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## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: Summary of Citizen Concerns

**Last Prepared By:** TAM, 9/27/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

Purpose/Conclusion: To exhibit the details of the citizen concern regarding the sale of the MLK property.

Source: SAO Hotline database.

#### **Record of Work Done:**

##### Concern #1

The citizen's concern was submitted to our office via the SAO Hotline. Although the citizen provided their name and contact info, the citizen did not waive confidentiality.

The details of the concern, extracted from the SAO Hotline Database, are as follows:

### **H-11-137 Details Information**

#### **What state or local organization is involved?**

Seattle Public Schools

#### **Please provide a detailed description of the assertion or outstanding achievement, including who, when, where, what, how and how much.**

I believe the Auditor has been apprised of this situation but I wanted to add my voice to the pleas for the Auditor to look into this situation. Seattle Public Schools recently completed a sale of school property to the First AME Church. It may not be possible at this point to undo that sale but we all need clarity about whether or not a senior district staff member had undue influence and/or knowledge of the sale. That senior staff member is Fred Stephens who now works at the Department of Commerce. Mr. Stephens left the district in June 2010 to work at DOC. Mr. Stephens was and continues to be a member of First AME Church. His father was a pastor there and when Mr. Stephens' son died, the funeral was held there. He has deep ties to this church. This issue is whether Mr. Stephens used his position at SPS to favor First AME's bid (which was the lowest of three bids). According to a district document in May 2010: Thus, comparing the Bush lease offer and the CCC@MLK and FAME offers of \$2.4M on an "apples to apples" basis, the Bush lease offer is worth \$7.3M more, or over four times as much." This may mean that between the two more important issues in the sale - the funding and community use - the district did not get best funding deal. There are several issues that stand out and need attention: - Mr. Stephens recused himself and yet continue to receive e-mail updates on the issue. (KING 5 tv has seen e-mails supporting this accusation.) It would have been one thing to be receiving the same information as his church but he was getting information from the district side as well. He could have easily used that inside knowledge to help their bid. - the role of Rep. Sharon Tomiko-Santos, Senator Eric Pettigrew and Rep. Adam Kline needs to be looked into as well. They "found" more money for the First AME Church bid from state funds. The majority of the money for the sale of the building did not come from the church itself.



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They had to request that the district reopen the RFP after the deadline had passed. - the Board asked for no presentations and so the recommendations for the sale came from senior staff. This seems wrong for the Board to conduct this sale without proper oversight. - What is even more disturbing is that a previously allocated \$1M came from the Department of Commerce's Community Schools program. Fred Stephens left SPS to work for the DOC by the end of June 2010. Many of these dots line up and it has the appearance of favoritism to First AME Church. This is also troubling given that many of the same players are involved who were also involved in the Small Business Works audit - Stephens, Ron English, Sharon Tomiko-Santos (who helped steer legislation supportive of Silas Potter's goals). The district did do its oversight on that issue and the worry is that this sale was not conducted properly or with less Board oversight than it should have.

**How did this issue come to your attention?**

I write for the education blog, Save Seattle Schools. Many of my readers had called this issue out. I keep track of capital issues and so this had come onto my radar as well.

**What employee(s), contractors, etc., were involved in the assertion or achievement? Please include employee titles if possible.**

Fred Stephens, former head of Facilities for Seattle Public Schools, now a deputy in the Department of Commerce Ron English, SPS legal counsel, who oversaw the bidding process and provided the staff recommendations to the Board Sharon Tomiko-Santos, state representative Eric Pettigrew - state senator Adam Kline - state representative

**Please provide the names of any witnesses to the assertion or achievement, if possible.**

All the members of the School Board had the opportunity to see presentations by each of the three bidders. It is unclear if any did but if they did, they would be witnesses. I don't know who attended the various briefing sessions, discussion or public workshops (referenced by Director Michael DeBell in the KING 5 report) but I'm sure there are others who would know.

Please provide any additional details or comments that would help us understand your assertion or achievement. (The citizen did not write anything in this section)

**Concern #2 H.2.PS**

The second citizen's concerns regarding the MLK property sale are:

1. Does the proposed provision of state funds to buyers of the M.L. King property constitute a gift of state funds, and thereby violate prohibitions against giving gifts of public funds to private entities, as contained in Article VIII Sections 5 and 7 of the Washington State Constitution, or other statutes?
2. Do the District-posted summary pages from an appraisal of the M.L. King school site reflect the operative appraisal for the site, was the appraisal properly conducted, and does the proposed sale price meet the requirements stated by RCW 28A.335.120?

These concerns are included in H-10-551.

As of 8/8/2011 there are a total of five (5) hotline concerns about the sale of this property (the two above, plus 11-167, 11-299, and 11-314) Aside from the two hotline submittals detailed above, the other three concerns submitted simply say they are concerned/outraged about the sale, hoping that SAO will take action to "correct" this sale. As noted elsewhere, SAO does not have the authority to "overturn" the sale or "make FAME return the property" or "make the District award the sale to the highest bidder."



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An underlying concern, not expressly stated in these additional concerns, is that somehow this sale violates separation of church and state. As noted in our response to H-10-545, our office does not have the authority to audit whether the state funding violated "principled or statutory separation of church and state." That is a legal determination that is beyond our authority. We will not investigate this aspect any further, and will not respond further to this underlying concern since we have already addressed it in our response to H-10-545.



## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: Strategy and Summary of Results

**Last Prepared By:** TAM, 9/27/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

**Purpose:** To determine the strategy and procedures we will follow and conduct in performing this hotline investigation. To summarize the results of our work regarding the sale of the MLK property

**Conclusion:** We summarized our results in the Record of Work Done below, and recommend the following:

1. We recommend that the District develop and establish a process by which District employees can document an official recusal for themselves whenever there is the possibility of a conflict of interest, whether that conflict be in-fact or appearance. That recusal information should then be provided to other District staff so they know not to include recused persons in communications related to the situation for which the recusal occurred. See [H.2.60](#).

#### **Record of Work Done:**

##### Strategy and Procedures

To address the citizen's concerns of whether or not a senior district staff member (Fred Stephens) had undue influence and/or knowledge of the sale, we will approach this examination by conducting the following procedures:

Review emails of District staff (and former District staff) and executives involved in the process of making a recommendation to the Board as to which proposer should be awarded the sale of the property.

Conduct interviews of District staff (and former District staff) and executives and other persons involved in the process of making a recommendation to the Board as to which proposer should be awarded the sale of the property to gain an understanding of that process.

Review/examine relevant documents such as the original RFP, the submitted proposals by parties interested in the property (but not for the purpose of evaluating the proposals or comparing them or determining which proposal was the better one), documentation from the Washington State Department of Commerce on the funding provided from the Community Schools program, presentation PowerPoints shown to the Board, etc.

Determine, based on the results of the above procedures:



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- if Fred Stephens was involved in the decision to sell the MLK Elementary property to First A.M.E Church, or if he had knowledge such that he would have had an undue influence on the sale of the property.
- if Fred Stephens passed on inside knowledge of the sale process to anyone at First A.M.E.
- the selection process that was followed to reach the decision to sell the property to First A.M.E., while also determining if the District complied with state law and their own policy on the sale of surplus property.
- if the funding provided by the state Department of Commerce was a gifting of public funds.
- if the District-posted summary pages from an appraisal of the M.L. King school site reflected the operative appraisal for the site, was the appraisal properly conducted, and does the proposed sale price meet the requirements stated by RCW 28A.335.120?

Or, put in the form of questions, our investigation was intended to answer the following questions:

- • Was the School District's former Executive Director of Facilities involved in the decision to sell the former Martin Luther King, Jr. Elementary School property to the successful bidder?
- • Did he have knowledge such that he would have had an undue influence on the sale of the property and the decision-making process to favor the successful bidder?
- • Did the former Executive Director of Facilities pass on inside knowledge of the sale process to anyone related to the successful bidder?
- • Did the District-posted summary pages from an appraisal of the M.L. King school site reflect the operative appraisal for the site, was the appraisal properly conducted, and did the proposed sale price meet the requirements stated by RCW 28A.335.120?
- • What was the process that was followed to reach the decision to sell the property to the winning bidder, and did the District comply with state law and their own policies?
- Was the funding provided by the Department of Commerce for this purchase a gifting of public funds?

As part of our investigation into the above bullet points, we need to make it clear that we will not be determining whether one proposal was better than another, if the District evaluated the proposals "correctly", or whether the "right" group was awarded the sale of the property. The decision as to whom to sell the property rests with the District Board, State law and District policy give the School Board the authority to decide to whom it will sell its property, if the purchaser pays the minimum price established by law. We will not second guess their decision in this matter. We will be focusing solely on the items stated above.

### Results

1. We did not find any evidence that Fred Stephens was involved in the decision to sell the MLK property to First A.M.E.
2. We did not find evidence that Fred exerted undue influence on the sale of the property and decision making process.
3. We did not find any evidence that Fred Stephens passed on any inside knowledge of the sale process to anyone at First A.M.E.
4. We determined that the District complied with state law and their own policy when selling the MLK property.



