BEFORE THE
MISSOURI ETHICS COMMISSION

Filed
NOV 16 2010
Missouri Ethics Commission

MISSOURI ETHICS COMMISSION Petitioner, v. JOSEPH WASHINGTON and PETER O'NEAL Respondents.	))))))))))	No. 08E189(A) and 08E190(A)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This is the Final Decision and Order of the Missouri Ethics Commission following a hearing on a Complaint filed by Petitioner, by and through Counsel, pursuant to §105.961, RSMo, and Chapter 536, RSMo. The final decision and order follows the deliberations of the following members of the Missouri Ethics Commission: Jim Wright, James Tweedy, Vernon Dawdy, Louis J. Leonatti, and Dennis Rose.

The closed hearing took place on June 25, 2010 at the offices of the Missouri Ethics Commission at 3411 A Knipp Drive, Jefferson City, Missouri 65109. The Commission was represented by Elizabeth L. Ziegler, Legal Counsel. Respondent, Joseph Washington appeared in person, and was represented by Elbert J. Washington, Jr., Legal Counsel. Respondent Peter O'Neal, having been duly notified of the Complaint and the Hearing did not appear.

The Commission admitted into evidence Petitioner's Exhibits P1, P1-A through P1-S, P2 – 10, and P12 – 23; and Respondents Exhibit 1. Having considered all the competent and substantial evidence upon the whole record, the Commission finds as follows:

FINDINGS OF FACT

1. On October 27, 2008 and November 1, 2008, the Commission received two complaints pursuant to §105.957, RSMo, alleging violations of §115.646, RSMo by expending public funds in advocacy or support of a ballot measure.

2. Respondent Joseph Washington was elected to the Board of Directors of the Northeast Ambulance & Fire Protection District on April 5, 2005 and served as the Chair of the Board in 2008 and 2009.

3. In 2008 and 2009, Respondent Peter O'Neal was the Fire Chief of the District.

4. Section 2.02, "General Powers" of the By Laws of the Northeast Ambulance & Fire Protection District, adopted by the District Board states:

> The powers of the Board of Directors shall be as set forth in Section 321.220, RSMo or as otherwise provided by law. The business and affairs and property of the District shall be managed by the Board of Directors but the Board of Directors, from time to time, may delegate functions and responsibilities to officers, agents, or employees of the District, in any manner consistent with law, either by provision in these Bylaws or any amendment hereto, or by duly adopted resolution, or by duly adopted ordinance. However, the Board of Directors shall not delegate to any person or organization any legislative or contractual power of the District, nor any duty or responsibility, which is by law imposed upon the Board of Directors, Section 321.220, RSMo.

5. Section 3.02, "President of the District", of the By Laws of the Northeast Ambulance & Fire Protection District, adopted by the District Board, stated:

> The Chairperson of the Board of Directors, ex-officio, shall be the President of the District...The President of the District shall be the chief executive of the District, and shall supervise the performance of their functions by all other officers of the District, except the legal Officer, and shall also supervise all of the activities and functions of the District, subject, however, to any resolution, ordinance, or direction of the Board of Directors...Section 321.170, RSMo.

6. Section 3.08, "Fire Chief", of the By Laws of the Northeast Ambulance & Fire Protection District, adopted by the District Board, states:

> The Fire Chief shall be appointed to the office by resolution of the Board of Directors, to serve at the pleasure of the Board, which may be fixed for a term by written contract...The Fire Chief shall plan, organize, train, supervise and direct all of the staff of the District, which is engaged in the work of fire fighting, fire protection, and ambulance services...Section 321.220, RSMo.

7. The Northeast Ambulance and Fire Protection District is funded primarily through personal property and property tax revenues paid by residents of the District.

8. Yearly tax revenues are paid into general operating funds and into special funds for the District based upon tax rates for general and special operating funds which are set yearly b y the Board of Directors.

