



**King County**

## KING COUNTY OMBUDSMAN'S OFFICE

### ETHICS FINDINGS

Complaint No. 2012-00512  
Respondent: Doug Osterman  
September 25, 2012

#### ALLEGATIONS SUMMARY

On June 21, 2011, the Ombudsman's Office<sup>1</sup> received a complaint filed under the King County Employee Code of Ethics (the "Ethics Code"). The complaint alleged that Doug Osterman, a Watershed Coordinator with the King County Department of Natural Resources and Parks (DNRP), used his county position to favor the City of Normandy Park, where Mr. Osterman also serves as a city councilmember. Specifically, the complaint alleged that Mr. Osterman influenced the Watershed Resource Inventory Area Forum ("the WRIA-9 Forum" or "the Forum"), for which he served as lead staff, to undertake a waterfront restoration project in Normandy Park, called "Beaconsfield on the Sound." Additionally, the complaint alleged that Mr. Osterman did not provide sufficient notice of his potential conflict of interest.

#### INVESTIGATIVE SUMMARY

The complaint submitted to the Ombudsman's Office raised questions about Mr. Osterman's dual position as a county employee and a Normandy Park councilmember. The complaint did not assert specific allegations or name specific sections of the Ethics Code alleged to have been violated. Our office met with the complainants and their attorney to establish the specific allegations and their bases. We determined, and the complainants agreed, that the only Code sections relevant to their complaint are sections 3.04.030.A.9.a and 3.04.037. These sections are copied below in relevant part, as follows:

*No county employee shall engage in any act which is in conflict with the performance of official duties. A county employee shall be deemed to have a conflict of interest if the employee directly or indirectly... [e]ngages in or accepts compensation, employment or renders services for any person or a governmental entity other than the county when such employment or service is incompatible with the proper discharge of official duties or would impair independence of judgment or action in the performance of official duties. [KCC 3.04.030.A.9.a];*

and,

*Any employee who becomes aware that he or she may have a potential conflict of interest which arises in the course of his or her official duties shall notify in writing*

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<sup>1</sup> The Ombudsman is an independent official within King County's legislative branch, and is authorized to investigate the administrative conduct of King County agencies, including investigating and enforcing the provisions of the Employee Code of Ethics. KCC 2.52.090.G.

*his or her supervisor or appointing authority of such potential conflict.* [KCC 3.04.037]

The Ethics Code requires the Ombudsman to investigate and make written findings as to whether there is or is not reasonable cause to believe that the respondent violated the Ethics Code. KCC 3.04.055.<sup>2</sup> The standard of proof for these findings is a preponderance of the evidence; that is, whether the allegations at issue are more likely true than not.

In the course of our investigation, we reviewed relevant Ethics Code provisions, King County Board of Ethics advisory opinions, Mr. Osterman's response to the complaint, Mr. Osterman's county job description and duties, and a large number of WRIA 9 Forum records, including evaluations of the performance of Mr. Osterman's staff, and information regarding the Beaconsfield Project specifically. We also interviewed ten witnesses, in addition to the complainants and Mr. Osterman. Witnesses included current and former members of the WRIA 9 Forum and the Forum's Executive Committee<sup>3</sup>, and King County employees who have worked with Mr. Osterman.

The Ombudsman's Office investigation was conducted by Senior Deputy Ombudsman Lynn Anders and Deputy Ombudsman Chuck Sloane; findings were written by Deputy Anders with support from Deputy Sloane. King County Ombudsman Amy Calderwood provided oversight.

## **SUMMARY ANALYSES AND FINDINGS**

In determining whether Mr. Osterman, in his position as a county employee,<sup>4</sup> violated sections 3.04.030.A.9.a or 3.04.037 of the Ethics Code, we analyzed four questions. Our summary analyses and associated findings follow.

***Question 1:*** *Did Mr. Osterman "engage in or accept compensation, employment or render services for any person or a governmental entity other than the county?"*

We find that Mr. Osterman, in serving as a councilmember for Normandy Park, did render services for a governmental entity other than the County.

