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**Audit of the District of Columbia  
Sports and Entertainment Commission  
for Fiscal Years 1996 Through 1998**

**March 14, 2000**

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## ***EXECUTIVE SUMMARY***

Pursuant to Public Law 93-198, Section 455, the District of Columbia Auditor examined the accounts and operation of the District of Columbia Sports and Entertainment Commission (Commission) for fiscal years 1996 through 1998.

### **CONCLUSION**

The Auditor's examination of the quality of the Commission's financial management and spending practices, particularly in the area of internal management and accounting controls over expenditures, revealed that the Commission needs to strengthen its policies, procedures, and practices with regard to: (1) awarding grants; (2) making financial contributions; (3) spending Commission revenue for contractual services provided outside the management and control of the Commission; (4) expending Commission funds to purchase gifts, food and entertainment for Commission officials, employees, and their guests; and (5) disbursing Commission funds for "bonuses" to a non-Commission employee.

The Auditor found that the Commission, with the approval of its Board of Directors, loaned approximately \$5.8 million of Commission revenue to finance pre-development costs related to the MCI Arena project under a flawed informal arrangement that lacked sufficient internal controls. Inadequate internal controls and other risks inherent in this arrangement resulted in the Commission not being reimbursed approximately \$45,689 by the Redevelopment Land Agency for payments the Commission made to contractors who were not providing services to the Commission. The Auditor recommended that the Commission develop guidelines and procedures to govern its financial participation in such future projects and safeguard its assets. The Auditor further recommended that the RLA reimburse the Commission the \$45,689 in disbursements.

In reviewing the Commission's expenditures, the Auditor found expenditures for gifts, food, and entertainment totaling approximately \$36,258 that primarily benefitted Commission officials and employees in a manner that did not appear to relate to the Commission's mission. The Commission should discontinue the practice of spending public funds for personal gifts, food, and entertainment that are unrelated to its mission.

The Auditor found that the Commission's revenue has decreased since the departure of the Washington Redskins' football team in calendar year 1996. A decrease in other events at the Stadium has also contributed to a decrease in revenue. Additionally, the Commission has failed to properly maintain the Stadium or to develop an effective strategic plan or marketing plan to reverse the declining trend in the condition of the facility, the number of events hosted, and the amount of revenue generated.

The District of Columbia Sports and Entertainment Commission was authorized by D.C. Law 10-152 to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks and by providing disadvantaged youths with opportunities to attend sporting events. To implement this provision, the Commission established a flawed grant program which lacked adequate internal management, administrative and financial controls. In awarding community grants, the Commission did not comply with policies and procedures that it had established to administer the program. Further, the Commission failed to develop an effective marketing strategy to ensure that all funds set aside for grants were awarded to a broad range of qualified grant applicants.

During the period under audit, the Commission's Board of Directors failed to establish performance goals and measures for its executive director to achieve as a basis for evaluating the executive director's performance. The Board awarded the former executive director a total of \$60,000 in bonuses over a three-year period covered by the audit but failed to document the basis for outstanding performance ratings. The bonuses were awarded during the District's financial crisis and at a time when the Stadium's revenue had declined significantly. Performance measures are essential in assessing accomplishments and measuring performance. In order to effectively rate the executive director's performance and justify the award of "bonuses," the Board should establish clearly defined goals and performance-based measures to be achieved by the executive director to support the award of annual bonuses.

Finally, the Commission improperly paid \$15,000 in "bonuses" to an individual who at the time was the Administrator of the District's Office of Documents and Administrative Issuances. Further, this individual provided services to the Commission over more than a three-year period without a written contract to justify and support the payments.

### **FINDINGS**

1. The Commission has carried a \$2.177 million accounts payable on its books since fiscal year 1995.
2. The Commission needs to strengthen its financial management and spending practices.
3. The Commission loaned approximately \$5.8 million of its funds to finance initial pre-development costs of the MCI Arena Project.

5. The Redevelopment Land Agency failed to reimburse the Commission \$45,689 disbursed to contractors for MCI Arena pre-development costs.
6. The Commission incurred questionable expenditures that did not appear to relate to its mission.
7. Commission's internal controls over community grants need to be improved.
8. The Commission did not comply with its proposed standards and guidelines in awarding community grants.
9. The Commission ignored its grant eligibility requirements in awarding community grants.
10. The Commission's Board of Directors should clarify the Community Outreach Committee's responsibilities and authority to award grants without the full commissions approval.
11. The Commission improperly classified contributions as grants.
12. The Commission needs to improve its grant marketing efforts.
13. The former executive director's salary increased by approximately 20 percent over the three-year period under audit.
14. The Commission did not establish performance goals and measures to evaluate the performance of the Commission's former executive director.
15. The Commission engaged in personnel practices that did not comply with applicable personnel rules.
16. The Commission improperly detailed an employee to the Office of the Secretary of the District of Columbia for more than two years.
17. The Commission improperly paid bonuses to and travel expenses for the District's former Administrator of the Office of Documents and Administrative Issuances.
18. The Commission's former executive director awarded bonuses to an individual who was not an employee or contractor of the Commission.
19. Former administrator of the Office of Documents and Administrative Issuances violated District leave regulations.

## **RECOMMENDATIONS**

1. The Commission's Board of Directors immediately take the appropriate actions necessary to resolve the \$2.177 million outstanding accounts payable and clear its accounting books and records of this long-standing transaction.
2. The Redevelopment Land Agency reimburse the Commission \$45,689.30 in contract payments approved by RLA and/or the Office of the Secretary of the District of Columbia on behalf of RLA.
3. The Commission develop and implement sound financial management and procurement controls to safeguard its assets and effectively govern its participation in future projects such as the MCI Arena project.
4. The Commission immediately discontinue the practice of spending public funds for personal gifts, food, and entertainment for Commission officials and employees in that such expenditures do not relate to its mission or a discernible marketing plan or strategy.
5. The Commission's Board establish a policy stating the types of expenditures that are permissible and those that will not be permitted using Commission funds.
6. If there is a need for official entertainment to carry out its mission, the Commission should seek statutory authority to establish a representation or reception fund.
7. The Commission revise its grant policies, procedures, and practices to ensure that they are applied fairly and that only complete applications are considered for approval.
8. The Commission's Board of Directors clearly define the responsibilities and authority of the Community Outreach Committee.
9. The Commission's Community Outreach Committee establish effective review and approval policies and procedures and formally record its decisions in a manner that clearly articulates the basis for the grant award and the Committee's vote.
10. The Commission should establish effective grant monitoring and reporting procedures to ensure that grant funds are used for the intended purpose.
11. The Commission improve its maintenance of grant files so that all documents pertaining to each grantee are readily available for review.
12. The Commission discontinue making donations and contributions until adequate policies and procedures are established to govern this activity.

13. The Commission develop more effective marketing strategies for its grant activity to attract a broader range of qualified grant applicants.
14. The Commission's Board of Directors review the Commission's mission and establish annual performance goals, objectives, and measures that should be achieved by the executive director in order to obtain performance bonuses. The goals, objectives, and measures should be qualitative as well as quantitative.
15. The Commission amend its personnel regulations to include provisions that speak to detailing its employees to other District government entities.
16. The Commission discontinue the practice of awarding bonuses to individuals who are not employees of the Commission.
17. Commission employees who authorized and disbursed Commission funds totaling \$15,000 in "bonuses" to the individual who was not an employee or a contractor of the Commission should be held fully accountable under appropriate personnel laws and regulations for these improper financial transactions.
18. The Office of the Inspector General investigate the Commission's financial transactions with the former Administrator of the Office of Documents and Administrative Issuances.



## **PURPOSE**

Pursuant to Public Law 93-198, Section 455, the District of Columbia Auditor examined the accounts and operations of the District of Columbia Sports and Entertainment Commission (Commission) for fiscal years 1996 through 1998.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives of the audit were to determine:

1. the status of the Commission's implementation of recommendations contained in KPMG Peat Marwick's Fiscal Year 1996, 1997, and 1998 Management Letters;
2. whether the Commission applied prudent financial management and spending practices during fiscal years 1996, 1997, and 1998;
3. whether community grants awarded by the Commission complied with established policies and procedures; and
4. whether the Commission followed applicable personnel and procurement regulations.

The scope of the audit included the activities noted above for the period October 1, 1995 through September 30, 1998.

In conducting the audit, the Auditor reviewed D.C. Law 10-152 entitled, "Omnibus Sports Consolidation Act of 1994"; D.C. Law 10-115 entitled, "Omnibus Sports Consolidation Amendment Act of 1998"; D.C. Code, Sections 2-4001 through 2-4019; Title 19, Chapters 27 through 34 of the District of Columbia Municipal Regulations; audited financial statements for the period under audit; event schedules; management reports; District and Commission personnel regulations; board minutes; grant files; cash receipts and disbursements journals; contracts; and bank statements. Additionally, the Auditor interviewed appropriate Commission officials and employees.

The Auditor examined expenditures, cash receipts, contracts, community grants, and bank and investment statements to determine the quality of the Commission's compliance with applicable laws, regulations, and standards.

The audit was performed in accordance with generally accepted governmental auditing standards and included such tests of the records as deemed necessary under the circumstances.

## **BACKGROUND**

District of Columbia Law 10-152, the "Omnibus Sports Consolidation Act of 1994," established the District of Columbia Sports Commission<sup>1</sup> effective August 23, 1994 to consolidate the non-military functions of the D.C. Armory Board (Armory), the Robert F. Kennedy Memorial Stadium (the Stadium), the District of Columbia Commission on Baseball, and the non-regulatory functions of the District of Columbia Boxing and Wrestling Commission. The Commission was established as a corporate body and instrumentality of the District of Columbia Government. According to the District's Comprehensive Annual Financial Report for the Year Ended September 30, 1998 (1998 CAFR), the Sports and Entertainment Commission is a "component unit" of the District of Columbia Government. Further, the 1998 CAFR states the following:

Component units are legally separate organizations for which the elected officials of the District are financially accountable. Accountability exists because the governing bodies of all the component units are appointed by the Mayor with the consent of the Council... The District must approve certain financial transactions of the ...sports commission, and certain tax revenues are dedicated to these organizations. All the component units use proprietary fund type accounting. The financial data of the component units are reported separately from the financial data of the primary government. [Auditor's Emphasis]

The District of Columbia Sports and Entertainment Commission was established to perform the following functions:

- Promote the District as a location for holding sporting events to enhance the District's economic development;
- Provide community outreach and grassroots recreation for all District residents, especially children;
- Coordinate and develop construction and implementation of new facilities and related infrastructure as well as the improvement of existing facilities in the District;

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<sup>1</sup>D.C. Law 12-115 entitled, "Omnibus Sports Consolidation Amendment Act of 1998", which became effective on June 6, 1998, changed the name of the District of Columbia Sports Commission to the District of Columbia Sports and Entertainment Commission.

- Manage and maintain facilities in the District which already exist and any new construction by the Commission;
- Promote, market and participate in sports events in the District; and
- Own and operate professional sports franchises in the District.

The District of Columbia Sports and Entertainment Commission's Board of Directors consists of 11 members. Eight (8) of the members are nominated by the Mayor with the advice and consent of the Council of the District of Columbia. Three members, who serve as ex-officio members, include a District government official designated by the Mayor, the Chief Financial Officer of the District of Columbia, and the Director of the District's Department of Recreation and Parks. Members of the Board, except for ex-officio members, serve 4-year terms and may be compensated at a rate equivalent to the highest step of a grade 15 in the District Service. Although authorized to be paid compensation, none of the Commission's Board members received any compensation during the period under audit. District employees who are members of the Commission serve without compensation. (See Appendix I for a list of the members of the Commission's Board of Directors as of December 31, 1998 and current Board members as of July 20, 1999.)<sup>2</sup>

Section 10 of D.C. Law 10-152 authorized the Commission to establish a Sports Commission Fund from the following sources: (1) all monies held by the D.C. Armory Board in the Starplex Fund, other than funds designated for military purposes, and (2) monies in the District of Columbia Commission on Baseball Fund. According to the Commission's audited financial statement for fiscal year 1994 and the District's Comprehensive Annual Financial Report, the Armory Starplex Fund's ending balance as of September 30, 1993 totaled \$5,797,027, which included \$1,398,430 in cash and cash equivalents and \$4,398,597 in investments. The \$5,797,027 was transferred to the Sports Commission Fund. Commission officials stated that the Commission did not receive any funds from the Commission on Baseball Fund.

