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November 6, 2019

Karen Brinson Bell
State Board of Elections
430 N. Salisbury St., 3rd Floor, Dobbs Building
Raleigh, NC 27603

Dear Ms. Bell,

This complaint requests an investigation and ruling from the State Board of Elections regarding a legislator using his campaign funds for personal financial gain by purchasing a home in Raleigh and paying for undocumented, imaginary expenses.

On January 12, 2007, the State Board's executive director issued an advisory opinion that said a campaign could pay a legislator's rent for a Raleigh apartment because of the provision in NC General Statute 163-278.16B(2) that says the campaign may use funds for "Expenditures resulting from holding public office." However, accountants will tell you that paying for the purchase of a house is not an expenditure – it's a substantial capital investment in an asset that could increase in value over time. Put another way, this appears to be a case of a legislator profiting from his campaign by using his contributors' money to acquire an asset worth about \$250,000.

The legislator is Senate President Pro Tem Phil Berger of Rockingham County, arguably the most powerful legislator in the NC General Assembly. To the best of my knowledge, Sen. Berger is the only legislator effectively using campaign funds to pay for a home the legislator is buying, based on my review of tens of thousands of campaign entries over the past three years, from July 1, 2016 to June 30, 2019.

Perhaps tellingly, Berger's counterpart in the NC House – House Speaker Tim Moore – is the only current legislator who used a similar scheme to pay for a Raleigh home during the previous three-year period (July 1, 2013 to July 1, 2016). Moore Properties of Kings Mountain, which is owned by Tim Moore, purchased a condominium on Bishops Park Dr. for \$150,000 on November 27, 2013. Two weeks later, Moore's campaign committee began sending periodic checks for \$1,200 to Moore Properties of Kings Mountain for "Raleigh rent." The payments finally stopped in April 2016. Over a 29-month period, Moore's campaign sent a total of \$22,800 to his real estate company for his home in Raleigh. I do not see any examples of Moore's campaign paying for a home after April 2016.

Going through records over the past decade, I also do not see any examples of campaign-financed capital investments benefiting the previous legislative leaders – namely House Speaker Thom Tillis, House Speaker Joe Hackney or Senate President Pro Tem Marc Basnight.

As with Speaker Tim Moore, Sen. Phil Berger's scheme to use campaign funds for a major capital

investment involved an intermediary company or conduit controlled by the politician. Here are the facts in Berger's case, as best as I can determine them, along with several supporting documents that are included with this letter.

- On May 19, 2016, Philip E. Berger and his wife Patricia H. Berger purchased a townhouse at 1535 Yarborough Park Drive, Raleigh, for \$250,000.
- On May 19, 2016, Phil and Patricia Berger signed a Deed of Trust with NewBridge Bank for a mortgage loan of \$224,910 for the Yarborough Park Drive townhouse. The deed says the initial interest rate of 3.875% will become an adjustable rate after June 1, 2023; the full loan, with interest, is payable by June 1, 2046.
- The May 19, 2016, loan agreement with NewBridge Bank includes a "Second Home Rider," signed by Phil and Patricia Berger, which says, "Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property." (emphasis added)
- On June 25, 2016, Phil Berger's attorney Steven B. Long filed Articles of Organization with the NC Secretary of State for YPD Properties, LLC. Its principal office is located at Berger's law firm office address in Eden. In subsequent annual filings with the Secretary of State, Philip E. Berger is identified as YPD's manager and YPD's business is describes as "property management." YPD apparently stands for Yarborough Park Drive.
- On August 8, 2016, the Philip E. Berger Committee sent \$4,500 to YPD Properties at the Berger law firm address for a purpose described as "Holding Public Office Expenses." Thereafter, in the first few days of each month, the campaign sent \$1,500 to YPD Properties. The payments of \$1,500 per month have continued all 12 months of the year, through the most recent campaign disclosure report that ended June 30, 2019. The initial \$4,500 payment apparently covered \$1,500 per month for June, July and August of 2016.
- The purpose of the 24 monthly payments to YPD Properties in 2017 and 2018 is not provided on the campaign disclosure reports. "Rent" is the purpose given for the most recent six payments of \$1,500, from January to June, 2019. (Does the arrangement to have YPD Properties pay "rent" for the townhouse violate the mortgage loan stipulation against renting the property?)
- Thus far, from August 2016 through June 2019, Berger's campaign has sent a total of \$55,500 to YPD Properties.
- It's not clear whether YPD Properties is paying down the mortgage loan directly, or paying \$1,500 each month to Phil Berger, or doing something else. On his Statements of Economic Interests since 2017, Berger lists himself as "Member/Manager" of YPD Properties and also says he files a K-1 tax form with the IRS for income received from YPD Properties for "property management."

