



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

JOHN COOPER
MAYOR

WALLACE W. DIETZ
DIRECTOR OF LAW

DEPARTMENT OF LAW
METROPOLITAN COURTHOUSE, SUITE 108
P.O. BOX 196300
NASHVILLE, TENNESSEE 37219-6300
(615) 862-6341 • (615) 862-6352 FAX

TO: MEMBERS, BOARD OF ETHICAL CONDUCT

FROM: WALLACE DIETZ, DIRECTOR OF LAW *WWD*
LORA FOX, ASSOCIATE DIRECTOR OF LAW
NICKI EKE, ASSISTANT METROPOLITAN ATTORNEY

RE: DEPARTMENT OF LAW REPORT – ETHICS COMPLAINT OF
ALBERT BENDER AGAINST THIRTEEN COUNCILMEMBERS

DATE: AUGUST 14, 2023

I. BACKGROUND AND RECOMMENDATION

On July 31, 2023, Albert Bender filed an ethics complaint against thirteen members of the Metropolitan Council.¹ The complaint alleges that the Councilmembers violated the Standards of Conduct by voting in favor of the new Titans stadium deal on April 25, 2023 after having received campaign donations from Titans lobbyists.

For the reasons provided herein, the Department of Law recommends that the ethics complaint filed against the thirteen Councilmembers be dismissed.

II. DUTY OF THE DEPARTMENT OF LAW

The Department of Law is required to evaluate the complaint, applying the law of the standards of conduct to the facts alleged in the complaint, and shall undertake an investigation as may be deemed necessary, to determine if such complaint alleges facts, which if proven true, could be deemed to be a violation of the Standards of Conduct set forth in the Metropolitan Code.² Thereafter, the Department of Law issues a report concluding whether the facts alleged in the complaint, if true, would give rise to a violation

¹ Exhibit A, July 31, 2023 Complaint of Albert Bender.

² Metropolitan Code § 2.222.040(C)(1)(e).

of the Standards of Conduct, and recommending either that the complaint be dismissed or a hearing be held on the complaint.³

III. ALLEGATIONS IN THE COMPLAINT

The complaint alleges that the following thirteen Councilmembers violated the Standards of Conduct: Sharon Hurt, Courtney Johnston, Nancy VanReece, Jennifer Gamble, Jeff Syracuse, Russ Pulley, John Rutherford, Kyontze Toombs, Tonya Hancock, Burkley Allen, Antionette Lee, Zach Young, and Zulfat Suara.

The complaint avers that the Councilmembers “voted in favor of the hugely unpopular new Titans stadium deal on April 25, 2023 after having received donations from Titan[s] lobbyists” as follows:

Metro Nashville Council Members Receiving Donations from Titans Lobbyists (Waller-Lansden PAC, Sam Reed of Jigsaw, James Weaver) 2022-2023

Council Member (District)	Total Amount Received
Hurt (At Large)	\$5,000
Johnston (26)	\$5,000
VanReece (8)	\$4,120.30
Gamble (3)	\$2,000
Syracuse (15)	\$2,000
Pulley (25)	\$1,750
Rutherford (31)	\$1,500
Toombs (2)	\$1,500
Hancock (9)	\$1,250
Allen (At Large)	\$1,000
Lee (33)	\$1,000
Young (10)	\$1,000

³ Metropolitan Code § 2.222.040(C)(1)(e).

Suara (At Large)	\$750
Evans (12) ⁴	\$500

The complaint contends that the Councilmembers must be held accountable for their actions and cites the following provisions of the Standards of Conduct allegedly violated by the Councilmembers: Section 2.222.020 of the Metropolitan Code, subsections (a), (b), (j), (k), and (s).

IV. ANALYSIS OF THE COMPLAINT

The complaint states in conclusory manner that the Councilmembers “voted in favor of the hugely unpopular new Titans stadium deal on April 25, 2023 after having received donations Titan[s] lobbyists.” The complaint asserts that the donation information was obtained from the Davidson County Election Commission.