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5. We determined that the provision of state funds to First AME for the purchase of this property was not a gifting of public funds.
6. We determined that the District-posted summary pages from an appraisal of the M.L. King school site reflected the operative appraisal for the site, and the proposed sale price met the requirements in state law at RCW 28A.335.120. We do not have the audit authority to determine whether the appraisal was properly conducted. However, we noted the appraiser is certified by a national institute as an MAI and is licensed as a certified general real estate appraiser in the state of Washington.

See [H.2.60](#)

Under citizen concern #2, item 2 questions whether the property appraisal was properly conducted. We do not have the authority to determine if a property appraisal was properly conducted. The District followed state law by obtaining a market value appraisal. There was an appraisal done in January 2009, dated January 28, 2009, where the value of the property was determined to be \$2,565,000. There was a second appraisal, an "Update Appraisal", done in September 2010, dated September 30, 2010, where the value of the property was determined to be \$2,410,000. See [H.2.57](#) The appraisal was done by the firm Allen Brackett Shedd, and the individual appraiser has the certification of MAI, and is licensed in Washington as a Certified General Real Estate Appraiser (we checked the Department of Licensing website to verify this information on 8/4/2011).

RCW 28A.335.120(5) states: "Any sale of school district real property authorized pursuant to this section shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in \*RCW 74.46.020 or a general real estate appraiser certified under chapter 18.140 RCW selected by the board of directors and no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the real estate appraiser: PROVIDED, That if the property has been on the market for one year or more the property may be reappraised and sold for not less than seventy-five percent of the reappraised value with the unanimous consent of the board." As a side note, "RCW 74.46.020 was amended by 2010 1st sp.s. c 34 § 2, deleting the definition of 'professionally designated real estate appraiser.'" As noted above, the appraiser is licensed by the state Department of Licensing.

The proposed sales price for the property of \$2.4 million was 93.6% of the first appraisal amount, and 99.6% of the September 2010 appraisal amount. The sales price exceeded the minimum 90% required in RCW 28A.335.120.



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## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: Process and Timeline of MLK sale

**Last Prepared By:** RRD, 6/24/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

**Purpose:** To determine our understanding of the events that led up to the sale of the former MLK Jr. Elementary School.

**Source:** Referenced throughout ROWD

**Conclusion:** We have documented our understanding of the timeline of events leading up to the sale of the MLK property.

#### **Record of Work Done:**

Process and Timeline of events leading up to the sale of the MLK property.

Based on information gathered from interviews (H.2.PS), email reviews (H.2.PS), and our review of relevant hard-copy/on-line documents, we developed a timeline of events for the sale of Martin Luther King (MLK) school to First AME Church. See below:

- In January 2007, the Board declared the former MLK School surplus under the Facilities Master Plan. See H.2.14.
- In the 2008 Supplemental State Capital Budget, the legislature appropriated state monies for the acquisition of surplus school buildings to be converted into community facilities. MLK School was one of the eligible schools for the grant funding. The grant monies are only available to local governments, nonprofit organizations, nonprofit early learning providers, and tribal governments. See H.2.2 for a copy of the 2008 supplemental state capital budget.
- In March 2008, the District amended Board procedure H02.01 "Closed Facilities Procedure". Before March 2008, this procedure was last updated in June 2004. We compared the June 2004 procedure to the March 2008 procedure. We learned that the June 2004 procedure allowed the District to rent surplus property at a discount to no more than six community groups. Per H02.01, community groups must meet criteria to qualify for the rental discount. The March 2008 procedure changed the definition of criteria from "Youth, family, and adult education and activities" to "Youth education activities". The March 2008 procedure also developed specific procedures for disposition of non-essential (surplus) property. These procedures also allow the District to give discounts to community groups for the sale of District property. These updated procedures about the disposition of non-essential property states in part:
  - In selected circumstances, the District may decide to negotiate directly with a selected prospective tenant or group. Such action will require School Board approval. Such action shall be taken only
    - (1) when the prospective buyer either
      - (a) would use the site exclusively or primarily (at least 50%) to provide services that directly support and substantially benefit Youth Education or



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(b) is a governmental agency or nonprofit organization that provides community or social services in the community and neighborhood surrounding the school and

(2) where no alternative nearby location exists where such service can be provided. Services that are deemed to support Youth Education include before and after school programs; preschool, child care and infant care; tutoring, reading, and other supplemental education classes; dance, art, and sports programs directed to children; and similar activities primarily directed to enhance and enrich childhood experiences. Where more than one prospective purchaser seeks to buy or long term lease, priority will be given based on comparison of the degree and quality of K-12 education support provided, in particular to low income youth and to the immediate area surrounding the site.

See [H.2.44](#) for the agenda of the March 26, 2008 Board meeting, and the Board Action Memo at <http://www.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/area/board/07-08agendas/032608agenda/facilitiesreport.pdf>, and the policy they voted on that evening at <http://www.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/area/board/07-08agendas/032608agenda/h02.01.pdf>.

Note that this policy/procedure change occurred in March 2008, which is over one year before the RFP for the MLK property was issued. The Board Action Memo was from the Superintendent, and the staff person identified in the memo is Fred Stephens. It makes sense that he was the lead staff person on this policy/procedure change since he was the director of facilities, and does not, in our judgment, indicate that he was involved in the MLK property sale process. Between February 2008 and June 2009, the MLK School property went through a School Use Advisory Committee (SUAC) process, just like other former schools the Board had declared surplus property in prior years. The SUAC process is required by City of Seattle Municipal Code, Chapter 23.78, Establishment of Criteria for Joint Use or Reuse of Schools. See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=23.78&s2=&S3=&Sect4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=1&Sect6=HITOFF&f=L3%3B1%3B23.78.002.SNUM>. The SUAC process is required by City of Seattle Municipal Code Chapter 23.78 so that the owner of a public school structure may apply for the establishment of criteria for nonschool use of an existing or former public school structure. The differences between the sale of the MLK School and the other schools were MLK School had no tenants or obvious buyers, and did not have zoning approval for a community center. In the previous sale of school buildings (Crown Hill Elementary, Fauntleroy School, University Heights, and the Allen Building), the buyers had been tenants of the schools, and in some instances for over 20 years. The purpose of the MLK SUAC was to have community engagement about how the building should be used. After the SUAC process was completed, the committee's recommendations were sent to the City of Seattle's Department of Neighborhoods. These recommendations include approved uses for churches, schools, day-cares, community centers, and other activities. The Director of the City of Seattle's Department of Neighborhoods approved the MLK SUAC recommendations in January 2009, see [H.2.15](#). The Director's report and decisions were appealed by the Seattle Committee to Save Schools. The Hearing Examiner has jurisdiction over these types of proceedings, and in the end, the Hearing Examiner agreed with the recommendations from the Department of Neighborhoods Director, see [H.2.16](#), and denied the appeal.

- On July 15, 2009 and July 22, 2009, the District advertised in the Seattle Times for the public hearing that was held on July 29, 2009, regarding the District's intent to sell MLK School. This notice complies with state law at RCW 28A.335.120. See [H.2.32](#).
- On August 17, 2009 and August 24, 2009, the District advertised the availability of RFP documents for the sale of the MLK school property in the Seattle Times. Again, see [H.2.32](#), pages 4,5, and 6. This complies with District Board procedure H02.01(IV)(B)



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where it states, in part, "Sale or long-term lease of closed buildings will be accomplished through a publicly advertised request for proposals process."

- A few days prior to October 15, 2009, the District formed a selection committee for the purposes of evaluating the proposals, and making a staff recommendation to the Board. The committee comprised of Don Kennedy (chair), Ron English (SSD Property Manager and Deputy General Counsel), Holly Ferguson (Director of Policy and Government Relations), and Chanin Kelly-Rae (a member of the public that was involved with the SUAC process and selected by the District to be involved with the selection process).
- On October 15, 2009, the District received proposals from the Bush School, Hamlin Robinson School, First AME Church and the Citizens for a Community Center at MLK (CCCatMLK). First AME Church and CCCatMLK relied heavily on state funding as source of funds to purchase the property, and were seeking "special consideration" from the District. Board policy gives "special consideration" to community use buyers allowing the District to not take the highest bid if a bidder can use 50% or more of the building to support youth education activities. State law at RCW 28A.335.120 requires school districts to accept an offer of at least 90% of the appraised value. At this point in time, the state had only appropriated \$1 million, which was not within 90% of MLK's appraised value. Therefore, during this time-period, neither organization had enough funds to pay the full amount offered for MLK School. The Bush School offered substantially more money than the appraised value, and was not seeking special consideration. The Hamlin School offered less money than the Bush School, and was not seeking special consideration. Based on these facts, the Hamlin School was not a contender because if the District elected to accept the highest bid, and not award the sale based on "special consideration", they would have sold the property to the Bush School not Hamlin because Bush offered more money.
- October 16, 2009 – CCCatMLK submits Public Records Request for copies of other bidders' proposals. This prompted the District to post all four proposals on the District's website, in the middle of the RFP process. After CCCatMLK requested copies of the 3 other proposals, one day after the first due date, Ron English, the property manager and Deputy General Counsel, told us that he weighed whether there was any exception under the Public Records Act that would allow him to withhold the submitted bids/proposals from disclosure. Traditionally, their practice would dictate that such proposals would not be disclosed until after an evaluation of each proposal is done. But, he concluded that there was no exception that would allow him to withhold the documents from a public records request. But, before releasing the other proposals to CCCatMLK, the District notified the other bidders and told them that they could try to get a court order preventing such a release as allowed by state law. None of the other bidders opted to go to court. Instead, the others submitted their own records requests for the other competing bids. To address the multiple requests for all the bids, Ron decided to post all the submitted bids on the District website, reasoning that if each bidder could see all the other proposals/bids, then everyone, including the public, should be able to see them as well. He said he did this in the interests of transparency. Thus, CCCatMLK sought an advantage that others had not requested; in an attempt to be fair, Ron posted the proposals, thus nullifying any advantage for one proposer.
- On October 28, 2009, the Hamlin School sent a letter to the District acknowledging the notice by the District of the intent to release the Hamlin Robinson School's proposal to the other bidders. They said that they would not seek a court order to prevent such a release. However, the letter conveys their displeasure over the District's decision to release bid information in the middle of the public procurement process. They were also concerned that this would result in the proposal review process to become highly publicized and political. See [H.2.24](#).
- In the beginning of November 2009, District emails reveal that Holly Ferguson, Ron English, and Chanin Kelly-Rae (members of the selection committee minus Don Kennedy), were prepared to make the recommendation to the Board that they sell the



