

REPORT OF INVESTIGATION

K #: 10-064 Governance Inc.

Date Opened: June 3, 2010

Date Closed:

Name of investigator: Karl Ross
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Allegation:

On May 5, 2010, COE interviewed former North Bay Village City Manager Mathew Schwartz about a number of topics, including his recent firing as city manager and other city business. The latter included an allegation by Schwartz that Vice Mayor George Kane may have exploited his official position in violation of Section 2-11.1(g) of Miami-Dade County Code (The Conflict of Interest and Code of Ethics Ordinance) by attempting to get the city to pay an invoice from Tallahassee-based consulting firm Governance Inc., even though the firm lacked a valid contract with the city and had not performed any services in connection with the invoice. Section 2-11.1(g), in applicable part, states that: "No person ... shall use or attempt to use his official position to secure special privileges or exemptions for himself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the [North Bay Village City Commission]."

Investigation:

On June 3, COE made a public records request to City Clerk Yvonne Hamilton for copies of "any and all payments, along with supporting documents (contracts, resolutions, invoices, check requests, correspondences, emails, etc.) made to Governance Inc., along with copies of any work product associated with said payments. In response, COE received a copy of a consulting agreement dated March 10, 2009, between NBV and Governance Services and a companion resolution by the NBV City

Commission, also dated March 10, 2009. That resolution (No. 2009-17) was introduced at the request of Vice Mayor Kane and adopted by a unanimous vote, 5-0.

The purpose of this agreement was to enlist Governance to help secure Federal Stimulus Package and other funding for major capital projects, including a wastewater force main, a public safety and city hall complex, the development of West Drive Community Park and the re-development of the John F. Kennedy Causeway. Under the terms of the agreement, the city was to pay Governance a \$10,000 retainer “for providing grant services” over a four-month period. That payment was to be received by no later than April 30th of that year. The contract states that the parties would have an option “to enter into a written agreement to extend for an additional two years.”

COE also received copies of several invoices from Governance and corresponding payments from NBV, as follows:

- Payment of \$2,500 on Oct. 9, 2008, for invoice dated Oct. 1, 2008, and for work described as “September Consulting Services.”
- Payment of \$5,000 on Dec. 5, 2008, for invoices dated Nov. 1, 2008 (“October Consulting Services”) and dated Dec. 1, 2008 (“November Consulting Services”).
- Payment of \$2,500 on Jan. 13, 2009, for invoice dated Jan. 2, 2009, and for work described as “December Consulting Services.”

On Aug. 3, COE interviewed former Manager Schwartz regarding the alleged Governance invoice and he advised as follows:

Mr. Schwartz said that the morning after he was fired he found an invoice on his desk to pay \$10,000 to Governance. (He said he tore it up and threw it away.) He said he was aware that, during the past year, Scott Maddox of Governance had called his assistant, Arleen Weintraub (capital improvements manager), on a couple of occasions regarding grant opportunities. Schwartz said he and Weintraub were already aware of the grants and the city had in fact made

applications. He said Maddox's information was largely useless and "after the fact." Schwartz said that he didn't see any reason why the city should pay Governance because, in his view, "They didn't do any work." He also said that Maddox has a residence called Governance House that provides lodging to visiting public officials. He said that Vice Mayor Kane and Comm. Trujillo allegedly stayed there the night before a March 19, 2010, item was placed on the agenda to have him fired. (Note: He was ultimately fired at a subsequent City Commission meeting on April 13, 2010.) He said Mayor Oscar Alfonso sometimes stays there as well. He said that there was no purpose for the contract with Governance since the city is represented in Tallahassee by lobbyist Fausto Gomez. He said Kane tried to give the Governance invoice for \$10,000 to the city's finance director, Jerry Pirri, and that Pirri later told him about the encounter.

On Aug. 4, COE interviewed NBV Finance Director Gerard Pirri concerning the alleged pending invoice submitted by Governance and was advised as follows:

Mr. Pirri advised he has not encountered any recent invoices to the city from Governance Inc./ Governance Services LLC. He said the last such payment was made in January 2009 under a previous contract. He said that Vice Mayor George Kane did query him several months ago as to whether Governance had submitted a new invoice but did not present any such invoice himself. He said he did have a conversation with the former city manager, Mathew Schwartz, about whether the city owed anything to Governance and was advised that the city's sole representation in Tallahassee was with Gomez Barker & Associates. "We haven't been paying anything this year. They haven't been doing anything for us," he said. He said that Kane did not take any subsequent action or speak to him again on this matter. He said the conversation with Kane would have occurred on or about April in the hallway. He said that nobody else was present during the encounter. He said that he is not aware of any pending invoices. Asked about the apparent irregularity in the payments in late 2008 and 2009 (for a contract approved in March 2009), Mr. Pirri advised he had recently visited the City Clerk's office and saw a copy of a contract with Governance for 2007 – dated December 2007 – and that the payments in late 2008 and early 2009 were made pursuant to that contract. He said the payments were not approved retroactively by the contract signed and executed on March 10, 2009.