The Sports Commission Fund is an enterprise fund which is defined in the District's Comprehensive Annual Financial Report for the Year Ended September 30, 1998 as follows:

Enterprise funds are used to account for activities that are financed and operated in a manner similar to private business enterprises where the costs (including depreciation) of providing goods or services

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<sup>2</sup>The Board's membership changed after December 31, 1998.

primarily or solely to the public on a continuing basis are or could be financed or recovered primarily through user charges.

An executive director, who is appointed by the Board, is responsible for the day-to-day management and administration of the Commission. During the audit period, the executive director was compensated, pursuant to a contract executed for the period January 1, 1996 through December 31, 1998 as follows: \$105,000 plus benefits for the first year of the contract; \$110,000 plus benefits for the second year; and \$110,000 plus benefits for the third optional year. In each of the three fiscal years under audit, the Commission's Board of Directors also awarded the executive director annual \$20,000 bonuses. On January 1, 1999, the Commission's Board of Directors and then-executive director entered into a new employment contract. Under the new contract, the executive director's compensation package for the first year was increased to \$120,000 plus fringe benefits and a \$15,000 bonus.

D.C. Law 10-152 authorized the Commission to adopt its own procurement and personnel regulations. The Commission's personnel regulations became effective August 29, 1997. Prior to the Commission promulgating its own personnel regulations on August 29, 1997, employees of the Commission were governed by the provisions of the District's Comprehensive Merit Personnel Act, as amended. Further, Chapter 3400.2 of the Commission's personnel regulations state:

This Chapter shall apply to all Commission employees hired after the effective date hereof. Commission employees hired prior to the effective date [August 29, 1997] hereof may waive, in writing, coverage under existing personnel laws and regulations and in lieu thereof opt for coverage under the provisions of this Chapter. [Auditor's Emphasis]

As noted above, Commission employees hired before August 29, 1997 are still covered by the Comprehensive Merit Personnel Act, as amended, unless they have waived this coverage in writing.

The District of Columbia Government, at no cost to the Commission, processes the Commission's payroll on a biweekly basis. The Commission transfers its payroll funds to the District of Columbia treasury. During fiscal years 1996 through 1998, the Commission's employees were paid through the District's Financial Management System (FMS). Presently, Commission employees' paychecks are processed through the District's Comprehensive Automated Personnel and Payroll System (CAPPS). Thus, the District government is incurring costs to perform the Commission's payroll processing function.

## **Budget**

The Commission's operating budget, which is funded by user charges, rental fees, and investment revenue, is subject to the same review and approval process as all other District agencies and instrumentalities. The budget is submitted to the District's Mayor, Council, and Financial Responsibility and Management Assistance Authority (Control Board) for review and approval, and is ultimately submitted for Congressional review and approval as part of the District's budget. The Commission's approved budget and actual expenditures for fiscal years 1996, 1997, and 1998 are summarized in Table I.

**TABLE I**

**D.C. Sports And Entertainment Commission's Budget  
Robert F. Kennedy Stadium And D.C. Armory  
Combined For Fiscal Years 1996, 1997 And 1998**

<b>Fiscal Year</b>	<b>Approved Budget</b>	<b>Actual Expenditures</b>	<b>Variance</b>
1996	\$6,547,000	\$10,797,000	(\$4,250,000)
1997	\$8,717,000	\$7,894,000	\$823,000
1998	\$6,936,000	\$6,720,000	\$216,000

Source: Commission's Budget Operating and Financial Plans

In fiscal year 1996, the Commission's actual expenditures exceeded the approved budget by \$4,250,000, or approximately 65 percent. The Commission's actual fiscal year 1996 unbudgeted revenue was used to cover budget overspending. According to Commission officials, variances between the approved budget and actual expenditures during fiscal year 1996 were attributed to costs associated with the preparation of the Stadium for preliminary rounds of the 1996 Olympic soccer games.

## **Revenue**

The Commission's revenues were derived from rental of the Stadium and Armory facilities, parking fees, concession commissions, advertising fees, and other miscellaneous fees generated from the rental of the Stadium and D.C. Armory. Table II presents operating revenue collected by the Commission during fiscal years 1996, 1997, and 1998.

**TABLE II**

**D.C. Sports and Entertainment Commission  
RFK Stadium and D.C. Armory  
Operating Revenue for Fiscal Years 1996, 1997, and 1998**

<b>Revenue Source</b>	<b>Fiscal Year 1996</b>	<b>Fiscal Year 1997</b>	<b>Fiscal Year 1998</b>	<b>Combined Totals</b>
Facility Rentals	\$3,093,608	\$2,249,870	\$1,311,530	\$6,655,008
Commissions	3,029,132	1,809,140	1,519,375	6,357,647
Event and other services	1,407,847	1,654,532	1,679,946	4,742,325
Facility Advertising	1,385,326	963,767	340,479	2,689,572
Co-promoted events	4,128,818	530,281	919,555	5,578,654
Parking	2,054,598	1,315,137	1,255,720	4,625,455
Miscellaneous	557	5,288	115,360	121,205
<b>Total</b>	<b>\$15,099,886</b>	<b>\$8,528,015</b>	<b>\$7,141,965</b>	<b>30,769,866</b>

Source: District of Columbia Sports and Entertainment Commission's Independent Audited Financial Statements

As indicated in Table II, the "event and other services" revenue category increased by \$246,685, or 17.5 percent, in fiscal year 1997 as a result of Redskins' games that were played in the stadium during the first three months of fiscal year 1997 and D.C. United soccer games. During fiscal year 1998, the Redskins did not play any games in the Stadium and one of the Commission's main revenue sources became D.C. United soccer games. The Commission also hosted the major league soccer playoffs and championship soccer games which brought in additional revenue.

During fiscal year 1997, the Commission's miscellaneous revenue increased by \$4,731, or 849 percent. The increase in miscellaneous revenue in fiscal year 1997 consisted of four \$1,000 deposits totaling \$4,000 for events that were canceled and not rescheduled within one year as specified in agreements. In fiscal year 1998, miscellaneous revenue increased by \$110,072, or 2,082 percent. The increase in miscellaneous revenue in fiscal year 1998 was due to the settlement of a \$114,511 insurance claim for damages caused by fans during the last Redskins game of the 1996 season.

## **Impact of the Washington Redskins Departure On Commission Revenue**

The Commission's contract with the Washington Redskins to play football games at RFK Stadium accounted for a substantial percentage of the Commission's revenue until the 1997 football season at which time the contract expired. According to audited financial statements, the Commission's total operating revenue<sup>3</sup> decreased from \$15,162,886 in fiscal year 1996 to \$8,528,015 in fiscal year 1997 - a decrease of \$6,634,871, or 44 percent. The Auditor notes, however, that fiscal year 1996 was an unusual year in that the preliminary rounds of the Olympic Soccer games were played at the Stadium which increased revenue during the last season that the Washington Redskins played in RFK Stadium. Therefore, to present a more accurate comparison of revenue generated after the Redskins' departure, the Auditor compared \$9,501,867 in operating revenue from fiscal year 1995 to \$7,141,965 in fiscal year 1998 operating revenue which resulted in a total operating revenue decrease of \$2,359,902, or approximately 25 percent. The revenue loss was partially offset by the Commission contracting with a major league soccer team (D.C. United) to play games at the Stadium beginning in fiscal year 1997. This lessened the impact of the loss of revenue generated by Redskin games. However, the Commission has not been able to offset lost revenue from Redskin games due, in part, to a lack of effective marketing, a decrease in the number of events, age of the facility, and inadequate maintenance of the facility. The Commission currently has two liability claims filed against it as a result of the Stadium's poor condition. (See Appendix II for a list of events held at RFK Stadium during fiscal years 1996, 1997, and 1998.)

## **Commission's Investment and Banking Activity**

In addition to operating revenues, the Commission generated non-operating revenue from invested funds. As of September 30, 1998, the Commission managed approximately \$18,797,778 in invested funds. During the audit period, the Commission's investments consisted of repurchase agreements and treasury bills which generated a return on non-operating revenue of approximately \$516,000 on \$6,924,282 invested during fiscal year 1996; \$830,000 on \$13,099,300 invested during fiscal year 1997; and \$979,000 on \$16,874,724 invested during fiscal year 1998. According to audited financial statements, the Commission held the following investments as of September 30, 1998:

<b><u>Type of Investment</u></b>	<b><u>Amount of Investment</u></b>
Repurchase Agreements	\$15,000,000
U.S. Treasury Bills	<u>3,797,778</u>
<b>Total</b>	<b>\$18,797,778</b>

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<sup>3</sup>Total operating revenue includes revenue from both the D.C. Armory and RFK Stadium.

The Commission is required by Section 11 (c)(5) of the "Financial Institutions Deposit and Investment Amendment Act of 1997" (D.C. Law 10-152) to:". . . adhere to District law governing investment of funds in financial institutions." [Auditor's Emphasis] The "Financial Institutions Deposit and Investment Amendment Act of 1997" allows public funds to be invested in instruments such as bonds, bills, notes, revenue bonds of the District, certificates of deposit, mortgage backed or asset backed securities, prime banker acceptances, prime commercial paper, investment grade obligations of the District, money market funds, and repurchase agreements. Before the passage of the "Financial Institutions Deposit and Investment Amendment Act of 1997," the Commission was required to invest its funds in accordance with the District of Columbia Depository Act of 1977 which limited investment instruments to obligations of the United States government or its agencies, repurchase agreements, money market funds, and time deposits with eligible institutions. The Commission is in the process of procuring the services of an investment advisor to advise it on investment options in order to comply with the District's depository and investment law and to realize greater returns on its investments with minimal risk.

During fiscal years 1996, 1997, and 1998, the Commission conducted its banking activities with Franklin National Bank and Signet Bank (now First Union Bank). In addition to an investment account with First Union Bank, the Commission established the following bank accounts:

<b><u>Name of Account</u></b>	<b><u>Bank</u></b>
Holding Accounts	Signet and Franklin Banks
Sweep Investment Account	Franklin National Bank
General Fund Account	Signet Bank (First Union Bank)
Business Checking Account	Franklin National Bank

Four (4) of the Commission's operations utilized individual holding accounts, also known as "zero balance" accounts. The four (4) holding accounts held funds for the (1) Stadium, (2) Armory, (3) Parking, and (4) Box Office. These four operations made deposits into their respective holding accounts which were with the Signet Bank until July 31, 1996. New holding accounts were opened with Franklin National Bank in August 1996. All deposits in the holding accounts were swept overnight to the Commission's general fund account at Signet Bank prior to July 31, 1996 and Franklin National Bank after July 31, 1996. All unused funds in the general fund account were invested overnight on a daily basis. Interest from overnight investments remained in the general fund account to pay operating expenses, while interest from term repurchase agreements was transferred to the general fund account also to pay bills. Any unused funds were reinvested overnight.



## **FINDINGS**

### **THE COMMISSION HAS CARRIED A \$2.177 MILLION ACCOUNTS PAYABLE ON ITS BOOKS SINCE FISCAL YEAR 1995**

The District of Columbia Appropriations Act of 1994 and the District of Columbia Supplemental Appropriations and Rescissions Act of 1994 provided that the Armory Board transfer from its Starplex Fund a total of \$3,177,000 as follows:

1. \$1,742,000 to the District of Columbia Courts;
2. \$35,000 to the Office of Cablevision; and
3. \$1,400,000 to the General Fund of the District of Columbia.