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property to the Bush School. Between November 6 and November 20, there was a meeting with members of the selection committee in Don Kennedy's office to discuss MLK School options. Based on our interview with Chanin, we were told that Don stressed that the District needed to take a closer look at "special consideration" because there may be other benefits by selling to a community group, and did not want the recommendation solely based on money. He wanted to look at the proposals again through the lens of "special consideration". An email dated 11/18/2009 from Ron English to the members of the selection committee also states the following, in part: "At the conclusion of the Finance Committee meeting last week, we were asked to go back to the various proposers and get them to modify their proposals, to see if we could get a "real" community center operation at the site. The Committee wasn't saying that they wouldn't take the Bush proposal, but wanted us to try harder to get actual community use at the site."

It appears the decision to go back out for a second round of proposals was not only at the direction of Don Kennedy, but also at the direction of the members of the Finance Committee.

- On November 20, 2009, the District requested clarifications from each bidder. See [H.2.50](#), [H.2.51](#), [H.2.52](#), and [H.2.53](#). The bidders revised their original proposals and submitted them to the District on December 1, 2009. Since the District was looking at the proposals again through the lens of "special consideration", and the fact that both proposals submitted by the two community groups did not meet special consideration requirements, it appears the District requested clarifications from each bidder in hopes that the community groups would improve their bid proposals to meet special consideration requirements. The District already had an offer from the Bush School that substantially exceeded the MLK School appraisal.
- December 28, 2009 - the Selection Committee writes a draft report on their analysis of the second-round of proposals. See [H.2.48](#).
- At the January 6, 2010 Board work session, the selection committee presented their analysis of each bidders proposal to the Board. The presentation pointed out that First AME Church & CCCatMLK proposal's sought "special consideration" from the District. The evaluation conducted by the selection committee also noted both proposals did not qualify for the discount because each proposal did not demonstrate that over 50% of the building would be used to support youth education activities. Since neither organization met "special consideration" requirements as outlined in Board policy H02.01, the alternative would be to accept the highest bid. After the selection committee finished their presentation, a board member was quoted as saying "we are not going to sell to a rich private school". We questioned Board member DeBell about this statement, and he could not recall whether a Board member made that statement or not. He told us everyone decided to give the two community groups another opportunity to bid on MLK School, giving the community groups one last opportunity to submit proposals that meet "special consideration" requirements. (It appears the District was accommodating the community groups by eventually giving them three opportunities to modify their bid proposals to demonstrate that over 50% of the building would be used for youth education activities, thus, allowing the District to not accept the highest offer, which would have been the Bush School.)
- Between January 7, 2010 and May 2010, the process for selling this property came to a halt. The community groups did not have enough money to buy the building. Therefore, the District was unable to sell MLK School to a community group regardless if they met "special consideration" or not. The District was in contact with legislators and knew that legislators were planning on allocating more money for the



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MLK purchase. This additional money would enable the District to sell the property to a community group because the amount would exceed 90% of MLK School's appraised value (i.e. the District must sell the property for at least 90% of its appraised value in order to comply with state law - RCW 28A.335.120 (5)).

- On January 14, 2010 the CCCatMLK group sends an email to Ron English (and copies City, County, State, and Federal legislators (or their staff), and members of the media) as a rebuttal to his presentation on the Selection Committee's Comparison of Proposals at the January 6, 2010 Board work session. See [H.2.49](#).
- February 4, 2010 - Susan Llewellyn and Don Kennedy meet with CCCatMLK at the request of CCCatMLK. Susan Llewellyn provided minutes of that meeting. The minutes do not indicate a clear purpose of the meeting (there is no sentence saying what CCC wanted to meet for), but it appears they wanted to meet to address issues they saw with the selection committee's summary report that had been given to the Board on January 6, 2010. On February 22, 2010, Susan, Don, and Holly Ferguson met with First AME at the request of First AME. Susan also provided minutes of this meeting. The minutes indicate that First AME wanted to go over revisions to their proposal for purchasing the MLK site. See [H.2.56](#)
- As of 2/26/2010, the District was working on legislative language that would have provided \$1.5 million to the City of Seattle to buy the building and enter into a long-term lease with a community-based master tenant that will use the building exclusively or primarily for youth education and have a covenant for 40 year use. Between this date and late March, the topic of the City buying the property appears to have been dropped since we no longer saw any emails or other documentation that discussed this.
- April 2010 (approximate), the state legislature appropriated \$1.5 million for the acquisition of MLK School, in addition to the \$1 million appropriated in the 2008 state budget. The total money set aside for the MLK purchase was approximately \$2.5 million.
- May 17, 2010: three legislators (Senator Adam Kline, Representative Eric Pettigrew, and Representative Sharon Tomiko Santos) wrote a letter to the District, attention to Superintendent Goodloe-Johnson. In this letter they ask the District to re-open the RFP process for the MLK property sale due to an increase in state funding. See [H.2.30](#). The District reopened the bidding for the sale of MLK school. The District received four proposals by the June 30, 2010 deadline from First AME Church, CCCatMLK, the Bush School, and the Central Area Development Association (CADA). [*Auditor Note:* The purpose of the RFP and selection process is to provide full and open competition, transparency, and accountability. While the District's RFP process was supposed to bring transparency and accountability to reassure citizens that the District complied with state law and was impartial throughout the entire process, it appears the District was being influenced or pressured by state legislators to award the sale of the MLK school to a community group instead of a private organization, (i.e. The Bush School).] Examples of this are documented at [H.2.PS](#). This explains why the District asked the bidders to resubmit bids three times (i.e. the community groups needed to improve their bids if the District was to not take the highest bid), why the process came to a halt for four months between January and May of 2010 (i.e. the legislature had not appropriated enough money for the purchase of MLK School), and why three legislators requested the District to reopen the bid process once enough money was set aside in the state capital budget. There is also a memorandum written by the Selection Committee on May 17, 2010 titled "Developments since January 6, 2010." This memorandum was issued with Addendum 5, also issued on May 17, 2010, and is on page 223 at



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[http://district.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/Departmental%20Content/general%20counsel/property%20management/mlk\\_addendum.pdf?sessionid=9a4c48493e3f6399fa8ed83a20e6eb57](http://district.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/Departmental%20Content/general%20counsel/property%20management/mlk_addendum.pdf?sessionid=9a4c48493e3f6399fa8ed83a20e6eb57). Addendum 5 starts on page 221 of the same document.

- On June 9, 2010 the CCCatMLK group sent a letter to the District outlining certain objections related to the Selection Committee Memorandum dated May 17, 2010 and Addendum 5. The issue with Addendum 5 is that the email the District sent out to provide Addendum 5 included Fred Stephens on the distribution list. They ask that the letter be treated as a protest. See [H.2.47](#). (However, the email announcements for the addendums, from what we've seen, were sent out to a list of approximately 154 email addresses in the BCC field of the emails, which would not be visible to all recipients. Carole Rusimovic was able to provide us with a copy of the email delivery receipts, showing that this specific email was addressed to 179 separate emails, including CCCatMLK representatives, as well as FAME representatives.) See [H.2.55](#)
- On June 17, 2010, Bob Westgard, Materials Manager, responds on behalf of the District to the 6/9/2010 letter from the CCCatMLK group, noting that the protest was untimely (late), the protest is denied, and that they can appeal the denial of this protest to the Superintendent. The denial letter also addresses the issue of Fred receiving the email that included Addendum 5 as an attachment. It is noted in this letter that Mr. Westgard knows that Fred is a member of FAME, and that Don Kennedy previously directed that neither Fred or any member of his staff should have any involvement in the selection process or receive information before that information becomes public. He states that the fact that Fred was copied on the email issuing the Addendum to the public indicates that he did not receive the information before it went public, and that there is nothing improper with Fred receiving information that is publically available. See [H.2.46](#).
- June 25, 2010, the District issues Addendum 6 which changes the language in the RFP with regard to whom to address protests. The RFP had said to address protests to Fred Stephens. This Addendum officially changed the protest contact to Bob Westgard; although, the CCCatMLK group was told previously on November 20, 2009 that Fred Stephens was not "in any manner involved in the decision process, and will not be involved in any protest" and that they should address any protests to Mr. Westgard, and provided the CCCatMLK group an address at which they could send protests to Mr. Westgard. See [H.2.51](#)
- On August 24, 2010 the Selection Committee writes a memorandum summarizing an analysis of the proposals received June 30, 2010. See [H.2.54](#).
- August 24, 2010, Ron English, Don Kennedy, Noel Treat, and the Superintendent met in the Superintendent's office to discuss staff recommendations. Ron and Noel told us in separate interviews that Ron's recommendation to the Superintendent was to seek the highest monetary amount, and sell the MLK School property to the Bush School. The Superintendent did not echo these sentiments, and rejected that recommendation. Based on interviews with Ron and Noel, we were told that the Superintendent wanted to sell MLK School to First AME Church after running through the analysis one more time, saying something to the effect "we haven't done a lot of good things for the African American community lately, so let's give them this one." Ron updated his PowerPoint presentation based on the discussion with the Superintendent to include a staff recommendation to sell to FAME on the last slide. Noel Treat was also present at that meeting and recalled the Superintendent saying something like "The African American Community has not been very happy with me as Superintendent, and maybe they will be surprised by this and be happy." During an interview with the Superintendent, she said in reference to those statements "That's a lie".



