

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 FOURTEENTH STREET, N.W., SUITE 433
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF:

The Honorable Dwayne Toliver, Commissioner
Advisory Neighborhood Commission 4A02
Washington, District of Columbia
Respondent

Docket No.: PI-2011-101

ORDER

I. Introduction

This matter arises from a complaint filed by Michael Sindram, a resident of ANC 4B in the District of Columbia, alleging that Dwayne Toliver, Advisory Neighborhood Commissioner, 4A02, may have violated the District of Columbia's conflict of interest statute, D.C. Official Code §§ 1-1106.01 et seq., by voting on a matter involving a grant for an organization with which he is associated. The complaint was based on a news article appearing in the June 15, 2011 Northwest Current Newspapers which published that Commissioner Gale Black, ANC 4A08, stated that she would resign as treasurer of ANC 4A fearing a conflict of interest on the part of fellow Commissioner Dwayne Toliver. The conflict of interest purportedly arose from an award of grant funds for \$2,000.00 to the Friends of Shepherd Park Recreation. The grant was requested from ANC 4A to support improvements to Shepherd Field, a recreation facility located behind Shepherd Elementary School in Washington, D.C.

II. Findings of Fact

On April 6, 2010, ANC 4A convened its monthly meeting in which Commissioner Toliver and John Pilznyi ¹, made a presentation on behalf of the Friends of Shepherd Park Recreation (FSPR), that proposed improvements to Shepherd Field, and requested grant funds from ANC 4A to support this activity. The grant request was for \$2,000.00. Friends of Shepherd Park Recreation is a District of Columbia non-profit organization on which Commissioner Toliver serves as member of its Board of Directors, and is not compensated. The mission of Friends of Shepherd Park Recreation is to “engage the Shepherd Park community and working with DC Department of Parks and Recreation (DPR) in enhancing, maintaining and beautifying the space known as Shepherd Field”.²

On June 15, 2011, the *Northwest Current East* newspaper published an article stating that Commissioner Gale Black (ANC 4A08) announced at the June 2011 monthly meeting of ANC 4A that she would resign as treasurer of the Commission for fear of a conflict of interest. The conflict of interest apparently was the result of alleged conduct of fellow ANC Commissioner Dwayne Toliver, who may have voted on a matter involving Friends of Shepherd Park, an organization with which Commissioner Toliver is associated.

On October 18, 2011, Commissioner Toliver issued a written statement to OCF which categorically denied the allegations in the complaint.

¹ According to Articles of Incorporation issued in 2010 to Friends of Shepherd Park Recreation, Inc. (FSPR), Commissioner Toliver and Mr. Pilznyi are incorporators and members of its Board of Directors.

² Friends of Shepherd Park Recreation website at www.thefspr.org/About.

On October 25, 2011, OCF reviewed five (5) weekly online editions published during the month of June 2011 by the *Northwest Current* newspapers (i.e., June 1-2011 through June 29, 2011) to obtain a copy of the article referenced as the subject of the complaint.

On October 26, 2011, OCF contacted Kris Kain, managing editor of the *Northwest Current* newspapers, who stated that the *Northwest Current East* newspaper published the referenced article, and provided the website where the article could be found.

On November 1, 2011, OCF contacted Commissioner Gale Black, treasurer of ANC 4A, who stated that she can personally attest to Commissioner Toliver's recusal from voting on the matter before the ANC relative to the complaint.

On November 2, 2011, OCF interviewed Commissioner Stephen Whatley, Chair, ANC 4A. Commissioner Whatley stated that he and Commissioner Toliver live in Shepherd Park and are members of the Board of Directors of the Friends of Shepherd Park Recreation. He further stated that his recollection was that the grant request by Friends of Shepherd Park Recreation (FSPR) was awarded by ANC 4A via a "voice" vote, and not a "roll call" vote.

On November 3, 2011, OCF obtained a copy of the April 6, 2010 minutes of ANC 4A. The minutes confirmed a presentation by Commissioner Toliver and John Pilsznienski, representing the Friends of Shepherd Park Recreation (FSPR), to propose improvements to Shepherd Field, and to request \$2,000.00 in ANC 4A grant funds to support FSPR's activities. Further, the minutes indicate that ANC 4A voted unanimously to grant FSPR's funding request, and that Commissioner Toliver abstained from voting.

