

DATE:

June 6, 2013

TO:

Distribution

FROM:

Clitt Richards, CPA Con Richards
City Auditor

Ron Maxwell, CIA, CFE
Chief Internal Auditor

For Mofuell

SUBJECT:

City Auditor Report on Ethics Complaint filed May 23, 2013

# INTRODUCTION

At 5:03pm May 23, 2013 Internal Auditing received an ethics complaint (Complaint) filed with the City Clerk regarding Mayor Dewey Bartlett. The Complaint was time stamped as filed with the City Clerk at 12:19pm May 23, 2013 and was forwarded to the City Auditor pursuant to TRO, Title 12, Chapter 6, Section 609. B.

The Complainant alleges improper conduct by Mayor Bartlett relating to Section 600 of the city of Tulsa Ethics Code (TRO, Title 12, Chapter 6) regarding a citizen survey and cover letter distributed to approximately 1800 people in the city. Based on the timing of the citizen survey and content of the survey cover letter, the Complaint asserts that Mayor Bartlett has engaged in an endeavor to use a tax payer funded citizen survey as a vehicle for his campaign in the current City of Tulsa Mayoral election.

Pursuant to TRO, Title 12, Chapter 6, Sections 601 and 609.B. Internal Auditing has made an examination of the facts regarding the Complaint. Following is a report on the facts and conclusions determined by Internal Auditing pertaining to the Complaint.

# DISCUSSION

The Ethics Ordinance defines three "interests" which a City Official may have in City business: a financial interest, an organizational interest, and a personal interest.

Financial interest in an official action exists when the action may result directly or indirectly in a financial gain or loss accruing to the City official and/or his immediate family to a greater extent than could reasonably be expected to accrue to the general public. Comparisons between the mayoral salary and historical campaign spending in City of Tulsa elections indicate that political campaign activities do not constitute a financial gain to the candidate and political campaign activities do not generally implicate any financial interest.

**Organizational interest** exists when the City official "is a director or a member of a board which establishes policy and/or budgetary decisions for the entity." Political campaign activities do not generally implicate an organizational interest.

**Personal interest** means "a direct or indirect interest, matter or relationship not shared by the general public which could be reasonably expected to impair the City official's objectivity or independence of judgment." However, the Ordinance defines a personal interest only as one "which could be reasonably expected to impair the City official's objectivity or independence of judgment." The Ordinance in its entirety makes clear that it is the *potential conflict* between the official's responsibility to the voters and his or her personal interests which is at issue. Political campaign activities do not generally implicate a personal interest.

**Political campaign activities** which use City resources fall squarely within the proscriptions of Section 602 of the Ethics Ordinance. Both Section 600, the "General policy" of the City, and Section 602 address the use of public positions for personal gain.

Mayoral duties according to the Tulsa City Charter include that "The Mayor shall be the chief executive and administrative officer of the city and shall: A. Identify the needs and establish the objectives and priorities of the City and make recommendations to the Council for meeting the needs and achieving the objectives."

# **CONCLUSION**

Based on the following summary of facts as determined by Internal Auditing and consultation with the City Legal Department regarding application of the provisions and requirements of the Ethics Ordinance to the facts surrounding the Ethics Complaint, it is our opinion that:

- Mayor Bartlett did not have a financial, organizational, or personal interest in the cover letter and survey, as those terms are defined in the Ethics Ordinance.
- No evidence was provided in the Ethics Complaint filed with the City Clerk or in the bidding and contract documentation reviewed, that Mayor Bartlett was responsible for the timing of the survey which was initially proposed in 2011.
- The cover letter itself, taken in its entirety, has both the purpose and effect of promoting citizen surveys as an effective means of obtaining information and positive change in government. Political campaigning was neither the apparent purpose nor the effect of the cover letter.

Therefore, it is our overall conclusion that the survey cover letter does not violate the Ethics Ordinance and the Ethics Complaint is cleared with no corrective action necessary.

## OTHER OBSERVATION

Sections 601 and 609 of the Ethics Ordinance provide the City Auditor is the appointing authority for investigation of ethics complaints filed on the Mayor. The City Auditor does not have a statutory duty or authority to investigate or resolve ethical matters regarding other City Officials. However, the Code of Ethics for Internal Auditors and internal auditing professional standards require reporting of significant matters that come to our attention. Although outside the scope of this examination, during the course of determining the facts for the Ethics Complaint filed May 23, 2013 the following has come to our attention.

