

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:
“D.C. Character Development and
Citizenship Education
Initiative of 2014.”

Administrative Hearing
No. 15-01

Re: Approval of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Wednesday, January 7, 2015, pursuant to D.C. Official Code § 1-1001.16(b)(1). It involves a finding by the Board that the proposed initiative, the “D.C. Character Development and Citizenship Education Initiative of 2014” (hereinafter referred to as “the Initiative”), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1). Edwin Powell appeared before the Board as the proposer of the initiative *pro se*. Chairman Deborah K. Nichols and Board Member Devarieste Curry presided over the hearing. Also present was General Counsel Kenneth McGhie.

Statement of the Facts

On November 17, 2014, Edwin Powell filed the Initiative pursuant to D.C. Official Code § 1-1001.16(a) (2012 Repl.). The Initiative establishes a Character Development and Citizenship Education Council in the District of Columbia (hereinafter referred to as “Council”). This newly created Council will be tasked with:

1. Assessing the need to integrate Character Development and Citizenship Education into public and public charter schools in the District of Columbia.
2. Making recommendations on how a non-religious Character Development and Citizen Education curriculum can be implemented in the District of Columbia Public and Charter School systems. This curriculum will focus on critical issues facing the youths of the District of Columbia including but not limited to

bullying, drug use, peer pressure, life focus, ethics, respect, health, self-esteem, and the importance of positive attitudes and influences.

3. The Council shall complete its work and submit recommendations to the Mayor, the Council of the District of Columbia, the Office of the State Superintendent for Education, the Chancellor of the District of Columbia Public Schools and the Executive Director of District of Columbia Public Charter Schools within twelve (12) months following its creation.
4. The Council shall have a sunset provision that will take effect twelve (12) months following its creation.¹

On November 21, 2014, the Board's General Counsel requested that the Office of Documents and Administrative Issuances (hereinafter referred to as "ODAI") publish in the D.C. Register a "Notice of a Public Hearing: Receipt and Intent to Review" (hereinafter referred to as "the Notice") with respect to the Initiative. ODAI published the Notice in the D.C. Register on November 28, 2014. *See* 61 D.C. Reg. 49 (2014). On November 21, 2014, the General Counsel's Office sent the Notice to the Attorney General for the District of Columbia (hereinafter referred to as "the Attorney General") and the General Counsel for the Council of the District of Columbia inviting them to comment on the issue of whether the Initiative presented a proper subject.

On December 19, 2014, the interim Attorney General submitted comments to the Board stating that the Initiative was a proper subject. "[T]he Office of the Attorney General for the District of Columbia has reviewed the Initiative and concluded that it is a proper subject for an initiative in the District of Columbia."²

¹ Initiative proposed Summary Statement.

² Opinion of the District of Columbia interim Attorney General, Eugene A. Adams, Esq. (Dec. 19, 2014) p. 1.

Analysis

Pursuant to D.C. Official Code §1-1001.02(10) (2012 Repl.), “[t]he term ‘initiative’ means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.” The Board may not accept an initiative measure if it finds that it is not a proper subject of initiative under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;³
- (B) The petition is not in the proper form established in subsection (a) of this section;⁴
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;⁵ or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.⁶

D.C. Official Code § 1-1001.16 (b)(1) (2012 Repl.).

The District of Columbia Court of Appeals has determined that “a measure which would intrude upon the discretion of the Council to allocate District government revenues in the budget process is not a proper subject for initiative. This is true whether or not the initiative would raise

³ The verified statement of contributions consists of the statement of organization required by D.C. Official Code § 1-1163.07 and the report of receipts and expenditures required by D.C. Official Code § 1-1102.06.

⁴ Subsection (a) of D.C. Official Code § 1-1001.16 provides that initiative measure proposers must file with the Board “5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative[.]”

⁵ Chapter 14 of Title 2 of the D.C. Official Code contains the District of Columbia Human Rights Act, the intent of which is to secure an end in the District of Columbia to discrimination for any reason other than individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.

D.C. Official Code § 2-1401.01 (2012 Repl.).

⁶ D.C. Official Code § 1-204.46 (2012 Repl.) deals with budgetary acts of the D.C. Council.

new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d 3 at 19 (D.C. 1991) (“*Hessey*”). In order for an initiative measure to pass muster, the measure cannot: block the expenditure of funds requested or appropriated; directly appropriate funds; require the allocation of revenues to new or existing purposes; establish a special fund; create an entitlement enforceable by private right of action against the District of Columbia; or directly address and eliminate any revenue source. Finally, the mandatory provisions of the initiative may not be precluded by any lack of discretionary funding by the District. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005) (“*Campaign Treatment*”).

In the instant case, the proposed measure does not appropriate any funds. As the Attorney General opined: “[t]he test . . . is whether the initiative requires expenditures for a program or leaves authorization of funding to the Council’s discretion.” (A.G. op. at 2) The Initiative authorizes eligibility for reimbursement expenses pursuant to existing law, but Members are not compensated for their service on the Council. Accordingly, the Initiative authorizes a program without the allocation of funds beyond *de minimis* reimbursement of expenses pursuant to existing law.

Conclusion

The proposed measure avoids the appropriation of District of Columbia funds by specifically excluding member compensation for service on the Council. Further it does not on its face appear to conflict with any of the prohibitions codified in the Initiative Procedures Act and applicable case law.

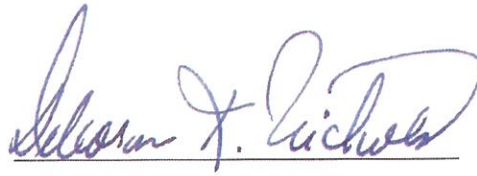
Accordingly, "D.C. Character Development and Citizenship Education Initiative of 2014" is a proper subject for an initiative in the District of Columbia pursuant to the Initiative Procedures Act.

For the foregoing reasons, it is hereby:

ORDERED that the proposed initiative, the "D.C. Character Development and Citizenship Education Initiative of 2014," is **ACCEPTED** pursuant to D.C. Official Code § 1-1001.16(b)(2) (2012 Repl.).

January 16, 2015

Date

A handwritten signature in blue ink, reading "Deborah K. Nichols", written over a horizontal line.

Deborah K. Nichols, Esq.

Chairman, Board of Elections