



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross, Lawrence Lebowitz

Case K16-024	Case Name: David Chiverton payments	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): Opa-locka City Manager David Chiverton	May 16, 2016	9/22/2016

**CASE CLOSED**

Allegation(s):

It was alleged that Opa-locka City Manager David Chiverton may have exploited his official position by authorizing improper conversions of his annual and sick leave to cover alleged “unforeseen expenses” prior to his stepping aside as city manager on a temporary leave of absence.

More specifically, a published report accused Mr. Chiverton of authorizing payments to himself of \$24,982.57 for unused sick leave and \$14,160.36 for unused annual leave when the city’s personnel rules only allow for such payouts at the time of an employee’s severance.

The payments totaling more than \$39,000 were processed in late April 2016 as the City faced a mushrooming financial crisis. By June, the City was declared to be in a financial state of emergency with its spending subject to the control of a state oversight board.

Rather than return to work, Chiverton resigned Aug. 1, 2016. It was later revealed he entered into a plea deal with federal prosecutors in exchange for his cooperation with an FBI corruption investigation. He pleaded guilty on Sept. 12, 2016 to using his office to pocket bribes paid by city business owners and is facing in excess of three years in prison.

Relevant Ordinances:

The Miami-Dade Code of Ethics and Conflict of Interest Ordinance prohibits Exploitation of Official Position, as described in Sec. 2.11-1(g) of the county’s ethics ordinance.

Investigation:

*Interviews*

Charmaine Parchment, finance director

City of Opa-locka, FL

May 31, 2016

Ms. Parchment advised that City Manager Chiverton's requests to convert his annual leave and sick leave bypassed her department and that this was a departure from the way such requests are normally handled. She said that typically her payroll officer makes the calculations as to how much leave an employee is entitled to, but that instead the matter was handled through the city's Human Resources office, under the control of director Kiera Ward. It is widely known that Ward's common law husband is Dante Starks, a lobbyist and subject in the FBI corruption probe. She said the calculations were handled by a temporary employee, Kimberly Williams.

Ms. Parchment said she did not sign the checks to Mr. Chiverton and that her signature was done by automation. She said Mr. Chiverton's signature on the check and the supporting requisition was also done by automation. She said the purchase orders to support the payments were also signed by Mr. Chiverton through automation, and that the purchase orders would be considered as the requisitions for the payments. She said she was surprised to learn on a Thursday that Mr. Chiverton had requested the leave when he asked her if his checks were ready. Mr. Chiverton made his request for the payments on April 27, according to city records.

Ms. Parchment said she was aware that Mr. Chiverton returned some of the payout amounts to the city the following month after realizing he was overpaid on both leave requests. She said that his after-tax payouts – \$12,027.12 for vacation time and \$18,528.84 for sick leave – were improperly calculated and included his regular pay for the most recent pay period as well. She suggested this was because HR was not accustomed to preparing the calculations, normally handled by Gladys Elliot, the payroll officer in the Finance Department. "Based on our procedure this should have gone through finance," she said, noting the city uses ADT for payroll disbursements. She said the overpayments would not have happened if normal procedure had been followed.

Ms. Parchment said she was unsure whether Mr. Chiverton was entitled to the leave conversions, but added she was never asked whether the city had sufficient funds to cover them. She said nothing had been budgeted, and the city was already in arrears on millions of dollars owed to creditors. She said the checks issued to Mr. Chiverton were cashed, and this has added to the city's financial burden. She said that she felt he may have been entitled to a 50 percent payout of his vacation time, but not his sick time. She said that, as far as she knows, sick leave policy 3-311 from the employees handbook, applies to regular employees.

Ms. Parchment said the rules may not apply to appointed employees such as the clerk and city manager, saying any exceptions to this rule would typically be spelled out in their contracts. She said she is not aware of Mr. Chiverton having a contract since he was appointed to the post following the ouster of former City Manager Steve Shiver. She said she has been seeking clarification as to whether the payouts should have been brought before the City Commission since their collective value exceeded the \$25,000 threshold required for commission approval.

