

Date: September 25, 2006

To: City Council

From: David Mullan, Integrity Commissioner

Subject: Report on complaint that a Member of Council violated Clauses IV and V of the Code of Conduct by using City resources in the conduct of a private business (2).

Purpose:

To report on a complaint by a candidate¹ in the upcoming City of Toronto municipal elections complained that Councillor Howard Moscoe violated Clauses IV (“Use of City Property, Services and Other Resources) and V (“Election Campaign Work”) of the Code of Conduct for Members of Council (“Code of Conduct”) by conducting an election sign business using City of Toronto email services.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that Council uphold the complaint but not impose any sanctions.

Background:

On the evening of July 14, 2006, Councillor Moscoe sent out an email message to between twenty and thirty candidates² for office in the upcoming 2006 City of Toronto municipal elections. He was in his City Hall office at the time and was using his office computer. The message went out from the following email address: hmoscoe@toronto.ca. The purpose of the message was to encourage the candidates to use his election sign business. The message had an attachment with sign specifications and prices with a return cell phone number and another telephone number that was not the Councillor’s City Hall number.

This action attracted media attention and subsequently two formal complaints (of which this was one) under the Complaint Protocol. After determining there was sufficient basis for launching a

¹ The complainant is not running against Councillor Moscoe.

² None was an incumbent.

formal investigation and an exchange of written submissions among the parties, I interviewed Councillor Moscoe.

In both his written response to the complaint and in the interview with me, Councillor Moscoe admitted that the emails in question were sent from his City Hall office using his office computer. However, he drew attention to the fact that the numbers provided on the advertisement were not City Hall numbers and the email address from which the messages emanated was not his official or advertised City Hall email address (councillor_moscoe@toronto.ca). In fact, the address from which the message originated is an email address set up and maintained by the City's IT services for the private use of members of Council in conducting the business of the corporation.

He also provided an account of the circumstances in which the message was sent out. It occurred during a week in which he had meetings every night of the week at City Hall. On the evening of July 14, 2006, during some down time, he started to experiment with setting up batch emails. It was in the course of that experiment that the message was sent.

Councillor Moscoe also provided evidence of having reimbursed City Hall in 2000 for the use that he made of his office facilities (fax and telephone) for the purposes of his election sign business during the course of that year's municipal elections. He also questioned whether a policy established by Council at its meeting of May 23, 24 and 25, 2006 should apply retroactively.

Relevant Provisions:

Clauses IV and V of the Code of Conduct provides as follows:

IV. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES:

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, web sites, Council transportation delivery services and Councillor global budgets) for activities other than the business of the Corporation. Nor should any member obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

V. ELECTION CAMPAIGN WORK:

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters) for any election campaign or campaign related activities. No member shall undertake campaign-related activities on City property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.

In addition, at its meeting of May 23, 24, and 25, 2006, City Council approved the policy on Use of Corporate and Communication Resources During an Election Year for the City of Toronto

municipal elections of 2006. This policy reaffirmed the following statement that Council had adopted for the 2003 municipal elections:

Corporate resources and funding may not be used for any election-related purposes, with the exception community groups be extended access to City facilities for the explicit purpose of conducting all-candidates meetings, including all candidates meetings for municipal, provincial and federal elections, at a nominal fee of \$1.00, and all registered candidates within each specific category must be invited to attend such meetings.

As well, the City of Toronto's Acceptable Use Policy, issued, approved and effective May 16, 2005, states that

I & T resources are to be used solely for City business purposes with the exception of the limited occasional personal use.

In the section of that policy entitled "Personal Use (limited and occasional)", it is further provided that any such usage cannot involve "an activity that may result in personal gain (e.g. derive income from a personal source)."

Comments:

There is no doubt that Councillor Moscoe used a City of Toronto website for an activity other than the business of the corporation as prohibited by Clause IV of the Code of Conduct.

This conclusion is reinforced by the terms of the Acceptable Use Policy. While such policies do not at present provide a stand alone basis for a complaint of violation of the Code of Conduct, they can be used in the interpretation of the specific substantive provisions of the Code of Conduct. In this instance, limited though the use of City facilities was, it did not come within the permissible range of limited occasional personal use as permitted by that policy. This is because it constituted an activity that could result in personal gain, in this instance income from the Councillor's election sign business.

Support for this finding is also found in the City's policy for the 2006 municipal elections on the Use of Corporate and Communications Resources during an Election Year, a policy that has as its objective the elimination (save in one respect) of any association between the City and the election process. (In this context, I reject Councillor Moscoe's contention that to apply the policy to his activities would be to act with retroactive effect. The policy was adopted almost two months before the conduct giving rise to this complaint and, in any event, simply incorporated the policy that applied to the 2003 City of Toronto municipal election.)

However, I am dismissing the complaint that Councillor Moscoe's conduct also amounted to a violation of Clause V of the Code of Conduct. On my interpretation, this provision governs a member of Council in the conduct of her or his own election campaign. The soliciting of business in the form of orders for election signs had no relationship with the Councillor's own election campaign.

Conclusions:

In a letter to the Director, Council and Support Services dated August 17, 2006, copied to the City Clerk, the Director, Elections and Registry Services and the Integrity Commissioner, and shared with the complainant as his response to the complaint, Councillor Moscoe stated:

It would appear that my actions have come into conflict with city policy. If I have acted improperly, I assure you that it was without intent and I sincerely regret the oversight.

In the course of the interview with me, Councillor Moscoe was similarly contrite.

Nonetheless, for a member of Council to create the impression in the minds of reasonable people that he or she may be running a business out of that member's City Hall office is certainly a serious lapse of judgment on the part of a very experienced member of Council. The Councillor's conduct and justification of it also seemed to reveal a lack of awareness of current Council policies on such matters. It is also conduct that could well lead some candidates to actually contract for the advertised services in the expectation in the event of success at the polls of future alliances with and goodwill from an influential member of Council.

Despite considerable misgivings, I have decided, however, to rely on Clause 5 of the Complaint Protocol and recommend to Council that no penalty be imposed. I accept the Councillor's explanation of the circumstances under which the email message was composed and sent out. It is also of some significance that, while the message encouraged email responses, the phone numbers on the advertisement itself were not City Hall phone numbers and there is no reference to the City of Toronto in that advertisement. It also seems clear that, in the past, before the current policies were in place, the Councillor was careful to reimburse the City for the use of his office facilities for the purpose of this business. On those considerations, I am prepared to classify this as "an error of judgment made in good faith". However, in the cause of protecting the integrity interests of the City, I would urge the Councillor to send an electronic copy of this report to all those candidates to whom he sent the message and to extend his regrets in writing personally to the complainant.

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