Although the Commission transferred \$1 million to the District's general fund on April 30, 1995, Commission officials believed the transfer was illegal. The Commission has carried the remaining \$2.1 million on its books as an accounts payable since fiscal year 1995. The Commission's independent auditors, by management letter dated June 9, 1997, recommended "that the D.C. Corporation Counsel investigate the matter and resolve whether the 1994 directive and the 1995 transfer were legal to the Commission." Almost one and one-half years later, on December 18, 1998, the Commission requested an opinion from the Office of Corporation Counsel on the legality of the Congressional directives and the Commission's transfer of funds.

The Commission in its request to the Corporation Counsel indicated that the Armory Board's Starplex Fund, rather than the Sports Commission Fund, was obligated under the District of Columbia Supplemental Appropriations and Rescissions Act of 1994 to transfer the funds. In other words, the District of Columbia Sports Commission was established after the D.C. Appropriations Act of 1994 and, therefore, the \$3,177,000 directive was made to the D.C. Armory Board (the predecessor to the Sports and Entertainment Commission) and was not transferrable to the D.C. Sports Commission.

On July 27, 1999, the Corporation Counsel rendered an opinion concerning the Commission's obligation and concluded, in relevant part, that:

"...the Armory Board was obligated to transfer \$3.177 million to the General Fund and the Office of Cable Television... The Armory Board transferred only \$1 million to the General Fund... therefore... funds in the Sports Commission Fund, up to \$2.177 million, should now be transferred to the General Fund and the Office of Cable Television in accordance with the 1994 congressional directives."

A copy of the Corporation Counsel's opinion is attached as Appendix III.

## **RECOMMENDATION**

The Commission's Board of Directors immediately take the appropriate actions necessary to resolve the \$2.177 million outstanding accounts payable and clear its accounting books and records of this long-standing transaction.

## **THE COMMISSION NEEDS TO STRENGTHEN ITS FINANCIAL MANAGEMENT AND SPENDING PRACTICES**

### **I. The Commission Loaned Approximately \$5.8 Million of Its Funds to Finance Initial Pre-Development Costs of the MCI Arena Project**

The Commission's Board of Directors approved and paid a total of approximately \$5.8 million for pre-development costs associated with the MCI Arena project with the unwritten understanding that the Redevelopment Land Agency (RLA) would reimburse the Commission with funds from a \$53,000,000 loan under negotiation at the time. The Auditor was not provided and could not find a written agreement between the D.C. Sports Commission and RLA requiring RLA to reimburse the Commission the \$5.8 million. The Commission's Board of Directors authorized the initial allocation of \$1.5 million to RLA on September 12, 1995 to fulfill the District's obligations under the Exclusive Rights Development Agreement related to the project. These initial funds were used to pay for completed studies and studies in progress. Additional amounts up to \$5.8 million (inclusive of the \$1.5 million) were disbursed by the Commission on behalf of this project.

In addition to allocating funds to RLA, the Commission assumed the role of paymaster, the agent responsible for paying invoices submitted by RLA and the District's Office of the Secretary for payment. The Commission maintained contract files and a journal of expenditures to record pre-development expenditures on behalf of the MCI Arena project.

Pursuant to D.C. Law 10-152, Section 4(3), the Commission was created for the purpose, among others, of:

"... coordinating the development, construction and implementation of new facilities and related infrastructure and the improvement of existing facilities in the District including issuing bonds, notes or other obligations to finance the acquisition, construction, rehabilitation or expansion of such facilities . . . "

The Auditor observed that the Commission's participation in this privately sponsored project appeared not to be completely consistent with its mission under D.C. Law 10-152 in that the law is silent concerning the Commission's informal financial participation in such projects. Of primary

concern is the informal manner in which the Commission committed approximately 25 percent of its then-existing revenue to underwrite costs associated with the MCI Arena project apparently without security or a legal right to recover any funds not reimbursed.

## **II. The Payment Method Used To Fund the Pre-Development Costs of the MCI Arena Project Lacked Sufficient Internal Controls**

The method used to pay vendors performing pre-development services for the MCI Arena project lacked sufficient internal controls.

On September 25, 1995, the Commission developed the following procedures for disbursing Commission funds to or at the direction of the RLA to contractors providing services for the MCI Arena project:

- The Commission's then-General Counsel, or the Mayor's Arena Task Force Coordinator, would review all invoices and requests for payment submitted by the MCI Arena Task Force for accuracy, necessity, and reasonableness.
- All invoices and other requests for payment would be approved by the Commission's then-General Counsel or the Mayor's Task Force Coordinator in writing and forwarded to the D.C. Sports Commission for payment. [Auditor's Emphasis]
- The Commission's Finance Office would make appropriate payments and maintain a separate ledger of all disbursements made pursuant to the Board resolution.

Notably absent in these procedures is RLA's role and responsibility in reviewing and approving all invoices submitted under contracts awarded by it and the Executive Office of the Mayor in the name of the D.C. Sports and Entertainment Commission. Further, the procedures did not address the Commission's role, or lack thereof, in negotiating contracts awarded and administered by RLA and the Executive Office of the Mayor (both separate entities of the District government) even though the Commission obligated its funds to pay for services rendered under these contracts. For example, RLA officials and staff members of the District's Office of the Secretary, which was within the Executive Office of the Mayor, negotiated contracts with vendors on behalf of the D.C. Sports and Entertainment Commission. Further, the then-Mayor, in several instances as Chairperson of the D.C. Sports and Entertainment Commission, requested that the Commission execute contracts on behalf of the District for the MCI Arena Project. After the contracts were negotiated by individuals not employed by the Commission, the Commission's

executive director signed the contracts on behalf of the Commission. The executive director maintained that the Commission played no role in the negotiation of contract terms even though the contracts obligated the Commission to pay vendors for services not provided to the Commission. Moreover, the Commission's former executive director obligated the Commission to pay for services that were not provided to or monitored and controlled by the D.C. Sports and Entertainment Commission. Further, even though the Commission was to be reimbursed by RLA, there was no written agreement between the Commission and RLA to ensure the prompt reimbursement of all Commission funds, and there was no guarantee, at the time, that RLA would receive the \$53,000,000 loan that was then under negotiation. This informal arrangement placed the Commission's revenue at substantial risk of loss and raises questions concerning its financial and management practices.

Initially, the Commission received invoices from contractors, but could not attest to whether the services had in fact been performed. The Commission's executive director indicated that this was one of the main reasons he instituted the procedures noted earlier in this section under which payment would only be made after verification by RLA and the Office of the Secretary. Again, the Auditor notes that RLA's role and responsibilities were not addressed in the payment procedures established by the Commission's former executive director. Even under the procedures instituted by the former executive director, the Commission itself never verified the validity of the contractor's requests for payment. Since the Commission did not have an agreement with RLA outlining a process for making disbursements, the Commission had no way of determining: (1) whether services rendered by contractors were accurately reflected on invoices; (2) that services rendered were consistent with the scope of work and terms of the contracts and therefore appropriate for the Commission to pay; or (3) whether fees established under the contracts for services rendered were reasonable. The Commission's independent auditor noted in its report for the fiscal year ending September 30, 1996 that *" . . . the Mayor's Office of the Secretary is approving invoices but not notifying RLA or receiving RLA's approval of the invoices. This causes discrepancies between the RLA and the Sports Commission."*

Additionally, the Commission did not monitor contract spending to ensure that disbursements were within the applicable contracted amounts, and the Commission did not know whether the contracts were properly monitored and administered by either RLA or the Office of the Secretary. Despite these glaring deficiencies and inherent risks, the Commission disbursed funds in excess of the amounts set forth in at least three contracts in the absence of duly executed amendments increasing the contract amount. For example, the Auditor reviewed a sample of the Commission's contract files for the MCI Arena project and found that the Commission disbursed \$200,423.43 more funds to the contractors listed in Table III than authorized by the respective contracts.

**Table III**

**Commission Payments to Contractors  
That Exceeded the Contract Amount**

<b>Name of Contractor</b>	<b>Contract Amount</b>	<b>Amount Paid</b>	<b>Amount Paid Over Contract</b>
Beveridge & Diamond	\$ 350,000.00	\$ 380,479.57	\$ 30,479.57
Wrecking Corporation Of America	686,067.00	816,067.00	130,000.00
Latham & Watkins	50,000.00	74,734.13	24,734.13
EDAW, Inc.	<u>1,564,681.00</u>	<u>1,579,890.73</u>	<u>15,209.73</u>
<b>Totals</b>	<b>\$2,650,748.00</b>	<b>\$2,851,171.43</b>	<b>\$ 200,423.43</b>

Source: D.C. Sports and Entertainment Commission

The Auditor further found that the Commission, the Office of the Secretary, and RLA failed to monitor disbursements against the contracts to ensure that contract costs would not exceed the contract amount. The Auditor found that this occurred, in part, as a result of ineffective coordination among the parties, lack of established points of accountability between the three entities, and inadequate internal controls over the review, approval, and payment processes.

**III. The Redevelopment Land Agency Failed to Reimburse the Commission \$45,689 Disbursed to Contractors for the MCI Arena's Pre-Development Costs**

The Redevelopment Land Agency failed to reimburse the Commission approximately \$45,689 that it disbursed to contractors for the MCI Arena Project. The Commission submitted to RLA a summary of all invoices received and payments made on invoices approved by RLA and the Office of the Secretary which totaled \$5,870,005.78. The Redevelopment Land Agency began repaying the Commission on October 2, 1995. Table IV summarizes payments the Commission made on behalf of RLA and reimbursements the Commission received from RLA:

**TABLE IV**

**Summary of Payments Sports Commission Made on Behalf of RLA And  
Reimbursements the Sports Commission Received From RLA**

<b>PAYMENTS THE COMMISSION MADE ON BEHALF OF RLA</b>		
<b>Vendor</b>	<b>Amount</b>	<b>Total</b>
Beveridge & Diamond	\$380,479.57	
Coopers & Lybrand	140,255.00	
Rubin, Winston, Diercks, Etc.	50,257.65	
Arnold & Porter	75,174.45	
Public Financial Management	54,448.00	
Dickstein, Shapiro & Morin	49,341.31	
Fried, Frank, Harris, Etc.	125,000.00	
EDAW, Inc.	1,579,890.73	
Project Resources, Inc.,	5,000.00	
Robert L. Moore	30,000.00	
Larry Pavlish	300.00	
Sportscorp, Ltd.	10,000.00	
Girard Engineering	9,926.50	
Bell Atlantic, D.C.	25,045.48	
Thorne Consultants, Inc.	2,000.00	
Lloyd Moving & Storage	299,912.50	
Wrecking Corp. of America	816,067.00	
The Officeworks Group	608,556.00	
HiTech International, Inc.	221,977.26	
Wang Laboratories, Inc.	13,650.00	
Latham & Watkins	74,734.13	
Boscart Construction	44,100.00	
De Leuw, Cather & CO.	10,500.00	
Ellerbe Becket Architects	438,000.00	
Soil Safe, Inc.	203,815.20	
Environmental Consultants & Contractors	25,190.00	
Tri County Industries	191,965.00	
Nations Bank	350,000.00	
Commonwealth Land Title Insurance Co.	34,420.00	
<b>Total Payments</b>		<b>\$5,870,005.78</b>

REIMBURSEMENTS TO THE COMMISSION FROM RLA		
Date	Amount	Total
10/02/95	\$1,581,218.51	
12/04/95	371,530.00	
01/02/96	1,237,558.75	
01/03/96	550,667.09	
04/08/96	1,500,071.50	
01/09/97	476,574.75	
07/24/97	106,695.88	
<b>Total</b>		<b>(\$5,824,316.48)</b>
<b>Amount Owed Commission</b>		<b>\$45,689.30</b>

Source: D.C. Sports & Entertainment Commission

The amount in dispute involves whether payments the Commission made to contractors over and above the contract amount were for reimbursable expenses covered by the contracts. These payments were made to Beveridge & Diamond in the amount of \$30,479.57 and EDAW, Inc. in the amount of \$15,209.73 for a total of \$45,689.30. The refusal of RLA to reimburse the Commission for payments authorized by RLA or the Office of the Secretary is but one manifestation of the inherent risk that the Commission assumed through its participation in this flawed arrangement.