Pursuant to the information received by Mr. Pirri, COE re-contacted City Clerk Hamilton and requested a copy of the December 2007 contract with Governance. In response, COE received a copy of a consulting agreement dated Dec. 15, 2007, between NBV and Governance Inc. for "grants services" and requiring the city to pay a monthly retainer of \$2,500 during the term of the contract – one year, with an option to renew for two additional years. That contract was signed by Maddox (president of Governance) City Clerk Hamilton, former City Attorney Robert Switkes and former City Manager

Jorge Forte. (Note: According to Pirri all payments were made pursuant to this contract, not to the contract signed and executed on March 10, 2009.)

On Aug. 16, COE interviewed Mayor Alfonso, who advised as follows:

COE interviewed Mayor Alfonso regarding his knowledge of the city's contract with Governance Inc. and any related matters. He said he was not aware of a current contract, but said he had discussed whether the city was obligated to make payments to the firm with former City Manager Schwartz. He said Schwartz told him Governance had not performed any useful services for the city and therefore he felt that the city was under no obligation to make any payments. He said that during the third week of March 2010, he and two other city officials stayed at Governance House, located adjacent the company's headquarters. He said that he and the other two city officials – Kane and Trujillo – had reservations at A Lofts, a local hotel. He said that Kane, acting on his own and without consulting him, made arrangements for the trio to stay at Governance House. He said the three officials wanted to get some face time with lawmakers before the arrival of the Miami-Dade Delegation (“Dade Days”). He said he was scheduled to fly up with the other two on Saturday, but had to delay his flight because of plans he had with a grandson. He said he flew up Sunday evening and that the three of them – who were the only guests during that time – stayed until Thursday. He said the stay was free and the city did not pay for their accommodations. He said he felt uncomfortable with the arrangement, which could potentially violate the prohibition on accepting travel or lodging from a city vendor [Miami-Dade County Code of Ethics and Conflict of Interest Ordinance, Section (w)].

On Aug. 17, COE interviewed Audrey Moore, a grant writer at Governance, and she advised as follows:

Ms. Moore said Governance billed NBV for services provided pursuant to a December 2007 contract and received payments totaling \$10,000 in late 2008 and early 2009. She further advised that Governance continued to provide services under that contract, having been advised that the city intended to grant a one-year extension. Moore said she does not have paperwork relating to the extension, but said an invoice in the amount of \$10,000 was submitted to the city on or about May 2009 for services provided during the four-month period from January 2009 through April 2009. She said the invoice was inadvertently made for \$12,000 but later reduced to the correct amount of \$10,000. She said the City has not made any payment pursuant to this invoice. Moore said she did not know whether Vice Mayor George Kane or any other North Bay Village elected official may have discussed this matter with the account executive, Paige Carter-Smith, during a visit to Governance House on or about March of 2010. Moore said it was possible that the matter might have been discussed, but said she had no knowledge that an invoice was issued to the city through Vice Mayor Kane. Moore said she would check with Ms. Carter-Smith regarding any discussions with City officials. Moore also said she was aware that Kane and other NBV officials stayed at Governance House earlier in the year, but did not know any of the particulars of their visit. She said she would provide a copy of the most recent, unpaid invoice.

Later on Aug. 17, 2010, Ms. Moore provided a copy of what appears to be the invoice in question – an invoice for \$10,000 to NBV and dated May 27, 2009. The invoice is for “Grant Writing Consulting Fee – four months at \$2,500 per month.” Moore sent a copy of the original invoice – which she said incorrectly states the total due as \$12,000 – and a subsequent revised invoice in the amount of \$10,000. (Note: The invoice with the correct amount of \$10,000 was updated on March 11, 2010. Said invoice was faxed on that same date to the attention of Vice Mayor Kane, according to a copy of a fax cover sheet Moore provided to COE The city did apparently did not have this in its files.)

Ms. Moore subsequently provided written clarification to CEO regarding her interview, explaining that, under the Dec. 15, 2007 contract, Governance actually billed NBV a total of \$30,000 (at a rate of \$2,500 per month), with the final such invoice being issued in January 2009. She added that, in January of 2008, Governance worked on television production materials for NBV and billed the city separately for that work. She went on to advise that Kane did meet with Governance account executive, Ms. Carter-Smith, during his visit to Tallahassee in March 2010 and that he was advised that NBV had an outstanding invoice that was nearly a year overdue (May 27, 2009).

