




OFFICE OF THE INSPECTOR GENERAL

PRELIMINARY INQUIRY MEMORANDUM

August 8, 2019

TO: Andrew W. Kleine
Chief Administrative Officer

FROM: Edward L. Blansitt III
Inspector General 

SUBJECT: Publicly Funded Political Campaigns for Montgomery County
Candidates - OIG Publication #20-004

A Preliminary Inquiry Memorandum (PIM) describes specific issues or complaints received and the outcomes of limited procedures undertaken during a Preliminary Inquiry conducted by the Office of the Inspector General (OIG). Copies of this PIM along with your response, if any, will be provided to the members of the County Council and the County Executive within 10 business days of the date of this PIM.

Background and Complaint:

On December 31, 2018, a complainant contacted the OIG questioning the legality of an event to be held on January 4, 2019 on the ground floor of the Montgomery County Executive Office Building in Rockville, Maryland, to celebrate the election of the incoming County Executive. Although the complaint did not specify any legal issues, we identified and investigated three potential concerns:

- 1) the use of the public building for the event;
- 2) the possible use of campaign funds to support the event and/or violations of campaign finance laws; and
- 3) potential violation of applicable ethics laws.

We did not attempt to review the funding or expenditures related to this specific event. Due to the recent establishment of public campaign financing for County Executive and County Council Candidates, we decided to review examples of campaign statements, matching fund requests, and expenditure reports for candidates for the 2018 election cycle for Montgomery County Maryland political offices for compliance with the specified requirements.

Summary and Conclusion:

We found no evidence that a celebration of the incoming County Executive, held on Montgomery County property on January 4, 2019, conflicted with any law or regulation reviewed by the OIG. However, we concluded that the County's approvals conflicted with statements on the County's office of Community Use of Public Facilities (CUPF) website titled *Facility Reservation – Council Office Building and Executive Office Building* and within the CUPF's *Government Buildings - Guidelines for Meeting Room Use – Executive Office Building (EOB), Council Office Building (COB) and the Clarksburg Cottage (CC)* (Guidelines). CUPF may wish to edit these statements on the website and in the CUPF Guidelines to better reflect CUPF practices.

We did not identify any specific instances of non-compliance with publicly funded campaign laws for the statements reviewed.

PRELIMINARY INQUIRY DETAILS

Celebration Event

The community use of County facilities is governed under County Code Sec. 2-64M and associated regulations by the County's office of Community Use of Public Facilities (CUPF). We did not identify any violations of the County Code or regulations related to this event. We learned both that appropriate County applications were made and that the event was being handled in the same way as other CUPF applications. While the celebratory event did not appear to be a campaign event (in that it did not appear to be raising money for the campaign fund), there would have been no prohibition at CUPF on campaign events being held on County property.

Tickets were made available at varying donation levels to support the event. An announcement of the celebration made clear that campaign funds could not be used to support the event and that unused campaign funds would be returned to the public treasury by December 31, 2018.

A "One Day" alcohol license was applied for, and on January 4, 2019 the County Board of License Commissioners issued an alcohol license for the event.

The OIG learned that a separate, similar inquiry was sent to the Staff Director/Chief Counsel of the Ethics Commission who consulted the County Attorney. The County Attorney had informally confirmed that, in general, a political event organizer would be treated no differently than any other member of the public. Although it does not appear that the Ethics Commission has ever provided advice on whether CUPF's policy is inconsistent with the County Ethics Law addressing misuse of County office (to engage in political activity), the Commission's Chief Counsel theorized that the Commission could find the public use of County facilities pursuant to CUPF policies to be public use that the County allows, rather than official use. The Chief Counsel developed a few suggestions regarding the management of the donations which the County Attorney provided to the new County Executive's Chief of Staff.

We advised the complainant that we saw no conflict between the planned event and County law and associated regulations. We did not attempt to review the funding or expenditures related to this specific event. However, due to the recent establishment of public campaign financing for County Executive and County Council candidates, we reviewed examples of campaign statements, matching fund requests, if filed, and expenditure reports for candidates for the 2018 election cycle for Montgomery County Maryland political offices for compliance with the specified requirements.

We did conclude that the County's approvals for this event conflicted with statements addressing alcohol on the CUPF website and in CUPF Guidelines:

- The CUPF Guidelines state, "No alcoholic beverages of any kind are permitted on County property."
- The website states, "No alcoholic beverages are permitted on County property."

However, the CUPF Facility Use License Agreement states that “Unpermitted use or possession of alcohol” is prohibited, which implies that some use may be permitted. Furthermore, the Board of License Commissioners issued a license to provide alcohol for this event at the Executive Office Building cafeteria.

CUPF may wish to edit the statements on the website and in the CUPF Guidelines to better reflect CUPF practices.

Montgomery County Public Election Fund

Under Maryland Election Law¹ any county in the State may elect to establish a system of public campaign financing for elective offices in the executive and legislative branches of the county’s government. Programs created under this provision must be established by the county Director of Finance while the Maryland State Board of Elections remains responsible for generally administering the public campaign financing system.

