

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

IN THE MATTER OF)
) DATE: May 14, 2003
Committee to Elect Vincent Orange)
Orange 2002)
Gwendolyn Orange, Treasurer) DOCKET NO.: PI 2002-105

ORDER

Statement of the Case

This matter arises out of a complaint filed by Cary Clennon, Esq. (complainant), 600 F Street, N.W., Washington, D.C., 20004, alleging a violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974, as amended, D.C. Official Code Sections 1-1101.01 *et seq.* (the Act). Complainant alleged that the Committee to Elect Vincent Orange, Orange 2000 (the Committee) violated D.C. Official Code Section 1-1102.10 by distributing by U.S. mail campaign literature without the required disclaimer. Complainant further alleged that the literature was prepared using government resources on government property and using government staff time.

Issues

1. Whether the Committee allegedly distributed campaign literature that failed to disclose, as required by D.C. Official Code Section 1-1102.10, the following identifying language: “. . .the words ‘paid for by’ followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears.”
2. Whether the Committee allegedly prepared campaign literature using government resources and staff time on government property, in contravention of D.C. Official Code Section 1-1106.51.

Background

On August 30, 2002, the Office of Campaign Finance (OCF) received complainant's letter wherein he affirmed that he received at the address on his voter registration, in the Committee's incumbent candidate's ward, in the U.S. mail an 8 page glossy color publication entitled "The Ward 5 Report" directly from the incumbent candidate's Wilson Building address of 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. Complainant was concerned that the incumbent, a candidate in the September 2002 Primary Election, was mailing campaign literature at taxpayer expense less than 3 weeks primary to the election and that the literature failed to indicate the requisite disclosure requirement. Complainant believed that the publication was produced with government resources and staff time on government property.

Upon review thereof, the complaint was accepted for filing on September 23, 2002, and a preliminary investigation was initiated. Letters were dispatched to the complainant and the Committee requesting any information relevant to the instant matter no later than October 2, 2002. Nothing further was received from complainant.

Still, on October 2, 2002, Vincent B. Orange, Jr., Ward 5 Councilmember, acting on behalf of the Committee, responded by notarized letter. He averred therein that "The Ward 5 Report" is an official Ward 5 newsletter properly produced in accordance with D.C. Official Code Section 2-706. According to Councilmember Orange, he had dispatched 3 newsletters to Ward 5 residents prior thereto. He admitted that he was statutorily prohibited from mailing the instant newsletter through the D.C. Government because the issuance date was within the 90-day period immediately preceding the Primary Election, pursuant to D.C. Official Code Section 2-706; and, after consulting with and obtaining approval from the Office of the General Counsel of the Council, he paid for the distribution thereof with Committee funds.

On November 22, 2002, OCF submitted interrogatories to Councilmember Orange. His responses were received thereby on December 4, 2002.

During the course of this investigation, Councilmember Orange was interviewed by the undersigned. He confirmed his statements and submitted for the record an August 14, 2002, invoice from Dynamic Marketing Services (the Dynamic invoice), 1730 17th Street, N.W., Washington, D.C., 20002. The invoice listed thereon services for, inter alia, addressing and distributing "The Ward 5 Report." At the same time, members of

the staff members of the Council's Office of the General Counsel were also interviewed and they concurred with the statements offered by Councilmember Orange.

The investigation was completed on December 23, 2002. Nonetheless, at a meeting of the Board of Elections and Ethics held on January 8, 2003, the undersigned, who was also serving as Acting Director, requested an extension, pursuant to D.C. Official Code Section 1-1103.02(c), within which to submit the final order in this matter. The Board granted the request.

The scope of the OCF investigation encompassed gathering, reviewing and verifying the pertinent submitted information; examining applicable OCF records; research; interviews; and in-house meetings.

Relevant Statutory and Regulatory Provisions

D.C. Official Code Section 1-1101.01(7)(A) defines "[t]he term 'expenditure' [to mean, inter alia]: A purchase, payment, distribution. . .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 election campaign[.]"

D.C. Official Code Section 1-1102.10 states, in part, "All newspaper or magazine advertising, posters, circulars, billboards. . .and other printed matter with reference to or intended to or intended for the support or defeat of a candidate. . .for nomination or election to any public office. . .shall be identified by the words 'paid for by' followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears."

D.C. Official Code Section 1-1106.51(a) states, 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 [and] materials. . .shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan[.]"

D.C. Official Code Section 2-701(6) defines "official mail" to mean "the mail which is either prepaid or postpaid by any branch, division, or other agency of the government of the District of Columbia.

D.C. Official Code Section 2-705 states, in part, “[T]he following officials may mail materials as official mail. . .members-elect of the Council.”

D.C. Official Code Section 2-706 states, in part, “(a) [a]n elected official may not mail, as official mail, any mass mailing within the 90-day period that immediately precedes a primary, special, or general election in which such official is a candidate for office.”

At 3 D.C.M.R. Section 3013.1, it reads, “Campaign funds shall be used solely for the purpose of financing, directly or indirectly, the election campaign of a candidate.”

At 3 D.C.M.R. Section 3711.2, it reads, in part, “Fines shall be imposed as follows:
. . .(l) failure to place notices required by the Act on campaign literature[,] \$10 per day[.]”

At 3 D.C.M.R. Section 3711.4, it reads, “In calculating the time period for delinquencies, Saturdays, Sundays and holidays shall not be included.”

At 3 D.C.M.R. Section 3711.5, it reads, “Any fine imposed by the Director, under Section 3711.2, shall become effective on the sixteenth (16th) day following the issuance of a decision and order; Provided, that, the respondent does not request a hearing under Section 3709.12.”