9. During 4 separate elections in 2008 and 2009, the Board of Directors of the Northeast Ambulance and Fire Protection District passed resolutions to place proposals on the election ballot for the District to incur indebtedness and issue bonds in the principal amount of $10,700,000.00 in support of the clearing of land or real estate, the construction, equipment, and maintenance of administration buildings, fire and ambulance stations, garages and houses, and the purchase of ambulances, fire trucks, emergency medical service equipment, paramedical equipment, fire protection equipment and fire-fighting apparatus and auxiliary equipment for the District.

10. Respondent Washington voted in favor of placing the proposals on the ballot.

11. The Propositions which appeared on the ballot were Proposition B in the April 8, 2008 election, Proposition B on the August 5, 2008 election, Proposition Y was a ballot measure in the November 4, 2008 election, and Proposition Y on the April 7, 2009 election.

12. According to Article VI Sections 6.01 and 6.02 "Hours" of Volume II of the "PERSONNEL POLICIES, RULES, REGULATIONS AND PROCEDURES" of the Northeast Ambulance and Fire Protection District:

> Employees will work a three (3) platoon, twenty-four (24) hour rotating shift. Shift rotation will be in the sole discretion of the Fire Chief...Each twenty-four hour shift will commence at 07:30 hours and continue through 07:30 hours the following day.

13. According to Article V, "Working Hours" of Volume I of the "PERSONNEL POLICIES, RULES, REGULATIONS AND PROCEDURES":

> Regular working hours will start at 0730 hours...Employees may be relieved between 0700 hours and 0730 hours... The regular working hours shall be a twenty-four hour shift or continuous period commencing the hour of 07:30; but may be extended at the end of the shift, as required, at the discretion of the on duty House Captain...

14. According to IX 9.01(n), of Volume 1, "General Employment Policies and Procedures - Duty":

> All employees shall remain on duty until properly relieved or otherwise directed by their Commanding Officer.

15. In 2008, Northeast Ambulance and Fire Protection District employed 3 shifts of personnel, which were operated as the A Shift, B Shift, and C Shift.

16. Each Shift was composed of a Deputy Chief, a Captain or Captains, and Privates.

17. Each Shift worked a 24-hour shift, beginning at 7:30 a.m. and ending at 7:30 a.m. the next day.

18. During this 24- hour shift, all members of the shift were on duty.

19. On October 17, 2008 through October 18, 2008, B Shift worked a 24 – hour Shift beginning at 7:30 a.m. on October 17, 2008.

20. On October 18, 2008 through October 19, 2008, C Shift worked a 24-hour shift beginning at 7:30 a.m. on October 18, 2008.

21. In 2008, the Northeast Ambulance and Fire Protection District owned Fire Engines 4714 and 4724. Fire engine 4714 was purchased in 2005 for approximately $400,000.

22. On October 17, 2008, the Deputy Chief and 2 Privates (herein after referred to as "4714 crew") were assigned to Fire Engine Number 4714.

23. During the two-week pay period ending October 30, 2008, the Deputy Chief of "4714 crew" was paid a gross salary of $3,190.03, a uniform allowance for maintaining uniforms in the amount of $25.37, and a meal allowance for the time worked on shift in the amount of $55.04. The Private members of "4714 crew" were paid a gross salary of $2,265.22, a uniform allowance of $20.49, and a meal allowance of $55.04.

24. During the two-week pay period ending October 30, 2008, the employee members were paid a salary, and a uniform and meal allowance.

25. The District paid for uniforms of all Shift personnel while working on duty as established in Petitioner's Exhibit P1 - O. Uniforms consisted of shirts, trousers, belts, and shoes.

26. In 2008, the Northeast Ambulance and Fire Protection District paid for fuel for both fire engines. On October 17, 2008 and October 18, 2008, the fuel levels for both fire engines were checked by shift personnel at the beginning of the shift to determine that each engine's fuel three-quarters tank full. On October 17, 2008, 14.4 gallons of fuel was put in Engine 4714. On October 14, 2008, 19.7 gallons of fuel was put in Engine 4724. 19.9 gallons of fuel were placed in Engine 4724 on October 19, 2008.