Further, the Auditor notes that the Commission unnecessarily continued to pay MCI Arena contractors for over a year after RLA received its \$53 million loan. The Commission's independent auditor noted in the fiscal year 1996 management letter that the RLA loan had been finalized for over a year and recommended that the Commission *"cease making payments on behalf of the RLA."* They also recommended that: *"If it continues to make payments, the Sports Commission should work with the RLA and the Office of the Secretary to ensure that the RLA approves the invoices prior to payment."*

## **RECOMMENDATIONS**

1. The Redevelopment Land Agency reimburse the Commission \$45,689.30 in contract payments approved by RLA and/or the Office of the Secretary on behalf of RLA.

2. The Commission develop and implement sound financial management and procurement controls to safeguard its assets and effectively govern its participation in future projects such as the MCI Arena project.

**THE COMMISSION INCURRED QUESTIONABLE EXPENDITURES THAT DID NOT APPEAR TO RELATE TO ITS MISSION**

During the audit period, the D.C. Sports and Entertainment Commission disbursed \$36,258.86 to purchase food, entertainment, and gifts for Commission officials, employees, and others.

The District of Columbia Sports and Entertainment Commission was established as a corporate body and instrumentality of the District government. The D.C. Sports and Entertainment Commission is an entity of the District government and as a public entity its expenditure policies should be consistent with laws, policies, and standards governing the expenditure of public funds in the absence of statutory authority stating otherwise. The fact that the Commission is not a subordinate agency of the District of Columbia Government does not relieve it of the obligation and responsibility of prudently managing and using public funds entrusted to its management, custody, and care to carry out its mission in a manner that does not undermine the public's trust and confidence in the District government.

The legislation establishing the District of Columbia Sports and Entertainment Commission (D.C. Law 10-152) states, in relevant part, the following:

Sec. 2. Declaration of Policy

- (a) The Council of the District of Columbia hereby.... establishes a Sports Commission as a corporate instrumentality of the District for the purpose of:
  - (1) Promoting, developing, and maintaining the District as a location for hosting sporting and entertainment events;
  - (2) Planning, developing, and maintaining a comprehensive complex of sports, entertainment, and recreational events; and
  - (3) Consolidating the District's efforts in promoting and managing sports events and entertainment;...



Further, Section 2(b) of D.C. Law 10-152 states the following:

(a) In addition, an important goal for the Sports Commission is to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks and by providing disadvantaged youths with opportunities to attend sporting events.

The General Accounting Office's Principles of Federal Appropriation Law states, in relevant part, the following:

Appropriated [public] funds may not be used for entertainment except when specifically authorized by statute . . . The basis for the rule is that entertainment is essentially a personal expense even when it occurs in some business related context.<sup>4</sup>

Further, the Principles of Federal Appropriation Law, also states, in relevant part, the following:

Appropriated funds may not be used for personal gifts, unless, of course, there is specific statutory authority . . . If, for example, a General Counsel decided it would be a nice gesture and improve employee morale to give each lawyer in the agency a Christmas turkey, few would argue that the expense should be borne by the agency's appropriations. Appropriated funds could not be used because the appropriation was not made for this purpose (assuming, of course, that the agency has not received an appropriation for Christmas turkeys) and because giving turkeys to lawyers is not reasonably necessary to carry out the mission at least of any agency that now exists.<sup>5</sup>

In reviewing the Commission's disbursements for fiscal years 1996, 1997, and 1998, the Auditor found improper expenditures for food, gifts, and entertainment that did not appear to be necessary to carry out the mission of the Commission. The definition of improper expenditures, as used in this report, includes those expenditures which are not consistent with the mission of the Commission. Funds expended for food, entertainment, and gifts also did not relate to a discernible

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<sup>4</sup>Principles of Federal Appropriations Law, 2<sup>nd</sup> Ed., Vol. 1, p. 4-82.

<sup>5</sup>Ibid. p.4-128.

marketing plan or strategy and primarily benefitted Commission officials and staff. These expenditures are listed in Table V below.

**TABLE V**  
**Expenditures That Did Not Appear to Relate to**  
**The Commission's Mission**  
**For the Period October 1, 1995 Through September 30, 1998**

<b>Payee</b>	<b>Purpose</b>	<b>Amount</b>
B&B Caterers	Holiday (Christmas) Party	\$4,836.05
Honey Baked Ham Company	Employee Christmas Gifts - 1995	3,385.20
Petty Cash	Christmas Party Gifts and Door Prizes-1995	1,500.00
Honey Baked Ham Company	Employee Christmas Gifts - 1996	4,309.62
Petty Cash	Christmas Party Gifts and Door Prizes-1996	1,500.00
R. Downey	Reimbursement for purchase of retirement gift	263.99
Honey Baked Ham	Employee Christmas Gifts- FY 1997	3,203.50
Spirit Cruises	Christmas Luncheon for employees - 1997	2,015.00
Barry Legacy Committee	Full Page Ad for "A Tribute to the Legacy of Marion Barry, Jr."	500.00
Georgia Café	Reception hosted by Mayor Barry for Inaugural events at the D.C. Armory	3,663.50
Ken's Smoke House	Farewell party for employee	431.50
Ken's Smoke House	Farewell party for employee	431.50
Ken's Smoke House	Employee	476.00
B&B Caterers	Refreshments for Board members and guests	8,505.00
Mt. Ranier Flower Shop	Flowers and Fruit Baskets	1,238.00
<b>Total</b>		<b>\$36,258.86</b>

Source: Office of the D.C. Auditor

The Commission's revenue is derived from charges and fees collected on events held at the Stadium. The Auditor believes that the Commission's expenditure of public funds for the purchase of food, entertainment, and gifts for Commission officials, employees and their guests in the absence of specific statutory authority is not permissible and is not necessary to carry out the mission of the Commission. If the Commission has a legitimate need to incur entertainment expenses in furtherance of its statutory mission of " . . . promoting, developing, and maintaining the District as

a location for hosting sporting and entertainment events . . . " it should seek specific statutory authority from the Council of the District of Columbia to establish a representation or reception fund for official entertainment. Further, the maximum annual allocation for official entertainment should be established by law.

## **RECOMMENDATIONS**

1. The Commission immediately discontinue the practice of spending public funds for personal gifts, food, and entertainment for Commission officials and employees in that such expenditures do not relate to its mission or a discernible marketing plan or strategy.
2. The Commission's Board establish a policy stating the types of expenditures that are permissible and those that will not be permitted using Commission funds.
3. If there is a need for official entertainment to carry out its mission, the Commission should seek statutory authority to establish a representation or reception fund.

## **COMMISSION'S INTERNAL CONTROLS OVER COMMUNITY GRANTS NEED TO BE IMPROVED**

### **I. The Commission Did Not Comply With Its Proposed Standards and Guidelines in Awarding Community Grants**

D.C. Law 10-152, which established the District of Columbia Sports and Entertainment Commission, authorized the Commission: "...to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks and by providing disadvantaged youths with opportunities to attend sporting events." To implement this provision, the Commission chose to award grants. The Commission began awarding grants in fiscal year 1996, but did not develop official grant guidelines and publish the guidelines in the District of Columbia Register until May 9, 1997. Final guidelines were finally approved by the Commission on September 15, 1997 after it had awarded \$170,806 in grants. Final rules were published in the D.C. Register on September 26, 1997. The final guidelines did not apply to any grants awarded during fiscal years 1996 and 1997. During most of the audit period, the Commission appears to have operated its grant program pursuant to proposed grant guidelines. However, the Auditor found that the Commission did not comply with the proposed guidelines in awarding grants during fiscal years 1996 and 1997.

During fiscal year 1996, \$150,000 was set aside for grants and \$76,860 in grants was actually awarded. During fiscal years 1997 and 1998, \$100,000 was set aside each year for grants of which

\$93,946 in grants were awarded during fiscal year 1997 and \$91,871 in grants were awarded during fiscal year 1998. For fiscal year 1999, the Commission approved a grant budget of \$200,000.

The Auditor reviewed the available records for the 31 grants awarded between fiscal years 1997 and 1998. (The Auditor could not review applications for grants awarded in fiscal year 1996 because grant files could not be produced by the Commission.) Two grants were awarded in fiscal year 1996, 13 grants were awarded in fiscal year 1997, and 16 grants were awarded in fiscal year 1998. The grants awarded by the Commission or the Commission's Community Outreach Committee are summarized in Appendix IV.

Chapter 3301.3 of the proposed guidelines state the following with regard to the exclusion of certain entities from seeking and receiving Commission grants:

"Individuals, government agencies, offices and departments, as well as Advisory Neighborhood Commissions shall be ineligible to apply for grants hereunder."  
[Auditor's Emphasis]

During fiscal years 1996 and 1997, when proposed guidelines prohibited government agencies, offices and departments from receiving grants, the Commission funded 5 D.C. Public School projects totaling \$135,430. In doing so, the Commission violated its proposed guidelines by issuing grants to an agency of the District government. To cure this lapse in compliance with the proposed grant guidelines, the Commission's final guidelines eliminated the exclusion of government agencies, offices and departments from receiving Commission grants. Therefore, the final guidelines conformed to the Commission's practice of awarding grants to D.C. Public Schools. The final guidelines, however, continued to exclude the award of grants to Advisory Neighborhood Commissions.

## **II. The Commission Ignored Its Grant Eligibility Requirements in Awarding Community Grants**

According to information reviewed by the Auditor, the Commission awarded 31 grants during fiscal years 1996, 1997, and 1998 totaling approximately \$266,177.40.

As noted previously, District of Columbia Law 10-152 authorized the Commission to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks and by providing disadvantaged youths with opportunities to attend sporting events. In implementing this provision of D.C. Law 10-152, the Commission established a grant program and application process. The grant eligibility requirements set forth in 19 DCMR, Chapter 33, Sections 3301.1 and 3301.2 state:

A grant awarded hereunder shall be made solely to District of Columbia based nonprofit organizations, groups, agencies, associations and partnerships that demonstrate the capacity to develop and implement sports and recreation programs within the District of Columbia.

A grant hereunder may be awarded only to the following entities:

District-based nonprofit organizations, whose articles of incorporation, financial statement, and, as applicable, Internal Revenue Code Section 501(c)(3) letter of exemption are enclosed with the application; or

Such other legally constituted organization, groups, associations, partnerships, or government agencies which the Commission determines possess the demonstrated capacity to develop and implement sports and recreation programs within the District of Columbia.

Individuals, as well as Advisory Neighborhood Commissions, shall be ineligible to apply for a grant hereunder.

To ensure that organizations applying for grants met these eligibility requirements, the Commission developed an application to elicit information consistent with the eligibility requirements for grant applicants. The Commission's guidelines required that all grant applications include the following:

1. The applicant's legal name, address and telephone number;
2. The names, addresses and telephone numbers of all officers, directors, members, trustees, partners, shareholders, and employees;
3. As applicable, a copy of the applicant's charter, articles of incorporation, partnership agreement or registration;
4. As applicable, the date of incorporation within the District of Columbia;
5. A copy of the applicant's Internal Revenue Code Section 501(c)(3) letter of exemption, as well as the applicant's local and federal tax exempt or identification number;
6. As applicable, the applicant's audited financial statements for the three years preceding application;
7. A project narrative, including purposes, objectives, target population, and the number of persons to be served, and the grantee's plans for adult supervision of youths participating in the proposed activities;
8. The project, or program manager's name and a statement as to his/her qualifications;
9. An itemized list of projected expenditures and revenues, if any;
10. A budget narrative, including an itemization of expenditures to be funded by the grant hereunder; and
11. A notarized certification that the grant will be used exclusively to provide, promote, foster, support, or encourage sports and recreation activities among District of Columbia youth.

