion when Chief Lanier met with respondent during "a standard meeting to discuss crime issues existing within Ward 2"; observed "several personal photographs displayed throughout his office in which he appeared with various officials and dignitaries"; and, acquiesced to his request to pose with her for a photograph because she believed said picture would be for respondent's personal display, the resulting photograph was taken with respondent's personally owned camera, where all expenses associated with the processing of photographs emanating from this camera were borne by respondent, her appearance – as the District's Chief of Police with the visage of the utmost integrity and honesty -- in the resulting photograph was not a resource of the District of Columbia government used for a campaign-related purpose because, contrarily, the photograph was captured for respondent's personal use, as for over 16 years throughout his District government service, he regularly and consistently photographed himself with, among notable others, friends, colleagues, public leaders and entertainers, in his District government office at the Wilson Building. See D.C. Official Code §1-1106.51; see also 3 D.C.M.R. §3301.9.
8. Respondent did not violate D.C. Official Code §1-1106.51 when he allegedly used government resources for campaign related activities by allowing Evans

2008, his campaign committee for the September 9, 2008 Primary Election, to place in The Current newspapers a photograph of himself posed with Police Chief Cathy Lanier, in her official Metropolitan Police Department (MPD) uniform, under the heading of “Working Together for Ward 2” and noting, among other things, “Vote Jack Evans on September 9” because the photograph was not taken for a campaign-related purpose and because Chief Lanier consented to pose with respondent in the photograph for a personal, not campaign-related, purpose.

**Recommendation**

I hereby recommend the Director of the Office of Campaign Finance (Director) to dismiss this complaint. I hereby further recommend the Director to strongly urge respondent to review the District’s “Employee Conduct” rules, at DPM §1803.1(a), to ensure that public officials always remain vigilant concerning their 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 integrity of government.”

November 20, 2008

Date

Kathy S. Williams  
General Counsel

**ORDER OF THE DIRECTOR**

**IT IS ORDERED** that this matter be dismissed. At the same time, I strongly urge respondent to review the District’s “Employee Conduct” rules, at DPM §1803.1(a), to ensure that public officials always remain vigilant concerning their 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 integrity of government.” Attachments to this Order are available for review or copying in OCF, upon request.

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

\_\_\_\_\_  
November 20, 2008  
Date

\_\_\_\_\_  
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 Thursday, November 20, 2008.

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**NOTICE**

Pursuant to 3 D.C.M.R. §3711.5 (1999), 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 420, 2000 14<sup>th</sup> Street, N.W., Washington, D.C., 20009.