



CITY OF

PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR

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MEMORANDUM

VIA EMAIL

Date: April 18, 2008

To: John Branam
Certified Candidate for Commissioner No. 1
May 20, 2008 Municipal Primary Election

From: Andrew Carlstrom, City Elections Officer

CC: Citizen Campaign Commission

RE: City Code Compliance Findings

Summary

After evaluating the documentation you have provided in response to four information requests, and after reviewing compensation data from various sources, the Auditor has determined that the aggregate expenditures made by your principal campaign committee, John4PDX, for “wages, salary, and benefits” (ORESTAR purpose description) to Phil Busse comply with City Code Section 2.10.090 C. Any further expenditures made by John4PDX to Mr. Busse for “wages, salary, and benefits” during the Primary Election Period will violate City Code Section 2.10.090 C and will result in penalties. The Auditor has also determined that payments for “wages, salary, and benefits” made by John4PDX to Beth Roberts have complied with City Code Section 2.10.090 C.6.

2.10.090 Limitations on Use of Qualifying Contributions, Seed Money Contributions, and Campaign Finance Fund Revenues

...

C. Prohibited Uses. Revenues distributed to a Certified Candidate from the Campaign Finance Fund may not be:

...

5. Used to repay any loans, debts or penalties;
6. Used to pay for consulting services to a Person, unless the Person is providing bona fide services to the campaign and is compensated at fair market value;

2.10.090.C.5 (Repayment of Loans, Debts, or Penalties)

The documentation you submitted to the Auditor on April 7, 2008 includes “Attachment C: Signed Affirmation Regarding Payments and Hours”. The large payment of \$15,000 to Mr. Busse in the beginning of the service agreement term raised questions about whether or not you were paying for services Mr. Busse performed prior to certification (“back pay”). Your sworn statement affirms that payments from John4PDX to Mr. Busse after the date of certification (2/21/2008) did not constitute payment for any services rendered before the date you were certified as a Campaign Finance Fund Candidate.

Based on the information you have submitted, the Auditor has determined that the payments that you have made to Phil Busse are in compliance with City Code Section 2.10.090.C.5. Although structuring larger payments in the beginning of an employment or service agreement, as you have done with Mr. Busse and Ms. Roberts, are unusual, they are not prohibited by City Code Chapter 2.10.

2.10.090.C.6 (Compensation at Fair Market Value)

The 2008 Campaign Finance Manual, published by the Secretary of State, defines Fair Market Value as “the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obliged, to sell and purchased by one who is willing, but not obliged, to buy.”

On March 27, 2008, you and Beth Roberts executed a service agreement (Attachment A, April 7, 2008 submission to the auditor). In an April 14, 2008 email, you indicated that, with evening and weekend hours, Roberts works approximately 50-60 hours per week, which over 90 days equates to between \$15.56 and \$18.67 per hour. This range of compensation for Roberts, your field manager, is comparable to the compensation for a part-time field manager position based upon research by this office. The Auditor has determined that Ms. Roberts’ rate of compensation is compliant with City Code Section 2.10.090.C.6.

To evaluate whether payments made to Phil Busse are comparable to Fair Market Value, the Auditor looked at a range of salaries for individuals in similar positions, as well as factors that merit a higher or lower compensation range such as experience and additional duties.

On March 27, 2008, you and Phil Busse executed a service agreement. You submitted this agreement as well as other documentation, including a memorandum, to the Auditor on April 7, 2008. You state in the memorandum that you and Mr. Busse entered into an oral agreement prior to certification which is consistent with the March 27 written agreement. In other documentation submitted to the Auditor on April 7, 2008, you state that Mr. Busse began paid work “when and if certification was reached”. You were certified as a Campaign Finance Candidate on February 21, 2008.

In the March 27, 2008 Service Agreement with Mr. Busse, you agreed to pay Mr. Busse \$25,000 for 90 days of work. This equates to approximately \$8,333 per month. For comparison, recent campaign manager salaries for City, State district, and statewide races

are between \$1,200 and \$9,000 per month. As a final comparison, campaign consultant Liz Kauffman, was paid a base rate of \$7,500 per month as the campaign manager for the state-wide Measure 49 in 2007. She received bonuses and other compensation in addition to the base rate.