Upon information and belief, by following the money from campaign contributors to YPD Properties to Phil Berger, it seems apparent that Burger is using his campaign for personal profit – for substantial financial gain and for acquiring a capital asset.

It is understandable that Mr. and Mrs. Berger want lodging in Raleigh. Patricia Berger is employed by the NC General Assembly to work in Sen. Phil Berger's office as a research assistant and paralegal. As Senate leader and his party's leader in an era of nearly year-round legislative meetings, Sen. Berger is in Raleigh frequently and for long hours. But he receives \$104 a day from taxpayers for food and lodging when the General Assembly is in session, in addition to his legislative salary, a monthly expense allowance and reimbursable travel expenses. Regardless of how the Bergeries use the money they receive from taxpayers (it totaled about \$115,000 in 2017), there is nothing in state law that authorizes a legislator to use campaign money to pay for a wife's lodging, or pay the mortgage loan on a home, or profit handsomely from "holding office."

The State Board of Elections has consistently prohibited the use of campaign funds for personal gain. I am asking the Board to investigate all aspects of the scheme described above involving the YPD property, recover any misused funds, and penalize any wrongdoing. Especially given the clever way an intermediary company is being used to funnel campaign money to a politician, I am also asking the Board to conduct a thorough investigation of other transactions where Phil Berger's campaign funds are directly or indirectly personally enriching him.

One particular set of transactions that merits close scrutiny involves the Berger campaign's monthly payment to the "Berger Law Firm" in Eden. A campaign finance auditor at the State Board of Elections asked for more information about those payments during an audit of the Philip E. Berger Committee's disclosure reports covering the period from July 1, 2009, through June 30, 2015. (This is before the 2016 payments to YPD Properties began, so those transactions are not included in the audit.) In response to the staff inquiry, Berger's campaign treasurer (Amy Ellis) wrote a memo explaining that the campaign paid the law firm "because it is the most convenient location for Senator Berger to conduct campaign and legislative business when not working on legal matters."

The campaign began paying the Berger Law Firm \$1,200 a month in October 2012 and increased that to \$1,500 a month in September 2015. As of June 30, 2019, the Berger campaign has sent the Berger Law Firm a total of \$109,800 in 80 monthly payments. I believe these transactions deserve more scrutiny by the State Board of Elections.

According to Rockingham County tax records, the law firm office is a converted small house built in 1930 with 1,412 square feet of heated space and a value of \$120,045. Berger bought the building in December 2003 for \$86,500 and transferred ownership in December 2004 to his family partnership, PPK Company LLC. In addition to Berger's modest office in the building, another attorney has an office, the secretary has office space and a work area, and there's a small conference room. Nevertheless, campaign treasurer Ellis' memo claims 1,000 sq. feet are devoted to Sen. Berger's "campaign and legislative business" on a part-time basis at a "fair market" rate of \$600 per month; another \$700 per month pays for the secretary's time, and \$200 per month pays for a fax line, phone line, cell phone and utilities, for the monthly total of \$1,500 – every month of the year.

These expense estimates are even more fanciful when you realize that for years Sen. Berger has been charging taxpayers the \$104 per diem for spending more than 200 days in Raleigh on legislative business. (256 days in 2015, etc.) To get around this inconvenient truth, his campaign treasurer justifies the \$1,500 monthly payments not by documenting the actual way Berger's law firm office is used, but by comparing rental prices at other office buildings in Eden and by asserting, incorrectly, that such office payments are "common practice" among legislators.