In September 2014, the Montgomery County Council unanimously enacted Bill 16-14, which established a Public Election Fund to provide public campaign financing for County Executive and County Council candidates. When the Council enacted Bill 16-14, it was the first measure of its type in the Washington metropolitan region and in Maryland.

The legislation created the requirements for candidates for the elective offices of County Executive, At-Large Councilmember and District Councilmember to participate in public campaign financing. The County Council stated that the goals and intent of establishing the program were to encourage greater voter participation in County elections, increase opportunities for more residents to run for office, and reduce the influence of large contributions from businesses, political action groups, and other large organizations.

To begin the certification process to qualify for public financing, a candidate must register with the Public Finance Committee through the Maryland Campaign Reporting Information System (MDCRIS), file a Notice of Intent to Qualify, and establish a publicly funded campaign account with a bank. The campaign committee must open a bank account for the exclusive use of the publicly funded campaign. The bank account will receive all deposits and make disbursements. Any other bank accounts associated with the campaign or candidate will not be recognized and must be closed or inactive during the period the candidate seeks public funds.

Once the Publicly Funded Candidate Committee is registered through MDCRIS and the bank account is established, the applicant candidate may begin collecting qualifying contributions to become a certified candidate². However, no contributions received prior to the Notice of Intent to Participate will be considered qualifying contributions.

A qualifying contribution must be an aggregate donation (during a four-year election cycle) of at least \$5 but no more than \$150, contributed from a County resident, and

¹ Md. Code Election Law Article § 13-505 (2019).

² The Maryland State Board of Elections is responsible for certifying a candidate’s eligibility and generally administering the public campaign financing system. The County’s Director of Finance is responsible for establishing a Public Election Fund and distributing the public contributions to certified candidates. The council is responsible for appropriating funds.

contributions must be made during the qualifying period. Candidates must refuse to accept a contribution from any group or organization, including a political action committee, a corporation, a labor organization, and a State or local central committee of a political party.

Once the contributions are certified by the State Board of Elections, the Director of Finance for Montgomery County is notified to deposit the authorized matching publicly funded campaign contribution into the certified candidate's publicly funded campaign account.

Campaign Expenditure Requirements

The public funding is to be used for primary or general election expenses and must not pay in advance for goods and services to be used after certification with non-qualifying contributions received before certification. Within 30 days after the County Board of Elections certifies the results of the general election, a participating candidate must return to the Public Election Fund any unspent money in the candidate's publicly funded campaign account. In order to withdraw from participation in public financing, a candidate must file a statement with the State Board of Elections and repay to the Public Election Fund the full amount of the public contribution received.

The allowable uses of money in a publicly funded campaign account are limited to expenses directly related to election campaign activities and expenses incurred during the specific time period for either the primary or general election. For each expenditure, the following, among other things, must be reported: the expenditure date, expense category, expense purpose, and expense amount. Pre-purchasing by a non-public financing committee for campaign materials or items is largely prohibited.

Prohibited uses of money in a publicly funded campaign account include candidate personal use or expenses relating to holding office, payment of a personal endorsement, or payment of late filing fees.

Analysis – Public Campaign Financing

The OIG reviewed *Original Campaign Statements* and *Amended Campaign Statements* for candidates for the 2018 election cycle for Montgomery County Executive and the Montgomery County Council. As reported in a staff memorandum to a County Council Committee,³ 38 candidates for these offices filed an intent to use public campaign financing.

We reviewed matching fund requests available in MDCRIS as compared to the contribution limit of \$150 per contributor for matching fund eligibility. Based on the information we obtained, the matching fund requests reviewed appear to have followed the laws and rules governing the publicly funded campaigns. We did not identify any instances of non-compliance with the criteria.

We reviewed contributor addresses for which matching funds were requested to ensure they were located within the confines of Montgomery County Maryland. The addresses

³ Memorandum to the Government Operations and Fiscal Policy Committee (April 9, 2019).

reviewed, as recorded on the matching fund requests, appeared to be located within Montgomery County. We did not identify any instances of non-compliance with the criteria.

Based on the reviewed campaign expenditure reports, for publicly funded candidates, we did not identify any instances of non-compliance with the laws and rules governing the expenditures of the publicly funded campaigns.

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Ramona Bell-Pearson, Director, Office of Community Use of Public Facilities

CAO's Response to the Memorandum

On August 21, 2019, the office of the Chief Administrative Officer (CAO) responded:

“Thank you for the opportunity to respond to the conclusion and recommendation resulting from the limited procedures performed and conveyed in the August 8, 2019, Preliminary Inquiry Memorandum Publicly Funded Political Campaigns for Montgomery County Candidates – OIG Publication #20-00x (Memorandum).

Based on your recommendations, we have investigated the issue and CUPF has made amendments that corrected the conflicting statements.”