According to Section 601 of the Ethics Ordinance, "City Official" includes "every...member of a City of Tulsa Board, Authority, Commission or Committee." Complainant is a member of the City's Sales Tax Overview Committee. As such, the Complainant is a city official subject to the Ethics Ordinance. Although Complainant was careful to point out that he did not file the Complaint in his capacity as a committee member, the Ethics Ordinance makes no such distinction under Section 602.

Section 602 of the Ethics Ordinance mandates that "City officials shall not use or permit the use of City resources for personal or private purposes, except as provided by rules adopted by the appropriate appointing authority to address minor or incidental uses common to an ordinary workplace." Political campaign activities which use City resources fall squarely within the proscriptions of Section 602 of the Ethics Ordinance. The City Auditor has a statutory duty to investigate ethical complaints filed against the Mayor, has done so in this instance, and has necessarily used City resources to do so.

Bill Christiansen and the subject of the Complaint, Mayor Bartlett, are both seeking election to Mayor of the City of Tulsa. Both will participate in an election on June 11, 2013. The Complaint was filed approximately two weeks prior to the election. After the Complaint was filed, the Christiansen campaign used the Complaint in its campaign materials. Indeed, the media was contacted about the Complaint at least a week before the Complaint was filed with the City.

Complainant was represented by Tulsa attorney George Gibbs in his interview with Internal Auditing. Gibbs instructed Complainant not to answer several questions, primarily regarding Complainant's filing of the Complaint and the involvement of the Christiansen campaign in same.

These facts raise the issue of whether the Complaint constitutes "the use of City resources for personal or private purposes" in violation of Section 602, specifically for the purpose of influencing the June 11, 2013 Mayoral election via media coverage of the Complaint. That issue cannot be resolved without making significant factual, legal, and ethical determinations and is outside the scope of the City Auditor's examination. Therefore, the City Auditor declines to make any determination on this issue.

# **RECOMENDATION**

The appropriate appointing authority should consider investigation of this matter.

# **SUMMARY OF FACTS**

### BUDGET APPROPRIATION – PUBLIC PURPOSE OF THE CITIZEN SURVEY

Documentation obtained from the City of Tulsa Budget Division shows funding for the citizen survey was requested in the amount of \$50,000 as part of the Fiscal Year 2011-2012 General Government department budget. Subsequent appropriation of this funding as part of the FY 2011-2012 budget adoption approved by the City Council establishes the public purpose of the citizen survey for the City of Tulsa.

# CONTRACT REVIEW AND INTERVIEW WITH PROFESSIONAL SERVICES CONTRACTOR FOR THE CITIZEN SURVEY

Internal Auditing reviewed the professional services contract (# 30262) for the citizen survey and interviewed the Vice President of ETC Institute (V.P of ETC), the vendor selected to conduct the citizen survey, regarding circumstances and control of the timing and sample selection for the citizen survey. Based on results of the contract review and interview conducted, the following facts were determined:

## CITIZEN SURVEY PROJECT SCHEDULE, PROPOSAL AND CONTRACT TIMELINE

The scope of work provided in the ETC Institute response to RFP 12-858 submitted to the City contained the following statement: "ETC Institute's plan has been designed to complete this project in a 12-14 week period. Since the surveys will be administered in-house, the completion date for the project is completely within our control. If desired, we can meet a more ambitious timeline and are available to start at a date most convenient for the City." Following is the work schedule as originally planned by ETC:

**Project Schedule** 

September 2012

- \*Initial meetings to discuss survey goals and objectives
- \*Survey design
- \*City approval of survey

October 2012

\*Data collection process

November 2012

\*Report

During the interview with the V.P. of ETC, Internal Auditing asked why the schedule for the citizen survey slipped until approximately April 2013. The V.P. of ETC responded that ETC didn't begin working with the Mayor's Office until early January 2013. She stated that ETC worked through 6 drafts of the survey package which includes the cover letter to insure that the wording was clear for the citizens to understand. The V.P. of ETC also commented there were some mailing problems with the Tulsa Project. Based on the interview with the V.P. of ETC and review of the bidding and contract documents, the follow actual timing for the citizen survey was determined:

## PROPOSAL and CONTRACT TIMELINE

	ALL ALL CONTRACT II			
DATE	DESCRIPTION	SIGNATURE	TITLE/APPROVAL	
07/12/12	Request for Proposal 12-858 issued re: citizen survey			
<u>7/25/12</u>	Clarifying addendum # 1 issued			
<u>8/6/12</u>	Clarifying addendum # 2 issued			
<u>8/15/2012</u>	Request for Proposal 12-858 response date			
<u>8/16/2012</u>	Bids were opened. Five bidders responded			
<u>11/13/2012</u> <u>11/15/2012</u>	Awards Committee Inter- Office Correspondence	Larry Hood	Purchasing Agent	
11/28/2012	Service Agreement contract signed by vendor	Karen A Falk	Vice PresidentETC Institute	
12/31/2012	Request for Action: Contract	Michael P. Kier	Department Head Approval	
12/31/2012	City legal approval	Audrey D Blank	Assistant City Attorney Approval	
<u>1/7/2013</u>	Contract approved by Mayor			
4/2042	Pro-Tem	Jim Twombley (Pro-Tem)	Mayoral Approval	
<u>4/2013</u>	Citizen survey mail out by			
7/2013	ETC Survey results expected to be complete by ETC			

## CITIZEN SURVEY SAMPLING PLAN

The scope of work for Phase 1: Develop the Survey and Sampling Plan in the ETC Institute contract for the citizen survey provided for a random sample of 1800 completed surveys to allow for sub-analysis of the survey data for the City's nine-district subareas and specific demographic groups. A random sample of 1800 completed surveys would have a precision of at least +/- 2.3% at the 95% level of confidence for the City and a +/- 7% margin of error for each of the nine districts.

Internal Auditing contacted the Tulsa County Election Board and determined the City of Tulsa has 198,894 registered voters. The 1800 citizen survey sample size represents 0.9% of the registered voters in the City of Tulsa (1800/198,894). However, it was determined the sample for the citizen survey was not selected from the population of registered voters in the City of Tulsa. In the interview with Internal Auditing, the V.P. of ETC stated ETC used a list broker for selection of the survey sample from as current as possible list of community household addresses. The V.P. of ETC further stated the survey sample selections are randomly generated and that ETC has used the same list broker for over 30 years.

#### SURVEY COVER LETTER

The scope of work for Phase 2: Administer the Survey in the ETC Institute contract states: "The survey will include a letter on City letterhead that explains the purpose of the survey and that indicates all survey responses will remain anonymous." During the interview with the V.P. of ETC she stated it is common practice to include a cover letter with the survey. The V.P. of ETC further stated that usually mayors sign cover letters but city managers, the entire council and others have signed cover letters.

During an interview with the Complainant, he provided sworn testimony that: "It is my opinion that the cover letter—which I have an issue with—improperly touts the mayor's accomplishments in an election campaign, and I don't think it's appropriate. And so it's my opinion that the first few paragraphs and a little bit of the last paragraph, at the very least, indicate an appearance of impropriety, which is what the Ethics Ordinance says is not allowed."

The Complainant specifically identified the following wording of the cover letter which he believes is not in compliance with the Ethics Ordinance because it was received by voters in a nonpartisan election weeks before the election and it casts the Mayor in a positive light:

"When I was first elected in 2009, one of my top priorities as Mayor was to reach out across Tulsa with the first citizen's survey."

"With the data from that survey and the KPMG recommendations, my administration worked with the community to build public policy based on efficiency and citizen's inputs."

"The City of Tulsa is committed to building a strong, prosperous community. In order to accomplish this, we need your help. We are inviting you to participate in the 2013 survey. The results will allow us to see our successes from the last survey and properly plan for the city's future."

Based on these statements in the cover letter, the Complainant believes the Mayor has engaged in an activity which has an appearance of impropriety in non-compliance with TRO Title, 12, Chapter 6, Section 600.

## SOURCES OF COMPLAINT DOCUMENTATION

The copy of the citizen survey included with the Ethics Complaint filed with the City Clerk was addressed to a person other than the Complainant. The Complainant refused to provide testimony of who gave him the copy of the survey or how he became aware of the survey. The Complainant did provide sworn testimony that the person who provided the copy of the survey is politically active and is involved in the Bill Christiansen campaign for the current Mayoral election.