The Department of Law has evaluated the provisions of the Metropolitan Code listed in the complaint to determine whether the skeletal facts alleged, if true, would constitute a violation of the Standards of Conduct. The provisions of the Standards of Conduct listed in the complaint are addressed in sequence below.

(1) Metropolitan Code § 2.222.020(a)

Metropolitan Code § 2.222.020(a) provides that employees shall not accept or solicit, for personal financial gain, any benefit that might reasonably tend to influence them to act improperly in the discharge of their official duties.

“Anything of value” is defined in section 2.222.010 of the Standards of Conduct as follows:

For the purposes of this chapter:

(1) “Anything of value” includes any financial benefit, or other item that is pecuniary or compensatory in value to a person, including, but not limited to, any valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit,

⁴ Even though Councilmember Erin Evans’s name is listed on the table, the complaint does not actually allege that she violated the Standards of Conduct. To the extent the complaint intended to allege that Councilmember Evans violated the Standards of Conduct, the analysis and conclusions herein equally apply to any such allegation against Councilmember Evans.

gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these items will be conferred in the future.

(2) For purposes of the foregoing definition, the following do not constitute part of “Anything of Value:”

...

(d) Campaign or political contributions that are received and reported in accordance with state law; (Emphasis added.)

As reflected in section 2.222.010(2)(d) of the Metropolitan Code, campaign or political contributions that are received and reported in accordance with state law do not constitute receipt of “anything of value” under the Standards of Conduct.

Campaign finances and contributions are governed by the provisions of Title 2, Chapter 10, of the Tennessee Code Annotated. The complaint is devoid of facts which indicate that the Councilmembers received or solicited campaign funds in violation of state law. The complaint lacks facts which could establish that a violation of the provisions of Metropolitan Code § 2.222.020(a) has occurred.

(2) Metropolitan Code § 2.222.020(b)

Section 2.222.020(b) of the Metropolitan Code states that employees “[s]hall not accept or solicit bribery”. The offense of bribery is defined in Tenn. Code Ann. § 39-16-102 as follows:

(a) A person commits an offense who:

(1) Offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or other action in the public servant's official capacity; or

(2) While a public servant, solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced. (Emphasis added.)

The complaint does not contain facts which reflect that the Councilmembers have accepted or solicited bribery. The complaint does not allege facts which indicate that there was a quid pro quo with regard to the referenced campaign contributions and the vote of

the Councilmembers on the new Titans stadium. See Tenn. Code Ann. § 2-19-121, which provides in pertinent part:

It is unlawful for any candidate for nomination or election in any state, county, city or district office, to expend, pay, promise, or loan or become pecuniarily liable in any way for money or other thing of value, either directly or indirectly, or to agree to enter into any contract with any person to vote for or support any particular policy or measure, in consideration of the vote or support, moral or financial, of such person.

See also, Tenn. Code Ann. § 2-19-122 (“It is unlawful for any person to demand that any candidate for nomination or office shall promise or agree in advance to support any particular individual, policy or measure, in consideration of the vote or support, financial or moral, of such person, in any election, primary or nominating convention.”)

(3) Metropolitan Code § 2.222.020(j)

Metropolitan Code § 2.222.020(j) provides that employees “[s]hall not participate in making or influencing any metropolitan governmental decision or action in which they know that they have any material financial interest distinguishable from that of the public generally or from that of other metropolitan officers or employees generally”.

The complaint does not reflect any personal pecuniary or material financial interest that the Councilmembers have concerning the new Titans stadium deal.

(4) Metropolitan Code § 2.222.020(k)

Metropolitan Code § 2.222.020(k) states that employees “[s]hall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person”.

The complaint does not contain facts which could show that the Councilmembers have given the impression by their conduct that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties. Neither does the complaint reflect facts which could establish that the Councilmembers have been unduly affected by the kinship, rank, position or influence of any person in the performance of their duties as members of the Metropolitan Council.