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- September 9, 2010, Ron's PowerPoint presentation was presented at the audit and finance committee meeting on 9/9/10. The staff recommendation from the power-point read "Sell the property to First AME Church." Ron said that he did not read the recommendation because he was uncomfortable with it and believed the District should sell to the Bush School. The audit and finance committee agreed with the staff recommendation and moved the vote to the full board.
- September 24, 2010, CCCatMLK filed a protest to the School District's decision to sell the MLK School to First AME Church. See protest letter at [H.2.39](#).
- September 29, 2010, Bob Westgard responded to CCCatMLK's protest letter, and informed them that their protest was denied. See [H.2.40](#).
- October 1, 2010, the CCCatMLK group appealed to the Superintendent the District's decision to deny their protest letter. See [H.2.41](#)
- October 6, 2010, the Superintendent denied the CCCatMLK group's appeal. See [H.2.42](#). Also on that day, the recommendation that the District should sell MLK School to First AME Church was introduced to the full School Board. See [H.2.17](#).
- On October 11, 2010 the CCCatMLK group sent an email to the District, that included an attachment addressed to Ron English protesting yet again the staff recommendation that the Board vote to sell the property to FAME. See [H.2.45](#)
- October 20, 2010, the President of the CCCatMLK group sends a letter directly to the SSD Board (in response to a letter from Don Kennedy dated 10-18-2010) asking them to not accept the SSD staff recommendation; rather, they should award the sale to the CCCatMLK group. See [H.2.43](#). Also on this date, a motion to authorize the Superintendent to execute a contract for the sale of MLK School to First AME Church was approved by the Board (5-2 vote) in a public, regular legislative session. Although they accepted the lowest bid, the award was made in accordance with state law and District policy. See [H.2.18](#). After this meeting there was speculation that Fred Stephens was present at that meeting and sat with the FAME group in the audience and that this constitutes some sort of conflict of interest. An SAO auditor was present at that meeting (sitting directly behind the FAME group) and did not see Fred Stephens there. Moreover, Fred Stephens left the District in July 2010 to work at the U.S. Department of Commerce in Washington D.C., and was not a District employee at the time of the staff recommendation to the Finance Committee, at the introduction of the item on October 6, 2010, nor at the time of the Board vote.
- Property documents from King County Recorder's Office web access for tax parcel number 5317100295 show that on February 14, 2011, Ron English signed the Bargain and Sales Deed (Recording # 20110217001529) on behalf of the District. We also saw the Quit Claim Deed (recording # 20110218000653) between FAME and the MLK Family Arts Mentoring Enrichment Community Center (MLK FAME CC) that was signed three days after the District signed the Bargain and Sales Deed. From further email review, we found that the District was aware in January 2011 that this transfer would take place, and also that the state Department of Commerce was aware in January 2011 that the transfer to the MLK FAME CC was going to take place.



## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: Interviews

**Last Prepared By:** RRD, 6/24/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

Purpose: To summarize the results of District staff interviews, and any significant issues arising in the interviews.

#### Source(s):

Maria Goodloe-Johnson, former Superintendent  
Ron English, District Attorney  
Holly Ferguson, Director of Policy & Government Relations  
Chanin Kelly-Rae, citizen member of the selection committee  
Michael DeBell, Board member and former Board President  
Fred Stephens, former executive director of facilities  
Eleanor Trainor, former SSD employee  
Kathy Johnson, Facilities Planner  
Susan Llewellyn, Contracts Manager  
Noel Treat, General Counsel  
Duggan Harman, Executive Finance Director

#### Conclusion:

We summarized the results of District staff interviews in the ROWD.

#### **Record of Work Done:**

##### **Details:**

We interviewed individuals who may possess knowledge of activities related to the sale of MLK School to First AME Church. We will document all communications between SAO and interview participants.

Don Kennedy - SAO asked the SSD's legal department to contact each interviewee and attempt to set-up interviews. Don never responded to the District's attempt to set up a interview with the SAO. The SAO contacted Don Kennedy directly by sending him an email asking if he would be willing to meet with us to discuss the sale of MLK School. As of 7/1/11, Don had not responded to our email, nor had he communicated with the School District in any manner regarding the sale of MLK School.

Maria Goodloe-Johnson - the former Superintendent, discussed the sale of MLK School with us via phone on 6/21/11. See [H.2.28](#) for questions asked and her responses. Here's a summary of that interview:

1. It was evident from the beginning of the interview that the former Superintendent would not be able to provide us with any significant information about the sale of MLK School to First AME Church. Her answers were short and, for the most part, unresponsive. Although some time has passed since the



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events occurred, it is unusual that the former Superintendent could not recall or remember generic details about the sale of MLK School. She told us that she could not remember:

2. If she met with state legislators regarding the sale of MLK School. This is unusual because Duggan Harman told us that she attended at least one meeting with the Speaker of the House Frank Chopp, Rep. Santos, Rep. Pettigrew, and Mayor McGinn. Also, based on our review of emails, she attended other meetings with legislators about the sale of MLK.
3. Forwarding an email to Fred Stephens about the sale of MLK School. We read the email verbatim during the interview, evidencing that she forwarded at least one email to Fred about the sale of MLK School after he is said to have removed himself from the process. After we read the email to her over the phone, she still said she did not remember sending him that email.
4. She told us "I don't know" how and when Fred Stephens recused himself from the sale of MLK School process.
5. Why the process came to a halt in January 2010, and then reopened in May 2010.
6. In a private meeting, in her office on August 24, 2010, the staff recommendation was discussed and she told us she could not remember what the recommendation to the Board was that came out from that meeting, although she later gave us specific reasons for why the recommendation to sell to FAME was made, in response to another of our questions.
7. She also said that she did not make statements during the 8/24/2010 meeting saying "we haven't done a lot of good things for the African American community lately, so let's give them this one," or "The African American Community has not been very happy with me as Superintendent, and maybe they will be surprised by this and be happy." She said any assertions that she said these things are "a lie."

Ron English - a District attorney/property manager, met with us on 3/31/11 to discuss the sale of MLK School. See [H.2.1](#) for questions asked and his responses. Here's a summary of that interview:

1. Ron told us that he asked Fred Stephens to recuse himself from the process because of his connection with First AME Church.
2. The District knew the community buyers could not come up with funding until legislators finished their work in the April 2010 session, and so the District reopened the bidding in spring 2010. State legislators supported this action.
3. On August 24, 2010, Ron English, Don Kennedy, Noel Treat, and the Superintendent met in the Superintendent's office to discuss staff recommendations. The Superintendent was concerned about selling to Bush School and would prefer selling to a community based organization. CCC@MLK did not meet the 50% requirement but First AME did. The Superintendent said she wanted to award to First AME, saying "we haven't done a lot of good things for the African American community lately, so let's give them this one.". The "them" is referring to First AME (Ron also told us subsequent to the interview that this comment that he remembers was not made in the context of her having pre-selected FAME to the exclusion of CCC@MLK). But, Ron said he was uncomfortable with the recommendation because he felt the District should go after the money, and award the sale to the Bush School. Ron updated his presentation based on the discussion with the Superintendent to include staff recommendations on the last slide. His presentation already included the financial analysis of each proposal when he met with the Superintendent. Ron presented the power-point to the Audit and Finance Committee on 9/10/10 except for the last slide which included a staff recommendation. Don Kennedy read the last slide without further commentary. The staff recommendation from the power-point read "Sell the property to First AME Church." The finance committee thought it was a good idea. Ron noted this was where the Board appeared to be going anyway.
4. Ron said the Superintendent and the Board were responsible for accepting FAME's offer.
5. From a purely property management perspective, Ron believed the District should have awarded the sale to the highest bidder (Bush School).