### COMPLAINANT LINK TO OPPOSING MAYORAL CANDIDATE CAMPAIGN

A copy of a "Weekly Volunteer Newsletter" of the "Bill Christiansen Mayor for All Tulsa" campaign reports the Complainant as "Our Featured Volunteer of the Week". The Newsletter states: "(The Complainant) has been making phone calls in the headquarters office and also displays a Christiansen yard sign in his yard. He has walked his neighborhood and handed out push cards for Bill's campaign."

The Complainant provided sworn testimony that he volunteered for the Christiansen campaign; he made a few phone calls and knocked on a few doors; and that he handed out push cards in his neighborhood. The Complainant refused to state whether he had discussed filing of the Ethics Complaint with anyone in the Christiansen campaign and whether he may or may have not discussed it with people in the Christiansen campaign before the Ethics Complaint was filed with the City Clerk. The Complainant stated he didn't want to answer for a couple of reasons. One, he was not sure he could give an accurate answer. And two, he was not sure the question was relevant. The Complaint stated that he had absolutely not been offered anything of value or of benefit of any kind by any of the mayoral candidates or their campaign officials.

### LOCAL NEWS MEDIA CONTACTS REGARDING THE ETHICS COMPLAINT

Internal Auditing obtained documentation that a Tulsa World reporter (Zack Stoycoff) contacted City Staff on May 16, 2013 asking whether the ethics committee has received any complaints about a survey the City has been mailing out. This contact was eight days before the ethics complaint was filed on May 23, 2013. The Complainant provided sworn testimony that he couldn't tell exactly when he found out about the survey cover letter other than a general idea that it was just about the middle of May 2013. The Complainant did provide sworn testimony that there was contact with the media before he filed the Complaint. However, on advice of the Complainant's legal counsel that questions regarding contacts with the news media were not relevant to the Complaint, the Complainant refused to identify who in the news media was contacted or to describe any information that might explain contacts by the Tulsa World reporter to City Staff over a week before the ethics complaint was filed.

#### MAYOR'S RESPONSE TO THE ETHICS COMPLAINT

Mayor Dewey F. Bartlett, Jr. provided a written response dated May 31, 2013 to the Ethics Complaint. The following statements are paraphrased from the response.

The Mayor's response states that he knows of no inquiry the Complainant made, prior to May 23, 2013, to obtain any facts regarding the survey cover letter. The response states the Community Survey has and is designed as a means to:

"Identify the needs and establish the objectives and priorities of the city and make recommendations to the Council for meeting the needs and achieving the objectives;" (1989 Amended Charter, Article III, Section 1.4A, under Executive and administrative powers and duties).

The Mayor's response further makes the following three statements:

First, there obviously has been no "personal gain" either intended or received as a result of the distribution of the Community Survey.

Second, based upon the success of the first survey, and the Mayor's continuing duty to respond to issues perceived by Tulsa citizens to be important to City government, the Mayor would have been delinquent in his responsibilities by not following up with the additional survey.

Third, the author of the survey, ETC Institute, received the materials for preparation of the survey prior to the time the Mayor announced his decision to run for re-election and in advance of the need to establish priorities for the next fiscal year's budget. To the extent the ETC's preparation of the Community Survey was delayed, it is certainly never been claimed or suggested that the Mayor had any responsibility for the timing of the survey's release.

#### Distribution:

Mayor		
Councilor, District 1	Mayor's Chief of Staff	External Auditor
Councilor, District 2	City Manager	Mayor's Audit Committee
Councilor, District 3	Press Secretary	Ethics Committee Chair
Councilor, District 4	MRO Director	
Councilor, District 5	Council Administrator	
Councilor, District 6	Council Secretary	
Councilor, District 7	Finance Director	
Councilor, District 8	Sr. Admin. Services Offices	
Councilor, District 9	City Attorney	

#### Attachments:

Complainant cover letter for Ethics Complaint filed May 23, 2013.

Community Survey cover letter dated April, 2013.

Mayor's response to the Ethics Complaint dated May 31, 2013.

Email from Tulsa World reporter dated May 16, 2013.

