

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	)	
	)	
<b>Vincent Gray</b>	)	DATE: April 7, 2010
<b>Chairperson</b>	)	
<b>Council of the District of</b>	)	DOCKET: OCF FI 2009-106
<b>Columbia</b>	)	
<b>The Wilson Building</b>	)	
<b>1300 Pennsylvania Avenue, N.W.</b>	)	
<b>Washington, D.C. 20001</b>	)	

**ORDER**

**Statement of the Case**

This matter arises from inquiries from the D.C. Office of Campaign Finance (OCF), as a result of information concerning the use of government resources for campaign-related activities, supplied from a full field audit of the D.C. Democratic State Committee (DCDSC) (State Party Committee), issued by OCF on December 18, 2009; and, from a series of articles by local newspapers that Chairperson Vincent Gray of the District of Columbia City Council (Respondent) may have used his official position for financial gain when the William C. Smith & Company, a business doing business with the District of Columbia, allegedly serviced and made repairs to his home, and may not have charged market, or any, price therefor. See D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (Act), as amended, D.C. Official Code §§1-1101.1 et seq. (2001 Edition, as amended).

**Issues**

1. Whether Respondent violated D.C. Official Code §1-1106.51 and DPM Chapter 18 §§1804.1(b) & 1806.1(c), when he allegedly used government resources, District City Council stationery, for campaign-related purposes, on August 18, 2008, to solicit of Kathy E. Hollinger, Comcast Director of Government Relations and Public Affairs, in Washington, D.C. monies from Comcast for the District of Columbia delegation at the Democratic National Convention?
2. Whether Respondent's receipt of services and repairs to his home by the William C. Smith & Co., a business doing business in the District of Columbia, may have affected, directly or indirectly, his actions or decisions as Chairperson of the District of Columbia Council?

### **Background**

Of the documents received pursuant to a full field audit of the D.C. Democratic State Committee (Committee) last year, was an August 18, 2008 letter to Kathy E. Hollinger, Comcast Director of Government Relations and Public Affairs, in Washington, D.C., from Respondent, on his D.C. City Council stationery. See Exhibit One. See also Final Audit Report of The D.C. Democratic State Committee (DCDSC) (State Party Committee), issued on December 18, 2009, at [www.ocf.dc.gov](http://www.ocf.dc.gov). Among other things, Respondent requested \$20,000 from Comcast to support “the District’s delegation at the Democratic National Convention.” Additionally, it was revealed in the media through several articles in November 2009 that, from June through August 2009, Respondent used the services of William C. Smith & Co. (WCS) of Washington, D.C. to service and repair his home; and, may not have paid therefor.

On November 24, 2009, OCF dispatched to Respondent a letter of notification of a full investigation of these matters. On December 8, 2009, Respondent answered through counsel, Frederick D. Cooke, Jr., Esq., of Rubin, Winston, Diercks, Harris & Cooke, LLP of Washington, D.C. and pointed out that the request for assistance was to promote voting rights for citizens of the District. Moreover, he attached invoices and copies of checks to indicate the type of work performed on his home, the costs thereof, and cancelled checks signifying payment for the services and repairs. See Exhibit Two.

Thereafter, on December 11, 2009, Respondent secured different counsel, Robert J. Spagnoletti, Esq., Schertler & Onorato, L.L.P., also of Washington, D.C.; and, sought additional time in which to review the matter and possibly supplement the record. At the end of December, Counsel Spagnoletti represented that he incorporated the response of previous counsel. He further represented that he would schedule a time for OCF staff to conduct an informal hearing with Respondent and to obtain the specifications for the work completed on Respondent’s home.

In January 2010, OCF staff sought to speak with and interview WCS members. On January 26, 2010, the undersigned spoke with Jim Anglemyer, President of WCS Construction. He confirmed that the document for a proposal for an expansive renovation of Respondent’s home was for the architect’s design only; and, that the renovation was not executed. Throughout this investigation, interviews with residential and government contractors were conducted and memorialized for review. See Exhibit Three.

By the end of February, OCF had established a March 4, 2010 date to conduct an informal hearing of Respondent. On that date, OCF staff conducted an informal hearing with Respondent. Based upon that testimony, OCF sought additional information from WCS, pursuant to a letter of March 24, 2010. On April 1, 2010, WCS, represented by Caroline Petro Gately, Esq. of Venable LLP of Washington, D.C. submitted an answer thereto. See Exhibit Four.

The scope of the OCF investigation entailed reviewing and verifying all submitted information, in light of the OCF statutes and regulations; research, especially with regard to local licensed and bonded general and sub-contractors and prescribed market rates; and in-house and outside meetings.

**Relevant Statutory and Regulatory Provisions**

D.C. Official Code §1-1101.01 reads, in pertinent part:

When used in this chapter, unless otherwise provided:

...

(2) The term “candidate” means an individual who seeks nomination for election, or election, to office, whether or not such individual is nominated or elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he or she has: (A) Obtained or authorized any other person to obtain nominating petitions to qualify himself or herself for nomination for election, or election to office; (B) received contributions or made expenditures, or has given his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office; or (C) reason to know, or knows, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose. A person who is deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other federal law.