The Auditor found during a review of grant files that the Commission awarded grants that did not comply with its grant guidelines. Additionally, the Auditor found irregularities in the grant award process. During fiscal years 1997 and 1998, none of the grantees submitted all of the documents required by the Commission's grant guidelines. For example, during fiscal year 1997, 8 of the 13 grantees did not file a complete application yet the Commission awarded these grantees \$72,446 in Commission grant funds. During fiscal year 1998, 4 of the 16 grantees did not file a complete grant application yet the Commission awarded these grantees \$15,990 in Commission grant funds. A summary of grantees' compliance with the Commission's grant procedures is presented in Appendix V. The grantees who did not file a complete application are presented in Table VI.

**Table VI**

**D.C. Sports and Entertainment Commission  
Grantees Who Did Not File Complete Grant Applications**

<b>Fiscal Year</b>	<b>Grantee</b>	<b>Grant Amount</b>
<b>1997</b>	Langston Jr. Boys & Girls Golf Club	\$ 3,000
	Anacostia High School Track Team	3,170
	Ballou High School Team	2,500
	Sanya J. Tyler Girls Basketball Camp	5,000
	St. Paul Baptist Church	5,000
	Dunbar High School	3,000
	Oak Hill Youth Center	776
	Wilson High School Track	<u>50,000</u>
	<b>Total</b>	<b>\$72,446</b>
<b>1998</b>	Football Sports Day Luncheon	\$ 8,065
	Grant Presentation Luncheon	975
	Commemorative Plaques	1,950
	Sanya J. Tyler Girls Basketball Camp	<u>5,000</u>
	<b>Total</b>	<b>\$15,990</b>

Source: D.C. Sports and Entertainment Commission

Areas of noncompliance with grant application requirements included failure to file: (1) a 501(c)(3) letter; (2) articles of incorporation; (3) projected expenditure and revenue statement; (4) project narrative; (5) financial statement; and (6) notarized certification that "the grant will be used exclusively to provide, promote, foster, support, or encourage sports and recreation activities among

District of Columbia youth." Additionally, all of the grantees failed to file a final report at the end of the grant period as required by the Commission's guidelines. Final, or any other, grantee reports were not available in the Commission's files, and the Commission failed to produce such reports for the Auditor's review.

### **III. The Commission's Board of Directors Should Clarify the Community Outreach Committee's Responsibilities and Authority To Award Grants Without the Full Commission's Approval**

The Board's September 30, 1996 minutes indicate that it approved the establishment of a Community Relations Committee (Committee) to "allocate funds for programs to assist the District's youth, improvements needed at area public schools and for uniforms." The Director of the Department of Recreation and Parks was appointed chairperson of the Committee. However, minutes of a Board meeting held on December 9, 1996 indicated that a "... Community Outreach Committee had been established to provide grants to local schools, youth programs, etc." The Commission's staff person responsible for managing the Commission's grant program indicated that the Community Relations Committee and the Community Outreach Committee were used synonymously.

According to Commission officials, the Community Outreach Committee, which was composed of four Commission Board members, met once per quarter during fiscal years 1997 and 1998 to review grant applications. Commission officials indicated that the Community Outreach Committee was authorized to award grants up to \$5,000 without the Board's approval, however, the Auditor was not provided, and could not find, any evidence that the Board delegated such authority to the Community Outreach Committee. For example, the Board's minutes of May 20, 1997 indicated that the Board approved \$5,000 as the maximum amount to be granted, specifically, to Anacostia High School for the purchase of uniforms. In this and other instances, the Board approved \$5,000 grants. During this May 20<sup>th</sup> meeting and other meetings for which minutes were provided for the Auditor's review, the Board did not delegate the Community Outreach Committee the authority to approve and award grants of \$5,000 or less without the Board's review and approval.

Written minutes of the Community Outreach Committee's meetings, which could have documented its approval of grants up to \$5,000, were never recorded. Therefore, there was no evidence that the four members, or a majority of the members, of the Committee met and approved grant disbursements in amounts of \$5,000 or less. Twenty-four (24) grants, or 77 percent, of the 31 grants disbursed during the period under audit were for \$5,000 or less. The Auditor's review of the Board's minutes indicated that the Board approved only four (4) of the twenty-four (24) \$5,000 or less grants awarded during fiscal years 1997 and 1998. The Auditor also found twenty (20) grants,

totaling \$78,940, that were purportedly approved by the Community Outreach Committee which lacked critical supporting documentation.

During the audit, the Auditor observed that the grant files were not in any discernible order. Fragments of the grant applications, related correspondence, and other documents were divided between three different folders. Additionally, the Commission had not established a monitoring program for grantees to ensure that grant funds were used only for grant purposes. Commission officials indicated that members of the Community Outreach Committee made occasional site visits, however, there was no documentation in the Commission's files to substantiate this assertion. The Auditor also found that site visits were not made before a grant was awarded to verify the existence and nature of the organization applying for the grant.

#### **IV. The Commission Improperly Classified Contributions as Grants**

As previously noted, the Commission chose to award grants as a way of implementing its statutory authority to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for youth athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks, and by providing disadvantaged youth with opportunities to attend sporting events. However, it appeared that in some cases the Commission made contributions rather than grants which were not governed by established policies and procedures. For example, the Commission disbursed \$975 in funds set aside for grants to pay catering expenses for a "grant presentation luncheon" held at RFK. This disbursement was not supported by a grant application. The Commission also disbursed \$1,950 in grant funds to purchase commemorative plaques for a "football day luncheon." This disbursement was also not supported by a grant application. Only two documents supported these expenditures- a Commission requisition for catering services and an invoice from a vendor for plaques. The Commission's Board minutes of October 27, 1997 indicated that one Board member recommended the presentation of plaques to Wilson and Anacostia high schools during a press conference.

The Commission also disbursed \$8,065 in grant funds to underwrite a "high school football luncheon" sponsored by former Mayor Barry at the Omni Shoreham Hotel. The total cost of this event was \$8,065 which included \$4,500 for food, beverages, and gratuity in addition to \$3,565 for tee-shirts and golf shirts. The invoice from the Omni Shoreham Hotel was sent to the Department of Recreation and Parks, not the Sports Commission. However, the then-Director of the Department of Recreation and Parks, who was both a Commission Board member and the Chairperson of the Community Outreach Committee, obtained the approval of the Commission's Board to disburse grant funds for this event by having them sign and return a memo to the Director of the Department of Recreation and Parks. In other words, this grant disbursement was not approved in an official Board or Community Outreach Committee meeting.



A payment of \$3,170 was made for the purchase of uniforms for the Anacostia High School track team which the Commission classified as a grant but was not supported by a grant application. This disbursement of grant funds was made after Anacostia High School requested funding from the Mayor. Again, the then-Director of the Department of Recreation and Parks requested that the Commission's Board underwrite this expense. The Board approved this payment.

The Commission also made a \$1,500 "donation" to the Shaw Community Outreach Committee to support a Thanksgiving Day Food Basket donation program. In this instance, the Commission made the donation in response to a letter received from an employee of an organization called "The Redskins." The Commission's Chairperson of the Community Outreach Committee approved the disbursement of grant funds for this activity. This disbursement was not made until fiscal year 1999.

#### **V. The Commission Needs to Improve Its Grant Marketing Efforts**

As noted earlier, the Commission set aside funds each fiscal year for grant awards. Approximately 75 percent of funds set aside for this purpose were disbursed during the three-year period under audit. The Commission's marketing manager, who also served as the grant coordinator, indicated that marketing efforts included an initial press release sent out to print and broadcast media, stories on different radio programs, word of mouth, and social contacts. However, these marketing efforts were too narrowly focused to attract a broader range of non-profit organizations that provide sports and recreation programs for youth of the District of Columbia.

#### **RECOMMENDATIONS**

1. The Commission revise its grant policies, procedures, and practices to ensure that they are applied fairly and that only complete applications are considered for approval.
2. The Commission's Board of Directors clearly define the responsibilities and authority of the Community Outreach Committee.
3. The Commission's Community Outreach Committee establish effective review and approval policies and procedures and formally record its decisions in a written record that documents the basis for the grant award and the Committee's vote.
4. The Commission establish effective grant monitoring and reporting procedures to ensure that grant funds are used for the intended purpose.

5. The Commission improve its maintenance of grant files so that all documents pertaining to each grantee are readily available for review.
6. The Commission discontinue making donations and contributions until adequate policies and procedures are established to govern this activity.
7. The Commission develop more effective marketing strategies for its grant activity to attract a broader range of qualified grant applicants.

**THE FORMER EXECUTIVE DIRECTOR'S SALARY INCREASED BY APPROXIMATELY 20 PERCENT OVER THE THREE-YEAR PERIOD UNDER AUDIT**

**I. Examination of the Former Executive Director's Salary and Benefits under the Contract In Effect During 1996 Through 1998**

The previous contract between the Commission and the former executive director covered the period January 1, 1996 and terminated on December 31, 1997 with an option to renew for an additional year. The contract was renewed for the additional period of January 1, 1998 through December 31, 1998. The contract authorized an annual bonus not to exceed \$20,000, in addition to an annual salary of \$105,000 during the first year of the contract, and \$110,000 during the second year of the contract. The contract provided the executive director with the same health insurance, life insurance, retirement, disability, and leave benefits provided under District of Columbia personnel regulations for full-time District employees, and also provided the executive director with an automobile, including insurance and expense coverage.<sup>6</sup>

**II. Examination of the Former Executive Director's Salary and Benefits under the Contract Executed for the Period January 1, 1999 Through December 31, 2001**

On January 1, 1999, the Commission's Board of Directors<sup>7</sup> awarded and executed another contract with the former executive director for the period January 1, 1999 through December 31, 2001 with the option to extend the contract term for one additional year upon mutually agreeable terms and conditions. The former executive director was paid \$120,000 for the first year of the contract. The former executive director was entitled to receive a salary of \$122,000 during the second year, and \$124,000 during the third year. The contract provided that the Commission's Board

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<sup>6</sup>The automobile was insured under a policy for all Commission vehicles. The vehicle was fueled from a gas pump operated by the Commission.

<sup>7</sup>The appointments of most members of the Commission's Board of Directors at the time had expired or were about to expire.

of Directors would annually rate the executive director's performance and, upon a majority vote, award an annual bonus in the amount of \$15,000 for the first year of the contract, \$20,000 for the second year of the contract, and \$25,000 for the third year of the contract. In addition to salary and annual bonuses, the executive director was provided \$15,000 in deferred compensation for the first year of the contract, \$17,500 for the second year, and \$20,000 for the third year of the contract. This contract also provided the executive director with the same health insurance, life insurance, retirement, disability, and leave benefits provided under District of Columbia personnel regulations for full-time District employees, and also provided the executive director with an automobile, including insurance and expense coverage. Table VII below summarizes the executive director's total salary and benefits for fiscal years 1996 through 1999.

**TABLE VII**  
**Summary of Executive Director's Salary**  
**And Other Benefits for**  
**Calendar Years 1996 Through 1999**

<b>Calendar Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Automobile</b>	<b>Deferred Compensation</b>	<b>Total</b>
1996	\$105,000	\$20,000	0	0	\$125,000
1997	110,000	20,000	7,812	0	137,812
1998	110,000	20,000	6,686	0	136,686
1999	120,000	15,000	6,686	15,000	\$156,686
<b>Total</b>	<b>\$445,000</b>	<b>\$75,000</b>	<b>\$21,184</b>	<b>\$15,000</b>	<b>\$556,184</b>

Source: Office of the D.C. Auditor and D.C. Sports and Entertainment Commission

A comparison of the executive director's salary was made with the salary of Atlanta, Georgia and Pittsburgh, Pennsylvania's stadium managers. The general manager of the Georgia Dome in Atlanta, who is appointed by the Governor, received a salary ranging between \$85,000 and \$119,000 prior to October 1999. In October 1999, the salary range increased to between \$106,000 and \$149,000. The Georgia Dome's general manager receives a 10 to 15% annual bonus based on performance which is reflected in a written performance review. Major tenants of the Georgia Dome include the Atlanta Hawks, Atlanta Falcons, Peach Bowl, college football and basketball, and others. The seating capacity of the Georgia Dome is 71,500.

