

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
LOUISVILLE/JEFFERSON COUNTY METRO ETHICS COMMISSION

IN RE: COUNCILWOMAN BARBARA SHANKLIN

\* \* \* \* \*  
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDATION  
\* \* \* \* \*

This matter is before the Louisville/Jefferson County Metro Ethics Commission on the Order Amending Notice of Hearing that was issued by the Commission on September 13, 2012. In that Order, the Commission found that probable cause existed to believe that Councilwoman Barbara Shanklin may have violated Louisville Metro Ordinance Chapter 21, the Louisville/Jefferson County Metro Ethics Code.

The Commission held a hearing regarding the allegations made against Councilwoman Shanklin, as set out in the Order Amending Notice of Hearing, on November 6, 7, and 8, 2012. All members of the Commission were present at the hearing: Thelma Clemons, Terry Conway, Gus G. "Skip" Daleure, Vickie Tabler, Enid Trucios-Haynes, Susan Rhodes, and Jonathan Ricketts. Councilwoman Shanklin was present for part of the hearing and absent for part of the hearing, and was represented by attorney Aubrey Williams. The Investigating Officer, James Earhart, was present at the hearing, as was the Commission's attorney, Deborah Kent. The hearing was conducted by Ann M. Sheadel, Hearing Officer.

The issue to be decided in this case is whether the Investigating Officer, Mr. Earhart, has proven, by clear and convincing evidence, that Councilwoman Shanklin violated Louisville Metro Ordinance Chapter 21, the Louisville/Jefferson County Metro Ethics Code, as specifically alleged in the Order Amending Notice of Hearing.

### The Evidence on the Record of this Case

The general rule in administrative proceedings, such as this proceeding before the Louisville/Jefferson County Metro Ethics Commission, is that findings of fact shall be based exclusively on the evidence on the record of the case. [See, e.g., KRS 13B.090(1).]

The evidence on the record of this case consists of: (1) the testimony of the witnesses who testified at the hearing in this matter; (2) the exhibits that were admitted into evidence at the hearing in this matter; and (3) the adverse inferences that are allowed from Councilwoman Shanklin's refusal to testify, as discussed in detail in the Conclusions of Law, below.<sup>1</sup>

The Investigating Officer, Mr. Earhart, called four (4) witnesses to testify at the hearing in this matter:

1. Ingram Quick, Director, Office of Internal Audit, Louisville Metro Government [Transcript of Hearing, Day 1 (Tr. 1), pp. 55 - 243; Transcript of Hearing, Day 2 (Tr. 2), pp. 167 -170];
2. Mark Edward Bolton, Director, Louisville Metro Department of Corrections [Tr. 2, pp. 9 - 84];
3. Steve Rowland, Chief Financial Officer, Louisville Metro Government [Tr. 2, pp. 87 - 130]; and
4. Barbara Shanklin, Councilwoman [Tr. 2, pp. 136 - 163; Transcript of Hearing, Day 3 (Tr. 3), pp. 95 - 97, 102 - 109].

Councilwoman Shanklin called three (3) witnesses to testify at the hearing in this matter:

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<sup>1</sup> At times, both parties have made assertions and arguments based on alleged facts that have not been placed in evidence in this case, *i.e.*, the alleged facts have not been testified to by a witness who testified at the hearing in this matter, have not been included in the exhibits that were admitted into evidence at the hearing in this matter, and are not included in the adverse inferences that are allowed from Councilwoman Shanklin's refusal to testify. Because such alleged facts are not part of the evidence on the record of this case, those alleged facts may not be considered in making the findings of fact in this case.

1. Arnetta Al-Amin, Corrections Supervisor II, Metro Corrections [Tr. 3, pp. 18 - 29];
2. Kathleen Herron, Metro Council Clerk, Louisville Metro Council [Tr. 3, pp. 31 - 76]; and
3. Edwin Ernest, Business Office, Louisville Metro Council [Tr. 3, pp. 78 - 93].

Thirty (30) exhibits were admitted into evidence at the hearing in this matter:

1. Non-Profit Application FY 2009-2010, Petersburg-Newburg Improvement Association [Exhibit 1];
2. Ordinance No. 97, Series 2009 [Exhibit 2];
3. Grant Agreement 2009-2010, Petersburg-Newburg Improvement Association [Exhibit 3];
4. Checks and invoices, Petersburg-Newburg Improvement Association FY 09-10 [Exhibit 4];
5. Grant Application FY 2010-2011, Petersburg-Newburg Improvement Association [Exhibit 5];
6. Ordinance No. 120, Series 2010 [Exhibit 6];
7. Grant Agreement 2010-2011, Petersburg-Newburg Improvement Association [Exhibit 7];
8. Checks and invoices, Petersburg-Newburg Improvement Association FY 2010-2011 [Exhibit 8];
9. Memorandum re: lost checks [Exhibit 9];
10. Intent to Purchase Services up to \$10,000, A New Expression, 12-19-07 [Exhibit

10];

11. Intent to Purchase Services up to \$10,000, Linda Haywood dba A New Expression, 10-23-08 [Exhibit 11];

12. Intent to Purchase Services up to \$10,000, A New Expression, 8-28-09 [Exhibit 12];

13. Intent to Purchase Services up to \$10,000, Linda Haywood, 8-19-10 [Exhibit 13];

14. Intent to Purchase Services up to \$10,000, Linda Haywood, 9-21-11 [Exhibit 14];

15. Payment records for A New Expression/Linda Haywood [Exhibit 15];

16. Invoice with attachments, 11-30-11 [Exhibit 16];

17. Check to Linda Haywood from Petersburg Newburg Improvement Inc., 12-20-11 [Exhibit 17];

18. NDF Grant Agreement, Petersburg/Newburg Improvement Association, Inc., 2011-2012 [Exhibit 18];

19. Order Amending Notice of Hearing [Exhibit 19];

20. E-mails re: invoice from Linda Haywood [Exhibit 20];

21. Letter from Steve Rowland to Petersburg Newburg Improvement Association, 7-16-12 [Exhibit 21];

22. Letter from Steve Rowland to Petersburg Newburg Improvement Association, 7-16-12 [Exhibit 22];

23. Payment documents re: payment to Linda Haywood [Exhibit 23];

24. Payment documents re: payment to Linda Haywood [Exhibit 24];

25. Payment documents re: payment to Linda Haywood [Exhibit 25];

26. Sign-in sheets for classes conducted by Linda Haywood [Exhibit 26];
27. Arrest History Report re: Gary Bohler [Exhibit 27];
28. 2006-07 Budget [Exhibit 28];
29. 2009-10 Budget [Exhibit 29]; and
30. Time sheets for Gary Bohler [Exhibit 30].

#### Findings of Fact

1. Barbara Shanklin is a Council Member on the Louisville/Jefferson County Metro Council (Metro Council). She represents District 2. Councilwoman Shanklin has been the Metro Council Member for District 2 for all times relevant to this matter. [Tr. 2, pp. 141-142 (adverse inference); infra, see Fifth Amendment discussion below]

2. The Metro Council is the legislative governing body of the Louisville/Jefferson County Metro Government.

3. The Metro Council has enacted an Ethics Code, which is codified in Louisville Metro Ordinance (LMO) Chapter 21. The Ethics Code applies to Metro Officers, which includes Metro Council Members. [LMO Chapter 21, §§ 21.01 & 21.02]

4. The Ethics Code created the Louisville/Jefferson County Metro Government Ethics Commission (Ethics Commission), which is responsible for the enforcement and administration of the Ethics Code. [LMO Chapter 21, § 21.05]

5. On September 13, 2012, the Ethics Commission issued its Order Amending Notice of Hearing, in which the Ethics Commission set out five counts of allegations against Councilwoman Shanklin, and in which the Ethics Commission found probable cause to believe that Councilwoman Shanklin may have violated six sections of the Ethics Code: §§ 21.02(B),

21.02(C), 21.02(D), 21.03(C), 21.04(B), and 21.04(C). [Exhibit 19]

6. There are three issues raised in these allegations: (1) whether Councilwoman Shanklin, in her official actions connected with obtaining three Neighborhood Development Grants for the Petersburg-Newburg Improvement Association, violated §§ 21.02(B), 21.02(C), 21.02(D), and 21.03(C) of the Ethics Code; (2) whether Councilwoman Shanklin, in her official actions in obtaining funding for a program intended to serve ex offenders, violated § 21.02(B) of the Ethics Code; and (3) whether Councilwoman Shanklin, in her official actions connected with hiring and supervising her grandson as her legislative aide, violated §§ 21.04(B) and 21.04(C) of the Ethics Code. The Commission will address each of these issues in turn.

#### **I. Neighborhood Development Funds**

7. The first issue to address is whether Councilwoman Shanklin, in her official actions connected with obtaining three grants of Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, violated §§ 21.02(B), 21.02(C), 21.02(D), and 21.03(C) of the Ethics Code. First, the Commission will discuss background information regarding Neighborhood Development Funds. Second, the Commission will discuss the three grants of Neighborhood Development Funds that were appropriated to the Petersburg-Newburg Improvement Association that are at issue in this matter. Third, the Commission will discuss Councilwoman Shanklin's relationship with the Petersburg-Newburg Improvement Association. Fourth, the Commission will discuss whether Councilwoman Shanklin's official actions in connection with the three grants of Neighborhood Development Funds that were appropriated to the Petersburg-Newburg Improvement Association violated the cited provisions of the Ethics Code.