She said she is trying to obtain a copy of the ordinance establishing this threshold for guidance.

Ms. Parchment said that Mr. Chiverton, as city manager, is responsible for overseeing all expenditures made by the city under his administration, from “one penny” to payments in the millions of dollars. She said the normal controls were overridden and that, as a result, the city overpaid Mr. Chiverton, though she could not say whether fraudulent intent was involved. She said she did feel there was a double standard with respect to ordinary city employees in that: “Managers are different in that they seem to authorize whatever they want.”

Vincent Brown, city attorney  
City of Opa-locka, FL  
July 1, 2016

Mr. Brown stated that he had not been consulted with respect to the leave conversions paid to Mr. Chiverton. He said he learned about the payments after the fact, “the same way you did,” i.e., he read about it in the Miami Herald. He said other city employees had been granted leave conversions for personal reasons – citing Delia Kennedy and Randolph Aikens, who he said used the proceeds for his mother’s funeral. He said that had he been consulted he would have advised the manager or others to seek commission approval.

Mr. Brown said Mr. Chiverton was never given a contract or employment agreement after he became manager, and that the absence of any applicable guidelines or policy could lend itself to “multiple interpretations” as to whether the city’s personnel rules applied to “city officers” such as the manager, clerk, and attorney. “I had not been consulted or asked about how you could do it. If I had been asked I probably would have answered contradictory to the way it was. I would have asked for it to have gone before the commission.”

Randolph Aikens, urban ranger  
Opa-locka Public Works Department  
July 1, 2016

Mr. Aikens said he requested 352 hours of accrued vacation time be converted into cash this past May after his mother died. He said he needed precisely that amount to provide burial services.

He said that Mr. Chiverton told him “the city is broke” but consulted his then assistant manager, Yvette Harrell, and advised she had “a negative attitude” with respect to the requested payout. Mr. Aikens said Mr. Chiverton told him, “The best we can do is 120 hours.” Mr. Aikens said he accepted the payout of roughly \$2,400.

Mr. Aikens said that while he was away, he learned about Chiverton’s more sizeable payouts, remarking: “I came back, I saw what all he had done, and I was flabbergasted.” He noted that he only requested he be able to convert his annual leave, not sick leave. Mr. Aikens said he confronted Mr. Chiverton about his seemingly hypocritical actions when Mr. Aikens returned from Atlanta, and stated the former manager told him that he needed the money for legal fees.

*Document/Audio/Video Review:*

Documents provided by the City Clerk's Office in response to COE public records requests established that City Manager Chiverton did not have a contract or employment agreement with the City of Opa-locka at the time of his questionable leave conversions.

Resolutions supplied by the clerk showed that, on or about Nov. 24, 2015, Mr. Chiverton was hired on an interim basis following the removal of former City Manager Steve Shiver; that Mr. Chiverton while still the interim manager, was given a \$25,000 pay raise on or about Jan. 13, 2016; and that Mr. Chiverton – in recognition of his being “highly effective in the performance of his duties since being appointed” on an interim basis – was named as the permanent city manager on or about March 23, 2016. (He took a leave of absence on May 18, 2016.)

In response to a public records request for copies of any contracts for all city managers serving the city of Opa-locka during the previous five years, contracts were provided for Kelvin L. Baker, who served from July 3, 2012, through about July 22, 2015, and also for Roy Stephen Shiver, who served from Sept. 2, 2015, through about Nov. 24, 2015.

Of significance to this case, it was found that both contracts contained language stating that with respect to annual and sick leave, the city's rules and regulations “shall apply to the City Manager as they would to other employees of the City ... except as herein provided.” No further mention of a material nature could be found in either Employment Agreement regarding the use and/or conversion of annual and sick leave, except that – in the case of Shiver – he would have been entitled to 25 vacation days and 15 sick days annually.