Mr. Osterman was elected to the Normandy Park City Council in 2007, at which time he was employed by King County. As a councilmember, Mr. Osterman had responsibility for

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<sup>2</sup> The Ombudsman's Office conducted a thorough investigation into the allegations and was in the process of completing our findings when the complainants sought to withdraw their complaint. By that point, the Ombudsman's Office had spent significant investigative resources on the matter. The Ombudsman has determined, based on the commitment of staff resources and other considerations, that it is in the public interest to release our findings in this case.

<sup>3</sup> The Executive Committee acts as the central decision-making body for the WRIA 9 Forum. Executive Committee members' responsibilities include reviewing projects and providing recommendations to the larger WRIA 9 Forum for ratification. Mr. Osterman works most closely with the Executive Committee.

<sup>4</sup> We determined whether Mr. Osterman's actions as a King County employee violated the Ethics Code. We did not examine whether Mr. Osterman violated any rule governing the conduct of Normandy Park councilmembers.

"establishing policy, direction and goals"<sup>5</sup> for the City of Normandy Park and for adopting the city's governing laws through specific ordinances.

Although Mr. Osterman was never employed by Normandy Park, and had not received any compensation from the city for his work as a councilmember, we find that Mr. Osterman performed significant work on behalf of Normandy Park, and therefore 'rendered services' for that governmental entity.<sup>6</sup>

**Question 2:** *Was Mr. Osterman's service for the Normandy Park City Council "incompatible with the proper discharge of official duties" that Mr. Osterman is responsible for as a King County employee?*

We reviewed the potential conflict that could arise if Mr. Osterman's responsibilities to Normandy Park were incompatible with his duties as the WRIA 9 Watershed Coordinator. The fact that Mr. Osterman serves Normandy Park's interests while he is employed by King County to staff the Forum, of which Normandy Park is a member, raises an inference that there might be an inherent incompatibility for Mr. Osterman to serve simultaneously in both roles. We find that Mr. Osterman's service to Normandy Park is not incompatible with the proper discharge of his official duties as a King County employee.

The City of Normandy Park is a member of the Forum, but Mr. Osterman did not represent Normandy Park on the Forum. Mr. Osterman's official duties as the Watershed Coordinator were exclusively administrative in nature and he did not have any formal authority to deliberate or decide on substantive matters. The nature of Mr. Osterman's official duties did not give him the opportunity to advance Normandy Park's interests in any formal capacity.

Further, Mr. Osterman performed his official job duties on behalf of the Forum under a contract that King County has with the Forum to be its service provider. Therefore, in his official duties for King County, Mr. Osterman served the interests of the City of Normandy Park the same as he served any of the other jurisdictions on the Forum. It was not improper for Mr. Osterman's service as the Watershed Coordinator to indirectly or directly benefit Normandy Park in its capacity as a Forum member.

**Question 3:** *Would Mr. Osterman's role as a Normandy Park councilmember "impair independence of judgment or action in the performance of official duties" as a county employee?*

Beyond the analysis of whether there exists a structural conflict between Mr. Osterman's role as a Normandy Park councilmember and his formal job duties for King County (that is, whether the two roles are incompatible), there remains the question of whether Mr. Osterman's association with Normandy Park would influence him in the discharge of his official duties or the exercise of his judgment as a county employee. The applicable code language directs us

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<sup>5</sup> Normandy Park City Council website, 8/23/12: [http://www.normandyparkwa.gov/index.asp?Type=B\\_BASIC&SEC=%7B24CC4688-7641-48C5-8B7F-1AB40EC8E5EC%7D](http://www.normandyparkwa.gov/index.asp?Type=B_BASIC&SEC=%7B24CC4688-7641-48C5-8B7F-1AB40EC8E5EC%7D)

<sup>6</sup> Rendering services is a necessary element of an ethics finding under 3.04.030.A.9.a, but is not of itself sufficient to constitute a violation.

to analyze whether Mr. Osterman's service for Normandy Park "would impair independence of judgment or action." We find that Mr. Osterman's role as a Normandy Park councilmember would not likely impair him in the performance of his duties as a county employee.