**I.A. Background Regarding Neighborhood Development Funds**

8. Neighborhood Development Funds are discretionary funds that are appropriated to the members of the Louisville Metro Council. Each Council Member is appropriated \$75,000 each Fiscal Year for use in the Council Member's district. [Testimony of Ingram Quick, Tr.1, pp. 58, 156-157; testimony of Steve Rowland, Tr. 2, p. 90]

9. Neighborhood Development Funds are distributed as grants to non-profit organizations. A non-profit organization that is interested in receiving such a grant submits an application for the grant to the specific Council Member from whom the organization is requesting the grant. [Testimony of Ingram Quick, Tr. 1, pp. 59-60, 70-71]

10. If the Council Member does not wish to fund the grant request from the non-profit organization that has submitted the application to the Council Member, the Council Member refuses the application, and the process ends. (The non-profit organization may choose to submit its application to other Council Members for consideration.) [Testimony of Kathleen Herron, Tr. 3, pp. 63-64]

11. If the Council Member wishes to fund the grant request from the non-profit organization that has submitted the application to the Council Member, the Council Member completes a memorandum form addressed to the Appropriations Committee that asks the Appropriations Committee to consider the request. No one other than a Council Member may submit such a grant request for Neighborhood Development Funds to the Appropriations Committee. [Testimony of Ingram Quick, Tr. 1, pp. 60-61; testimony of Kathleen Herron, Tr. 3, pp. 47, 65; Exhibits 2, 6, 18]

12. The documentation that is submitted to the Appropriations Committee for every

grant request for Neighborhood Development Funds consists of ten documents, including: (1) the application that was submitted by the non-profit organization; (2) the Council Member's memorandum asking that the Appropriations Committee consider the request; (3) a draft Ordinance to be submitted to the Metro Council if the request is approved by the Appropriations Committee; (4) the non-profit organization's Articles of Incorporation; (5) the paperwork that confirms that the non-profit organization is a 501(c)(3) non-profit organization; and (6) documentation from the Kentucky Secretary of State indicating that the organization is a non-profit organization in good standing. (There is no evidence in the record regarding the remaining four documents.) [Testimony of Kathleen Herron, Tr. 3, pp. 68-69]

13. If the grant request that is submitted to the Appropriations Committee is under \$5,000, the Appropriations Committee may approve the grant request. If the grant request is over \$5,000, the grant must be enacted as an Ordinance by the Metro Council. [Testimony of Steve Rowland, Tr. 2, p. 90; testimony of Kathleen Herron, Tr. 3, pp. 47-48]

14. If the grant request is over \$5,000, the Council Member who wishes to fund a grant request for Neighborhood Development Funds sponsors an Ordinance that is presented to the Metro Council for appropriating the requested funds to the selected non-profit organization. [Testimony of Ingram Quick, Tr. 1, pp. 72-73]

15. If the Metro Council enacts the Ordinance and appropriates the requested funds, a Grant Agreement is executed between the Louisville/Jefferson County Metro Government and the non-profit organization. [Testimony of Ingram Quick, Tr. 1, p. 79]

16. The paperwork for any grant request for Neighborhood Development Funds is reviewed both by the County Attorney's office and by the Metro Council Clerk's office. If the

grant request is over \$5,000, the County Attorney's office drafts the required Ordinance and approves the Ordinance as to form and legality. If the Ordinance is enacted, the County Attorney's office drafts the Grant Agreement and approves the Grant Agreement as to form. The Clerk's office reviews the paperwork to ensure that all required documents are present and signed; if any documents are missing or incomplete, the Clerk's office will work with the non-profit organization to obtain the required documentation. Although a conflict might be raised by the County Attorney or a budget analyst, there is no department that reviews the documentation to ensure that there are no conflicts of interest for the Council Member who is submitting the application for Neighborhood Development Funds. [Testimony of Kathleen Herron, Tr. 3, pp. 43, 65-66, 72, 74-75; *see, e.g.*, Exhibit 18].

**I.B. Neighborhood Development Funds Granted to Petersburg-Newburg Improvement Association**

17. The Petersburg-Newburg Improvement Association is a non-profit organization. Its mission is to improve the quality of life in the Newburg Area by educating the youth and young adults without a High School diploma, helping the needy, and beautifying the community. It provides adult education, computer training, and job skills to area residents. [Exhibits 1, 5, 18]

18. The Petersburg-Newburg Improvement Association submitted applications to Councilwoman Shanklin for Neighborhood Development Funds for Fiscal Years 2009-2010, 2010-2011, and 2011-2012. The Commission will discuss each of these Fiscal Years in turn.

**I.B.1. Fiscal Year 2009-2010**

19. On July 9, 2009, the Petersburg-Newburg Improvement Association submitted a Non-Profit Application for Neighborhood Development Funds to Councilwoman Barbara Shanklin. The request was for \$25,000 for Fiscal Year 2009-2010. The application form was

signed by Blanche T. Calloway, who was identified on the form as being the President of the Petersburg-Newburg Improvement Association. [Exhibit 1; testimony of Ingram Quick, Tr. 1, pp. 65-66]

20. Councilwoman Shanklin received and reviewed this application for Neighborhood Development Funds from the Petersburg-Newburg Improvement Association. [Tr. 2, p. 143 (adverse inference)]

21. In response to this application, Councilwoman Shanklin submitted a request form to the Appropriations Committee on July 10, 2009, asking that the Grant Proposal Agreement be placed on the agenda for the next Appropriations Committee Meeting. The request form submitted by Councilwoman Shanklin stated:

I have reviewed the attached Proposal in the amount of \$25,000 through the Finance for Petersburg-Newburg Improvement Association and have found it complete and within our guidelines. I/We have read the organization's statement of public purpose to be furthered by the funds requested and I/We agree that the public purpose is legitimate. I/We have also completed the disclosure section below.

[Exhibit 2] Councilwoman Shanklin reviewed and authorized the filing of this request. [Tr. 2, p. 144 (adverse inference)]

22. Councilwoman Shanklin sponsored an Ordinance to appropriate \$25,000 from the District 2 Neighborhood Development Fund to the Petersburg-Newburg Improvement Association for Fiscal Year 2009-2010. This Ordinance was passed by the Louisville Metro Council as Ordinance No. 97, Series 2009, on July 30, 2009, and was approved by the Mayor on August 3, 2009. The Ordinance states:

SECTION I: The sum of \$25,000 is hereby appropriated from the District 2 Neighborhood Development Fund through the Department of Finance and Administration to Petersburg/Newburg

Improvement Association, Inc. for operating expenses for the Newburg Festival, beautification projects, and other small projects.

SECTION II: The Council has determined that the funds requested in this Ordinance shall be expended for a public purpose.

SECTION III: The Ordinance shall take effect upon its passage and approval.

[Exhibit 2]

23. A Grant Agreement was then executed between the Louisville Metro Government and the Petersburg-Newburg Improvement Association, effective from July 30, 2009, through June 30, 2010. The Grant Agreement listed the "person responsible for bookkeeping" as Rev. Wayne A. Steele, and the "person to whom the checks will be sent" as Blanche Calloway.

[Exhibit 3]

24. As a result of this Grant Agreement, Louisville Metro Government provided Neighborhood Development Funds to the Petersburg-Newburg Improvement Association during the 2009-2010 Fiscal Year. [Testimony of Ingram Quick, Tr. 1, pp. 84-85]

**I.B.2. Fiscal Year 2010-2011**

25. On June 29, 2010, the Petersburg-Newburg Improvement Association submitted a Non-Profit Application for Neighborhood Development Funds to Councilwoman Barbara Shanklin. The request was for \$25,000 for Fiscal Year 2010-2011. The application form was signed by Dianne Walker, who was identified on the form as being the President of the Petersburg-Newburg Improvement Association. [Exhibit 5; testimony of Ingram Quick, Tr. 1, pp. 87-89]

26. In response to this application, Councilwoman Shanklin submitted a request form to the Appropriations Committee on June 29, 2010, asking that the Grant Proposal Agreement be

placed on the agenda for the next Appropriations Committee Meeting. The request form submitted by Councilwoman Shanklin stated:

I have reviewed the attached Proposal in the amount of \$25,000 through the Finance for Petersburg-Newburg Improvement Association and have found it complete and within our guidelines. I/We have read the organization's statement of public purpose to be furthered by the funds requested and I/We agree that the public purpose is legitimate. I/We have also completed the disclosure section below.

[Exhibit 6] Councilwoman Shanklin reviewed and authorized the filing of this request.

27. Councilwoman Shanklin sponsored an Ordinance to appropriate \$25,000 from the District 2 Neighborhood Development Fund to the Petersburg-Newburg Improvement Association for Fiscal Year 2010-2011. This Ordinance was passed by the Louisville Metro Council as Ordinance No. 120, Series 2010, on July 29, 2010, and was approved by the Mayor on August 2, 2010. The Ordinance states:

SECTION I: The sum of \$25,000 is hereby appropriated from the District 2 Neighborhood Development Fund through the Office of Management and Budget to Petersburg/ Newburg Improvement Association, Inc. for operating expenses for the Newburg Festival, beautification projects, and other small projects.

SECTION II: The Council has determined that the funds requested in this Ordinance shall be expended for a public purpose.

SECTION III: The Ordinance shall take effect upon its passage and approval.

[Exhibit 6]

28. A Grant Agreement was then executed between the Louisville Metro Government and the Petersburg-Newburg Improvement Association, effective from July 29, 2010, through June 30, 2011. The Grant Agreement listed the "person responsible for bookkeeping" as Rev.