Moore said Carter-Smith advised her that Kane suggested she have Governance re-submit the May 2009 invoice for payment. Moore said that Governance’s office manager, Christy Cameron, faxed the “updated” invoice, which remains unpaid. She said Ms. Carter-Smith was traveling but would contact COE regarding the visit to Governance House by NBV elected officials Kane, Trujillo and Alfonso.

On Aug. 25, COE interviewed Governance account executive Page Carter-Smith, who advised as follows:

Ms. Carter-Smith said she did meet all three North Bay Village elected officials when they went to Tallahassee in March, but didn't remember many of the particulars of those conversations because their visit coincided with the legislative session and she was preoccupied with her duties as a lobbyist. She said she recalled that they did stay at Governance House, a private residence next door to Governance Inc.'s main office. (The two buildings are connected, she said.) Carter-Smith said she must have been contacted by one of the officials, possibly George Kane, and that it was agreed they could stay there. She said the residence is open to out-of-town public officials, not just clients of Governance. She said it is similar to Florida House in Washington, D.C. She said that Governance does not charge anything for the accommodations and that rooms include TV, refrigerators and they are wired for Internet and meetings. She said there is no staff and no meals are provided. She said the arrangement is largely "informal."

Carter-Smith said she did recall discussing a pending invoice with the city officials and that they wanted to know why it hadn't been paid. She said the invoice was for services provided pursuant to the March 10, 2009, contract for grant writing services. She said that at the time of their visit (March 13-18) Governance would not have had a valid contract with the City of North Bay Village since the most recent contract had expired after one year (ending March 9, 2010). She said Governance has had a long-standing relationship as a city vendor, noting that Governance provided public relations services during the campaign to approve a local bond-issue for a new city hall and municipal complex and that it has provided subsequent services.

With respect to the fax to Trujillo, Carter-Smith said she delivered an envelope to then Vice Mayor Trujillo some time at or about the close of business, but that she did not know anything about its contents. She said another member of her staff passed her the envelope since she was going to see the NBV officials, telling her only that it was a fax for Vice Mayor Trujillo. She said she did not recall any conversation among the officials about the resignation of the NBV police chief or discussion of the city manager's position. She said that she recalled giving the envelope to Trujillo and that he was relaxing in one of the common rooms along with Mayor Alfonso. She said she did not recall seeing Kane on that occasion.

On Aug. 30, COE again spoke to Finance Director Pirri, who advised that since receiving a copy of the Governance invoice dated May 27, 2009, from COE, he has learned from the city clerk that Governance did have a valid contract at the time the invoice was submitted. He said that the invoice would also presumably be valid. He agreed to research any expenditures for lodging made during the March 2010 trip to Tallahassee by the three NBV elected officials – Alfonso, Kane and Trujillo. Late that day, Pirri contacted COE to advise that no expenses or requests for reimbursement had been submitted for lodging in connection with the March trip to Tallahassee.

On Aug. 30, COE spoke to City Manager Bob Pushkin, who advised:

Mr. Pushkin advised that he did not believe anything improper had transpired with respect to the trip to Tallahassee or the pending invoice from Governance Inc. He said he had asked the finance director, Mr. Pirri, to research the matter and was satisfied that the invoice was handled in an appropriate manner. He said further that he was not aware of any charges for lodging in connection with said trip, noting that the officials would have been required to use the city manager's credit card for hotels and lodging.

Conclusion:

There is insufficient evidence to support the allegation that Vice Mayor Kane may have exploited his official position or otherwise acted improperly in connection with the pending invoice from Governance Inc. The COE investigation found that Governance did have a valid contract at the time it first submitted its invoice on or about May 27, 2009. Whether the charges were appropriately billed and whether Governance is owed anything by the city is another matter, over which COE lacks jurisdiction. There is also no evidence that Vice Mayor Kane attempted to exert undue influence in this matter. COE did confirm that Governance account executive Paige Carter-Smith spoke with Kane about the invoice during a March 2010 trip to Tallahassee in which Kane and two other NBV elected leaders stayed at Governance House, an affiliated residence. COE also confirmed that Kane discussed the matter with NBV Finance Director Jerry Pirri, but Pirri told COE that Kane only mentioned the invoice in passing, inquiring as to whether it had been paid, and said that Kane has not mentioned it since.

Lastly, after consultation with the Independent Ethics Advocate, it does not appear that Kane or either of the other two NBV officials violated the Miami-Dade ethics code as it relates to accepting travel or related expenses from a city vendor [Subsection (w)], given that Governance's contract with the city expired four days before the officials arrived in Tallahassee and Governance, therefore, was not a vendor at the time. It has been determined, moreover, that the officials would not be required to report the free

lodging as a gift [Subsection (e)] because any such gift would be exempted so long as it was solicited by the officials in connection with official NBV city business.

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