At 3 D.C.M.R. Section 3711.7, it reads, “Fines imposed under this chapter shall be paid within ten (10) days of the effective date, at the OCF, Frank D. Reeves Municipal Building, 2000 14th Street, N.W., Washington, D.C., 20009, by money order or check made payable to the D.C. Treasurer.”

Summary of Evidence

In support of his complaint, Mr. Clennon submitted his letter of August 30, 2002. See Attachment A. The Committee, through Councilmember Orange, relied upon his October 2, 2002, response; the Dynamic invoice; and his December 4, 2002, answers to OCF interrogatories. See Attachments B-D. Both parties submitted a copy of “The Ward 5 Report.” See Attachment E.

OCF relied upon portions of the Reports of Receipts and Expenditures (Reports) of the Committee to Elect Vincent Orange, Orange 2002. See Attachment F. OCF also relied

upon the confirmation and verification by its investigator of all statements given under oath. OCF further relied upon information gleaned by the undersigned during interviews with Councilmember Orange and members of the staff of the Council's Office of the General Counsel.

Findings of Fact

Having reviewed the allegations, the responses and the entire record, I find:

1. On August 14, 2002, Vincent B. Orange, Sr., a member of the Council of the District of Columbia, and candidate for the 2002 Primary Election, representing Ward 5, caused Volume 2, Issue 2 of the Summer/Fall 2002 "The Ward 5 Report" to be distributed to his constituents, through Dynamic Marketing Services of Washington D.C. See Attachments C-E.
2. Councilmember Orange is the author and custodian of "The Ward 5 Report." See Attachments A & D.
3. Prior to August 14, 2002, Councilmember Orange caused the publication and delivery to his constituents of the Summer/Fall 2000 and the Fall/Winter 2001 "The Ward 5 Report." See Attachment D.
4. Councilmember Orange produced and designed the newsletter through the District of Columbia Government's Office of the Secretary, which is tasked to assist him in the printing and distribution of newsletters issued by members of the Council. Id.
5. The District of Columbia Government's Office of the Secretary distributed "The Ward 5 Report" on the 2 occasions prior to August 14, 2002. Id.
6. Since the 2002 Primary Election was within 90 days of the August delivery date, the District of Columbia Government's Office of the Secretary was prohibited from delivering the Summer/Fall 2002 issue. Id.
7. Councilmember Orange stated that "The Ward 5 Report" was official mail and that it was not campaign literature. See Attachment B.

8. Councilmember Orange sought and was given advice from the Office of the General Counsel of the Council that he was allowed to use Committee funds to distribute the Summer/Fall 2002 issue of "The Ward 5 Report." See Attachments B & D.
9. Councilmember Orange spent \$11,104.58 from the Committee funds for postage and distribution of the Summer/Fall 2002 issue of "The Ward 5 Report." See Attachment E.
10. OCF was not consulted with regard to the use of Committee funds to distribute the Summer/Fall 2002 issue of "The Ward 5 Report."
11. "The Ward 5 Report" is an official newsletter dispatched by Councilmember Orange to his Ward 5 constituents to communicate therewith about events in their community and overall in the District of Columbia; and, Committee funds cannot be used for its distribution. See Attachment D.

Conclusions of Law

Based upon the record and evidence, I therefore conclude:

1. Vincent B. Orange, Sr., is a member of the Council of the District of Columbia, representing Ward 5, imbued with the right and the authority to produce and distribute, at the expense of the District of Columbia Government, the newsletter, "The Ward 5 Report," to his constituents, pursuant to D.C. Official Code Section 2-705.
2. "The Ward 5 Report" is not printed matter with reference to or intended for the support of the Committee's incumbent candidate in the 2002 Primary Election, Vincent B. Orange, Sr. and payment for its distribution cannot be characterized as an expenditure, pursuant to D.C. Official Code Section 1-1101.01(7)(A).
3. "The Ward 5 Report" did not require the identifying language of "paid for by" because it was not printed matter with reference to or intended for the support of the Committee's incumbent candidate in the 2002 Primary Election, Vincent B. Orange, Sr., and thus constituting campaign literature, pursuant to D.C. Official Code Section 1-1102.10.

4. The Committee contravened the Act at D.C. Official Code Section 1-1101.01(7)(A) and violated 3 D.C.M.R. Section 3013.1 because it spent funds on a non-campaign related expenditure when it paid for the distribution of “The Ward 5 Report,” which was not intended for the support of the Committee’s incumbent candidate in the 2002 Primary Election, Vincent B. Orange, Sr. and which was not campaign literature.

Recommendation

I hereby recommend the Director to order Councilmember Vincent B. Orange, Sr. to reimburse the Committee, within 12 months, in the amount of \$11,104.58 for expenses associated with the “The Ward 5 Report.” I further recommend that upon written request submitted by Councilmember Orange, on or before May 14, 2004, the Director might allow an extension for reimbursement for a reasonable period of time, for good cause shown.

DATE

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that Councilmember Vincent B. Orange, Sr. reimburse the Committee, within 12 months, in the amount of \$11,104.58 for expenses associated with the “The Ward 5 Report.”

IT IS FURTHER ORDERED that upon written request submitted by Councilmember Orange, on or before May 14, 2004, an extension for reimbursement may be allowed for a reasonable period of time, for good cause shown.

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

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing order.

S. Wesley Williams
Investigator

cc: Cary Clennon, Esq.
600 F Street, N.W.
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Washington, D.C. 20004

The Honorable Vincent B. Orange, Sr.
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NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), 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.