27. On October 17, 2008, at 13:12:23 (1:12 pm), the "4714 crew" was "in service" following an earlier response to a passenger vehicle fire." "In Service" meant that "4714 crew" was available for calls.

28. When they returned to the fire house, the Deputy Chief went in the "joker stand" of the fire house, which is commonly used for entering reports of incidents, and began writing a report of the passenger vehicle fire incident.

29. Respondent O'Neal approached the Deputy Chief at the joker stand and stated that "Joe" would like him to go out and distribute campaign material for the bond issue, and that the Deputy Chief should get his crew together and go out and distribute the literature in a certain area. The Deputy Chief understood "Joe" to be Respondent Joe Washington.

30. Respondent Joe Washington and the District's public information officer were in the Deputy Chief's office in the fire house.

31. When the Deputy Chief went into the office, Respondent Joe Washington handed him a map with a highlighted area on it to go and distribute literature.

32. The Deputy Chief was given door hangers in the office to distribute.
The door hanger stated "Your Family & Home Is At Risk… Vote Yes on Y … NO TAX INCREASE…PROPOSITION Y …VOTE YES." The door hanger stated "Paid for by Northeast Ambulance and Fire Protection District Improvement Committee, Linda Tolbert Treasurer." A copy of the door hanger is incorporated into these findings of fact and conclusions of law as Petitioner's Exhibit P6.

33. The Deputy Chief told the 2 private members of "4714 crew" that they needed to go out and distribute literature in the area which he showed on the map.

34. "4714 crew" drove on Fire engine 4714 to the Pasadena Park, Pasadena Hills area.

35. The Deputy Chief and one private hung the door hangers on residences in the areas, and one private stayed in Fire Engine 4714, and drove the truck forward as they progressed distributing Petitioner's Exhibit P6.

36. "4714 crew" distributed Petitioner's Exhibit P6 to residences in the Pasadena Park, Pasadena Hills area for approximately 1 to 11/2 hours.

37. "4714 crew" wore official uniforms described in paragraph 25.

38. Prior to October 17, 2008, the Deputy Chief was skeptical of whether passage of the bond issue would cause a tax increase for the residents, and was aware of concerns of department employees and residents of the District not fully understanding what the money was going to be used for, and the amount of bond for stated purposes. Many district personnel were in fact against the bond issues based upon what would be done with the funds, the amount of money requested and the information being given to citizens.

39. The Deputy Chief would not have distributed Petitioner's Exhibit P6 on October 17, 2008 if he had not been told to go out and distribute Petitioner's Exhibit P6 through the statements and actions of Respondents Washington and O'Neal.

40. On October 18, 2008, at approximately 11:10 a.m., 3 to 4 district firefighters serving on Shift C hung door hangers, identified as Petitioner's Exhibit 6, on residences on Winchester Drive while in a fire engine owned by the District which was in service on that date and at that time.

41. One firefighter operated the fire truck in a slow, stop-and-go manner down the street.

42. The firefighters were in uniforms paid for by the Northeast Fire and Protection District.

43. While bond issues were on the ballot, including the November 8, 2008 election, Respondents Joseph Washington and Peter O'Neal had direct conversations with District personnel directing them to wear department uniforms and to drive District vehicles while handing out campaign literature on duty. Respondent O'Neal made direct statements to a

department officer that the officer had to go out on the streets while on duty, in uniform in a department vehicle in order to the keep the officer's job.

44. Meetings were held on Saturday mornings in private buildings prior to the August 2008 and November 2008 bond elections. Respondents Washington and O'Neal were in attendance, as well as District personnel and some citizens. Respondents Washington and O'Neal required officers to attend meetings prior to the November 2008 election. At one of these meetings prior to the November 2008 election, Respondent Washington stated that he wanted the fire trucks on the street. The fire trucks were always in service and driven by firefighters on duty.