(3) The term “office” means. . .an official of a political party.

(4) The term “official of a political party” means:

...

(B) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States.

(5) The term “political committee” means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in: promoting or opposing a political party [and] promoting or opposing the nomination or election of an individual to office[.]

D.C. Official Code §1-1106.01(c) reads:

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 [the Act] 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(g) reads, in pertinent part:

Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or 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; [and]
- (2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the "Board"), and to his or her immediate superior, if any.

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."

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:

. . .

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

“(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].

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**

Respondent relies upon his Answer. See Exhibit One. Incorporated therein are invoices and receipts representing service and work performed on his home and for which he paid.

He also relies upon his informal hearing. Respondent Testimony. At the March 4, 2010 hearing conducted before Jean Scott Diggs, OCF Senior Hearing Officer, OCF was represented by Kathy Williams, General Counsel, William SanFord, Senior Staff Attorney, and Respondent was represented by counsel, Robert Spagnoletti, Esq.

Respondent testified that during the summer of 2009, he began design plans for an interior home renovation project. He stated that he contacted several contractors to perform the work, but he was not satisfied because the estimates were high. He then contacted Chris Smith (Smith) of WCS and further stated that he knew Smith when Respondent worked for Covenant House prior to his coming to the D.C. City Council; and that he was aware that WCS Construction was an arm of Smith’s businesses. See also Exhibit Four. Respondent also stated that he believed that WCS performed residential work.

Respondent testified that Smith advised him that an architect would be needed for the renovation project, and recommended Michael Wiencek, with whom Respondent met on several occasions. Respondent corroborated that “Smith asked WCS Construction to assist” him. See Exhibit Four. Respondent further referenced a written proposal from WCS for the renovation work and that he did not receive any other proposal in writing.

Respondent clarified that repairs on his home were needed prior to the commencement of the proposed renovations, and were performed in the context of the proposed renovation project. According to Respondent and WCS, the work was sub-contracted out to D.C. companies with whom WCS was affiliated. See Exhibit Two. Respondent also stated that although he received a cost estimate of over \$89,000 from WCS for the proposed renovation work, he never executed a contract with WCS or any other contractor therefor because he believed the price was too high.

Respondent additionally stated that WCS retained District Electric Services (DES) [an affiliate of WCS], among others, to install lighting around the perimeter of his home for security purposes; to mount a television in his kitchen; and, to replace a door leading to his roof. An invoice for the stated services was presented to Respondent and he paid in full upon completion of the services.

Respondent volunteered that in 2008, he installed a new, aluminum fence around the exterior of his home; and that this project was unrelated to the interior renovation proposal. According to Respondent, the fence was installed by Mid-Atlantic Deck and Fence Company of Gambrills, Maryland, a company recommended to him by his landscaper. Respondent further volunteered that he paid “Mr. Shultz and his company” for proper coordination of the fence project, to include obtaining required permits for the work; and that WCS was not involved in any manner with the fence installation project.

Respondent recollected several bills before the Council relative to a mayoral initiative, the Northwest One Project, with which WCS is involved. According to Respondent, there were ten (10) measures before the Council on the Northwest One Project, five (5) of which were introduced in 2006, prior to his becoming Chairman. Respondent stated that four (4) of these measures were never considered by the Council; and that the other six (6) measures were adopted unanimously by the Council. Further, only one (1) of the six (6) measures adopted by the Council referenced WCS, which partnered with One Vision Development Partners, where the issues were the disposal of land and pricing. See Exhibit Five.

The undersigned sought confirmation and market pricing from various District of Columbia general contractors and subcontractors, e.g., Handyman Contractor and B&B Contracting, Inc. See Exhibit Three. Moreover, a definitive view on market pricing was obtained from the District of Columbia Government Department of Real Estate Services. See Exhibit Six.

### **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 Chairperson of the D.C. City Council of the District of Columbia. Records of the D.C. Board of Elections and Ethics (BOEE Records).
2. As Council Chairperson, Respondent is imbued with the authority to uphold the District statutes and regulations, which includes that of securing voting rights in the District of Columbia.
3. As a result of the Democratic Party selection process for delegates to the 2008 Democratic Convention in Denver, Colorado, Respondent was a nominated Delegate therefor and sought to advance the cause of voting rights in the District of Columbia in that venue by requesting support from at least one (1) local business. See Exhibit One.
4. “William C. Smith + Co. is a family-owned real estate development company that has been in business in Washington, D.C. for over 42 years [and] W. Christopher

Smith, Jr. [Smith] is the Chairman and CEO of the company, and WCS Construction is its construction affiliate.” See Exhibit Four.