The Three Rivers Stadium in Pittsburgh, Pennsylvania has an executive director who is appointed by the Mayor. The salary of the executive director ranges between \$100,000 and \$110,000. Major tenants of the Three Rivers Stadium include the Pittsburgh Pirates and the Pittsburgh Steelers. The seating capacity is 59,000.

By comparison, the District of Columbia Sports and Entertainment Commission's executive director manages a smaller complex (seating capacity of the Stadium is 56,000) than either the Georgia Dome or the Three Rivers Stadium, and, with the exception of D.C. United soccer team, does not have a major league sports team as a tenant. The salary of the Commission's executive director is comparable to or slightly higher than the managers of both the Georgia Dome and Three Rivers Stadium.

### **III. The Commission Did Not Establish Performance Goals and Measures to Evaluate the Performance of the Commission's Former Executive Director**

The Commission's Board of Directors awarded the former executive director a total of \$60,000 in bonuses for outstanding performance during calendar years 1996, 1997, and 1998. (During this same period most District managers and employees were denied raises and cost of living adjustments and faced increasing pressure to improve performance as a consequence of the District's financial crisis.) The contract between the Commission and the executive director, during the period under audit, specified that the Commission would annually rate the performance of the executive director and award a bonus upon an outstanding rating. A performance rating is defined as a written appraisal of performance. In rating the executive director, the Commission's Board of Directors did not complete a written performance appraisal. Instead, during calendar years 1996 and 1997, the Board approved a total of \$40,000 in outstanding performance bonuses for the executive director without documenting the basis of the rating. Approval of the bonuses were recorded in Board minutes.

The Board did prepare a written performance rating report to support the executive director's \$20,000 bonus award for calendar year 1998. However, the performance rating report did not link the executive director's outstanding performance to the Commission's mission and the achievement of articulated goals. Instead, the Board used the form in Appendix VI to rate the executive director's performance. While this was an improvement over prior years, it can and should be substantially improved.

### **RECOMMENDATION**

The Commission's Board of Director's review the Commission's mission and establish annual performance goals, objectives, and measures that should be achieved by the executive director in order to obtain performance bonuses. The goals, objectives, and measures should be qualitative as well as quantitative.

**THE COMMISSION ENGAGED IN PERSONNEL PRACTICES THAT DID NOT COMPLY WITH APPLICABLE PERSONNEL RULES**

**I. The Commission Improperly Detailed an Employee to the Office of the Secretary of the District of Columbia for More than Two Years**

The Commission improperly detailed an employee to the Office of the Secretary of the District of Columbia for more than two years in violation of the District's Comprehensive Merit Personnel Act which applied to the Commission at the time of this transaction. The employee's personnel file did not contain any records documenting the period of the detail or the nature and approvals for the detail.

The Commission's current personnel regulations do not include provisions governing detailing employees to other organizations within the District government. However, this employee was hired before the effective date of the Commission's personnel regulations, and after their personnel rules became effective the employee chose to continue coverage under the District's Comprehensive Merit Personnel Act, as amended, and rules set forth in the District's Personnel Manual (DPM). The Commission failed to follow the District's personnel procedures for detailing an employee as set forth in DPM, Chapter 8, Subpart 9.4 which states the following:

"A. All details in excess of 30 days must be reported on a Request for Personnel Action form (DCSF-52) and maintained as a permanent part of the employee's Official Personnel Folder.

B. Such records must contain the following information:

1. Name and official title, series, and grade of employee with the position number of his or her official position;
2. A copy of the official description of the position to which the employee is being detailed, or, if one has not been established a brief narrative of the assignments to be performed; and
3. the inclusive dates of the detail."

In addition to the absence of documentation to support the detail, the Commission also failed to develop a written justification for the detail. While the Commission's employee was detailed to the Office of the Secretary of the District of Columbia as a full time-time employee for more than two years (approximately April 2, 1995 to August 30, 1997) her salary was paid by the Commission.

Commission officials indicated that this arrangement was a "tradeoff" between the Office of the Secretary and the Commission to allow an employee of the Office of the Secretary to

unofficially serve as the Commission's legal counsel while also serving as the District's Administrator of the Office of Documents and Administrative Issuances.

## **II. The Commission Improperly Paid Bonuses to and Travel Expenses for the District's Former Administrator of the Office of Documents and Administrative Issuances**

During fiscal years 1996, 1997, and 1998, the Commission paid approximately \$16,961 in travel expenses for and "bonuses" to an individual who at the time the payments were made served as the District's Administrator of the Office of Documents and Administrative Issuances. The individual, who was formerly employed by the Commission, officially left the Commission's payroll on April 2, 1995. Effective May 2, 1995, the employee was appointed by Mayor's Order 95-65 as Administrator of the District of Columbia Office of Documents and Administrative Issuances at a DS-15/01 grade level with an annual salary of \$61,943. According to Commission officials and available documents, the individual also continued to serve informally as the Commission's legal counsel for approximately four years between May 1995 and January 1999, while also serving in an excepted service position as the Administrator of the Office of Documents and Administrative Issuances.

During fiscal years 1996, 1997, and 1998, the Auditor found that the Commission made payments to and paid the following expenses for the individual:

<u>Fiscal Year</u>	<u>Date Paid</u>	<u>Description</u>	<u>Purpose</u>	<u>Amount</u>
<b>1996</b>	10/10/95	Cash Advance	Sports Venues Conference	\$ 400
	10/23/95	Airline Ticket	Sports Venues Conference	254
	02/28/96	Bonus	Bonus	5,000
	03/30/96	Airline Ticket	Conference/Developing Sports	447
	04/30/96	Travel	Conference/Developing Sports	450
<b>1997</b>	12/17/96	Bonus	Olympic Soccer Work	5,000
<b>1998</b>	01/27/98	Bonus	Bonus	5,000
	01/22/98	Airline Ticket	U.S. Olympic Bid Seminar	220
	01/30/98	Hotel & Transp.	U.S. Olympic Bid Seminar	<u>190</u>
<b>Total</b>				<b>\$16,961</b>

## **III. The Commission's Former Executive Director Awarded Bonuses To An Individual Who Was Not An Employee or Contractor of the Commission**

The Auditor found that during fiscal years 1996, 1997, and 1998 the Commission paid the former Administrator of the Office of Documents and Administrative Issuances a total of \$15,000 in "bonuses" from Commission revenue even though the individual was not an employee of the

Commission and was not under a written contract to perform services for the Commission. The Commission's current personnel regulations do not address the Commission's authority or criteria under which "bonuses" should be granted to individuals not employed by the Commission. However, since the individual was not an employee of the Commission, the Auditor's position is that the Commission did not have the authority to award "bonuses" to the individual. Consequently, questions are raised about the basis and propriety of the Commission's payment of "bonuses" to this individual.

The Commission cited D.C. Code, Section 2-4006 as its authority to award "bonuses" to the individual. However, this provision of law appears to be inapplicable to the situation discussed in this section in that the facts did not involve an employee or contractor of the Commission. D.C. Code, Section 2-4006(11) states that the Commission shall have the power to:

"Employ advisers, consultants, and agents including, but not limited to, financial advisers, accountants, and legal counsel, and fix their compensation."

As previously noted, the individual was not employed by the Commission and had not entered into a written contract with the Commission. In essence, the arrangement may be characterized as a "gentlemen's agreement," which is an impermissible practice under the District's procurement law, as well as most federal, state, and municipal procurement laws. The Auditor notes that this type of arrangement undermines public trust and confidence in the integrity of the Commission's financial management practices and stewardship of District revenue entrusted to its custody, management, and care.

#### **IV. Former Administrator of the Office of Documents and Administrative Issuances Violated District Leave Regulations**

The Auditor reviewed the employees' time and attendance records to determine his leave status with the Office of Documents and Administrative Issuances while on travel for the Commission. Table VIII presents the findings from the Auditor's review.

**Table VIII**  
**Leave Status With the Office of Documents and Administrative Issuances**

<b>Dates of Travel</b>	<b>Leave Status</b>	<b>No. of Days</b>	<b>Purpose of Travel</b>
10/12/95-10/14/95	Administrative Leave	2	Sports Venue Conference
03/31/96-04/02/96	No leave taken	2	Conference/Developing Sports
02/22/98-02/23/98	No leave taken	2	U.S. Olympic Bid Seminar

Source: D.C. Auditor

As noted in Table VI, during fiscal years 1996, 1997, and 1998, the then-Administrator of the Office of Documents and Administrative Issuances traveled for the D.C. Sports Commission for a total of six workdays while paid from District funds appropriated to the Office of Documents. This practice violated District personnel regulations which prohibit employees from engaging in outside employment during regular working hours. DPM, part II, Chapter 18, Subpart 2.4 entitled, "Engagement in Outside Employment While in a Leave Status" states:

"A. Conditions to be met by employee. An employee of the District of Columbia government may not engage in any kind of outside employment, private business venture, or other financial undertaking, whether or not for compensation—

1. During regular working hours unless the employee is on annual leave or leave without pay which has been approved in advance in accordance with applicable leave regulations . . ."

### **RECOMMENDATIONS**

1. The Commission amend its personnel regulations to include provisions that speak to detailing its employees to other District government entities.
2. The Commission discontinue the practice of awarding bonuses to individuals who are not employees of the Commission.
3. Commission employees who authorized and disbursed Commission funds totaling \$15,000 in "bonuses" to the individual who was not an employee or a contractor of the Commission should be held fully accountable under appropriate personnel laws and regulations for these improper financial transactions.



4. The Office of the Inspector General investigate the Commission's financial transactions with the former Administrator of the Office of Documents and Administrative Issuances.

## **CONCLUSION**

The Auditor's examination of the quality of the Commission's financial management and spending practices, particularly in the area of internal management and accounting controls over expenditures, revealed that the Commission needs to strengthen its policies, procedures, and practices with regard to: (1) awarding grants; (2) making financial contributions; (3) spending Commission revenue for contractual services provided outside the management and control of the Commission; (4) expending Commission funds to purchase gifts, food and entertainment for Commission officials, employees, and their guests; and (5) disbursing Commission funds for "bonuses" to A non-Commission employee.

The Auditor found that the Commission, with the approval of its Board of Directors, loaned approximately \$5.8 million of Commission revenue to finance pre-development costs related to the MCI Arena project under a flawed informal arrangement that lacked sufficient internal controls. Inadequate internal controls and other risks inherent in this arrangement resulted in the Commission not being reimbursed approximately \$45,689 by the Redevelopment Land Agency for payments the Commission made to contractors who were not providing services to the Commission. The Auditor recommended that the Commission develop guidelines and procedures to govern its financial participation in such future projects and safeguard its assets. The Auditor further recommended that the RLA reimburse the Commission the \$45,689 in disbursements.

In reviewing the Commission's expenditures, the Auditor found expenditures for gifts, food, and entertainment totaling approximately \$36,258 that primarily benefitted Commission officials and employees in a manner that did not appear to relate to the Commission's mission. The Commission should discontinue the practice of spending public funds for personal gifts, food, and entertainment that are unrelated to its mission.

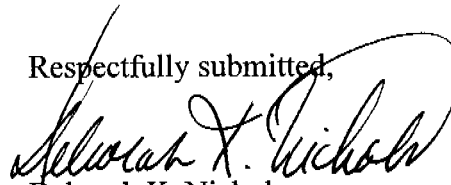
The Auditor found that the Commission's revenue has decreased since the departure of the Washington Redskins' football team in calendar year 1996. A decrease in other events at the Stadium has also contributed to a decrease in revenue. Additionally, the Commission has failed to properly maintain the Stadium or to develop an effective strategic plan or marketing plan to reverse the declining trend in the condition of the facility, the number of events hosted, and the amount of revenue generated.