Wayne A. Steele, and the "person to whom the checks will be sent" as Dianne Walker. [Exhibit 7]

29. As a result of this Grant Agreement, Louisville Metro Government provided Neighborhood Development Funds to the Petersburg-Newburg Improvement Association during the 2010-2011 Fiscal Year. [Testimony of Ingram Quick, Tr. 1, pp. 105-106]

**I.B.3. Fiscal Year 2011-2012**

30. On July 7, 2011, the Petersburg-Newburg Improvement Association submitted a Non-Profit Application for Neighborhood Development Funds to Councilwoman Barbara Shanklin. The request was for \$25,000 for Fiscal Year 2011-2012. The application form was signed by Dianna Walker, who was identified on the form as being the President of the Petersburg-Newburg Improvement Association. [Exhibit 18]

31. In response to this application, Councilwoman Shanklin submitted a request form to the Appropriations Committee on July 7, 2011, asking that the Grant Proposal Agreement be placed on the agenda for the next Appropriations Committee Meeting. The request form submitted by Councilwoman Shanklin stated:

I have reviewed the attached Proposal in the amount of \$25,000 through the Metro Council for Petersburg/Newburg Improvement and have found it complete and within our guidelines. I/We have read the organization's statement of public purpose to be furthered by the funds requested and I/We agree that the public purpose is legitimate. I/We have also completed the disclosure section below.

[Exhibit 6] The request form was signed by Councilwoman Shanklin. [Exhibit 18]

32. Councilwoman Shanklin sponsored an Ordinance to appropriate \$25,000 from the District 2 Neighborhood Development Fund to the Petersburg-Newburg Improvement Association for Fiscal Year 2011-2012. This Ordinance was passed by the Louisville Metro

Council as Ordinance No. 152, Series 2011, on July 28, 2011, and was approved by the Mayor on July 29, 2011. The Ordinance states:

SECTION I: The sum of \$25,000 is hereby appropriated from the District 2 Neighborhood Development Fund through the Office of Management and Budget to Petersburg/Newburg Improvement Association, Inc. for operating expenses for the Newburg Festival, beautification projects, and other small projects.

SECTION II: The Council has determined that the funds requested in this Ordinance shall be expended for a public purpose.

SECTION III: The Ordinance shall take effect upon its passage and approval.

[Exhibit 6]

33. An NDF Grant Agreement was then executed between the Louisville Metro Government and the Petersburg-Newburg Improvement Association, effective from July 28, 2011, through June 30, 2012. The Grant Agreement listed the "person responsible for bookkeeping" as Wayne Steele, and the "person to whom the checks will be sent" as Diana Walker. [Exhibit 18, pg. 12 of 16]

34. As a result of this Grant Agreement, Louisville Metro Government provided Neighborhood Development Funds to the Petersburg-Newburg Improvement Association during the 2011-2012 Fiscal Year. [Testimony of Ingram Quick, Tr. 1, pp. 105-106]

**I.C. Councilwoman Shanklin's Relationship to the Petersburg-Newburg Improvement Association**

35. At the times relevant to the issues in this proceeding, Councilwoman Shanklin had significant personal involvement in the Petersburg-Newburg Improvement Association. This significant personal involvement is demonstrated in several ways.

36. The address listed as the primary address for the Association was Councilwoman

Shanklin's home address, and the Articles of Incorporation for the Association listed Councilwoman Shanklin as the process agent for the Association. [Testimony of Ingram Quick, Tr. 1, p. 217]

37. The address listed as the address for the Association on the application forms submitted by the Association requesting Neighborhood Development Funds for Fiscal Years 2009-2010, 2010-2011, and 2011-2012 was the home address of Councilwoman Shanklin. [Exhibits 1, 5, 18; testimony of Ingram Quick, Tr. 1, p. 217]

38. During the times relevant to the grant process for these three grants, Councilwoman Shanklin was a member of the Board of Directors of the Petersburg-Newburg Neighborhood Association. [Exhibits 3, 7, 18]

39. At the time of the application for Neighborhood Development Funds for the 2010-2011 Fiscal Year, the President of the Petersburg-Newburg Improvement Association was listed as Dianne Walker. [Exhibit 5] At the time of the application for Neighborhood Development Funds for the 2011-2012 Fiscal Year, the President of the Petersburg-Newburg Improvement Association was listed as Dianna Walker. [Exhibit 18] Ms. Walker may be the Councilwoman's niece or daughter, but she did not appear at the hearing and the Commission could not compel her testimony, and the Commission declines to make an adverse inference as to a familial relationship.

40. During the times relevant to the grant process for these three grants, Councilwoman Shanklin had signatory authority for the accounts of the Association. [Exhibits 4, 8, 18] She contracted for services on behalf of the Association. [Exhibits 4, 8] After the Neighborhood Development Funds were appropriated to the Association, Councilwoman

Shanklin exercised control of the funds that were issued to the Association pursuant to the Grant Agreements. [Exhibits 4, 8].

41. Councilwoman Shanklin's signatory authority for the accounts of the Association is demonstrated in the expenditure documentation submitted by the Petersburg-Newburg Improvement Association for the Grant Agreements for Fiscal Year 2009-2010 and for Fiscal Year 2010-2011. Specifically:

a. For Fiscal Year 2009-2010, Councilwoman Shanklin signed 29 checks on behalf of the Petersburg-Newburg Improvement Association, for a total of \$4,535.00, in expending the grant money issued to the Petersburg-Newburg Improvement Association pursuant to the Grant Agreement for that Fiscal Year. [Testimony of Ingram Quick, Tr. 1, pp. 85-86; Exhibit 4]

b. For Fiscal Year 2010-2011, Councilwoman Shanklin signed 84 checks on behalf of the Petersburg-Newburg Improvement Association (out of a total of 92 checks issued), for a total of \$24,808.00, in expending the grant money issued to the Petersburg-Newburg Improvement Association pursuant to the Grant Agreement for this Fiscal Year. Councilwoman Shanklin issued approximately 91% of the checks issued by the Petersburg-Newburg Improvement Association in expending the grant money. [Testimony of Ingram Quick, Tr. 1, pp. 106-107; Exhibit 8] In the reconciliation process for this grant, there were two checks issued by the Petersburg-Newburg Improvement Association that could not be accounted for, totaling \$372.28. Councilwoman Shanklin wrote a check on behalf of the Petersburg-Newburg Improvement Association in the amount of \$372.28, made payable to Metro Finance, to reimburse Metro Finance for these expenditures. [Exhibit 9; testimony of Ingram Quick, pp.

109-110]

42. In sum, at the time relevant to these proceedings, Councilwoman Shanklin was a Board Member of the Petersburg-Newburg Improvement Association, a non-profit organization. The address for the Association was listed as Councilwoman Shanklin's home address on documents filed with the Secretary of State and on the Association's applications for Neighborhood Development Funds; thus, everything mailed to the Association would be delivered to Councilwoman Shanklin's home. Councilwoman Shanklin was listed in the Association's Articles of Incorporation as the process agent for the Association. Councilwoman Shanklin had signatory authority for the Association, and wrote checks dispersing Neighborhood Development Funds that were appropriated to the Association. [Testimony of Ingram Quick, Tr.1 pg 217; Exhibits 1, 5, 18].

43. All of these facts prove, by clear and convincing evidence, that Councilwoman Shanklin had a substantial and significant personal involvement in the Petersburg-Newburg Improvement Association at the times relevant to this proceeding.

#### **I.D. Ethics Code**

44. It is alleged that Councilwoman Shanklin, by her official actions connected with obtaining grants of Neighborhood Development Funds for the Petersburg-Neighborhood Improvement Association, violated §§ 21.02(B), 21.02(C), 21.02(D), and 21.03(C) of the Ethics Code. The Commission will discuss each of these provisions in turn, addressing two issues regarding each cited provision of the Ethics Code: (1) whether Councilwoman Shanklin violated the cited provision of the Ethics Code; and (2) if so, whether the violation was intentional.

I.D.1. Ethics Code § 21.02(B)

45. § 21.02(B) of the Ethics Code states:

No Metro Officer shall use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself or herself, members of his or her family or other persons.

[LMO Chapter 21, § 21.02(B)]

46. This provision of the Ethics Code prohibits Councilwoman Shanklin from using her position as a Council Member to secure unwarranted privileges or advantages for herself or members of her family.

47. In this situation, Councilwoman Shanklin used her position as a Council Member to request and obtain appropriations of Neighborhood Development Funds for the Petersburg-Newburg Improvement Association for Fiscal Years 2009-2010, 2010-2011, and 2011-2012. The question to address is whether, in requesting and obtaining those appropriations, Councilwoman Shanklin secured unwarranted privileges or advantages for herself or members of her family.

48. The first part of this question is whether Councilwoman Shanklin secured privileges or advantages for herself or members of her family. As discussed above, Councilwoman Shanklin had a substantial and significant personal involvement in the Petersburg-Newburg Improvement Association at the time that she requested and obtained appropriations of Neighborhood Development Funds for the Petersburg-Newburg Improvement Association. This personal involvement included signatory authority for the Association that allowed her to write checks on behalf of the Association, and to exercise control over the Neighborhood Development Funds that were appropriated to the Association.

49. By using her position as a Council Member to obtain these Neighborhood Development Funds for an Association in which she had such significant personal involvement, including the authority to control and spend the grant money obtained, Councilwoman Shanklin was using her position to secure a privilege and an advantage for herself. Clearly, it provided a privilege and an advantage to Councilwoman Shanklin to use her official position to obtain grant funds that she then proceeded to spend, which was a clear privilege and advantage to her. The Commission cannot, however, conclude that the Councilwoman secured these privileges and advantages for her family as there is no clear and convincing evidence in the record that any of the recipients of these payments were related to the Councilwoman.