5. In the summer of 2009, Respondent sought to service and repair his home and he inquired of Smith, who referred him to WCS which sub-contracted the work out to businesses with which it had previously worked. Id.; Respondent Testimony.
6. On August 30, 2009, WCS submitted an invoice for \$10,051.04, for: residential home repairs by D.H. Kim Enterprises (repair door at roof, family room and miscellaneous paint, and power wash driveway) for \$1,460.50; Maryland Doors & Locks (repair lock at entry gate) for \$245; District Electric Services [Electrical (flood lights, cable TV/DVD wiring and installation)] for \$1,942.50; Wienczek + Associates (architectural services) for \$5,000; WCS Construction LLC (general contions[sp?] and supervision) for \$924.42; and General Contractor’s Fee and Mark Up of 5% for \$478.62. See Exhibit Two.
7. Government market rate for hourly wage may be \$35 per hour; for construction cost is 10%; for profit is 10% of construction cost; for an electrician is \$85 per hour; and, for an architect is \$95 per hour, with \$3,800 for an architectural line drawing. See Exhibit Four.
8. Residential market rate, in accordance with two (2) licensed District contractors, for hourly wage per employee may be \$35 per hour, but is “high end”; for costs is 15%; for electrician is \$50 to \$70 per hour; and, for an architectural line drawing is \$5,000. Id.
9. The cost of \$1,460.50 for the home repairs is market for government and residential because each employee was paid a rate of \$35 per hour; the cost of \$245 for the locksmith is market for government because it is within the government market rate of \$100 per hour for two (2) hours of work to repair the entry gate, if not more and “on the high end” for the residential rate of \$75; the cost of \$1,942.50 is above market for government and residential because the work would entail about 10 to 16 hours at \$50 to \$85 per hour and \$250 to mount the television for a figure of \$750 to \$1,610. Id.
10. WCS is a regulated general contractor within the District of Columbia and, at least since 2005, WCS has been associated, through Northwest One, with D.C. Council budget actions and bond issuances; and, of the measures adopted, all were by unanimous vote. See Exhibit Five.
11. One resolution, Resolution 18-238, was considered during the time when WCS was performing the service and repair to Respondent’s home. Id.

12. Resolution 18-238, the “New Communities Northwest One – Site 2 Disposition Approval Resolution of 2009,” was approved unanimously on July 31, 2009, and was introduced at the request of District Mayor Adrian Fenty. Id.
13. WCS invoiced Respondent for service and repair to Respondent’s home; and, that the amounts stated were comparable to, if not higher than, the market rate for such services in the District of Columbia. See Exhibits Two, Three & Six.
14. Respondent paid WCS, as the general contractor, for all services performed. See Exhibit Two.

### **Conclusions of Law**

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

1. Respondent’s receipt of and payment to WCS for services and repairs to his home from WCS was a transaction made in the ordinary course of business, pursuant to D.C. Official Code §1-1106(c).
2. There is no evidence to suggest that Respondent’s official actions or judgment or vote would be influenced by WCS in exchange for the work performed at his home because Respondent and WCS engaged in a transaction made in the ordinary course of business, pursuant to D.C. Official Code §1-1106(c).
3. 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; the District’s personnel rules on “Employee Conduct,” DPM Chapter 18; see also 3 D.C.M.R. §3300.2; and the mission to secure statehood or voting rights in the District of Columbia, in accordance with D.C Official Code §§1-121 et seq.
4. 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; and, D.C. Council stationery is such a resource. See also 3 D.C.M.R. §3301.8(a) & Black’s Law Dictionary 1178.
5. Respondent’s August 18, 2008 letter to Kathy E. Hollinger, Comcast Director to Government Relations and Public Affairs, in Washington, D.C., on his D.C. Council stationery, wherein he requested support for voting rights at the 2008 Democratic Convention in Denver, Colorado, is not campaign-related, pursuant to D.C. Official Code §1-1106.51, or the use of government property for other than officially approved purposes, pursuant to DPM Chapter 18, §§1804.1(b) and 1806.1(c), because Respondent was acting within his duties as Chairperson of the

D.C. Council and as a duly appointed official of a political party, pursuant to D.C. Official Code §1-1101.01(4), and not as a candidate, pursuant to D.C. Official §1-1101.01(2).\*/

**Recommendation**

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

April 7, 2010

Date

KSWms

Kathy S. Williams  
General Counsel

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\*/ It is noted that the Official Correspondence Act (OCA), codified at D.C. Official Code §§2-701 et seq., which prohibits the use of “official mail to solicit directly or indirectly funds for any purpose,” pursuant to D.C. Official Code §2-706(c), is not subject to OCF purview. Pursuant to D.C. Official Code §2-704(g), this matter is addressed under the adopted “Rules of the Council of the District of Columbia” implemented in accordance with OCA, and, as considered by the Council General Counsel, who is the Ethics Officer therefor, for further, if any, review.

**ORDER OF THE DIRECTOR**

**IT IS ORDERED** that this matter be dismissed.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance. Attachments to this Order are available for review or copying in OCF, upon request.

\_\_\_\_\_  
April 7, 2010  
Date

\_\_\_\_\_  
CECM  
Cecily E. Collier-Montgomery  
Director

**SERVICE OF ORDER**

This is to certify that I have e-mailed a true copy of the foregoing Order to Respondent and other interested parties on Wednesday, April 7, 2010.

\_\_\_\_\_  
KSWms

**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 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.