Actually, the common practice is for legislators not to charge anything for their day-job's workspaces. Besides Phil Berger, the only current or past legislator I could find over the past six years whose campaign paid his own company a fee for office rent, 12 months a year, year after year, is former Sen. Tom Apodaca, who served as Berger's Rules Committee Chair until he resigned in 2016 and became a lobbyist. Apodaca's company took in \$95,000 from this practice before he quit.

Now we have Sen. Berger directing his campaign to pay \$1,500 each month, year-round, for his home in Raleigh and \$1,500 each month, year-round, for his office in Eden. Both payments benefit him through his intermediary companies, and both payments are based on theoretical rather than actual costs. This kind of trickery and manipulation of the law for personal gain must be stopped. It converts a legislator's campaign account into a personal piggybank.

What's next: charge your campaign \$4,000 a month for the mortgage loan on your \$600,000 home in Raleigh because you need lodging, or buy a luxury office building in your district because it's "convenient," or charge your travel costs to Raleigh based on airplane prices because you need to get to the legislature? Or maybe set up a shell company and have it bill your campaign \$1,500 a month for "office space" in your home because you do campaign and legislative work at home?

Unless the State Board of Elections takes action, politicians will continue to profit handsomely by funneling campaign contributions to themselves, directly or indirectly, to pay for inflated expenses and subsidized assets.

As I was completing my research for this complaint, I discovered that Philip E. and Patricia H. Berger purchased another home in Raleigh on September 26, 2019, for \$370,000 – a condominium at 400 W. North Street, Unit 726. The Deed of Trust for the 30-year loan with Wells Fargo has a Second Home Rider that is exactly the same as the one with the loan for the Yarborough Park Drive townhouse. It says, "Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, . . . and shall not rent the Property or give a management firm or any other person any control over the occupancy or use of the Property." The Rider for both loans ends with a statement that "Borrower shall be in default if, during the Loan application process, Borrower . . . gave materially false, misleading, or inaccurate information or statements to Lender . . . concerning Borrower's occupancy of the Property as Borrower's second home."

It will be interested to know what the Philip E. Berger Committee's bank records and campaign disclosure report show for transactions in September, October and November involving YPD Properties or a possible new entity related the North Street condominium.

Please let me know if I can be of assistance in your investigation and please notify me about actions the Board will be taking regarding this complaint.

Sincerely,

Bob Hall

Links for some of the attachments:

- Campaign finance reports: <https://www.ncsbe.gov/Campaign-Finance/report-search>

- Wake County property records and deeds of trust:
<http://services.wakegov.com/booksweb/genextsearch.aspx>
- Articles of incorporation and annual reports of companies, filed with NC Secretary of State:
https://www.sosnc.gov/online_services/search/Business_Registration_Results
- Statements of Economic Interests: <https://et.ncsbe.gov/Search?id=SEI>
- Rockingham County tax record for Berger Law Firm office:
<http://www.webgis.net/nc/Rockingham/PropertyCard.php?pid=109117>
- Rockingham County tax record/building sketch for Berger Law Firm office:
<http://www.ustaxdata.com/nc/rockingham/print.cfm?ownerID=&parcelID=109117>
- Amy Ellis's memo about Berger Law firm rent – pages 23-28 of audit letter:
<https://cf.ncsbe.gov/CFOrgLkup/ViewDocumentImage/?DID=211297>

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STATE OF NORTH CAROLINA
COUNTY OF _____

The undersigned, being first duly sworn, hereby certifies that he is a registered voter in North Carolina and that the information in this letter is true and correct to the best of his knowledge and belief.

Signature

Date

Sworn to (or affirmed) and subscribed before me, this ____ day of _____, 2019.

Signature of Notary Public

Printed Name of Notary Public

My commission expires: _____

(NOTARY STAMP OR SEAL)