50. The second part of this question is whether the privilege and advantage secured by Councilwoman Shanklin for herself was unwarranted. "Unwarranted" means unfair; unfounded; unjust; unreasonable; indefensible. [*Thesaurus.com*]. When Councilwoman Shanklin secured the privilege and advantage to herself by obtaining Neighborhood Development funds for the Association, she was being unfair and unjust to other organizations that may have had an interest in obtaining the funds. Moreover, it is unfair on its face for a Council Member to request and obtain grant money that the Council Member then has the authority and power to spend. Therefore, the Commission finds that the privilege and advantage secured by Councilwoman Shanklin for herself was unwarranted, because it was unfair and unjust.

51. For all of these reasons, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin, by her official actions connected with obtaining grants of Neighborhood Development Funds for the Petersburg-Neighborhood Improvement

Association, violated § 21.02(B) of the Ethics Code.

52. The next question is whether Councilwoman Shanklin's violation of this provision of the Ethics Code was intentional. Councilwoman Shanklin took deliberate action to use her official position to request and obtain Neighborhood Development Funds for the Petersburg-Newburg Improvement Association. At the time that she took that deliberate action, Councilwoman Shanklin knew of her significant personal involvement in that Association, knew that she had signatory authority on behalf of the Association, and knew that she had the authority and power to expend the grant funds on behalf of the Association. These facts indicate that the unwarranted privilege and advantage that Councilwoman Shanklin thus secured for herself was accomplished purposefully and with conscious design by Councilwoman Shanklin. Therefore, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's violation of § 21.02(B) was an intentional violation.

53. In sum, and for all of the reasons stated, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's actions in this matter constituted an intentional violation of § 21.02(B) of the Ethics Code.

54. Accordingly, the Commission finds that the Investigating Officer has proven, by clear and convincing evidence, that Councilwoman Shanklin, in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, intentionally violated § 21.02(B) of the Ethics Code. As the Commission is aware that the subpoena powers of the Metro Council while sitting as a court can be used to compel testimony regarding familial relations between the Councilwoman and the recipients of the grant proceeds, the Commission will recommend to the Metro Council that Councilwoman Shanklin

be removed from the Council, and that Council include charges that the Councilwoman secured these unwarranted privileges for her family as well as herself.

I.D.2. Ethics Code § 21.02(C)

55. § 21.02(C) of the Ethics Code states:

No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization in which such officer has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment.

[LMO Chapter 21, § 21.02(C)]

56. This provision of the Ethics Code prohibits Councilwoman Shanklin from acting in her official capacity in any matter in which she, a member of her family, or a business organization in which she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment.

57. As discussed in detail above, when Councilwoman Shanklin acted in her official capacity to request and obtain grants of Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, she had a significant personal involvement in the Petersburg-Newburg Improvement Association. The clear and convincing evidence is that Councilwoman Shanklin's personal involvement with the Association was so significant and extensive that a reasonable person would conclude that such an involvement with the Association might reasonably be expected to impair Councilwoman Shanklin's objectivity or independence of judgment in any matter concerning the Association.

58. For these reasons, pursuant to § 21.02(C) of the Ethics Code, Councilwoman Shanklin should not have acted in her official capacity as a Council Member in any matter

concerning the Petersburg-Newburg Improvement Association. Therefore, by acting in her official capacity as a Council Member to request and obtain three grants for Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, Councilwoman Shanklin violated § 21.02(C) of the Ethics Code.

59. The next question is whether Councilwoman Shanklin's violation of this provision of the Ethics Code was intentional. Councilwoman Shanklin took deliberate action to use her official position to request and obtain Neighborhood Development Funds for the Petersburg-Newburg Improvement Association. At the time that she took that deliberate action, Councilwoman Shanklin knew that she had a significant personal involvement in the Association. These facts indicate that Councilwoman Shanklin's purposeful design was to act to secure these Neighborhood Development Funds for the Association regardless of her significant involvement in the Association.

60. In sum, and for all of the reasons stated, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's actions in this matter constituted an intentional violation of § 21.02(C).

61. Accordingly, the Commission finds that the Investigating Officer has proven, by clear and convincing evidence, that Councilwoman Shanklin, in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, intentionally violated § 21.02(C) of the Ethics Code.

**I.D.3. Ethics Code § 21.02(D)**

62. § 21.02(D) of the Ethics Code states:

No Metro Officer shall undertake any employment or service, compensated or not, which might reasonably be expected to

prejudice such officer's independence of judgment in the exercise of his or her official duties.

[LMO Chapter 21, § 21.02(D)]

63. This provision of the Ethics Code prohibits Councilwoman Shanklin from undertaking any service for the Petersburg-Newburg Improvement Association if such service might reasonably be expected to prejudice her independence of judgment in the general exercise of her official duties.

64. There is no evidence on the record of this case that there has ever been any reason to believe that Councilwoman Shanklin's service and involvement in the Petersburg-Newburg Improvement Association might reasonably be expected to prejudice her general independence of judgment in the exercise of her official duties as a Council Member.

65. Accordingly, the Commission finds that the Investigating Officer has failed to prove, by clear and convincing evidence, that Councilwoman Shanklin, in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, has violated § 21.02(D) of the Ethics Code.

**I.D.4. Ethics Code § 21.03(C)**

66. § 21.03(C) of the Ethics Code states:

When any Metro Officer, or any member of his or her family, shall have any private financial interest, directly or indirectly, in any contract or matter pending before or within his or her office, or any Metro Agency, the Metro Officer shall disclose such private interest to the Ethics Commission, the governing body of the affected Metro Agency and, if the contract or matter requires formal action by the Metro Council, to the Metro Council.

[LMO Chapter 21, § 21.03(C)]

67. This provision of the Ethics Code requires Councilwoman Shanklin to make a

disclosure to the Ethics Commission and to the Metro Council whenever Councilwoman Shanklin, or any member of her family, has a direct or indirect private financial interest in any contract or matter pending before or within her office or any Metro Agency.<sup>4</sup>

68. Because Councilwoman Shanklin had signatory authority on behalf of the Petersburg-Newburg Improvement Association, and had the authority to expend the grant funds appropriated to the Association, the Commission finds that Councilwoman Shanklin had an indirect private financial interest in the matter of obtaining Neighborhood Development Funds for the Association.

69. Therefore, pursuant to this provision of the Ethics Code, Councilwoman Shanklin was required to disclose her indirect private financial interest to the Ethics Commission and to the Metro Council. The indirect private financial interests that needed to be disclosed was the fact that Councilwoman Shanklin had signatory authority on behalf of the Association, which meant that she had the authority and power to expend the grant funds that would be appropriated to the Association.

70. These disclosures could have occurred several times in the application process for Neighborhood Development Funds. The application form itself provided a space for the identification of the Association's legal signatory. The application form for Fiscal Year 2009-2010 identified the Association's legal signatory as Rev. Wayne A. Steele, Sr. [Exhibit 1]. The application form for Fiscal Year 2010-2011 identified the Association's legal signatory as Rev. Wayne A. Steele, Sr. [Exhibit 5] The application form for Fiscal Year 2011-2012 identified the Association's legal signatory as Rev. Wayne A. Steele, Sr., and the second signatory as

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<sup>4</sup>This provision also requires that the disclosure be made to the Ethics Commission. Because no evidence was presented regarding this portion of the provision, the Commission will not address this portion of the provision.

Councilwoman Shanklin. [Exhibit 18]

71. The application form also included this request:

List below any relationship any members of your Board of Directors or employees have with any Metro Council Member, Council Member's family, Council Member's staff, or any Louisville Metro Government employee.

[Exhibits 1, 5, 18] The response to this request in the 2009-2010 application was: "Barbara E. Shanklin – Lou. Metro Council Member." [Exhibit 1] The response to this request in the 2010-2011 application was: "Barbara Shanklin Metro Council Member." [Exhibit 5] The response to this request in the 2011-2012 application was: "Barbara E. Shanklin – Lou. Metro member."

[Exhibit 18]

72. For each of the grants in question, Councilwoman Shanklin submitted a request form to the Appropriations Committee regarding Councilwoman Shanklin's request that Neighborhood Development Funds be appropriated to the Petersburg-Newburg Improvement Association. The request form included a section headed "Disclosure," which stated:

List below any relation you have with the organization requesting the grant (you, your family, your legislative assistant or any city employee to this organization and to any member of the organization's board of directors or their employees.)

[Exhibits 2, 6, 18]

In the request form submitted for Fiscal Year 2009-2010, the space for making the requested disclosure was left blank. The request form contained a signature, "Dr. Barbara Shanklin," with initials circled after the signature. [Exhibit 2]

In the request form submitted for Fiscal Year 2010-2011, the space for making the requested disclosure was left blank. The request form contained a signature, "Dr. Barbara Shanklin," with initials circled after the signature. [Exhibit 6]

In the request form submitted for Fiscal Year 2011-2012, the space for making the requested disclosure was filled in with: "Barbara Shanklin – member." The request form was signed by Councilwoman Barbara Shanklin. [Exhibit 18]

73. For each grant issued, a Grant Agreement was executed. The Grant Agreement included a section for "Relationship Disclosure," which stated:

List below any relationship you or any member of your board of directors or employees has with any Metro Council Member, Council Member's family, Council Member's staff or any Louisville/Jefferson County Metro Government employee.