The District of Columbia Sports and Entertainment Commission was authorized by D.C. Law 10-152 to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks and by providing disadvantaged youths with opportunities to attend sporting events. To implement this provision, the Commission established a flawed grant program which lacked adequate internal management, administrative and financial controls. In awarding community grants, the Commission did not comply with policies and procedures that it had established to administer the program. Further, the Commission failed to develop an effective marketing strategy to ensure that all funds set aside for grants were awarded to a broad range of qualified grant applicants.

During the period under audit, the Commission's Board of Directors failed to establish performance goals and measures for its executive director to achieve as a basis for evaluating the executive director's performance. The Board awarded the former executive director a total of \$60,000 in bonuses over a three-year period covered by the audit but failed to document the basis for outstanding performance ratings. The bonuses were awarded during the District's financial crisis and at a time when the Stadium's revenue had declined significantly. Performance measures are essential in assessing accomplishments and measuring performance. In order to effectively rate the executive director's performance and justify the award of "bonuses," the Board should establish clearly defined goals and performance-based measures to be achieved by the executive director to support the award of annual bonuses.

Finally, the Commission improperly paid \$15,000 in "bonuses" to an individual who at the time was the Administrator of the District's Office of Documents and Administrative Issuances. Further, this individual provided services to the Commission over more than a three-year period without a written contract to justify and support the payments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols", written over the typed name.

Deborah K. Nichols

District of Columbia Auditor

## **APPENDICES**

MEMBERS OF THE BOARD OF DIRECTORS  
DC SPORTS AND ENTERTAINMENT COMMISSION

NAME	BUSINESS
John L. Richardson, Esq. (Chair)	Crispin & Brenner, PLLC
Joseph B. Gildenhorn, Esq. (Vice Chair)	JBG Company
William Lucy	AFSME, AFL-CIO
Cornelius Green	
Linda Greenan	G'rown University
William Hall, Esq. (Baseball Chair)	Winston & Strawn
Valerie Holt, Chief Financial Ofcr (Tom Huestis, Dep. CFO Treasurer)	Ofc. Chief Fin. Ofcr. "
Major General Warren L. Freeman	DC National Guard
Robert P. Newman, Director	DC Dept. of Recreation

As of July 20, 1999

# Sports Commission, D.C. Board of Directors

Board Code 275

Friday, May 01, 1998

Hon. Marlon Barry, Jr.	Position #: 1 Mayor's Order #: 95-088 Type of Member Public/Citizen Appt Author.: Mayor Appoints City Council confir Term Begins: 6/26/95 Term Ends: 12/31/98 Term #: 01 Elig-Reappt: Yes Board Title: Chairperson
BL/M WARD: 8 PRECINCT: 123 (H) (O) Mayor One Judiciary Square	
Major General Warren L. Freeman	Position #: 2 Mayor's Order #: Type of Member Federal Employee Appt Author.: Term Begins: Term Ends: Term #: 01 Elig-Reappt: Yes Board Title: Member
UK/M WARD: 0 PRECINCT: 000 (H) (O) Commanding Officer/Statutory Member DC National Guard(Ex-Officio)	
Dr. Betty Jo Gaines	Position #: 3 Mayor's Order #: Type of Member DC Government Representative Appt Author.: Ex-Officio Term Begins: 6/26/95 Term Ends: Term #: 01 Elig-Reappt: Yes Board Title: Member
BL/F WARD: 4 PRECINCT: 060 (H) (O) Director - Ex-Officio Dept. of Recreation	
Mr. Joseph B. Gildenhorn	Position #: 4 Mayor's Order #: 95-088 Type of Member Public/Citizen Appt Author.: Mayor Appoints City Council confir Term Begins: 6/28/95 Term Ends: 12/31/98 Term #: 01 Elig-Reappt: Yes Board Title: Member
WH/M WARD: 1 PRECINCT: 013 (H) (O) Officer and Director First Virginia Communications, Inc.	
Ms. Linda Greenan	Position #: 6 Mayor's Order #: 96-183 Type of Member Public/Citizen Appt Author.: Mayor Appoints City Council confir Term Begins: 6/26/95 Term Ends: 12/31/98 Term #: 02 Elig-Reappt: Yes Board Title: Member
WH/F WARD: 2 PRECINCT: 015 (H) (O) Asst. to President for Community Relations Georgetown University	

**Sports Commission, D.C. Board of Directors**

*Friday, May 01, 1998*

Board Code **275**

**Mr. Paul M. Wolff**

**WH/M WARD: 2 PRECINCT: 007**  
**(H; (O)**  
**Partner**  
**Williams & Connolly**

**Position #: 11**  
**Mayor's Order #: 96-183**  
**Type of Member Public/Citizen**  
**Appt Author.: Mayor Appoints City Council confir**  
**Term Begins: 6/26/95**  
**Term Ends: 12/31/99**  
**Term #: 01**  
**Elig-Reappt: Yes**  
**Board Title: Member**

DISTRICT OF COLUMBIA SPORTS COMMISSION

Schedule of Events at RFK Stadium

Year ended September 30, 1996

(Unaudited)

RFK Stadium

Date	Event
10/01/95	Redskins vs Cowboys
10/08/95	USA vs Saudi Arabia
10/22/95	Redskins vs Lions
10/28/95	Howard University Homecoming
10/29/95	Redskins vs Giants
11/19/95	Redskins vs Seattle
11/11/95	Temple University vs Virginia Tech
11/26/95	Redskins vs Eagles
12/24/95	Redskins vs Panthers
03/17/96	Rugby USA vs Ireland
04/20/96	D.C. United vs LA Galaxy
05/01/96	D.C. United vs Dallas
05/05/96	Bolivia vs El Salvador
05/12/96	D.C. United vs NY/NJ Metro
05/15/96	D.C. United vs Columbus
05/18/96	Women soccer USA vs China
05/24/96	Promise Keepers
05/25/96	Promise Keepers
06/01/96	WHFS Festival
06/05/96	D.C. United vs San Jose
06/12/96	USA vs Bolivia
06/30/96	D.C. United vs New England
07/01/96	D.C. United vs Dallas
07/12/96	D.C. United vs Tampa Bay
07/20/96	Olympic Soccer
07/21/96	Olympic Soccer
07/22/96	Olympic Soccer
07/23/96	Olympic Soccer
07/24/96	Olympic Soccer
07/25/96	Olympic Soccer
07/28/96	D.C. United vs Columbus
07/31/96	D.C. United vs Kansas City
08/04/96	D.C. United vs Kansas City
08/16/96	Redskins vs Bengals
08/18/96	D.C. United vs LA Galaxy
08/25/96	D.C. United vs Tampa Bay
09/01/96	Redskins vs Eagles
09/06/96	D.C. United vs NY/NJ Metro
09/08/96	Redskins vs Bears
09/10/96	D.C. United vs LA Galaxy
09/13/96	Howard vs Hampton
09/17/96	D.C. United vs New England
09/21/96	D.C. United vs Colorado
09/27/96	D.C. United vs NY/NJ Metro
09/29/96	Redskins vs NY Jets

(Continued)

## DISTRICT OF COLUMBIA SPORTS COMMISSION

## Schedule of Events at RFK Stadium

Year ended September 30, 1997

(Unaudited)

## RFK Stadium

Date	Event
10/02/96	D.C. United vs NY/NJ Metro
10/10/96	D.C. United vs Tampa Bay
10/20/96	Redskins vs NY Giants
10/26/96	Howard vs N.C. A & T
10/27/96	Redskins vs Indianapolis
10/30/96	D.C. United vs Rochester
11/03/96	USA vs Guatemala
11/10/96	Redskins vs Arizona
11/24/96	Redskins vs San Francisco
12/22/96	Redskins vs Dallas
04/05/97	D.C. United vs NY/NJ Metro
04/12/97	El Salvador vs Guatemala
04/26/97	D.C. United vs San Jose
05/02/97	D.C. United vs Los Angeles
05/10/97	D.C. United vs Dallas
05/16/97	D.C. United vs Leeds United
05/22/97	D.C. United vs San Jose
05/26/97	U2 Concert
05/31/97	HFS'TIVAL
06/07/97	D.C. United vs Colorado
06/08/97	USA vs Italy (U.S. Womens Cup)
06/13/97	Promise Keepers
06/14/97	Promise Keepers
06/21/97	Go-Go Festival
07/06/97	D.C. United vs Tampa Bay
07/25/97	D.C. United vs Columbus
07/27/97	The Warped Tour
07/30/97	D.C. United vs Columbus
08/02/97	D.C. United vs Colorado
08/03/97	Bob Marley Festival
08/09/97	D.C. United vs Los Angeles
08/12/97	CONCACAF 1st Round
08/16/97	Metro Music Festival
08/19/97	D.C. United vs Tampa Bay (U.S. Open Cup)
08/22/97	CONCACAF Semi-Finals
08/24/97	CONCACAF Finals
08/27/97	D.C. United vs New England
08/30/97	Go-Go Festival
08/31/97	D.C. United vs Kansas City
09/13/97	Howard vs Hampton
09/16/97	D.C. United vs New England
09/21/97	D.C. United vs Tampa Bay
09/28/97	D.C. United vs NY/NJ Metro

(Continued)



**RFK STADIUM**  
**Fiscal Year '98**

<i>Event</i>	<i>Date</i>	<i>Attendance</i>
USA VS JAMAICA	3-Oct	51,001
MLS PLAYOFF QUATERFINAL	5-Oct	11,937
MLS PLAYOFF SEMIFINAL	12-Oct	11,130
MLS CUP CHAMPIONSHIP	26-Oct	57,431
THIRD WORLD CULTURAL FESTIVAL	29-Nov	52,000
DC VS KANSAS CITY WIZARDS	21-Mar	13,853
DC VS NEW ENGLAND REVOLUTION	29-Mar	19,937
DC VS COLORADO RAPIDS	11-Apr	11,743
CD FAS VS CD ALIANZA	19-Apr	3,075
DC VS COLUMBUS CREW	26-Apr	8,353
DC VS SAN JOSE	29-Apr	7,261
DC VS NY / NJ METROSTARS	9-May	14,033
DC VS NEW ENGLAND REVOLUTION	13-May	12,123
WHFSTIVAL	16-May	64,000
DC VS TAMPA BAY	23-May	13,268
USA VS SCOTLAND	30-May	38,960
US VS DALLAS BURN	7-Jun	9,835
TIBETAN FREEDOM FESTIVAL	13-Jun	62,000
TIBETAN FREEDOM FESTIVAL	14-Jun	62,000
DC VS MIAMI FUSION	2-Jul	11,536
DC VS LOS ANGELES GALAXY	10-Jul	20,522
BUDWEISER SUPERFEST	11-Jul	5,776
DC VS CHICAGO FIRE	18-Jul	13,530
DC VS TAMPA BAY	29-Jul	8,065
THE VANS WARPED TOUR	31-Jul	8,832
CONCACAF (SOCCER)	11-Aug	5,911
CONCACAF (SOCCER)	12-Aug	6,384
CONCACAF (SOCCER)	14-Aug	7,111
SUMMER SLAM '98	15-Aug	1,578
CONCACAF (SOCCER)	16-Aug	10,281
DC VS NY / NJ METROSTARS	22-Aug	12,672
STONE SOUL PICNIC	29-Aug	40,000
CD FAS VS GUATEMALA	30-Aug	4,141
GWUL FOOTBALL CLASSIC	12-Sep	16,454
DC VS MIAMI FUSION	19-Sep	19,193
DC VS COLUMBUS CREW	27-Sep	9,260
DC UNITED PLAYOFF GAME 1	30-Sep	12,438
<b>TOTAL</b>		<b>737,624</b>

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL  
JUDICIARY SQUARE  
441 FOURTH ST., N.W.  
WASHINGTON, D. C. 20001



IN REPLY REFER TO:

## MEMORANDUM

**TO:** James A. Dalrumple  
Executive Director  
District of Columbia Sports Commission

**Prepared by:** LCD:JCS:jcs  
(AL-98-556)

**FROM:** Wayne C. Witkowski  
Deputy Corporation Counsel  
Legal Counsel Division

**Date:** July 27, 1999

**SUBJECT:** Request for Legal Advice Concerning  
the Sports Commission's Obligation  
to Transfer Certain Funds to the General Fund

This responds to your December 18, 1998 letter to former Corporation Counsel John M. Ferren requesting advice concerning the above-noted issue.