Holly Ferguson - Director of government relations, met with us on 5/24/11 to discuss the sale of MLK School. See [H.2.6](#) for questions asked and her responses. Here's a summary of that interview:



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1. Holly agreed with Ron's conclusion that the Bush School should get the property.
2. Holly did not have a clear explanation as to why the process came to a halt. She indicated that there was a question whether there would be state funding for this or not, and that is why she became involved.
3. Holly said there is a Board policy about leasing or selling District property for the purposes of community use (youth involvement). The Board wanted the buildings to stay in the community, and the Speaker of the House (Frank Chopp) wanted the District to sell to a community group.

Chanin Kelly-Rae - On the selection committee and hand-picked by Ron because of her involvement on the SUAC committee. Chanin met with us on 5/26/11 to discuss the sale of MLK School. See [H.2.7](#) for questions asked and her responses. Here's a summary of that interview:

1. Chanin received a phone call from Ron English, and he told her that the District is looking for a community member, who will hear all sides fairly and that was engaged to help decide which RFP the District should accept.
2. Chanin believed the strongest proposal came from the Bush School. She also believed that this would be a good deal for the District, especially since the District was in the process of making budget cuts.
3. Chanin said the selection committee met with the executive committee regarding the recommendation. She recalled the Chair of the Executive Committee (a Board member) saying something like "we are not going to sell to a rich private school". She said they were sensitive around school closings and would rather keep it as a public trust.
4. Chanin said that Rep. Santos attended a SUAC meeting and told everyone that there was a commitment from the state that there would be enough money for a community group to purchase the MLK School to keep it in the public domain.
5. Chanin recalled that Don was not steered in any direction and wanted to meet again, looking more closely at the proposals. He said there was sensitivity around being thorough and complete. He also wanted to talk with the Superintendent and the Board before making a recommendation because there would be a lot of public outcry. He also stressed that the District needed to take a closer look at special consideration because there may be other benefits to the public by selling to a community group and not going after the money, such as benefits to children, families, and the community. He did not want the decision to solely be based on money, and he wanted the proposals looked at again through the lens of special consideration. She said that if the committee had been responsible for selecting the winner, then the District would have sold to the Bush school. She said the Bush School did not have a chance (because they are a private school). There was too much public outcry coming from the School Board and CCC@MLK.

Michael DeBell - Michael was the Board President at the time of the RFP for the MLK property and also at the time of the awarding of the sale to FAME. Michael met with us on 6/8/2011 to discuss the sale process relating to this property. See [H.2.11](#) for questions asked and his responses. Here's a summary of that interview:

1. Michael recalled that Don Kennedy stated in an Audit and Finance Committee meeting that Fred had recused himself, and he did not remember Fred being involved in discussions related to this property sale. He acknowledged that the recusal was not documented anywhere and that he probably should not have used the term "officially" in his King 5 interview when speaking about the recusal.
2. Michael said that at the January 2010 meeting Don recommended that the process be postponed and not take any of the "first-round" proposals because none of the bidders met the 50% requirement.
3. Michael provided a background of the Board policy allowing the District to evaluate the proposals for special consideration. He said that back in 2006, the Board debated the issue of whether to accept the highest bid or sell to community groups



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that can provide more than 50% of youth education activities, but they still must offer at least 90% of appraised value. He said the Board received advice from a Superintendent committee that the District needs to get more return on SSD properties. He said there was strong lobbying from community organizations that had been long-term lessees at some of the identified buildings. He said that the Board then asked staff to explore the potential sale of surplus schools to benefit the SSD's mission, which would not require acceptance of the highest dollar amount, but would meet the 90% requirement in statute. He said his understanding was that the District was trying to secure the MLK property as a community asset and not necessarily seeking the highest price. He said that neither the CCC or FAME proposals met the policy requirements (although they were within "striking distance"), and that is why staff recommended to postpone the process.

4. He stated that the idea for the entire program (selling the various school properties) was his. He said he is the one that convinced his colleagues to sell the properties in this manner, and to adopt the policy/procedure about special considerations.
5. He said he does not feel that the decision to sell the property was unduly influenced by state legislators.
6. He said the Board was not just thinking about maximizing the price.

Fred Stephens - Former Director of Capital Facilities, discussed the sale of MLK School with us via phone on 6/8/11. He also provided us a written statement via email, and responded in writing to our first set of questions. See [H.2.33](#). See [H.2.8](#) and [H.2.34](#) for Fred's written responses to our questions. See [H.2.12](#) for questions asked and his responses during our phone interview. Here's a summary of that interview:

- Fred said that Don Kennedy instructed him not to be involved in the sale process.
- Fred said he was not around when staff made the recommendation to award the sale to FAME. He indicated he found out after the building was sold.
- Fred was not involved with the sale of MLK School despite his connection with First AME Church.

Eleanor Trainor - Former District staff, provided us with a written statement in response to an article in the Seattle Times where she alleges that in 2007, Fred Stephens wanted First AME Church to get MLK School. She also makes it clear that she "cannot substantiate or otherwise empirically support anything" related to this meeting. See her written statement at [H.2.9](#). We spoke with her on 7/5/2011. She said that when she was at the District in 2007 that the sale of the building to FAME was talked about (by Fred) as though it was a done deal. But, as noted in her written statement about the meeting in 2007, she does not have anything that could prove the meeting occurred, or that it was believed that a sale to FAME was a done deal. We verified with her that she does not have any other info to share on this issue.

Kathy Johnson - We spoke to Kathy on 7/6/2011. We asked her what her involvement was with the sale of the MLK property or if she had any information regarding the sale of the property. Kathy said that Ron English drew a strict line of separation between her staff and Fred's staff when it came to the sale of the MLK property once the decision was made to go with an RFP process. She said that Ron made it very clear at a staff meeting, but that it was not put into writing.

However, she said it was common knowledge in the facilities department that Fred wanted the church to get the building. She said that it was no secret, and that Fred would sometimes speak about it during meetings in which the needs for existing buildings were discussed. She said that before the decision was made to go with an RFP, FAME had inquired about expanding or moving their Head Start operation to the MLK building as a tenant. This did not occur. They then were interested in putting their Head Start operation in the TT Minor building, but this also did not occur. This was all before the decision was made to go with an RFP process to sell the MLK building.

Kathy said that a Building Condition Survey was done on a set of District buildings in anticipation of a levy. However, former Board member Mary Bass took a particular interest in the MLK building, and asked for a second building condition survey just for the MLK property. She said members of the community



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were complaining to her that the building was sinking and that she wanted to know if that was true. Fred instructed Kathy to have a second assessment done on the MLK building less than one year after the original assessment that included the MLK building. The assessment re-affirmed the previous assessment in that the building was not sinking.

As with Eleanor's recollection of events prior to the entire RFP process, there is no documentation that Fred Stephens was involved in the RFP process. There is also no evidence that former Board member Bass had any involvement in the RFP process, mainly because she was no longer a member of the Board at the time the RFP occurred in 2009.

Susan Llewellyn - We spoke with Susan on July 7, 2011. We asked her what her involvement was with the sale of the MLK property. She said that she was involved with writing some of the addendums, and she was the point of contact for submitting the RFPs. Susan confirmed our understanding of the timeline of events leading up to the sale of the property, as that understanding relates to the meeting dates, the re-submittal of the RFPs, and the final awarding of the sale.

Noel Treat - General Counsel, met with us on 5/24/11 to discuss the sale of MLK School. See [H.2.5](#) for questions asked and his responses. Here's a summary of that interview:

1. Noel began his employment with the District in August 2010.
2. Noel stated that to his knowledge Fred Stephens was not involved in the decision making process. He stated that the decision as to whom to sell the property was not made until the meeting with the superintendent in August 2010.
3. Noel told us that before Ron, Don, Maria, and himself met in the Superintendent's office to discuss the MLK School staff recommendation, Ron briefed him about selection and RFP process, and told him that he was going to recommend that the District sell the property to the Bush School. At the August 24, 2010 meeting, **Noel said the Superintendent rejected Ron's recommendation**, and asked which community group should be awarded the sale of MLK School. Noel said Ron went over his analysis of the two proposals submitted by FAME and CCC@MLK, and under his analysis, he thought FAME would have the most benefit. Noel recalled the Superintendent saying let's go with that then. As an afterthought, Noel said he remembers the Superintendent saying "The African American Community has not been very happy with me as Superintendent, and maybe they will be surprised by this and be happy."

Duggan Harman - On June 23, 2011, Duggan Harman, Executive Finance Director, told us that he attended a meeting regarding the MLK School sale and the budget in Olympia with Maria Goodloe-Johnson, Clifford Traisman, Holly Ferguson, Speaker Chopp, Rep. Santos, Rep. Pettigrew and Mayor McGinn.



## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: State Funding of Purchase

**Last Prepared By:** TAM, 9/27/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

Purpose: To determine the source of funds provided by the state for the purchase of the MLK property, and to determine if such funding constitutes a gifting of public funds.

#### Source(s):

Jennifer Myers, CPA, Assistant Audit Manager, State Auditor's Office - Olympia  
Dan Aarthur, Capital Programs Manager, WA State Department of Commerce  
Beth Prihoda, Contracts Specialist, Department of Commerce, Capital Programs  
AG Memo March 13, 1998, No. 7 - Gifts of Public Funds

#### Conclusion:

We conclude that the community use and value sharing payment requirements imposed by the restrictive covenant agreement constitute legally sufficient consideration to support the public money provided to FAME to purchase and renovate the building. Thus, there is not a gift of public funds in violation of the state constitution.