[Exhibits 3, 7, 18] For the Grant Agreement for Fiscal Year 2009-2010, the response to that request was: "Barbara Shanklin – member." [Exhibit 3] For the Grant Agreement for Fiscal Year 2010-2011, the response to that request was: "Councilmember Barbara Shanklin – Board Member, Metro Employee Dianne Walker – President." [Exhibit 7] For the Grant Agreement for Fiscal Year 2011-2012, the response to that request was: "Barbara Shanklin Board Member." [Exhibit 18]<sup>5</sup>

74. In all of the documents involved in obtaining the grants of Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, only one document indicated that Councilman Shanklin had signatory authority on behalf of the Association. That document was the application for Neighborhood Development Funds that was submitted by the Association on July 7, 2011, for Fiscal Year 2011-2012, which was signed by Dianna Walker and which identified Barbara Shanklin as second signatory for the Association. [Exhibit 18]

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<sup>5</sup> The wording of this request changed slightly in the Grant Agreement for Fiscal Year 2011-2012, to read:  
List below any relationship you or any member of your board of directors or employees has with any Metro Council Member, Council Member's family, Council Member's staff or any Metro Government employee.

[Exhibit 18]

75. Councilwoman Shanklin appears to be asserting that she cannot be found to have violated this provision of the Ethics Code because she is not responsible for the failure of other people to complete the forms correctly. The Commission agrees that Councilwoman Shanklin is not responsible for the failure of other individuals to properly identify Councilwoman Shanklin's relationship with the Association on the forms completed by those individuals. This provision of the Ethics Code, however, places its disclosure obligation specifically and directly on Councilwoman Shanklin. Thus, whether some other individual failed to make the required disclosures is irrelevant; the question is whether Councilwoman Shanklin made the required disclosures.

76. There was one document that was required to be submitted by Councilwoman Shanklin for each application for Neighborhood Development Funds that requested that Councilman Shanklin make this disclosure, and on which Councilwoman Shanklin failed to make the required disclosure. That document was the request form submitted to the Appropriations Committee regarding Councilwoman Shanklin's request that Neighborhood Development Funds be appropriated to the Petersburg-Newburg Improvement Association. As discussed above, that form included a "Disclosure" section that asked the Council Member to make the required disclosure in the space provided. For Fiscal Years 2009-2010 and 2010-2011, Councilwoman Shanklin left that section blank. For Fiscal Year 2011-2012, Councilwoman Shanklin indicated that she was a member of the Association, but she did not disclose that she had signatory authority for the Association. [Exhibits 2, 6, & 18]

77. Councilwoman Shanklin appears to be asserting that she should be excused from the disclosure requirements of this provision of the Ethics Code because someone else completed two of the three request forms that were submitted to the Appropriations Committee, as evidenced by the fact that someone else's initials were written after her signed name. The Commission disagrees. First and foremost, the disclosure obligation in this provision of the Ethics Code is placed specifically and directly on the Council Member. The Council Member is not released from this obligation by deciding to delegate the task to someone who fails to complete the task. Second, it was Councilwoman Shanklin's obligation to review and authorize the filing of the request forms before they were submitted to the Appropriations Committee. Third, the third request form that was submitted for Fiscal Year 2011-2012 was signed directly by Councilwoman Shanklin, and it did not disclose that she had signatory authority on behalf of the Association.

78. Councilwoman Shanklin also appears to be asserting that, if the Metro Council had reviewed all of the documentation that was submitted in support of appropriating the Neighborhood Development Funds to the Petersburg-Newburg Improvement Association, the Metro Council could have figured out the relationship that Councilwoman Shanklin had with the Association. The Commission disagrees. First, there is no evidence on the record of this case that any documents disclosed the relationship of Councilwoman Shanklin's family members to the Association or the extensive personal relationship that Councilwoman Shanklin had with the Association. Second, Councilwoman Shanklin presented no other documentation to the Metro Council to clarify her relationship with the Association. More importantly, however, this

provision of the Ethics Code places the responsibility to disclose this information directly and specifically on Councilwoman Shanklin; it does not place the responsibility on the Metro Council to try to figure out the relationship from various documents that have been submitted as part of the grant application.

79. For all of these reasons, the Commission finds that the clear and convincing evidence is that, pursuant to § 21.03(C) of the Ethics Code, Councilwoman Shanklin was required to disclose the fact that Councilwoman Shanklin had signatory authority on behalf of the Association for Fiscal Year 2010-2011 and for Fiscal Year 2011-2012. In addition, the clear and convincing evidence is that Councilwoman Shanklin failed to make the required disclosures.

80. Consequently, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin violated § 21.03(C) of the Ethics Code.

81. The next question is whether Councilwoman Shanklin's violation of this provision of the Ethics Code was intentional. The strongest evidence that this violation was intentional is the fact that Councilwoman Shanklin left the disclosure section of the request form, which was submitted to the Appropriations Committee, blank. Councilwoman Shanklin knew that she had signatory authority for the Petersburg-Newburg Improvement Association and that others had requested the Neighborhood Development Funds for FY 2010-2011 and 2011-2012. She also knew, because it was on request form, that she was required to disclose any relationship that she or a family member had with that Association. Nevertheless, the disclosure section of the request form was left blank on two of the forms and was incomplete on the third form. These facts indicate that Councilwoman Shanklin's failure to disclose the required information

was a deliberate decision. Therefore, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's violation of § 21.03(C) was an intentional violation.

82. In sum, and for all of the reasons stated, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's actions in this matter constituted an intentional violation of § 21.03(C) of the Ethics Code.

83. Accordingly, the Commission finds that the Investigating Officer has proven, by clear and convincing evidence, that Councilwoman Shanklin, in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association, intentionally violated § 21.03(C) of the Ethics Code.

## **II. Ex Offender Program**

84. The second issue to address is whether Councilwoman Shanklin, in her official actions in obtaining funding for a program intended to serve ex offenders, violated § 21.02(B) of the Ethics Code. The Commission first will discuss background information regarding the Ex Offender Program. Then the Commission will discuss whether Councilwoman Shanklin's official actions in obtaining funding for this Program violated § 21.02(B) of the Ethics Code.

### **II.A. Background Regarding Ex Offender Program**

85. A program for job training for ex offenders known as the "Ex Offender Upholstery Program" appears to have been started by the Newburg Community Council some time in 2006. [Testimony of Ingram Quick, Tr. 1, pp. 196-197]

86. In FY 2006, Shanklin signed checks drawn on the Newburg Community Council for program expenses. In May and June of 2006 she paid Linda Haywood for her

services as instructor in May, June and July of 2006. In April 2006 she gave Ms. Haywood \$1,706 in cash to purchase supplies. [Exhibit 15]

87. In March of 2006, there was a midyear adjustment to the Metro Corrections budget that appropriated funding to Metro Corrections for job training for ex offenders. This action appears to have adopted and funded the program that had been started by the Newburg Community Council. [Testimony of Ingram Quick, Tr. 1, pp. 114-115, 148; testimony of Mark E. Bolton, pp. 25, 37]

88. Following the mid-year adjustment, the Newburg Community Council was reimbursed for its expenditures by Louisville Metro Government. Shanklin continued her personal involvement in the program expenditures, however, [Testimony of Ingram Quick, Tr. 1, pp. 196-197; Exhibits 15, 23]

89. Beginning in November 2007, Metro Corrections entered into five annual agreements styled "Intent to Purchase Services up to \$10,000" with Linda Haywood, who was doing business as A New Expression. [Testimony of Ingram Quick, Tr. 1, pp. 117-131; Exhibits 10, 11, 12, 13, 14, 28, 29]. The Metro Corrections Director, in testifying to his authority to cancel contracts, questioned the authority of the signor of these agreements made prior to his tenure as they had not been signed by the department director, and the first "ITP" was signed by an assistant business manager, Harriet McEachern. [Testimony of Mark E. Bolton, pp. 22, 52-54]

90. Ms. Haywood submitted her first invoice to Metro Corrections on November 7, 2007, more than a year after she began serving as instructor. That invoice stated that the program was "under the care of Dr. Shanklin, Councilwoman" [Exhibit 15]

91. Shanklin's personal involvement in the program continued after these start-up costs were reimbursed and her name appears on orders for equipment purchased by Corrections. [Exhibit 24]

92. Attendance records were not kept for the classes held for this program until August of 2010. There is no evidence in the record regarding who attended this program's classes prior to August of 2010.

93. Beginning in August of 2010, Metro Corrections requested that Ms. Haywood submit attendance records with her invoices, because Metro Corrections wanted to determine what population was being served by the program. The first attendance records submitted were for the program classes that were conducted in August 2010. The attendance records submitted continued through the program class conducted on November 16, 2011. [Testimony of Ingram Quick, pp. 136-137; testimony of Mark E Bolton, Tr. 2, pp. 15-18; Exhibits 15, 26]

94. The attendance records submitted for this time period of August 2010 through November 16, 2011, indicate that very few people were participating in this program. For example, in August and September 2010, and from December 2010 through October 2011, the attendance records for the program listed only one person attending each of the classes offered during those time periods. Attendance records for the remaining classes indicate that the maximum number of people who attended the program class was four (on November 15 and 16, 2011). [Exhibit 26]

95. The attendance records for the program also indicate that Councilwoman Shanklin attended the class on fifteen occasions: July 4, August 1, August 3, October 12, October 14, October 17, October 18, October 26, October 28, October 31, November 1,

November 2, November 14, November 15, and November 16, 2011. On ten of those occasions, Councilwoman Shanklin was the only person listed on the attendance sheet for the program class. Other attendees to the program classes included Carla Shanklin and Craig Shanklin, whom the Hearing Officer reasonably infers are relatives of Councilwoman Shanklin. [Exhibit 16]

96. It is reasonable to infer from these attendance records that the program primarily benefited Councilwoman Shanklin and members of her family.