## To whom it may concern:

Please allow this to serve as my formal complaint to the Tulsa City Ethics Department regarding improper conduct by Mayor Dewey Bartlett Jr. The attached survey and cover letter was recently received by at least 1,800 people in the city. The wording of the cover letter is clearly an effort by Mayor Bartlett to posture his position as Mayor in the campaign that is currently being conducted. Under the general policy of the ethics code, a city official should have no interest..personal..direct..or indirect or engage in any activity...that is in a conflict of the proper discharge of their duties in the public interest. Nor should a city official engage in any activity which has the appearance of impropriety. See section 600 of the city of Tulsa Ethics code.

It is a clear from the attached survey cover letter that Mayor Bartlett has engaged in an endeavor to use a tax payer funded citizen survey as a vehicle for his campaign. This cover letter is a thinly veiled and disguised attempt to bring unwarranted attention to Dewey Bartlett Jr. For this letter to be sent in the heat of a political campaign is highly suspect. The letter infers that Dewey Bartlett Jr has done a great job and is much attuned to the needs and interests of the citizens of the City of Tulsa in a blatant attempt to curry votes.

I would ask that the City act on this matter and reprimand Mayor Dewey Bartlett of his unprofessional and reprehensible behavior before the June 11th, 2013, Election Day; so that the election results are not skewed due to the attached survey/cover letter.

Thank you.

Sincerely,

Steven H Roemerman Sr.

RECEIVED PIRECTOR OF FINANCE

MINIMAL PRINCHERY
MINIMAL PRINCHERY
OUTY CLERK

FILED STATS OF TULSA AMBIIAINO TO STATS



April. 2013

Dear Tulsa Resident.

When I was first elected in 2009, one of my top priorities as Mayor was to reach out across Tulsa with the first citizen's survey in order to help guide policies for all Tulsans. With the data from that survey and the KPMG recommendations, my administration worked with the community to build public policy based on efficiency and citizens input.

It is now time for us to complete another survey of our citizens.

The City of Tulsa is committed to building a strong, prosperous community. In order to accomplish this, we need your help. We are inviting you to participate in our 2013 Citizen's Survey. The results will allow us to see our successes from the last survey and properly plan for the future of our city.

The city has chosen ETC Institute to implement this survey and keep your responses anonymous and confidential. A postage-paid return envelope addressed to ETC Institute has been provided for your convenience.

You may also take the survey online by visiting www.tub.gc/negunity-survey.org .

We realize that this survey takes time to complete. It is, however, an essential tool in building our city. If you have any questions or concerns, please contact the City of Tulsa Customer Care Center at 918-596-2100 or via email at <a href="mailto:enactive-clayoftulsa.org">enactive-clayoftulsa.org</a>.

Thank you for allowing me to serve as your Mayor and I look forward to receiving your input!

Best regards.

Defrey F. Bartlett, Jr.

Mayor



May 31, 2013

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Clift Richards, CPA City Auditor City of Tulsa 175 East 2 Tulsa, OK 74103 DIRECTOR OF FINANCE

RE: Complaint by Steven H. Roemerman, Sr.

Dear Mr. Richards:

I am submitting a response to the ethics complaint which was filed with the City Clerk by Steve H. Roemerman, Sr. on May 23, 2013. I know of no inquiry that Mr. Roemerman made, prior to May 23, 2013, to obtain any facts regarding the letter or the underlying circumstances of the April, 2013 letter which I sent to over 1,800 Tulsa residents selected to participate in the 2013 City of Tulsa Community Survey.

As any investigation that your office may make will reveal, the Community Survey was preceded by a proper and approved Request for Proposal (with addendums thereto) by the City of Tulsa Finance Department, which process began in July of 2012. The July 2012 RFP sought "Professional Consulting Services to Design, Administer and Evaluate a Citizen Survey." Moreover, this survey, as I indicated in my April, 2013 cover letter, had been previously utilized by the Office of the Mayor to promote effectiveness and efficiency in City government. The Community Survey has and is designed as a means to:

###

"Identify the needs and establish the objectives and priorities of the city and make recommendations to the Council for meeting the needs and achieving the objectives;"

(1989 Amended Charter, Article III, Section 1.4A, under Executive and administrative powers and duties). I circulated the Community Survey with the specific statement that:

