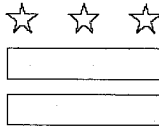


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



September 7, 2017

Via email: vorange@dcchamber.org

Vincent B. Orange, Sr.
President and CEO
D.C. Chamber of Commerce
1133 21st Street, N.W., Suite M200
Washington, D.C. 20036

Dear Mr. Orange:

This responds to your August 7, 2017 letter, in which you seek confirmation of the conclusion that you have drawn about the clarification provided in my August 3, 2017 letter regarding the constraints imposed upon you by Rule VIII(a) of the Council's Code of Official Conduct. I do not disagree with your conclusion, as it is stated in your letter.

In your letter, you also seek guidance on a conflict of interest question related to the possibility of your running in the District's 2018 elections. More specifically, you ask whether your running for – and then winning – any one of several At-Large or Ward Council seats would prevent you from taking office while serving as President and CEO of the Chamber. Your question can be answered as follows.¹

First, there would be no conflict of interest, as contemplated by section 223(a) of the Ethics Act (D.C. Official Code § 1-1162.23(a)) or Rule I(a) of the Council's Code of Official Conduct,² by your simply running for a seat in either a primary or the general election. Indeed, the answer would be the same even if you were to win a seat. Your holding public office, in and of itself, would not amount to a conflict of interest.

Second, any conflicts of interest, or appearances thereof, would only result from circumstances arising after your taking office, assuming you still held your positions with the Chamber. For

¹ The response to your conflicts question is based on District law. To the extent that you seek guidance based on federal law as well, I can only refer you to the federal Office of Government Ethics ("OGE"). The Ethics Board has no authority to enforce federal ethics laws, although we do look to them for guidance, along with their implementing regulations and the interpretive materials produced by OGE and other relevant federal offices. Accordingly, neither the District's Director of Government Ethics nor the Ethics Board itself has the authority to provide binding ethics advice under federal law.

² The Council's Code of Official Conduct is an element of the Code of Conduct enforceable under the Ethics Act. See section 101(7)(A) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(A)) ("For members and employees of the Council, the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council").

example, in order to avoid any conflicts, you would be required to recuse yourself from participating in any particular matters involving the Chamber itself.³

In terms of appearances of violating the law or ethical standards, the guidance provided in 30 Op. O.L.C. 64 (2006) (“Financial Interests of Nonprofit Organizations for Purposes of 18 U.S.C. § 208”) (hereinafter “O.L.C. opinion”) provides a useful starting point for discussion. As noted by the Ethics Board in footnote 13 of its September 26, 2016 advisory opinion to you, the principal conclusion reached in the O.L.C. opinion was that, under 18 U.S.C. § 208, a nonprofit organization does not have a financial interest in a particular matter solely by virtue of the fact that the organization spends money to advocate a position on the policy at issue in the matter. However, the O.L.C. opinion also stated that, 18 U.S.C. § 208 considerations aside, “[federal] government employees are under a separate duty to ‘avoid any actions creating the *appearance* that they are violating the law or ... ethical standards.’”⁴ The O.L.C. opinion continued:

Among the relevant ethical standards is an obligation to “act impartially and not give preferential treatment to any private organization or individual,” 5 C.F.R. § 2635.101(b)(8), and a prohibition against an employee’s use of “his public office . . . for the private gain of . . . persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member,” *id.* § 2635.702.⁵

The very same standards are reflected in Council rules that would apply to you if you were to take office in 2019. Rule II(a)(1) of the Council’s Code of Official Conduct, or a substantively similar provision then in effect, would prohibit you from “engag[ing] in outside employment or private activity that conflicts *or would appear to conflict with* the fair, impartial, and objective performance of the employee’s official duties and responsibilities or with the efficient operation of the Council.” (Emphasis added.) You would also be bound by a separate duty under Rule 202(a) of the Council’s Rules of Organization and Procedure, or a substantively similar provision then in effect, to “strive to act solely in the public interest and not for any personal gain or take an official action on a matter as to which they have a conflict of interest created by a personal, family, client, or business interest, avoiding both actual *and perceived* conflicts of interest and preferential treatment.”⁶

³ See Office of Campaign Finance Interpretive Opinion 99-01 (Jan. 14, 1999) (finding, in part, that, as Chair of the Council Subcommittee on Finance and Revenue, Councilmember Jack Evans had to recuse himself, on a case-by-case basis, from any official action before the subcommittee as it related directly to the insurance company that employed him).

⁴ O.L.C. opinion at 81 (emphasis in original) (quoting 5 C.F.R. § 2635.101(b)(14); other citations omitted).

⁵ *Id.*

⁶ Emphasis added. Note, however, that Rule 202(a) is not part of the Code of Conduct under the Ethics Act, and, therefore, the Ethics Board has no authority to enforce it. Any violation of Rule 202(a) would be addressed, presumably, by the Council itself under other provisions of its Rules of Organization and Procedure. See, e.g., Rule 654 (Reprimand) and Rule 655 (Censure).

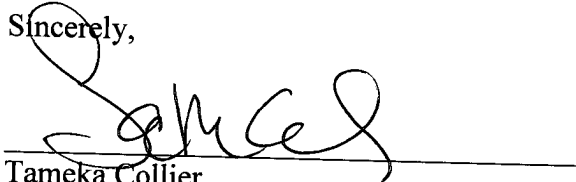
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In practical terms, these rules may well impact, for example, your assignment to any Council committees that are responsible for matters involving the local business community⁷ or, even more clearly, your work on those committees on bills on which the Chamber becomes involved on behalf of its members. This is true, given the Chamber's role as a "passionate advocate" for District businesses.⁸ As noted in consideration of a similar case in the O.L.C. opinion, "when an outside organization on whose board a government employee serves is actively advocating a position, particularly where it devotes a large portion of its budget to such advocacy, the employee's official participation in his agency's work on the same issue may suggest an inference of preferential treatment or loss of independence giving rise to an appearance of partiality for purposes of the ethical rules."⁹

In sum, there would be no prohibition to your holding a Council seat and, without more, continuing your employment with the Chamber. However, as the examples above and your own past experience serve to illustrate, there would be some real chance for ethical questions to arise, depending on what you are called upon to do once in office. To the extent that the answers to these questions are dependent on facts that cannot be known at this time, further discussion here is premature. You would be well advised, then, to seek guidance from the Director of Government Ethics as circumstances may warrant in the future.

Thank you for your letter. I hope you find the foregoing to be helpful.

Sincerely,



Tameka Collier
Chairperson
Board of Ethics and Government Accountability

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⁷ Indeed, I understand that before you resigned from the Council in 2016, you had decided to step down as Chairman of the Committee on Business, Consumer and Regulatory Affairs. According to at least one source, you said the move was taken "to 'get rid' of the appearance of conflicts of interest." See Michael Neibauer, *Vincent Orange will not resign from the council, but will give up biz oversight* (Aug. 3, 2016, 1:01 PM), https://www.bizjournals.com/washington/breaking_ground/2016/08/vincent-orange-will-not-resign-from-the-council.html.

⁸ See <https://www.dccchamber.org/the-chamber> ("The DC Chamber is the largest and #1 rated Chamber in the Washington region. We provide Washington businesses with passionate advocacy, valuable networking opportunities, and enlightening educational programs. We know just how special District businesses are and everything we do is dedicated to delivering the capital they value.") (last visited August 31, 2017).

⁹ O.L.C. opinion at 82 (internal quotation marks omitted).