Our conclusion that it is more likely than not that Mr. Osterman's independence of judgment or action would not be compromised by his dual roles is informed by the lack of a structural incompatibility as analyzed above, and further based on a thorough review of the specific facts of this case. In addition to reviewing Forum meeting minutes and other documentary evidence, we asked every Forum member we interviewed whether Mr. Osterman had shown any favoritism toward Normandy Park. We also asked whether members were aware of any other member who might have such concerns. While every interviewee described Mr. Osterman as dedicated to the work of the Forum and its mission, none expressed any concern with Mr. Osterman's impartiality nor directed us to anyone else who might have concerns. We assign this fact some weight, given Mr. Osterman's years of service for the Forum and the fact that the Forum's mission and projects are politically charged. The Forum's rotating membership includes dozens of high-level elected officials, but none we talked to had concerns with his independence.

Although the complainants did not allege any specific instance in which Mr. Osterman's actions as a county employee were improperly influenced, we did uncover and closely examine one decision in which Mr. Osterman authorized a \$4,994 contract to Blackmore Consulting for the purpose of helping Normandy Park complete a grant application. Mr. Osterman's position as the Watershed Coordinator gives him the authority to assign personnel and approve contracts below \$5,000 without specific review by the WRIA 9 Steering Committee or Forum. After examining the context of this contracting decision, we found no evidence of impaired independence of judgment or action by Mr. Osterman.

The grant that Normandy Park needed assistance to apply for was aligned with the Forum's mission, and was precisely the kind of project that the Forum's staff was supposed to assist with. While the work group typically provided such assistance directly, they were short-staffed at the time that Normandy Park made the request and had limited resources to provide the needed assistance. Further, while Normandy Park is the only member jurisdiction that received a consultant for the specific purpose of writing a grant, Mr. Osterman had previously approved comparable consultant contracts to assist other member jurisdictions with other project elements. Blackmore Consulting itself had previously contracted with the Forum for other project work on behalf of its members. We also note that the amount of the Blackmore contract was very small when compared to WRIA 9's annual budget of \$20-30 million.

Mr. Osterman has been functioning in his dual roles for the past five years. While such a situation could result in an improper conflict of interest under the Ethics Code, in this case, we did not find evidence that showed any actual impairment of Mr. Osterman's independence in his role as a County employee. In light of this, and with no structural incompatibility between his dual roles, we therefore find it unlikely that Mr. Osterman's role as a Normandy Park

councilmember would impair his independence of judgment or action in the performance of his official King County duties.<sup>7</sup>

**Question 4:** *Did Mr. Osterman provide the required notice of his potential conflict of interest?*

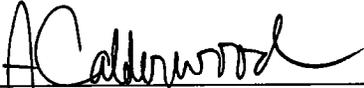
Section 3.04.037 of the Ethics Code requires that "Any employee who becomes aware that he or she may have a potential conflict of interest which arises in the course of his or her official duties shall notify in writing his or her supervisor or appointing authority of such potential conflict."<sup>8</sup> We find that Mr. Osterman gave proper notice to his supervisor.

On October 16, 2007, about three weeks before he was elected, Mr. Osterman sent an email to his county supervisor, Sarah Ogier, in which he stated his candidacy for the Normandy Park City Council and his commitment to "avoid any conflict of interest during the campaign due to my affiliation with Normandy Park as the WRIA 9 Watershed Coordinator and as an employee of King County. Ms. Ogier responded, in part, "Thank you for this written notification. And thank you for your continued attention to the potential for any conflict of interest." This notice to Ms. Ogier satisfied Mr. Osterman's obligation under the Ethics Code to provide written notification of a potential conflict of interest to his supervisor.

## CONCLUSION

Based on the available evidence, there is not reasonable cause to believe that Mr. Osterman violated the King County Employee Code of Ethics. We appreciate the support that the complainants, respondent, members of the WRIA 9 Forum, and the King County Department of Natural Resources and Parks, provided during the course of this investigation.

Dated this 25th day of September, 2012.



Amy Calderwood  
King County Ombudsman

Distribution per KCC 3.04.055(G):  
Complainant  
Mr. Doug Osterman  
King County Board of Ethics

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<sup>7</sup> While Mr. Osterman did not violate the Ethics Code, we will follow up informally with DNRP to debrief these findings and discuss ways to ensure continued compliance with the Code.

<sup>8</sup> Section 3.04.030.A.9(a) of the Ethics Code, which imposes an additional duty for designated employees to obtain supervisory consent, does not apply to Mr. Osterman because he is not in one of the designated classes.