#### **Record of Work Done:**

##### Background H.2.PS

The MLK property was one of five school district properties identified in legislation as eligible for funding for acquisition, rehabilitation, expansion, or improvement of surplus school buildings to be converted into community facilities for the delivery of nonresidential coordinated services for children and families by eligible applicants, including governments, nonprofit organizations, nonprofit early learning providers, and tribal governments. The funding, through the Community Schools Program, was first authorized in the 2008 State Supplemental Capital Budget, and reauthorized for the 2009-2011 biennium, with additional funding added in the 2010 Supplemental Capital Budget (see [H.2.2](#), [H.2.3](#), [H.2.4](#)).

##### Information provided by state Department of Commerce

On 3/30/11 an SAO Assistant Audit Manager met with Dan Aarthur, Capital Programs Manager, about the Department of Commerce's involvement in the funding for the sale of this property. Dan stated that the Department receives an appropriation from the Legislature for this program. The appropriation information details the total funding available and the specific schools that the appropriated funds can be used for. Here's the funding for the specific schools:

2008 Supplemental Capital Budget (Section 1018)	
2007-09 Projects, 1.25% retainage for Dept of Commerce Admin	
Amount	Total Contract



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Allen	\$658,227	\$650,000
Crown Hill	\$919,494	\$908,000
Fauntleroy	\$855,696	\$845,000
University Heights	\$1,012,658	\$1,000,000
<b>MLK</b>	<b>\$1,138,924</b>	<b>\$1,124,687</b>
<b>Total</b>	<b>\$4,585,000</b>	

2009-11 Capital Budget (Section 1046)

Fauntleroy	\$1,128,205	\$1,100,000
University Heights	\$1,810,000	\$1,780,000
Junior Achievement	\$2,030,000	\$2,000,000
Unallocated	\$31,795	\$31,000
<b>Total</b>	<b>\$5,000,000</b>	

2010 Supplemental Capital Budget (Section 1046)

<b>MLK</b>	<b>\$1,500,000</b>	<b>\$1,470,000</b>
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**Total Allocated to the purchase of MLK is \$2,594,687**

We requested an explanation as to how the amount for each school is determined. On 4/5/11 Dan stated,

*"A group of legislative staff, legislators, Commerce staff, and representatives from Seattle Schools and the nonprofits met regularly to determine how much funds each project would need. It was collectively decided what would be allocated to each nonprofit. Commerce ensures that the property is valued for at least the amount of funds to be used for acquisition costs. Both MLK school contracts were written to include acquisition, as well as renovation costs that were required in order to acquire an occupancy permit."*

We requested information about how the Dept of Commerce verifies the property value and Dan stated,

*"Yes. An appraisal was completed and submitted to First AME on January 28, 2009, by Allen Brackett Shedd, who appraised the property at \$2,565,000.00. That appraisal is part of the Commerce contract file."*

The Seattle School District is responsible for selecting the group who will purchase the surplus school property. Seattle SD met with groups who were interested in purchasing the MLK property. The Seattle SD then notified the Dept of Commerce that they selected the First AME Church. (Auditor Note: It should be noted that the 1/28/2009 appraisal by Allen Brackett Shedd was done on behalf of the Seattle School District, not on behalf of FAME)

The First AME Church then submitted an application for Community School Program funding. See [H.2.35](#)

The application included a request for **\$1,311,313** towards the total project costs of \$2,436,000 to acquire the MLK property.

The Dept of Commerce determined that the group met the eligibility requirements of the program and signed two grant agreements with the First AME Church on 2/14/11. The First AME Church was awarded \$1,421,313 (grant #10-96120-047) and \$1,124,687 (grant #08-96112-004), for a total of **\$2,546,000** Community Schools Program state grant funds - see [H.2.36](#) and [H.2.37](#).



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The Dept of Commerce received two A-19 payment vouchers from the First AME Church on 2/15/11 (one requesting \$1,275,313 for site acquisition costs and the second one for \$1,124,687 also for site acquisition costs), total of \$2,400,000. Warrant #151949U was issued to the First AME Church on 2/16/11. See [H.2.38](#).

What is the total that will be paid to the First AME Church?

*The total amount allocated for MLK school is \$2,594,687. However, of that amount Commerce has obligated only \$2,546,000 under both contracts. The remaining \$48,687 is being held until the grantee decides what additional renovations might be needed. At that point, we will amend the contract to add the remaining funds. At present, Commerce has expended \$2.4M of the funds obligated under the contracts. The remaining \$146,000 under contract will be expended as the grantee submits invoices for the work that was performed in order for them to acquire an occupancy permit.*

Citizen concern on gifting of public funds.

As noted at [H.2.PS](#), there is a second citizen concern regarding the funding of the purchase using state funds. The citizen alleges that the funding of the purchase by the state is a gifting of public funds.

There is a concern on our part that the contract between the state Department of Commerce and First A.M.E. lacks consideration. This could mean that the funding was a gift of public funds. We referred this question to our AAG. The analysis provided is as follows:

The grant agreement requires that FAME use the grant funds to acquire and renovate the school to house a community center; and that FAME use the property for a community center for at least 10 years. The deed of trust secures performance of the grant agreement, and remains in effect for ten years. (See [H.2.58](#) for the Deed of Trust)

The restrictive covenant agreement imposes a community use requirement on FAME. See [H.2.61](#). These community uses include making 1) certain areas of the building and grounds available at no charge for youth activities 8 hours per day; 2) 5 classrooms available for rent at below market rate by youth education or social service organizations; and 3) the playground area available for public use most of the time. If FAME does not comply with the community use requirements, it must pay the District a "value sharing payment". These requirements remain in effect for 40 years.

When legally sufficient consideration is provided in return for an expenditure of public funds, there is not a gift of public funds in violation of the state constitution. The legal sufficiency test is not concerned with comparative value, and gives deference to the decisions of elected officials to negotiate the scope and terms of consideration. In my opinion, the community use and value sharing payment requirements imposed by the restrictive covenant agreement constitute legally sufficient consideration to support the public money provided to FAME to purchase and renovate the building.

Accordingly, we conclude that the funding provided by the state Department of Commerce for this purchase was not a gifting of public funds. [H.1.PS](#)

After the Sale

Concern has also been expressed by citizens in June 2011 that First A.M.E. has not done anything with the property since it was awarded the sale. They are concerned that First A.M.E. has not lived up to the terms of the sale.



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It should be noted that although the sale was authorized in October 2010, it was not finalized (transfer of title) until February 2011. The time period elapsed since the transfer of title is only four months. The Church's grant agreement with the state Department of Commerce is that the funds provided by Commerce "shall be used for acquisition and renovation costs." "Renovation of the building and an existing portable will consist of classrooms, restrooms, roofs, carpeting, and office space to bring the buildings up to code to allow occupancy for a community center." In other words, the money was to be used to acquire the building, and renovate such that an occupancy permit could be obtained by the end date of the Commerce grant. The end-date of the Commerce funding was June 30, 2011. The grant contract states that renovations were to be complete by March 31, 2011. However, Commerce told us that the deadline for the use of the funds was June 30, 2011. First A.M.E. acquired and renovated the property such that an occupancy permit was obtained prior to the end-date of the funding. Thus, they complied with the grant requirements.



## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step: Conflict of Interest - Fred Stephens

**Last Prepared By:** RRD, 6/15/2011

**Last Reviewed By:** CJE, 9/28/2011

#### **Purpose/Conclusion:**

**Purpose:** To determine if Fred Stephens used his position within the District to influence the decision on to whom to sell the Martin Luther King elementary, thus creating a conflict of interest. To also determine if Fred Stephens passed-on any inside knowledge about the sale process to First A.M.E.

**Conclusion:** Based on our review of emails, interviews, and documentation, there is no evidence that Fred Stephens passed inside information to First AME Church or used his District position to influence the District's decision to sell the MLK property to First AME Church.

#### **Record of Work Done:**

##### Details

The citizen alleges that Fred Stephens may have used his position at Seattle Public Schools to influence the District's decision to sell the MLK Elementary property to First A.M.E Church, and also passed inside knowledge to his Church, thus, improving their bid proposal. This is allegedly indicated by Fred receiving emails that discussed the sale of the property. The citizen also implies, if not alleges, that Fred Stephens influenced the sale process when he left to go to the Department of Commerce - the agency that provided the funding for the purchase of the property by FAME.

##### Departure for Department of Commerce

The **state** Department of Commerce in Olympia (formerly CTED) provided the funding for the purchase of the property. When Fred Stephens left the District, he went to work for the **federal** Department of Commerce in Washington D.C. The federal government did not provide the funds to the state Department of Commerce for this purchase. Also, the funds for the purchase were part of a state program called the Community Schools Program, which was part of the state capital budget and was first authorized in the 2008 State Supplemental Capital Budget, and reauthorized for the 2009-2011 biennium, with additional funding added in the 2010 Supplemental Capital Budget. See [H.2.PS](#).

