

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



Office of Government Ethics

In Re: J. Sumner
Case No.: 1391-001

NEGOTIATED DISPOSITION

Pursuant to section 221(a)(4)(A)(v)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.21.04(A)(v)), the Office of Government Ethics (“OGE”) hereby enters into this Public Negotiated Disposition with the Respondent, J. Sumner. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent is a Data Warehouse Project Lead, and Statistical Analysis System Programmer with the Department of Health Care Finance (“DHCF”). Respondent has been an employee of DHCF for 4 years. Prior to that, the Respondent worked at the Department of Health for 15 years. Respondent was assigned the lead role in implementing a DHCF data warehouse contract as part of his official duties. The data warehouse project would modernize existing system functions, accommodate new local and federal reporting requirements, and improve data analysis and reporting. His responsibilities included arranging for DHCF employees to attend a retreat held by DHCF at the Washington Convention Center to provide feedback to the vendor that had been awarded the contract.

The retreat was held on August 25th, 2015, from 8am until 2:30pm. Approximately 50 agency employees attended. Respondent believed that participation would be improved if food was made available to participants, so he discussed the possibility of using appropriated funds to pay for the meals with DHCF staff, but prior to the completion of the process, during conversations between Respondent and the vendor, the vendor volunteered to pay the cost of breakfast and lunch for the employees. Respondent then went to DHCF’s Office of General Counsel to obtain the relevant ethics rules, but in doing so, did not ask an agency attorney or ethics counselor to assist with determining whether the vendor was permitted to pay the cost of food for employees at the retreat. Respondent took it upon himself to interpret the rules, and was satisfied that it was permissible to accept the offer to provide meals. The cost of the meals for breakfast at the Washington Convention Center and lunch at a private restaurant in the vicinity of the Convention

¹ Section 221(a)(4)(A) of the Ethics Act (D.C. Official Code § 1-1162.21(a)(4)(A)), provides, in pertinent part, that “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: . . . (v) Any negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

Center was approximately \$3,000. The average cost per employee was \$48, excluding taxes and service charges.

Respondent was subsequently informed by his agency ethics counselor that it was inappropriate for agency employees to accept meals from the vendor, a prohibited source, without the gift being processed as a donation. The agency submitted an after-the-fact application to the Office of Partnerships and Grant Services to determine whether the gift of meals to DHCF employees would be approved as a donation. The application was denied.

II. NATURE OF VIOLATIONS

Respondent's conduct is in violation of at least two sections of the District Code of Conduct, as set forth below:

- ❖ **One:** D.C. Official Code § 1-329.01(a)(1) ("Donations Act"), which states: "An entity of the District of Columbia government may accept and use a gift or donation ... if - the Mayor approves the acceptance and use of the gift or donation...."
- ❖ **Two:** DPM § 1803.2, which states that: "Except as otherwise provided in this section, an employee shall not, directly or indirectly, solicit or accept a gift ... from a prohibited source."

The investigation determined that although the Respondent did not solicit the gift or donation from the vendor, he failed to request and obtain approval for DHCF to accept this donation, as required by Mayor's Memorandum 2015-001, dated August 21, 2015.² It was determined that it was the vendor's idea, in consultation with the Respondent, to provide food because the vendor believed it would be beneficial to the overall training. Respondent's conduct, in accepting a gift or donation on behalf of the agency from a vendor without complying with the requirements of the Donations Act, was a violation of the District Code of Conduct. Respondent's role in accepting meals from a vendor doing business with Respondent's agency was also a violation of the Code of Conduct. See, D.C. Official Code § 1-1161.01(7)(g) (incorporating the Donations Act into the Code of Conduct), and DPM § 1803.2(b) (prohibiting gifts from prohibited sources).

In mitigation of his conduct, Respondent admitted to the allegations when interviewed by OGE staff, was otherwise forthcoming and cooperative, and has volunteered to repay the cost of his meals. Moreover, by taking it upon himself to interpret the ethics rules, Respondent seems to have held the subjective belief that his conduct was permissible. To be sure, Respondent proceeded at his own risk when he did not avail himself of ethics guidance from his agency Ethics Counselor or OGE. Nonetheless, I view this as a mitigating factor.

² See Mayor's Memorandum 2015-001, which implements the Donations Act for Executive branch employees. Section VIII(A) of the Mayor's Memorandum, provides that "Failure of a District government employee to follow a provision contained in this Memorandum may be considered evidence of a violation of the Code of Conduct." Mayor's Memorandum 2012-3, dated May 16, 2012 contained the same requirement.

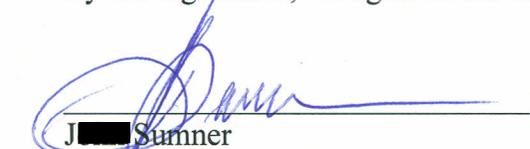
III. TERMS OF THE NEGOTIATED DISPOSITION

Respondent acknowledges that his conduct was in violation of the District Code of Conduct and that he should be, and hereby is, “**Censured**” for his conduct. As part of this Negotiated Disposition, Respondent agrees to attend ethics training provided by OGE within six months of the full execution of this Negotiated Disposition Agreement, and not to engage in such conduct in the future.

Respondent further understands that if he fails to adhere to this agreement, the Office may instead, at its sole option, recommend that the Ethics Board nullify this settlement and hold an open and adversarial hearing on this matter, after which the Ethics Board may impose sanctions up to the full statutory amount (\$5,000 per violation) as provided in the Ethics Act for each violation. Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent waives any statute of limitation defenses should the Ethics Board decide to proceed in that manner as a result of Respondent’s breach of this agreement.

Respondent agrees that this Negotiated Disposition is not just an admission of wrongdoing, but constitutes various factual admissions by him that may be used in any subsequent enforcement or judicial proceeding that may result from Respondent’s failure to comply with this agreement.

The mutual promises outlined herein constitute the entire agreement in the above-titled action. By our signatures, we agree to the terms outlined herein.


J. Sumner

10/06/2015
Date


Darrin P. Sobin
Director of Government Ethics

10/06/2015
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairman below.

APPROVED:


Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability

10/15/15
Date

#1391-001

DS/BF