97. The Department of Corrections involvement with this program was terminated on November 14, 2011; the last date of service paid for by the Department of Corrections was November 16, 2011. [Exhibit 16] The decision to terminate Correction's involvement with the program was made by Mark E Bolton, the Director of Metro Corrections, who determined that the program was not serving a corrections population, i.e., the inmates under the care, custody, and control of Metro Corrections. Metro Corrections is not responsible for, and does not have jurisdiction over, inmates who have been released from custody and are back in the community. Mr. Bolton determined that it was inappropriate for Metro Corrections to continue to pay for this program. [Exhibit 16; testimony of Mark E. Bolton, Tr. 2, at pp. 14 - 20, 42, 46, 64, 65] In addition, there were concerns that Metro Corrections had no management authority over the Ex Offender Program, that Metro Corrections did not administer the program, and that "the provider, which would have been Haywood or Newburg," controlled the program. [Testimony of Mark E Bolton, Tr. 2, pp. 37-39, 49-50, 80-81]

98. After Metro Corrections terminated its participation in this program, the Petersburg-Newburg Improvement Association paid Linda Haywood \$863.10 on

December 20, 2011, for "class and supplies." A note was attached to the check that stated: "The attached cancelled check reflects payment to complete the upholstery class program." The funds for this check came from the Neighborhood Development Funds that had been granted to the Petersburg-Newburg Improvement Association. [Exhibit 17; testimony of Ingram Quick, Tr. 1, pp. 153-154]

### II.B. Ethics Code

99. It is alleged that Councilwoman Shanklin, in her official actions in obtaining funding for a program intended to serve ex offenders, violated § 21.02(B) of the Ethics Code.

100. Although evidence was presented at the hearing regarding several matters connected with this Ex Offender Program, there is only one issue mentioned in the Order Amending Notice of Hearing regarding the Ex Offender Program that is alleged to be a violation of the Ethics Code, *i.e.*, that Councilwoman Shanklin may have used her office "to fund a program intended to serve ex-offenders that benefited family members and other persons." [Exhibit 19] This is the only allegation that the Commission will address, because this is the only allegation for which Councilwoman Shanklin has received the required notice; any other allegation connected with this issue is not properly before the Ethics Commission in these proceedings.

101. § 21.02(B) of the Ethics Code states:

No Metro Officer shall use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself or herself, members of his or her family or other persons.

[LMO Chapter 21, § 21.02(B)]

102. This provision of the Ethics Code prohibits Councilwoman Shanklin from

using her position as a Council Member to secure unwarranted privileges or advantages for herself or members of her family.

103. The funding for this Ex Offender Program came from a budgeted appropriation for the Metro Department of Corrections. There is no direct evidence in the record that Councilwoman Shanklin used or attempted to use her official position as a Council Member to secure that appropriation for the Ex Offender Program.

104. For these reasons, the Hearing Officer did not find that Councilwoman Shanklin's actions in this matter constitute a violation of § 21.02(B) of the Ethics Code.

105. While the Commission recognizes that lack of direct evidence in the record regarding Shanklin's responsibility for the Corrections midyear budget adjustment appropriating funds to Metro Corrections for the program, evidence of the following circumstances must be noted:

a. It appears from the record that Shanklin initiated the program using Newburg Community Council funds, selected Linda Haywood as the instructor, and set the compensation.

b. It appears from the record that Linda Haywood considered Shanklin to be the supervisor of the program, regardless of the funding source.

c. It appears from the record that that Councilwoman Shanklin started the Ex-Offender Upholstery Program and her involvement did not end when the program was placed in the Metro Corrections budget, and that Corrections did not oversee the program but instead served only to process payments to an instructor selected by Shanklin.

d. It appears from the record that the Director of Metro Corrections, after researching the origins of the program and observing the program for years, did not believe that Metro Corrections staff controlled the Ex-Offender Upholstery Program.

e. It appears from the record that Shanklin herself and members of her family were the primary beneficiaries of the program.

106. The Commission accepts the Hearing Officer's conclusion that there is insufficient direct evidence in the record to find Councilwoman Shanklin violated § 21.02(B) in connection with the Ex-offender program, but observes that the Metro Council can compel testimony that may produce direct evidence of Councilwoman Shanklin's use of her office to direct funds to Corrections for a program that benefited her and her family.

107. The Commission believes the Metro Council is the appropriate forum to hear these allegations as they bear on the Council's budgeting process, and as the use of subpoena powers to compel testimony will be necessary to obtain the necessary evidence.

108. Therefore the Commission will recommend that the Metro Council assert this allegation in any charges against Councilwoman Shanklin for removal as the Commission will recommend.

### **III. Grandson**

109. The third issue to address is whether Councilwoman Shanklin, in her official actions connected with hiring and supervising her grandson as her legislative aide, violated §§ 21.04(B) and 21.04(C) of the Ethics Code.

110. Gary Bohler is Councilwoman Shanklin's grandson. [Testimony of Councilwoman Shanklin, Tr. 3, p. 103]

111. In 2005, Councilwoman Shanklin hired Mr. Bohler to work in her office as her legislative aide; this was a paid position. Mr. Bohler worked in that position until May of 2012, with a 16-month period somewhere during that time frame in which he worked as a volunteer. [Testimony of Councilwoman Shanklin, Tr. 3, p. 104]

112. While Mr. Bohler worked as Councilwoman Shanklin's legislative aide, Councilwoman Shanklin was Mr. Bohler's supervisor. Councilwoman Shanklin exercised direct supervisory authority over Mr. Bohler, who was subject to her authority and management. [Exhibit 30; Tr. 2, p. 163 (adverse inference)]

113. On May 5, 2005, Mr. Bohler was employed as a legislative aide in Councilwoman Shanklin's office. On that date he was arrested at 6:24 a.m. and released at 4:05 p.m. [Testimony of Arnetta Al-Amin, Tr. 3, pp. 26-27; Exhibit 27]

114. On the time sheet that Mr. Bohler submitted for the time period 4/24/2005 to 5/7/2005, Mr. Bohler claimed that, on May 5, 2005, he began work at 12:00 noon, and that he worked from 12:00 - 3:00 and 3:30 - 8:30 for a total of 8 hours on that day. Mr. Bohler signed this time sheet in the space for the employee's signature, and Councilwoman Shanklin signed this time sheet in the space for the supervisor's signature. [Exhibit 30; testimony of Councilwoman Shanklin, Tr. 3, pp. 102-103] Councilwoman Shanklin's signature, as Mr. Bohler's supervisor, indicates that she had reviewed the time sheet and that it was fine with her. [Testimony of Edwin Ernest, Tr. 3, pp. 84-85]

115. Clearly, Mr. Bohler could not have worked on May 5, 2005, for the eight hours that he claimed, since he was incarcerated for a significant portion of that time.

116. Councilwoman Shanklin stated that she did not know that Mr. Bohler had not worked during the hours that he claimed he had worked on his time sheet.

[Testimony of Councilwoman Shanklin, Tr. 3, pp. 95, 96-97] The Commission finds this statement to be reasonable and credible. A legislative aide may work flexible hours, and spend a good deal of time out of the office; a Council Member must trust the legislative aide and rely on the legislative aide's representations regarding his or her work hours.

[Testimony of Kathleen Herron, Tr. 3, pp. 51-53] It is credible that Councilwoman Shanklin would not have known that Mr. Bohler was not working when he claimed to be working.

117. When Councilwoman Shanklin learned that Mr. Bohler had been paid for time that he was incarcerated, and had not worked, she required Mr. Bohler to repay the money that he had been paid for this time to Metro Government and she dismissed Mr. Bohler from his position. [Testimony of Councilwoman Shanklin, Tr. 3, pp. 95, 96-97]

118. It appears that the dismissal of Mr. Bohler from his employment in Councilwoman Shanklin's office became effective on May 14, 2012. On that date, Mr. Bohler was issued a check from the Metro Government to pay him for his 200 hours of accumulated vacation time, which is paid upon separation from Metro Government employment. [Testimony of Edwin Ernest, Tr. 3, pp. 81, 86-87]

### **III.A. Ethics Code**

119. It is asserted that Councilwoman Shanklin, in her official actions connected with hiring and supervising her grandson as her legislative aide, violated §§ 21.04(B) and 21.04(C) of the Ethics Code. The Commission will address each of these sections of the Ethics Code in turn.

#### **III.A.1. Ethics Code § 21.04(B)**

120. § 21.04(B) of the Ethics Code states:

No Metro Officer shall act in his or her official capacity to hire, or caused to be hired any member of his or her family at an hourly pay rate or with benefits in excess of any other employee with similar job duties, responsibilities and qualification requirements.

[LMO Chapter 21, § 21.04(B)]

123. There is no evidence in the record that Mr. Bohler's hourly pay rate or benefits as Councilwoman Shanklin's legislative aide were in excess of any other legislative aide. The only assertion connected with this section of the Ethics Code is that Mr. Bohler was paid for work that he did not perform on March 5, 2005, when he was incarcerated.

124. This provision of the Ethics Code requires direct action by a Council Member, either to perform the prohibited act or to have caused the prohibited act to be performed. There is no evidence in the record that Councilwoman Shanklin took any direct action, or caused any action to take place, to ensure that Mr. Bohler was paid for work that he did not perform. Indeed, it is clear that Councilwoman Shanklin did not know that Mr. Bohler had not worked during the hours that he claimed to have worked. When she discovered that this had occurred, she took the appropriate actions of requiring Mr. Bohler to repay the money to Metro Government and dismissing him from employment.

125. For these reasons, the Commission finds that Councilwoman Shanklin's actions in this matter do not constitute a violation of § 21.04(B) of the Ethics Code.

126. Accordingly, the Commission finds that the Investigating Officer has failed to prove, by clear and convincing evidence, that Councilwoman Shanklin, hired a member of her family at a pay rate or with benefits exceeding those of other employees

with similar duties in violation of § 21.04(B) of the Ethics Code.