On November 4, 2011, OCF obtained the minutes of the September 6, 2011 meeting of ANC 4A. The minutes indicate the return of ANC 4A grant funds from the Friends of Shepherd Park Recreation. According to ANC 4A Commission Chair, Stephen Whatley, the Friends of Shepherd Park Recreation returned the grant monies “due to non-use of funds during the timeframe legally prescribed for use of such funds.”³ Further, the minutes state that the Friends of Shepherd Park Recreation have the option of appearing before the Commission on a future date to make another such request.

III. Conclusions of Law

D.C. Official Code § 1-1106.02(i)(2) states that “Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of § 1-1106.01.”

Dwayne Toliver was re-elected to office on November 2, 2010 during the General Election in the District of Columbia to serve as Advisory Neighborhood Commissioner for ANC 4A02. Consequently, as a member of an Advisory Neighborhood Commission, Commissioner Toliver’s conduct is subject to D.C. Official Code § 1-1106.01, the conflict of interest statute.

D.C. Official Code § 1-1106.01(b) provides that “[n]o public official shall use his or her official position to obtain financial gain for himself or herself, . . . or any business with which he or she . . . is associated, . . .”.

Commissioner Dwayne Toliver requested grant funding of \$2,000.00 from ANC 4A to support the activities of the Friends of Shepherd Park Recreation (FSPR), a non-profit organization registered in the District of Columbia with which he is associated.

³ Interview with Stephen Whatley, Chairman ANC 4A, on November 4, 2011.

D.C. Official Code § 1-1106.01(i)(3) states “business with which he or she is associated means any business of which the person . . . is a director, officer . . .”

Commissioner Dwayne Toliver serves on the Board of Directors of the Friends of Shepherd Park Recreation (FSPR), a non-profit organization in the District of Columbia. Therefore, FSPR is a business with which Commissioner Toliver is associated pursuant to D.C. Official Code § 1-1106.01(i)(3).

D.C. Official § 1-1106.01(i)(2) provides that the term, “business”, means any corporation, partnership, . . . organization, . . . and any legal entity through which business is conducted for profit.”

The Friends of Shepherd Park Recreation (FSPR) is a non-profit organization registered in the District of Columbia. According to its Articles of Incorporation (Articles) issued in 2010, FSPR is “organized and operated exclusively for charitable purposes”. . . and “shall be operated . . . to cooperate with municipal authorities in preserving, beautifying, improving and maintaining a public park and recreational facility currently identified as Shepherd Field . . . in Washington, D.C.”. Further, according to the Articles, “the Corporation’s support is derived from contributions from the general public.”

Consequently, the grant funding of \$2,000.00 requested by Commissioner Toliver on behalf of FSPR is not considered a “financial gain” for himself or benefitting “a business with which he is associated” because FSPR is a not-for-profit organization; and Respondent Toliver is not compensated for his services to FSPR.

D.C. Official Code § 1-1106.01(g) provides, “[a]ny 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 . . . 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;”

Although Commissioner Toliver (ANC 4A02) is a Director of Friends of Shepherd Park Recreation (FSPR), a non-profit organization which made a request for funding from ANC 4A, he, nonetheless, recused himself from participating in the vote on the issue. Additionally, Commissioner Black corroborated his recusal. Therefore, we conclude that the allegations of a conflict of interest have not been substantiated.

IV. Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director dismiss this matter.

Date

_____/s/_____
Jean Scott Diggs
Senior Hearing Officer

V. Concurrence

In view of the foregoing, I hereby concur with the Recommendation.

Date

_____/s/_____
William O. SanFord
General Counsel

VI. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 6th day of December, 2011:

ORDERED, that this matter be hereby dismissed.

Dated: December 6, 2011

_____/s/_____
Cecily Collier-Montgomery
Director
Office of Campaign Finance

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

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order by first-class mail on December 6, 2011 on the following:

Michael Sindram
6645 Georgia Avenue, N.W.
#306
Washington, D.C. 20012

The Honorable Dwayne Toliver
Commissioner, ANC4A02
1326 Hemlock Street, N.W.
Washington, D.C. 20012

_____/s/_____

NOTICE

Pursuant to 3DCMR §3711.5 (March 2007), 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 433, 2000 Fourteenth Street, N.W., Washington, D.C. 20009.