##### Emails CC'd to Fred Stephens

The citizen contends that Mr. Stephens recused himself, and yet continued to receive e-mail updates on the issue. The citizen references the King 5 TV video clip at <http://www.king5.com/home/Controversial-bidding-process-leads-back-to--117719393.html> showing two emails from Carole Rusimovic to several persons, including Fred Stephens, as supporting this allegation. The citizen believes that he (Fred) was getting information from the District and passing that information to FAME before the information became available to the Public.

We watched the King 5 TV video clip and noted that one of the emails shown was entirely blacked out in the video, and the contents of the email cannot be read in the video clip. We are unsure from viewing this video how the citizen concluded that these emails are confirmation that Fred Stephens was getting "inside" information that was not available to the public. The SAO requested these specific emails from



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John Cerqui, citing the dates and times of the emails as seen in the video. See [H.2.26](#) & [H.2.25](#) for a copy of the emails shown in the King 5 video clip. Upon review of the emails, we learned that one of the emails sent from Carole Rusimovic discussed the MLK School RFP status (RFP 01913), and the other discussed a separate, un-related RFP (RFP 12972 - Seattle Public Schools Possible Lease of Closed School Sites). Although Fred Stephens was included as a CC on the email regarding the update on the MLK School RFP, the email was also distributed to all parties that submitted a bid proposal (including First AME, CCCatMLK, Bush School, and Hamlin Robinson School), state legislators, and other interested members of the public - approximately 154 other email addresses. The fact that Fred received this email from a District employee at the same time the public received it is inconsequential and is not, in our judgment, evidence that Fred received inside information that he passed on, nor is it evidence that he influenced the sale process.

The receipt by Fred of an email regarding RFP 12972 *is irrelevant* since RFP 12972 had nothing at all to do with the sale or lease of the MLK property. And, it makes sense that he received the email about RFP 12972 since he was the head of the Facilities department and would need to know about the status of the properties included in that specific RFP (which, again, did not include the MLK property).

#### Other emails

We requested all incoming and outgoing emails from February 2009 to April 2011 for Fred Stephens (although he left the District in July 2010). We reviewed his emails looking for instances where he received relevant information or updates (before they became available to the public) about the sale of MLK School. We also searched his email folders for emails where he sent relevant information about the bid process to any individuals. There were some emails received by Fred sent from Board office staff and, in at least one instance, the Superintendent. These emails include the Friday Update email from the Superintendent, and emails from members of the community that were writing in support of the different proposals. Fred responded to at least one of the emails from a community member on October 12, 2009, before the deadline for all proposals. See pages 6 and 7 at [H.2.29](#) for the email where Fred responded to the citizen, and [H.2.PS](#).

As a result of our email review, we did not find any evidence that Fred Stephens notified First AME Church or anyone else about the status of the sale of MLK School, nor did he receive emails of a material nature discussing the RFP and selection process related to the sale of MLK School. [H.2.PS](#)

#### Interview

We interviewed Fred Stephens, and also received a written statement and written responses to our first set of questions. See [H.2.12](#) & [H.2.31](#) & [H.2.8](#). We asked Fred if he provided any inside knowledge about the decision making process regarding the sale of the MLK property to anyone affiliated with First AME Church, and Fred responded "No". During the phone interview he mentioned that he wanted to stay away from the MLK School transaction because of his involvement with the Church, and did not want Church members asking him questions.

During separate interviews with Ron English ([H.2.1](#)), Holly Ferguson ([H.2.6](#)), Chanin Kelly-Rae ([H.2.7](#)), Maria Goodloe-Johnson ([H.2.28](#)) and Michael DeBell ([H.2.11](#)) all of whom were knowledgeable about the sale of MLK School to First AME Church, we were told that Fred Stephens was not involved in the MLK process nor did he receive any inside information about the status of the MLK sale.

Based on the procedures performed, we found no evidence suggesting that Fred Stephens passed inside information to First AME Church allowing them to improve their bid proposal, or attended meetings discussing the RFP and selection process for MLK School, or received communications of a material nature discussing the RFP and selection process for MLK School (i.e. information not available to the public). Therefore, based on our review of emails, interviews, and documentation, there is no evidence that Fred Stephens passed inside information to First AME Church or used his District position to influence the District's decision to sell the MLK property to First AME Church.



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## H.2.PS - Sale of MLK School Property Hotline H-11-137

### Procedure Step:      Email Review

**Last Prepared By:** RRD, 6/23/2011

**Last Reviewed By:** CJE, 9/28/2011

### **Purpose/Conclusion:**

Purpose: To summarize the results of our review of District emails.

Source(s):

April Johnson, Project Manager - Lead Network Systems Engineer (provided access to emails)

**Conclusion:** We summarized the results of our email review in the ROWD. Based on our email review, there is no evidence that Fred Stephens influenced the decision making process with regard to the sale of the MLK property. We also made copies of relevant emails that helped us develop an understanding of events. These are documented at , . Lastly, we recommend that the District develop procedures for staff to follow when recusing themselves from a particular transaction/process when a potential conflict of interest exists, whether the conflict is in-fact or appearance.

### **Record of Work Done:**

#### Emails Requested

We requested access to all incoming and outgoing emails from 2/1/09 through the day of our request (4/7/2011) for the names listed below.

Ron English  
Holly Ferguson  
Don Kennedy  
Maria Goodloe-Johnson  
Each Board member (their individual email accounts, not a generic board email account)  
Duggan Harman  
Fred Stephens  
Carole Rusimovic

Our request was sent via email to John Cerqui:

"The time period was all of 2009 through present day, as our investigation is focusing on more than just any possible involvement Fred Stephens may, or may not, have had in the sale. Our initial request was for all incoming and outgoing emails for each of the named individuals. I understand from our conversation that the District will not be providing access to all incoming and outgoing emails for Ron English due to concerns about privileged communications and the desire of the District to preserve that privilege with respect to certain communications."

We later amended the email request to include Noel Treat's email and Susan Llewellyn's email.



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### Email Review

We were given emails for all of the requested individuals listed above except for emails that were sent to/from a District attorney because the District was concerned that they may be privileged communications. Therefore, we provided the District a key-word listing to use for their review of the attorney emails that were withheld from our request related to the sale of MLK. See [H.2.27](#) for our key-word list.

### Emails to/from Fred Stephens

We reviewed emails looking for information about the sale of MLK School that could help us develop an understanding of the process that took place, and looking for instances where Fred Stephens may have received inside information, or sent such information to outside parties. Emails that we felt were pertinent to the investigation are documented at [H.2.59](#) and [H.2.29](#).

Although Fred was asked to recuse himself from the process, and according to him he was directed by his supervisor Don Kennedy to not be involved, he still received emails regarding the MLK property that were sent to him from various District staff, including the former Superintendent. As noted at [H.2.PS](#), it is our judgment that these emails are inconsequential.

Having said that, though, we recommend that the District develop and establish a process by which District employees can document that they officially recuse themselves whenever there is the possibility of a conflict of interest, whether that conflict be in-fact or appearance.

### Summary of email review:

1. We reviewed Fred Stephen's incoming and outgoing emails, and determined that Fred did not receive or send email communications of a material nature discussing the RFP and selection process related to the sale of MLK School. He did receive email updates discussing the the sale of MLK School, but he received them at the same time the public did. He also received emails discussing the sale of MLK School, e.g. in the Superintendent's Friday update email. Based on this email review, we found that these emails are, in our judgment, inconsequential and do not evidence that Fred influenced the District's decision in awarding the sale of MLK School to First AME Church. However, in our judgment, Fred should not have received or sent any communications discussing the sale of MLK School because he was asked to recuse himself from the selection and RFP process. It is apparent from our review of emails that not everyone was aware of this recusal (Board office staff, and the Superintendent in one instance, forwarded emails from the community on this topic to Fred since he was the Facilities director. And in one instance, Fred responded to a citizen's concern). We recommend that the District develop procedures for staff to follow when recusing themselves from a particular transaction/process when a potential conflict of interest exists. [H.2.PS](#). See [H.2.29](#), [H.2.25](#), and [H.2.26](#) for emails received by Fred relating to the MLK sale.