45. Prior to the November 8, 2008 election, Respondent Washington called more than 2 or 3 meetings at the District's building. Most of the meetings were attended by the Assistant Fire Chief, the Battalion Chief and the Deputy Chiefs; Respondent O'Neal was present at some of the meetings. At these meetings, Respondent Washington gave directions to those in attendance to make sure the trucks were on the street giving out literature during the day in uniform, and to make sure that people were going to their assigned communities and handing out the literature. At the meeting, District personnel were given campaign literature to hand out while on duty. Following one meeting, when an officer questioned Respondent Washington about whether it was legal to do this, Respondent Washington instructed the officer to go out on the streets in the uniform, and to not go home and change into non-district clothing to hand out campaign literature.

46. During the period of time prior to the November 2008 election, Respondent Washington attended a meeting for all on-duty members of Shift A at the fire house. At the meeting, Respondent Washington told the shift personnel that some people were reluctant to participate in supporting the bond issue and that he was unhappy about that. He stated that the bond issue was a benefit for them all, that if anybody had a problem with that he didn't want them there, and they were going to support the bond issue. After that meeting, District personnel on Shift A passed out the campaign literature.

CONCLUSIONS OF LAW

Jurisdiction

1. The Missouri Ethics Commission ("the Commission") is an agency of the State of Missouri established pursuant to §105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 105, RSMo.

2. Pursuant to §105.957.1(6), RSMo, the Missouri Ethics Commission may receive complaints and investigate violations of the provisions of any state law, order, ordinance, or resolution of any political subdivision of the State of Missouri relating to the conduct of officials or employees of the political subdivision.

3. §115.646, RSMo provides as follows:

> No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

4. §115.646, RSMo relates to the conduct of officials and employees of all Missouri political subdivisions.

5. The Commission has jurisdiction for violations of §115.646, RSMo by officials and employees of all Missouri political subdivisions pursuant to §105.957.1(6), RSMo. ***Gerrard v. Board of Election Commissioners, et. al.***, 913. S.W. 2d 88 (Mo. App. E.D. 1995).

6. According to §321.220, RSMo:

> For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:
>
> (8) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein...

7. The Northeast Ambulance & Fire Protection District is a three member District established under Chapter 321 of the Missouri Revised Statutes and qualifies as a political subdivision of the State of Missouri under §321.010 and §105.450 (8), RSMo.

8. According to §321.220, RSMo:

> For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:
>
> (8) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein...

9. Joseph Washington, as Chairman of the Board of Directors with the power to manage business and affairs and property of the District, with the specific duty under the by-laws as the chief executive of the District, and with the specific duty to supervise the performance of their functions by all other officers and the activities and functions of the District, was an officer under §115.646, RSMo.

10. Peter O'Neal, as Fire Chief of the District, with the specific duty "to plan, organize, train, supervise and direct all of the staff of the District, which is engaged in the work of fire fighting, fire protection, and ambulance services" was an officer and employee under §115.646, RSMo.

11. The Commission has jurisdiction over Joseph Washington and Peter O'Neal for violations of §115.646, RSMo.

12. §115.646, RSMo is a regulation conducive to the public good to protect the public from the expenditure of public funds for or against a particular ballot issue, and should be liberally construed to accomplish the greatest good. *City of St. Louis* v. *Carpenter*, 341 S.W.2d 786, 788 (Mo. 1961).

13. The use of the on-duty employees of the District in the distribution of the hangers constituted an expenditure of public funds in advocacy or support of the November 4, 2008 ballot issue.

14. The use of District vehicles and equipment in the distribution of the door hangers constituted an expenditure of public funds in advocacy and support of the November 4, 2008 ballot issue.

15. The use of District supplies in the form of fuel which would not have been used or needed to have been purchased but for the travel in providing the advocacy for the bond issue election hangers constituted an expenditure of public funds in advocacy or support of the November 4, 2008 ballot issue.