III.A.2. Ethics Code § 21.04(C)

127. § 21.04(C) of the Ethics Code states:

No Metro Officer shall exercise direct management or supervisory authority over any member of his or her family; nor shall any Metro Officer exercise contract management authority where any member of his or her family is employed by or is under contract to any vendor who is subject to such officer's direct authority or management.

[LMO Chapter 21, § 21.04(C)]

128. This provision of the Ethics Code prohibits Councilwoman Shanklin from exercising direct management or supervisory authority over any member of her family.

129. The Ethics Code defines the term "family member" to include a grandchild. [LMO Chapter 21, § 21.01]

130. By hiring her grandson to serve as her legislative aide, and by exercising direct management and supervisory authority over him, Councilwoman Shanklin violated § 21.04(C) of the Ethics Code. This was an intentional violation of this provision: when Councilwoman hired Mr. Bohler to work for her as her legislative aide, she knew that Mr. Bohler was her grandson, she knew that she was hiring him to work for her as her legislative aide, and she knew that she would be exercising direct management and supervisory authority over him in that position. Thus, she deliberately and purposefully hired her grandson to work as her legislative aide, even knowing that she would be exercising direct management and supervisory authority over him.

131. In sum, and for all of the reasons stated, the Commission finds that the clear and convincing evidence is that Councilwoman Shanklin's actions in this matter

constituted an intentional violation of § 21.04(C) of the Ethics Code.

132. Accordingly, the Commission finds that the Investigating Officer has proven, by clear and convincing evidence, that Councilwoman Shanklin, in her official actions connected with hiring and supervising her grandson as her legislative aide, intentionally violated § 21.04(C) of the Ethics Code.

#### **IV. Summary of Findings**

133. In sum, and for all of the reasons stated, the Commission finds that the Investigating Officer has proven, by clear and convincing evidence, that Councilwoman Shanklin:

a. Intentionally violated § 21.02(B) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

b. Intentionally violated § 21.02(C) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

c. Intentionally violated § 21.03(C) of the Ethics Code in her official actions connected with obtaining Neighborhood Development funds for the Petersburg-Newburg Improvement Association; and

d. Intentionally violated § 21.04(C) of the Ethics Code in her official actions connected with hiring and supervising her grandson as her legislative aide.

134. In sum, and for all of the reasons stated, the Commission finds that the Investigating Officer has failed to prove, by clear and convincing evidence, that Councilwoman Shanklin:

a. Violated § 21.02(D) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

b. Violated § 21.02(B) of the Ethics Code in her official actions in obtaining funding for a program intended to serve ex offenders; and

c. Violated § 21.04(B) of the Ethics Code in her official actions in hiring her grandson at a pay rate or with benefits exceeding those of other employees with similar duties.

#### Fifth Amendment Issues

1. The Commission relies upon, in part, the Hearing Officer's statement of the law regarding the Councilwoman Shanklin's Fifth Amendment privilege, as follows:

2. At the hearing in this matter, the Investigating Officer called Councilwoman Shanklin as a witness in the Investigating Officer's case in chief. Councilwoman Shanklin asserted that she had a right under the Fifth Amendment to the United States Constitution not to answer any questions asked of her at the hearing. She refused to answer the first question presented to her, which was to provide her name. After the Hearing Officer explained that the appropriate procedure was for Councilwoman Shanklin to respond to each question asked of her, and to assert any Fifth Amendment privilege that she has in response to each question, and after the Hearing Officer instructed the Investigating Officer that he could proceed to question Councilwoman Shanklin, Councilwoman Shanklin's attorney instructed her to leave the hearing room, which she did. [Tr. 2, pp. 131-140] Later in the hearing, the Investigating Officer called Councilwoman Shanklin to testify as a rebuttal witness. Councilwoman

Shanklin answered the initial question posed to her by the Investigating Officer and then answered the questions posed to her by her attorney; she refused to answer the questions on redirect that were posed to her by the Investigating Officer. Once again, her attorney instructed her to leave the hearing room, which she did.

3. There are three questions to address concerning Councilwoman Shanklin's refusal to testify at the hearing in this matter: (1) whether Councilwoman Shanklin had the right to assert a Fifth Amendment privilege to refuse to testify at the hearing in this matter; (2) whether Councilwoman Shanklin asserted the Fifth Amendment privilege in the correct manner; and (3) whether any adverse inference may be drawn from Councilwoman Shanklin's refusal to testify at the hearing in this matter. The Commission will address each of these questions in turn.

#### Right To Assert Fifth Amendment Privilege

4. The first question to address is whether Councilwoman Shanklin had the right to assert a Fifth Amendment privilege to refuse to testify at the hearing in this matter.

5. The Self-Incrimination Clause of the Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." This provision is often called the "Fifth Amendment privilege against self-incrimination."

The United States Supreme Court has made it clear that this Fifth Amendment privilege "'can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory,' in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a

subsequent state or federal criminal proceeding." *United States v. Balsys*, 524 U.S. 666, 672 (1998), quoting *Kastigar v. United States*, 406 U.S. 441, 444-445 (1972). See also *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976); *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973).

Thus, while a witness has a right to assert the Fifth Amendment privilege in an administrative proceeding, such as the current proceeding, that right is limited. The assertion of the privilege is "confined to instances where the witness has reasonable cause to apprehend danger from a direct answer." *Hoffman v. United States*, 341 U.S. 479, 486 (1951).

Accordingly, Councilwoman Shanklin had the right to assert her Fifth Amendment right against self-incrimination in these proceedings if Councilwoman Shanklin met her burden of showing that she reasonably believed that the information sought, or discoverable as a result of her testimony, could be used in a subsequent state or federal criminal proceeding against her, *i.e.*, that she had a reasonable cause to apprehend danger from a direct answer.

6. The determination regarding whether a witness who asserts the Fifth Amendment privilege has a reasonable cause to apprehend danger from a direct answer, and therefore has the right to assert the privilege against testifying, is for the court to decide. In the setting of an administrative hearing, it is for the Hearing Officer to decide. *Hoffman v. United States*, 341 U.S. at 486; *Roach v. National Transportation Safety Board*, 804 F. 2d at 1151-1152.

Unless the danger of self-incrimination is readily apparent, the burden of showing that such a danger exists rests with the claimant of the privilege. *Ueckert v.*

*Commissioner of Internal Revenue*, 721 F.2d 248, 250 (8<sup>th</sup> Cir. 1983). “The witness’ assertion [of the privilege] does not by itself establish the risk of incrimination.” *Ohio v. Reiner*, 532 U.S. 17, 21 (2001). The witness who asserts the privilege must make “some positive disclosure indicating where the danger lies.” *Ueckert v. Commissioner of Internal Revenue*, 721 F.2d at 250. It then is for the court, or the Hearing Officer in an administrative hearing context, to decide if the witness’ assertion of the privilege is justified. *Hoffman v. United States*, 341 U.S. at 486.

7. The only assertion made by Councilwoman Shanklin in support of her claim of the Fifth Amendment privilege was a statement made by her attorney that the “police public integrity unit is investigating her.” [Tr. 2, p. 131] That broad statement, used to cover all of the issues about which Councilwoman Shanklin might be questioned at the hearing, is not supported by the evidence on the record of this case. The evidence presented at the hearing is that the information regarding the Ex Offender Upholstery Program was turned over to the Louisville Metro Police Department, Public Integrity Unit, for criminal investigation. [Testimony of Ingram Quick, Tr. 1, pp. 113-114] There is no evidence in the record that any other matter connected with Councilwoman Shanklin, and about which she might have been questioned at the hearing, is being investigated by the Public Integrity Unit, or by any other criminal investigatory body. Thus, while Councilwoman Shanklin can claim that there is a danger to her in answering questions regarding the Ex Offender Upholstery Program due to this criminal investigation, she cannot extend such a claim to questions that might be asked of her on other topics. Indeed, Councilwoman Shanklin made no disclosure regarding what danger there was to her in answering questions that might have been asked of her on topics other

than the Ex Offender Upholstery Program.

8. Thus, the Commission concludes that Councilwoman Shanklin has met her burden to show that she had a reasonable cause to apprehend danger from direct answers to the questions that might be asked of her regarding the Ex Offender Upholstery Program, due to the fact that that matter was referred to the Public Integrity Unit for investigation. On the other hand, the Hearing Office concludes that Councilwoman Shanklin has failed to meet her burden to show that she had a reasonable cause to apprehend danger from direct answers to the questions that might be asked of her regarding topics other than the Ex Offender Upholstery Program, because Councilwoman Shanklin has made no disclosure regarding what danger there was to her in answering those questions.

9. Accordingly, the Commission concludes that Councilwoman Shanklin may not have a right to assert the Fifth Amendment privilege against testifying as to the questions regarding the Ex Offender Upholstery Program, but that Councilwoman Shanklin did not have a right to assert the Fifth Amendment privilege against testifying as to the questions regarding topics other than the Ex Offender Upholstery Program.

#### **Correct Manner in Which to Assert the Privilege**

10. The second question to address is whether Councilwoman Shanklin asserted the Fifth Amendment privilege in the correct manner.

11. In a criminal proceeding, a criminal defendant's Fifth Amendment right against self-incrimination includes the criminal defendant's right not to take the witness stand at his own criminal trial. This is "the right of an accused at his own criminal trial 'not only to avoid giving incriminating responses to inquiries put to him but to be free

from the inquiries themselves." *Roach v. National Transportation Safety Board*, 804 F.2d 1147, 1151 (10<sup>th</sup> Cir. 1986), *cert. denied*, 486 U.S. 1006 (1988), quoting McCormick on Evidence, § 130, at 315 (3d Ed. 1984).