### Review of other emails -

1. Emails reveal that some state legislators were trying to influence the District's RFP and selection process, and appeared to be pressuring the District to sell the MLK property to a community group (at one point even naming a specific group) instead of a private organization. Some examples of this are included in the emails below. Other emails referenced allude to the timeline of the decision to sell to FAME. The email attachments at [H.2.59](#) are more complete and are in chronological order:



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1. Email dated 10/21/09, sent from Senator Kline to Ron English, "...I suggest that the District use its discretion to lower the minimum bid, as it apparently has in the instance of the Crown Hill property, and at the same proportion; and further, that it not eliminate entirely from consideration those bidders who bid at a lower amount, but rather consider the fiscal factor along with the important non-fiscal factors. The purpose of the SUAC process was to favor bidders that serve and involve the local communities surrounding the school sites. This was not to be simply a sale to the highest bidder. I believe that the School Board's statements to this effect should be honored." Holly Ferguson replied to the Senator: "Senator Kline, Thank you for your query about the RFP process currently underway for the former Martin Luther King school. We appreciate your question, but at this time the RFP submittals are in, and we are required to address the original criteria that were listed. We look forward to concluding the RFP process and will certainly let you know when any decision has been made."
2. November 4, 2009, the Selection Committee (Ron English, Chanin Kelly-Rae, Holly Ferguson - minus Don Kennedy) believed the Bush School had the strongest proposal and offered the most money, and were prepared to make the recommendation that the District lease the property to the Bush school.
3. Email dated 12/11/09, sent from the District's lobbyist (Clifford Traisman) to Maria Goodloe-Johnson, Michael DeBell, Holly Ferguson, Ron English, and Don Kennedy, states in part, "I had a long meeting with Frank Chopp yesterday. He was adamant that the MLK selection be in the best interests of the community. He wants Rep. Pettigrew and Santos happy in the end, more than anything. We have meeting requests into the both of them and Senator Adam Kline as well. I shared more with Ron last night, but essentially if we end up holding abeyance any final decision for a year or two, that option would be fine with Frank. He understands the situation we are in. I also asked him to push the city hard for MLK funding and he said he would do that. In fact, he directed his staff to make sure they remind him to follow-up with Mayor-Elect McGinn. It will be on his short list of items that he would like the new mayor to work with him on, so that was very welcome news."
4. Email dated 12/11/09, sent from the District's lobbyist (Clifford Traisman) to Holly Ferguson, [in regards to Ron and Holly's worries about taking too long to sell the property and not being allowed by the City to have anyone re-occupy the building. The City had already given the District a two-year extension, bringing the length of time the property was vacant to four years] he states "We cannot go Bush, at least not now. Also, 4 years, 6 years, what's the diff?" Holly responds by saying the City won't allow anyone to reoccupy the building after so long, and that it will be more expensive to bring the building up to code than to rebuild the structure. She says that this would most likely be cost prohibitive for any community group and wouldn't allow them to meet requirements for reduced rates. Clifford responded: "My point: the city can allow anything it wants to allow. Exceptions can and would likely be made. Chopp, McGinn, Conlin, delegation, us all working together? Definitely."
5. Email dated 1/8/10, sent from Holly Ferguson to Senator Kline, "Senator Kline, thank you so much for taking the time to meet with us yesterday about the possible sale/lease of the Martin Luther King building. We are in a difficult position here, as we would very much like to see the property converted to a community center. However, state law requires us to give private schools an equal chance at properties, and therefore we cannot award the property to anyone else unless that offer surpasses the offer by Bush. We would definitely support the legislature providing funding to allow CCC or another community



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- group to acquire the property. We believe funding would need to include acquisition of the property, major maintenance, and operating costs, which we estimate to be about \$11 million."
6. Email dated 2/23/10, sent from the District's lobbyist (Clifford Traisman) to Maria Goodloe-Johnson & Holly Ferguson, "Maria, as Holly knows, I did know about the \$2.5 million in the House budget for Seattle to purchase MLK prior to its release, but Holly and I never connected before the Mayor mentioned it this morning. I look forward to your coming down here on Friday to talk with Frank Chopp and Reps. Santos and Pettigrew about it on Friday. We are also using the opportunity to spend an equal amount of time on the budget. Duggan will accompany us. Tying these two subjects together is in our best interest; we make them happy on MLK (theoretically) and they do more for us on the budget!"
  7. Email dated 3/11/10, sent from Michelle Chen (City of Seattle employee) to Frank Chopp's administrative assistant (Majken Ryherd) and the Senior Policy Analyst on Capital Budget Policy for the House Democratic Caucus (Debra Gurtler). Copied on this email are Ron English and Holly Ferguson. Michelle states "Please find two attachments: 1) budget proviso language and 2) statement of legislative intent for the MLK School. The attached proviso and intent language represent the collective agreement and support of the School District, City and CADA on an approach for moving forward with the State with respect to the MLK School. We appreciate the Speaker's efforts to assist all parties and hope that this language is acceptable." This indicates that CADA was involved with writing the original legislative intent and budget proviso language that included them specifically (although their name was subsequently removed from the final language).
  8. Email dated April 16, 2010, sent by Ron to Don Kennedy, with a CC to Holly Ferguson and Clifford Traisman (District Lobbyist): "Don, As you know, Frank Chopp asked that the state Capital Budget include \$1.5 million earmarked for purchase of MLK, and indicated that the legislative history for this item would include a specific statement that the intent was that the money be used by a community group "such as the Central Area Development Association" to purchase the building (along with \$1.0 million from 2008). This would mean the District would need to reopen the RFP process until June 30, to allow CADA to develop a proposal. The legislative intent that was to be included would also state that any proposal would need to meet the School Board's requirements for support of youth education. The Capital Budget does have the earmarked funds, but the legislative history does not include the stated information. Clifford Traisman as talked to Speaker Chopp's staff , who says it will be in a letter to the Department of Commerce. I do not believe this will have any legal significance, but will support the intent to allow a reopening of the RFP process. However, we do not have the letter, do not know for sure what it will say, or when it will arrive. Clifford has told us that we are expected to proceed with a new RFP , without getting anything more than we already have, i.e. without any public statement from the legislature to support why we are reopening the RFP process. Holly and I don't believe that is acceptable. Holly and I have discussed this, and recommend that we schedule a 30 minute Executive Session with the Board for May 5 (after Michael deBell returns) to discuss this. You may recall that the Board president only reluctantly went along with the Chopp approach and given their failure to follow through and the ambiguity of where we are at, we recommend this all be laid out to the Board for their consideration." Holly responded to this email with, "I 100% agree with Ron." Clifford Traisman



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responded to Holly with, "Holly, what are u talking about? We got exactly what we wanted."

9. On April 19, 2010 Ron responded to the 3/11/2010 email chain by sending an email to the District's lobbyist (Clifford Traisman) & Holly Ferguson: "We began a formal public process last August. No one has identified a single flaw in that process, yet we have been asked (read 'told') to reopen that process to allow a late bidder in. We need to explain why we are doing that. I thought the reason was that the legislation would state, through a formal legislative history, that the legislature wanted this. However, what we now have is an email from a staff individual, not the Speaker, which was not part of any record at any time, and even now is not part of the record. The email isn't even directed to us. So I've trying to figure out how to write the letter to the disappointed bidders that explains why we are starting the process all over. What is that we would say? The legislature hasn't adopted this, or even included it in any sort of record. I believe we need to discuss this with the Board and ask whether that is what should happen."

Clifford responded to Ron's email, (copied were Holly Ferguson and Don Kennedy), and said "Ron, appreciate the concerns, but the Board Chair AND the Superintendent both gave their word to the Speaker and the delegation that we would be happy (very happy, in fact) to proceed long these lines, should additional dollars be appropriated. The dollars were then appropriated. There is no question to pose, legal or otherwise, as I see it, but the Board should be updated, of course, I agree. This is a very touchy issue. I suggest we open the process for whatever stated reason we choose; there are many I could come up with off the top of my head, mostly because we now have more state money. Then, everyone, anyone would be allowed to submit a bid, including CADA, if they choose to do so. We never wanted this language in the budget anyway; the legislative intent was not something we sought in any legal way, as long as they were vague on the \$1.5, which they were -- much to their consternation --- because I made such a big deal out of not wanting CADA proscribed in the bill. Any letter to the disappointed bidders can state that we now have more state dollars in play and that given this new and welcome development we wanted to fairly give everyone a shot to re-bid. It is the fair and appropriate thing to do too. I left Michael a voicemail on this too in order to make sure that he remembers what we committed to."

Ron responded to this email, but only included Holly Ferguson and Don Kennedy, and said: "Clifford obviously feels everything is just fine, and we need to proceed on the basis of the email from the staff to Commerce, without any direct confirmation from the Speaker that this is requested by him. This is what they promised and have not delivered. I believe it is disingenuous to suggest (as Clifford does) that the money is something new and unexpected, when in fact everyone has known for literally years that the new money was coming. The new information is that there is a new player, selected by the Speaker, who we need to reopen the competition for and give a chance to win. I would like direction. Do we: 1. Talk it over with the Board first? 2. Proceed without any further discussion. Holly, what is your input?"



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10. Email dated 8/25/10, email sent from Ron English to Maria Goodloe-Johnson, "Last night the Finance Committee met to discuss the MLK sale. They were receptive to a proposal to sell to FAME."
11. Email dated 9/8/10, email sent from Ron English to Don Kennedy, "You should take a look at the link in the email below. It was sent to the Board Wednesday evening. It is to a website from the Mayor's office that asked people to vote for good ideas for Seattle. It indicates that going for the money received 400 votes, while a community center received only 100 votes. It's not a scientific poll, but a fair one nevertheless, since the two proposals are presented alongside each other, and the website was not controlled by any of the interested parties. A substantial number of votes were cast, i.e., people cared enough to pick out the idea from a long list and 80% chose the same way. That said, unless I hear otherwise, I will proceed as planned."
12. Email dated 10/13/10, sent from Noel Treat to Maria Goodloe-Johnson and Don Kennedy, "To follow up today's discussion we need to determine who will be the presenter to lay out the process and recommendation before final action. I recommend Don as he was the chair of the committee and oversees the facilities work. Ron, can draft the talking points. Don, what do you think?" Don responded that Ron could make the presentation.
13. After the King 5 story in March 2011, Ron thought the District should be proactive and contact the SAO.



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