Both agreements furthermore provide language regarding “other terms and conditions of employment” stipulating that any changes to these agreement can only be made in writing and with the approval of the City Commission in the form of a formal resolution.

A copy of Page 95 of the City of Opa-locka employee manual concerning Sick Leave, Sec. 3-311, states that “employees” with between one to five years of employment would be entitled to a cash payment of 25 percent of their accrued sick leave at the time of the termination of their position with the city.

The guidelines go on to state that: “The City will not pay out accrued sick leave to current employees.”

COE also obtained copies of email correspondences between Mr. Chiverton and Melinda Miguel, Chief Inspector General for the Office of Gov. Rick Scott. In a May 12 email, Chiverton contends that the payments did not violate the city's personnel rules.

Mr. Chiverton wrote that he needed the money “due to unforeseen emergencies” and cited his

daughter's illness and mother's "ongoing medical conditions." He further contended that because he is a political appointee, the city's personnel rules do not apply to him.

In his email, Mr. Chiverton concluded by saying: "I am not aware of a policy that prohibits or restricts me, as someone in an appointed position, from the payment of my accrued time. In light of the absence of any policy relevant to my position, my actions did not constitute a violation of any policy, procedure or practice relating to appointed personnel."

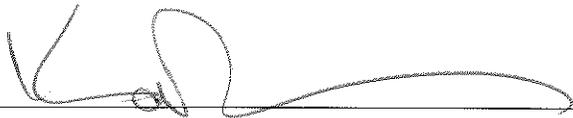
Conclusion(s):

Mr. Chiverton's lack of a formal employment agreement would seem to be an anomaly that could be attributed to the city's present state of administrative chaos. His two immediate predecessors – Steve Shiver and Kelvin Baker – both had provisions written into their contracts requiring them to abide by the same rules as other city employees, with respect to sick and annual leave. And under these rules, Chiverton would not have been entitled to any payout at the time the city issued him payments in excess of \$39,000. Nevertheless, the fact remains that Chiverton did not have a contract.

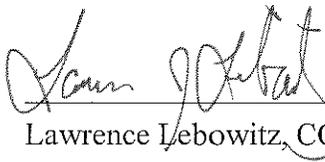
As can be seen from the statement of the city's finance director, Ms. Parchment, the handling of Chiverton's request for converted leave payments was irregular and by-passed the usual controls. As a result, the city compounded its error by overpaying Chiverton – an error that was acknowledged when Chiverton was forced to repay the city more than \$2,500. Although Parchment herself was unsure if Chiverton was entitled to the leave conversions.

It would appear that, at a minimum, the matter should have been referred to the Opa-locka City Commission for a public hearing and vote. This was the opinion of City Attorney Brown, who stated he was never consulted in connection with the questionable payments. This transaction is only the most recent example of fiscally irresponsible actions by city officials, that have led to its present crisis.

After review by the Ethics Commission Advocate it was determined that, although the investigation revealed a highly questionable and inappropriate action by the city's then acting chief executive, no further action would be taken with respect to this matter. Given the lack of a contract provision specifically prohibiting Chiverton from converting his leave and the lack of clarity as to whether the policy that applies to employees would also apply to Chiverton the evidence that Chiverton violated the policy cannot be proved by a clear and convincing standard. Moreover, Mr. Chiverton pleaded guilty to his role in the Opa-locka corruption scandal on Sept. 12, according to reports and is facing a federal prison sentence.



Karl Ross, COE Investigator

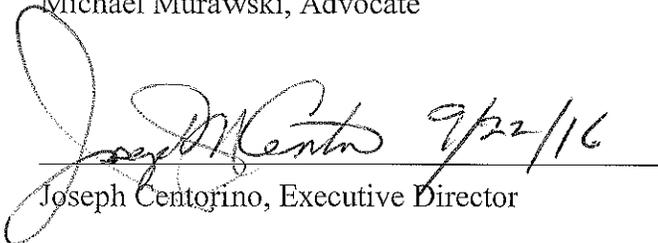


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