(5) Metropolitan Code § 2.222.020(s)

Metropolitan Code § 2.222.020(s) states:

If related in any way, directly or indirectly, to being an employee:

(1) [An employee] [s]hall not accept meals, beverages, food, promotional items, or hand-produced items of a value in excess of twenty-five dollars received from a single source in any calendar year; and

(2) [An employee] [s]hall not accept free or discounted admissions, tickets, access to events or travel expenses from any single source of an aggregate value in any calendar year in excess of one hundred dollars, provided that an employee may accept from the sponsoring organization, on behalf of himself and a guest, free or discounted admissions, tickets or access of a face value in excess of one hundred dollars if the event is generally recognized as an annual fund raising benefit sponsored by a non-profit organization.

There are no facts in the complaint regarding the receipt of meals, beverages, food, promotional items, or hand-produced items by the Councilmembers in excess of twenty-five dollars. Similarly, the complaint lacks facts concerning the receipt of tickets, discounted admissions, or travel expenses in contravention of the provisions of section 2.222.020(s) of the Standards of Conduct.

The complaint essentially asserts in summary manner that the Councilmembers violated the Standards of Conduct by voting in favor of the new Titans stadium deal after having received campaign donations from Titans lobbyists. Voting in favor of matters of interest to lobbyists, after having accepted campaign donations as authorized by state law, without more, does not constitute a violation of the Standards of Conduct.⁵

V. CONCLUSION

It is the opinion of the Department of Law that the allegations set forth in the complaint, if true, would not give rise to a violation of the Standards of Conduct. Accordingly, the Department of Law recommends that the complaint against the thirteen Councilmembers be dismissed in its entirety.

⁵ See Metropolitan Code § 2.222.010(2)(d); Tenn. Code Ann. §§ 2-19-121, 2-19-122, 39-16-102.

EXHIBIT A - COMPLAINT OF ALBERT BENDER

2023 JUL 31 AM 11:31
FILED METROPOLITAN CLERK

July 31, 2023

Metropolitan Clerk
The Honorable Elizabeth Waites
Metropolitan Courthouse
1 Public Square-205
Nashville, TN 37210

Re: Ethics Complaint

Dear Ms. Waites:

I am submitting this complaint, for the appropriate action, pursuant to the Metropolitan Code of Laws Chapter 2.222-Standards of Conduct, Disclosures of Interest and Enforcement section 2.222.20, subsections (a), (b), (j) (k), and (s) (1) and (2).

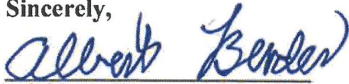
My name is Albert Bender and I reside at 439 N. Main Street, Goodlettsville, TN 37072. My phone number is 615-337-8512 and my email is albertbender07@yahoo.com.

I aver that Council members Sharon Hurt, Courtney Johnston, Nancy Van Reece, Jennifer Gamble, Jeff Syracuse, Russ Pulley, John Rutherford, Kyontze Toombs, Tonya Hancock, Burkley Allen, Antionette Lee, Zach Young, Zulfat Suara, violated the aforementioned Metropolitan Standards of Conduct.

The aforementioned Council members voted in favor of the hugely unpopular new Titans stadium deal on April 25, 2023 after having received donations from Titan lobbyists. Enclosed with this complaint is an attachment of the donations. This information was obtained from the Davidson County Election Commission.

These Council members must be held accountable for their actions.

Sincerely,



Albert Bender

my commission expires Oct. 2, 2023



Shawn Reed

notary public
Davidson Co TN
July 31, 2023

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Metro Nashville Council Members Receiving Donations from Titans Lobbyists (Waller-Lansden PAC, Sam Reed of Jigsaw, James Weaver) 2022-2023	
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Suara (At Large)	\$750
Evans (12)	\$500

Sworn to and subscribed before me in the

State Of Tennessee
Davidson County

This 31st Day of July 2023

Shawn Reed
Notary Public

Oct 2, 2023
Date Commission Expires