16. Respondents Joseph Washington as a member of the Board of Directors, and Respondent Peter O'Neal as Fire Chief were responsible for the management, control, and supervision of the District, and expenditure of those District funds.

17. Respondents Joseph Washington and Peter O'Neal knew about the planned use of on-duty personnel, equipment and supplies in the distribution of literature in support ballot issue Proposition Y in the November 4, 2008 election before it occurred.

18. Respondents Joseph Washington and Peter O'Neal caused the above-described expenditures of public funds to occur by directing or authorizing the use of District on-duty personnel, equipment and supplies in support of the ballot issue prior to the November 4, 2008 election through direct statements they made to District personnel and through statements they made at meetings with District personnel.

19. Respondents Joseph Washington and Peter O'Neal also caused the above-described expenditures of public funds to happen because, despite their responsibility for the management, control and supervision of the District, they failed to prevent them.

20. There is probable cause that Respondents, who were officers or employees of the District who were responsible for the management, control, supervision, and expenditure of its public funds, have violated §115.646, RSMo by making or causing to be made an expenditure or expenditures of the District's public funds to advocate or support the passage of a ballot measure proposed by the Northeast Ambulance & Fire Protection District which was voted on in the November 4, 2008 election.

Your Life & Property Is At Stake

Vote Yes on Y
NO TAX INCREASE!

Ambulance Services

Fire Protection

Election, November 4th

BOND ELECTION

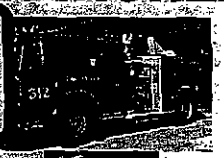
Northeast Ambulance & Fire Protection District

PROPOSITION Y

Shall the Northeast Ambulance and Fire Protection District of St. Louis County, Missouri, incur an indebtedness of said District in the amount of Ten Million Seven Hundred Thousand Dollars ($10,700,000) and issue general obligation bonds of said District in evidence thereof in order to or for the purchase and clearing of land or real estate, the construction, equipment, and maintenance of administration buildings, fire and ambulance stations, garages and houses, and the purchase of ambulances, fire trucks, emergency medical service equipment, paramedical equipment, fire protection equipment and fire-fighting apparatus and auxiliary equipment for said District?

VOTE YES ☑
NO TAX INCREASE

EXHIBIT
P6
6-25-10



Paid for by Northeast Ambulance & Fire Protection District Improvement Committee, Linda Tolbert, Treasurer

Your Family & Home Is At Risk

Vote Yes on Y

NO TAX INCREASE

New Firehouse

New Fire Trucks

New Ambulance Station

New Ambulances

PROPOSITION Y

VOTE YES ☑

To protect our children

For the safety of our families

For the health of our seniors

Vote Yes on Y

Angie Elgin
Medical Officer

Pete Oneal
Fire Chief

Mike Garstang
Deputy Chief

Dear residents

We are writing to urge your support of Proposition Y for the issuance of bonds in order to build a new fire house and ambulance garage and to purchase new ambulances and fire trucks. If we are to provide the best service possible then we need to improve the fire and ambulance house and buy new fire and ambulance equipment. We hope we can get your vote. There will be no tax increase to pay for these bonds.

For information only, you can call: (314) 382-1501

Angela Elgin *Pete O'Neal* *Mike Garstang*

ORDER

It is the order of the Missouri Ethics Commission that a fee is imposed against the Respondent Joseph Washington in the amount of $1,000.00 pursuant to § 105.961.4(6) RSMo. The fee will be paid by check or money order made payable to the Missouri Ethics Commission and sent to the Missouri Ethics Commission within 45 days of the date of the Order.

It is the order of the Missouri Ethics Commission that a fee is imposed against the Respondent Peter O'Neal in the amount of $1,000.00 pursuant to § 105.961.4(6) RSMo. The fee will be paid by check or money order made payable to the Missouri Ethics Commission and sent to the Missouri Ethics Commission within 45 days of the date of the Order.

Date: 11/16/10

Jim Wright, Chairman
MISSOURI ETHICS COMMISSION