This right not to take the witness stand, however, does not extend to a Respondent in a civil administrative proceeding. To assert a Fifth Amendment right against self-incrimination in a civil administrative proceeding, the Respondent must take the witness stand, be sworn in, and assert the privilege in response to each allegedly incriminating question as it is asked. *Burke v. Board of Governors of the Federal Reserve System*, 940 F.2d 1360 (10<sup>th</sup> Cir. 1991), *cert. denied*, 504 U.S. 916 (1992); *Anglada v. Sprague*, 822 F.2d 1035 (11<sup>th</sup> Cir. 1987); *Roach v. National Transportation Safety Board*, 804 F. 2d at 1151; *United States v. Malnik*, 489 F.2d 682 (5<sup>th</sup> Cir.), *cert. denied*, 419 U.S. 826 (1974). The witness may not claim the privilege as a "blanket defense," but rather "must make specific objections in response to specific questions." *In re Matter of Grand Jury Subpoena*, 739 F.2d 1354, 1359 (8<sup>th</sup> Cir. 1984).

12. Although the Commission informed the parties of this procedure several times during the hearing in this matter, Councilwoman Shanklin and her attorney refused to follow this procedure. When Councilwoman Shanklin was called to testify during the Investigating Officer's case in chief, Councilwoman Shanklin refused to be questioned at all, claimed the Fifth Amendment privilege as a "blanket defense," and left the hearing room. When Councilwoman Shanklin was called to testify by the Investigating Officer as a rebuttal witness, Councilwoman Shanklin answered the initial questions posed to her by the Investigating Officer and by her attorney, but then claimed the Fifth Amendment privilege as a "blanket defense," and left the hearing room.

13. Clearly, Councilwoman Shanklin did not assert the Fifth Amendment privilege in the correct manner.

14. Indeed, the overbreadth of Councilwoman Shanklin's assertion is clearly illustrated by her refusal to answer the question regarding her name. As the Supreme Court has stated, "Answering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances . . . . Even witnesses who plan to invoke the Fifth Amendment privilege answer when their names are called to take the stand." *Hibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 191 (2004). Councilwoman Shanklin offered no explanation regarding how the disclosure of her name could have been used against her in a criminal case.

#### Adverse Inference

15. The third question to address is whether any adverse inference may be drawn from Councilwoman Shanklin's refusal to testify at the hearing in this matter.

16. An adverse inference is a legal inference, adverse to the concerned party, drawn from a party's silence or the absence of requested evidence. [*Definitions. uslegal.com*] In the case of a party's refusal to testify, an adverse inference is an inference that, if the party had answered the questions put to her, the answers would have been unfavorable to her.

17. If a witness in a civil administrative proceeding properly asserts a Fifth Amendment privilege against testifying, the fact finder may draw an adverse inference from the witness' failure to testify. Such an adverse inference, however, may only be drawn when independent evidence exists of the fact to which the party refuses to answer. *Doe v. Glazer*, 232 F.3d 1258 (9<sup>th</sup> Cir. 2000).

18. As discussed above, the Commission has concluded that Councilwoman Shanklin had a right to assert the Fifth Amendment privilege against testifying as to the questions regarding the Ex Offender Upholstery Program. Therefore, an adverse inference may only be drawn regarding the answers to the questions that would have been asked of Councilwoman Shanklin regarding the Ex Offender Upholstery Program if independent evidence exists regarding those facts.

19. On the other hand, the Commission has also concluded that Councilwoman Shanklin may not have a right to assert the Fifth Amendment privilege against testifying as to the questions regarding topics other than the Ex Offender Upholstery Program. Therefore, the limitation placed on drawing an adverse inference from Councilwoman Shanklin's failure to testify that comes from the proper assertion of the Fifth Amendment privilege does not apply to Councilwoman Shanklin's refusal to testify regarding topics other than the Ex Offender Upholstery Program. In this situation, the fact finder may make an adverse inference from Councilwoman Shanklin's refusal to testify, and may infer that, if Councilwoman Shanklin had answered the questions put to her, the answers would have been adverse to her. The questions from which an adverse inference may be drawn are found at Tr.2, pp. 141-163, and Tr. 3, pp. 108-109. Because Councilwoman Shanklin refused to follow the correct procedure in asserting her Fifth Amendment privilege, and left the hearing room, the questions could not be asked of her directly. The Investigating Officer and the Commission members stated the questions that they would have asked Councilwoman Shanklin if they had had the opportunity to ask her the questions.

#### Conclusions of Law

1. The Louisville Metro Ethics Commission has jurisdiction over this matter pursuant to LMO Chapter 21, Ethics Code.

2. The Ethics Code applies to Metro Officers, which includes Metro Council Members. [LMO chapter 21 §§ 21.01 & 21.02] As a Metro Council Member, Councilwoman Shanklin is subject to the provisions of the Ethics Code.

3. The burden of proof in this matter is on the Investigating Officer to prove the allegations against Councilwoman Shanklin by clear and convincing evidence. [LMO Chapter 21, Section 21.06(C)]

**A. Allegations Against Councilwoman Shanklin**

4. The allegations are that Councilwoman Shanklin may have violated six provisions of the Ethics Code codified at LMO Chapter 21: §§ 21.02(B), 21.02(C), 21.02(D), 21.03(C), 21.04(B), and 21.04(C). If it is determined that Councilwoman Shanklin violated any or all of the cited provisions of the Ethics Code, a determination must be made regarding whether those violation were intentional violation. This determination must be made because the penalties that may be imposed for a violation of the Ethic Code differ depending on whether the violation was intentional or unintentional. (See discussion of Penalties, below.)

5. An “intentional” act is an act that is deliberate, purposeful, done on purpose, willful, or characterized by a conscious design or purpose.

[*thefreedictionary.com; merriamwebster.com; thesaurus.yourdictionary.com; americanheritage.your dictionary.com*]

6. Based on the foregoing findings of fact, the Commission concludes that the Investigating Officer has proven, by clear and convincing evidence, that

Councilwoman Shanklin:

a. Intentionally violated § 21.02(B) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

b. Intentionally violated § 21.02(C) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

c. Intentionally violated § 21.03(C) of the Ethics Code in her official actions connected with obtaining Neighborhood Development funds for the Petersburg-Newburg Improvement Association; and

d. Intentionally violated § 21.04(C) of the Ethics Code in her official actions connected with hiring and supervising her grandson as her legislative aide.

7. Based on the foregoing findings of fact, the Commission concludes that the Investigating Officer has failed to prove, by clear and convincing evidence, that Councilwoman Shanklin:

a. Violated § 21.02(D) of the Ethics Code in her official actions connected with obtaining Neighborhood Development Funds for the Petersburg-Newburg Improvement Association;

b. Violated § 21.02(B) of the Ethics Code in her official actions in obtaining funding for a program intended to serve ex offenders; and

c. Violated § 21.04(B) of the Ethics Code in her official actions connected with hiring and supervising her grandson as her legislative aide.

#### **B. Penalties**

4. In the case of a Metro Council member, an intentional violation of the Ethics Code may also be grounds for other sanctions or actions by the Metro Council under its rules, or otherwise.

[LMO Chapter 21, § 21.99(1) & (2)]

5. Determining the appropriate penalty is within the discretion of the Ethics Commission.

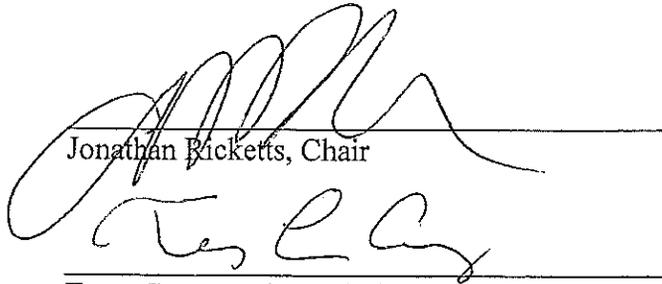
### **FINAL ORDER**

Following a thorough and deliberate review of the testimony, evidence, and arguments of counsel, the Louisville Metro Ethics Commission finds, unanimously by clear and convincing evidence, that Councilwoman Barbara Shanklin intentionally engaged in conduct in violation of Louisville Metro Ordinance Chapter 21 §21.02(B), §21.02(C), § 21.03(C), and §21.04(C). Pursuant to Louisville Metro Ordinance Chapter 21 §21.99, a Letter of Reprimand and Censure shall be sent to Councilwoman Shanklin and the Louisville Metro Council and entered into the record of the case.

The Commission recommends that the Louisville Metro Council exercise its authority under KRS 67.143 to commence proceedings to remove Councilwoman Shanklin from the Council.

This Order, and the Findings of Facts and Conclusions of Law in which this recommendation is grounded, shall be delivered forthwith to the Louisville Metro Council pursuant to Louisville Metro Ordinance Chapter 21 §21.99(A)(3)(b) and (c) for further action as the Council deems appropriate.

Entered unanimously this 14<sup>th</sup> day of March, 2013 by the following members of the  
Louisville Metro Ethics Commission.

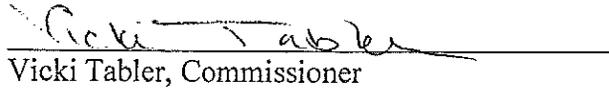


Jonathan Ricketts, Chair

Terry Conway, Commissioner



Thelma Clemons, Commissioner



Vicki Tabler, Commissioner



Skip Daleure, Commissioner



Susan Rhodes, Commissioner



Enid Trucios-Haynes, Commissioner