"With the data from [the first] survey and the KPMG recommendations, my administration worked with the community to build public policy based on efficiency and citizens input." \*

\*Letter from Dewey F. Bartlett, Jr., Mayor to Tulsa residents, dated April, 2013

CITY HALL AT ONE TECHNOLOGY CENTER

175 E. 2<sup>nd</sup> St. • Tulsa, OK 74103 • Office 918.596.7411 • Fax 918.596.9010

Email: dbartlett@cityoftulsa.org

www.cityoftulsa.org

Mr. Roemerman's complaint does not discuss or recognize that the above statements in my cover letter merely constitute my performance of my foremost duty under the 1989 Amended City Charter to identify the needs of the City of Tulsa and make recommendations to meet those needs. Rather, he suggests that the "wording of the cover letter" in some fashion violates Section 600 of the City of Tulsa Ethics Code. Section 600 of the Ethics Code (general policy) generally provides that public officials shall not use their positions for personal gain or give an appearance of impropriety. First, there obviously has been no "personal gain" either intended or received by me as a result of the distribution of the Community Survey. Second, based upon the success of the first survey, and my continuing duty to respond to issues perceived by Tulsa citizens to be of importance to our City government, I would have been delinquent in my responsibilities by not following up with this additional survey. Third, the author of the survey, the ETC Institute, received the materials upon which the survey was prepared from the City of Tulsa prior to the time I announced my decision to run for re-election and in advance of the need to establish priorities for the next fiscal year's budget. To the extent the ETC's preparation of the Community Survey was delayed, it is certainly never been claimed or suggested that I had any responsibility for the timing of the survey's release.

The fact of the matter is that Mr. Roemerman's vitriolic complaint appears to be either politically motivated or field without any due diligence in determining the underlying facts, objectives, or attendant benefits to the City of Tulsa.

Finally, a plain reading of my April, 2013 letter does not, in my view, suggest any impropriety at all. I might point out that Mr. Roemerman is the only Tulsa citizen that has complained about the letter, and has done so in a most conclusory fashion without any supporting facts. Construing the statements in my cover letter to constitute a violation of the Ethics Code is baseless, and to do so would have a chilling effect on all communications by me, or any other Mayor, to the citizens of Tulsa.

I am hopeful that this letter adequately responds to the ethics complaint of Mr. Roemerman, but should you have any additional questions, please contact me at any time.

Best regards,

Dewey F. Bartlett, Jr.

Mayor

cc: Michael Kier, City Clerk

## Maxwell, Ron

From:

Mayes, Anthony

Sent:

Thursday, May 16, 2013 1:31 PM

To:

'Zack Stoycoff'

Cc:

Bracken, Lydia; Maxwell, Ron

Subject:

RE: EAC question

The EAC can only receive & consider complaints from City officials or department heads. I haven't heard of anyone sending us anything, but if a citizen had contacted us regarding the citizen survey, they would be directed to file their complaint with the Ethics Hotline.

I believe Lydia Bracken (Strategic Planning Coordinator; Ibracken@cityoftulsa.org) or Ron Maxwell (Internal Auditing; rmaxwell@cityoftulsa.org) would be able to let you know if anyone has filed anything with the Hotline about the survey. I've copied both of them on this email as well.

**From:** Zack Stoycoff [mailto:Zack,Stoycoff@tulsaworld.com]

**Sent:** Thursday, May 16, 2013 1:06 PM

To: Mayes, Anthony

Subject: Re: EAC question

Thanks for the email. My question was whether the ethics committee has received any complaints about a survey the city has been mailing out. You'll have to forgive me if the ethics committee doesn't review such complaints -- I'm not too familiar with that process.

Thanks,

#### **Zack Stoycoff**

Staff Writer Tulsa World 918.581.8486

Cell: 918.521.5206

>>> "Mayes, Anthony" <amayes@cityoftulsa.org> 5/15/2013 8:28 AM >>>

I was out of the office yesterday so I just got your message. Going to be off & on at my desk so I figured email might be better to answer your questions regarding the EAC.

## Anthony Mayes | Office Administrator II

City of Tulsa - City Clerk's Department 175 E. 2nd, Suite 260. Tulsa, OK 74103

T: 918-596-7514 F: 918-596-7613

E: amayes@cityoftulsa.org www.cityoftulsa.org

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