Experience is a factor in compensation rate. In the documentation submitted to the Auditor on April 2, 2008, you included a resume for Phil Busse. The resume indicates writing, administrative, and creative experience, but very limited political campaign management experience.

Another factor for a compensation rate is the degree of supervisory duties. In the memorandum submitted to the Auditor on April 14, 2008, you indicated that Mr. Busse supervises 1.5 FTE, directs approximately twelve volunteers, and is in “regular contact” with one “designer” and one “web designer”. This level of supervisory duties is not out of the ordinary and would not in itself justify compensation at a higher level.

The March 27, 2008 Service Agreement includes the typical responsibilities of a campaign manager that Phil Busse performs. The contract also includes “additional responsibilities”. The additional responsibilities include three items that the Auditor has determined may be eligible for a higher rate of pay than a campaign manager:

- “Design advertisements for newspaper, web, radio and television”
- “Oversee design and execution of artwork, campaign literature creation and printing and production”
- “Oversee placement and purchase of advertisements for newspaper, web, radio and television”

In the April 14, 2008 memorandum to this office, you state that “Phil Busse has spent roughly 120 hours from February 21, 2008 through April 4, 2008 working on various media and campaign literature.” You have broken down this total as follows: Designing advertisements for newspaper, web, radio and television (45 hours); Overseeing design and execution of artwork, campaign literature creation and print production for campaign ads (50 hours); and Overseeing placement and purchase of advertisements for newspaper, web and radio (20+ hours). While it appears that that much of this time spent was in a supervisory rather than creative role, it is clear that Mr. Busse was also directly involved in the creative work of several campaign-related media projects.

Several campaign consultants indicated that these three items are the type of work that would be done by campaign consultants and media consultants. These types of consultants are often paid at higher rates of compensation than campaign managers.

Conclusions – Payments to Phil Busse

1. While the range of “fair market value” for compensation payments to a campaign manager is broad, it is clear from available data that a proposal to pay \$25,000 to Mr. Busse for three months’ work exceeds an acceptable range because of the type of work and Mr. Busse’s level of experience. To date, you have made payments totaling \$20,000 to Mr. Busse. If no further payments are made for the three-month period, this would equate to approximately \$6,667 per month. This number is still very high for

campaign manager duties, given Mr. Busse's supervisory duties and experience. However, the 120 hours performed to date on media and campaign literature mitigate this overpayment, even if only a fraction of the 120 hours was spent on direct creative work.

2. The Auditor has determined that payments totaling \$20,000 to Mr. Busse fall within the range of fair market value for three months work and will comply with City Code Section 2.10.090.C.6.
3. However, any further expenditures from John4PDX for "wages, salary, and benefits" to Mr. Busse will trigger a violation of City Code Section 2.10.090 and will result in a civil penalty. If John4PDX chooses to pay Mr. Busse in excess of \$20,000, the Auditor will determine the expenditures to Mr. Busse exceed "fair market value" and you will be assessed a penalty twice the amount of the infraction, or ten thousand dollars.

In addition, should this occur, you will be required to return the excess amount to the Campaign Finance Fund. Please note that, per City Code Section 2.10.220.A.6, civil penalties may not be paid with Campaign Finance Fund revenues.

4. Payments to Mr. Busse for reimbursement of expenses during the Primary Election Period will still be allowed. However, given that the original planned expenditures to Mr. Busse were to total \$25,000, any further expenditures made by John4PDX to Mr. Busse for wages, salary, or benefits during the Primary Election Period will result in a violation and penalty.
5. The March 27, 2008 Service Agreement between John4PDX and Phil Busse must be amended to reflect total payments to Mr. Busse of \$20,000 instead of \$25,000 to eliminate any commitment to any additional amount. Please submit a copy of the amended signed agreement to the Auditor not later than 5:00 p.m., Wednesday, April 23, 2008.
6. As previously noted by this office (April 7, 2008 email to all City candidates), the Auditor does not specifically monitor IRS compliance in terms of candidates' tax responsibilities as employers or contractees. However, any tax payments to the IRS or the Oregon Department of Revenue by Certified Candidates for Commissioner must be included in the \$150,000 spending limit described in City Code Section 2.10.110.

Let me know if you have any questions.