You state in your request that there is an apparent discrepancy in the District of Columbia Sports Commission's audited financial statements with respect to the Sports Commission Fund. Specifically, you state that pursuant to federal and District fiscal year 1993 and 1994 budget acts, and fiscal year 1992 and 1993 supplemental budget and rescission of authority request acts, the Armory Board was required to transfer certain monies maintained in the Starplex Fund to the General Fund or to the fund of other District agencies. You further state that the Armory Board transferred a portion of the monies, some \$1 million, to the General Fund but withheld \$2.177 million in the Starplex Fund. Finally, you state that after the Sports Commission Fund was created, and the Starplex Fund was dissolved, the audited financial statements of the Sports Commission consistently have shown the \$2.177 million liability as having been transferred to the Sports Commission Fund and as a liability of the Sports Commission. In addition to questioning whether the Armory Board was obligated to transfer any monies to the General Fund, you ask whether the Armory Board, rather than the Sports Commission, is the agency responsible for the liability.

## I. CONCLUSIONS

I conclude that the Armory Board was obligated to transfer \$3.177 million to the General Fund and the Office of Cable Television. Congressional directives in two fiscal year 1994 appropriations acts required that the \$3.177 million be transferred, in part, to the General Fund and, in part, to the Office of Cable Television. The Armory Board transferred only \$1 million to the General Fund before all the assets of the Starplex Fund were transferred to the Sports Commission and the Sports Commission Fund under the Council's Omnibus Sports Consolidation Act of 1994, infra, which created these entities. Also, it appears that assets well in excess of \$2.177 million (i.e., the difference between the required and the actual transfers from the Starplex Fund) were transferred from the Starplex Fund to the Sports Commission Fund when the latter was established. Absent contrary statutory direction or legislative history under the two fiscal year 1994 appropriations acts and the Omnibus Sports Consolidation Act of 1994, the unsatisfied \$2.177 million liability of the Starplex Fund to the General Fund necessarily was transferred to the Sports Commission Fund. I conclude, therefore, that funds in the Sports Commission Fund, up to \$2.177 million, should now be transferred to the General Fund and the Office of Cable Television in accordance with the 1994 congressional directives.

## II. ANALYSIS

### A. Background

#### 1. Relevant Fund Histories

a. **The Armory Board and the Starplex Fund.** The Armory Board was created pursuant to An Act To establish a District of Columbia Armory Board, and for other purposes ("Armory Board Act"), approved June 4, 1948 (62 Stat. 339; D.C. Code § 2-301 et seq.). It is a Charter independent agency. See D.C. Code § 1-299.6 (1999); D.C. Code § 2-302 (1994). As originally enacted, section 8 of the Armory Board Act established a "working capital fund" as a permanent revolving fund for the expenses incurred by the Armory Board. In addition, section 8 mandated that, at "the close of each fiscal year, after the provision has been made for payment of all lawful obligations then incurred," the Armory Board transfer all funds "in said Armory Board working capital fund" in excess of \$50,000 to the General Fund for subsequent appropriations. (The \$50,000 amount was eventually increased to \$400,000, and the reference to "said Armory Board working capital fund" was changed to "said Starplex Fund."<sup>1</sup>)

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<sup>1</sup> I understand that past transfers of funds above \$400,000 are not at issue. Orlean Ward, of the Sports Commission's staff, informed John Sassaman, of my staff, that the Armory Board's financial condition was always such that at the end of each fiscal year, liabilities met or exceeded assets. Thus, the Armory Board never transferred monies in excess of \$400,000 because such funds were never available. Indeed, page 24 of the Armory Board's 1993 Annual Report reflects an accounting of funds, including an item reflecting a \$3.177 million obligation to the General Fund, such that the Armory Board owed nothing to the General Fund at the end of 1993 because there was a net deficit of cash in the Starplex Fund.

Congress subsequently enacted the District of Columbia Stadium Act of 1957 ("Stadium Act"), approved September 7, 1957 (71 Stat. 619; D.C. Code § 2-321 *et seq.*). Subsection 6(a) of the Stadium Act, as amended,<sup>2</sup> created two additional funds, namely, an "operating fund" and a "sinking fund." The Stadium Act further provided that the sinking fund be used to (1) pay the interest and principal on bonds issued by the Board; (2) reimburse the District government for any monies advanced from its revenues or borrowed from the Secretary of the United States Treasury to pay interest or principal on bonds issued by the Board; and (3) redeem or repurchase bonds.<sup>3</sup>

Thereafter, the District of Columbia Fund Accounting Act of 1980 ("Fund Accounting Act"), effective June 14, 1980 (27 DCR 1776; D.C. Code § 47-371 *et seq.*), amended section 8 of the Armory Board Act by establishing the Starplex Fund – expressly designated as an enterprise fund – in the place of the working capital fund.<sup>4</sup> In addition, the Fund Accounting Act amended subsection 6(a) of the Stadium Act to strike the language concerning the operating fund. Section 7 of the Fund Accounting Act transferred all nonmilitary related monies held in the working capital fund, the canteen fund of the District of Columbia National Guard, and the Stadium operating fund to the Starplex Fund. Thus, the Starplex Fund was the required depository of all funds appropriated for the Armory Board and all receipts derived from the exercise of that agency's powers not related to military purposes.

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<sup>2</sup> See An Act To Amend the District of Columbia Stadium Act of 1957 to require the stadium to be constructed substantially in accordance with certain plans, to provide for a contract with the United States with respect to the site of such stadium, and for other purposes, approved July 28, 1958 (72 Stat. 421; D.C. Code § 2-325 (repealed)).

<sup>3</sup> Section 9 of the Stadium Act provided that if the sinking fund did not contain sufficient monies to pay all amounts becoming due and payable during any fiscal year, an amount necessary to cover any deficiencies would be included in the District government's budget estimates. Section 9 authorized the Council of the District of Columbia to borrow, and the Secretary of the Treasury to lend, the amounts necessary to cover such debts. That section further provided that amounts borrowed, plus interest, "shall be repaid promptly from the funds appropriated pursuant to authority in this section and from any other appropriation available for such purpose." According to Ms. Ward, the sinking fund is not at issue with respect to the monies that purportedly were required to be transferred. Provisions concerning the sinking fund were repealed by the Omnibus Sports Consolidation Act of 1994, effective August 23, 1994 (41 DCR 4636; D.C. Code § 2-4001 *et seq.*).

<sup>4</sup> An enterprise fund is a type of proprietary fund. With regard to proprietary funds, "[t]he assets, liabilities, equities, revenues, expenses, and transfers shall be separately accounted for in such fund and be maintained separately from the general fund of the District of Columbia in accordance with the legal requirements applicable to such fund or in accordance with generally accepted accounting principles to such funds." D.C. Code § 47-373(1)(B) (1997) (emphasis added).

b. **The Sports Commission and the Sports Commission Fund.** In 1994, the Council enacted the Omnibus Sports Consolidation Act of 1994 ("Consolidation Act"), effective August 23, 1994 (41 DCR 4636; D.C. Code § 2-4001 *et seq.*), establishing the District of Columbia Sports Commission. The Sports Commission is an independent agency of the District government. See D.C. Code § 2-4003 (1998 Supp.). Section 10 of the Consolidation Act created the Sports Commission Fund. Section 10 provides:

There is hereby created for the exclusive benefit of the Sports Commission a Sports Commission Fund. All monies other than funds designated for military purposes held by the Armory Board in the Starplex Fund and in the District of Columbia Commission on Baseball Fund<sup>5</sup> on the effective date of this act shall be transferred immediately to the Sports Commission Fund to be used for any lawful purpose of the Sports Commission.

D.C. Code § 2-4009. Based on its character, the Sports Commission Fund is – like the Starplex Fund that preceded it – an enterprise fund governed by generally accepted accounting principles pursuant to D.C. Code § 47-373(1)(B).<sup>6</sup>

## 2. Federal Statutory Requirements and Related Compliance

According to the Armory Board's 1993 Annual Report<sup>7</sup> and the Sports Commission's Combined Financial Statement for fiscal years 1997 and 1998, the budget acts in question concern fiscal year 1994 but not fiscal years 1992 and 1993 as indicated in your December 18, 1998 letter to this Office. Thus, this memorandum addresses only those monies subject to the District of Columbia Supplemental Appropriations and Rescissions Act, 1994, approved September 30, 1994 (Pub. L. 103-334; 108 Stat. 2576), and the District of Columbia Appropriations Act, 1994, approved October 29, 1993 (Pub. L. 103-127; 107 Stat. 1336). (I understand that the Armory Board, in previous fiscal years when monies were required to be

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<sup>5</sup> See District of Columbia Commission on Baseball Act of 1991 ("Commission on Baseball Act"), effective December 10, 1991 (38 DCR 6590; D.C. Code § 2-2901 *et seq.* (repealed)). The Baseball Fund was abolished by operation of law two years after it was established. See Section 9(b) of the Commission on Baseball Act. Upon the expiration of the Commission on Baseball Act, any unobligated funds were paid into the General Fund of the District. See Section 8(d) of the Commission on Baseball Act.

<sup>6</sup> As originally enacted, the Consolidation Act did not abolish the Starplex Fund. The following year, the Council, as part of the Recreation Act of 1994, effective March 23, 1995 (42 DCR 452; codified in various sections of the Code of the District of Columbia), amended the Armory Board Act by, *inter alia*, repealing section 8 of that act – that is, the provision that established the Starplex Fund. Although the Starplex Fund continued to exist for a short period of time after the creation of the Sports Commission Fund, the Starplex Fund did not contain any assets during that period.

<sup>7</sup> The fiscal year for the Starplex Fund was based on the calendar year.

transferred, did in fact transfer the requisite funds. Thus, other appropriations acts have not contributed to the liability.)

The appropriations act adopted by Congress for fiscal year 1994 provided:

STARPLEX FUND

For the Starplex fund, an amount necessary for the expenses incurred by the Armory Board in the exercise of its powers granted by An Act To Establish a District of Columbia Armory Board, and for other purposes, approved June 4, 1948 (62 Stat. 339; D.C. Code, sec. 2-301 et seq.) and the District of Columbia Stadium Act of 1957, approved September 7, 1957 (71 Stat. 619; Public Law 85-300; D.C. Code, sec. 2-321 et seq.), of which \$1,742,000 shall be transferred to the general fund for the District of Columbia Courts and \$35,000 shall be transferred to the Office of Cable Television: Provided, That the Mayor shall submit a budget for the Armory Board for the forthcoming fiscal year as required by section 442(b) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 824; Public Law 93-198; D.C. Code, sec. 47-301(b)).

107 Stat. 1343-44 (emphasis added). The District of Columbia Supplemental Appropriations and Rescissions Act, 1994 amended the District of Columbia Appropriations Act, 1994, requiring that "an additional \$1,400,000 shall be transferred to the General Fund of the District of Columbia." 108 Stat. 2598. Thus, pursuant to federal law, a total of \$3.177 million was required to be transferred from the Starplex Fund to the General Fund, to the Courts, and to the Office of Cable Television, in connection with fiscal year 1994.

The Armory Board's 1993 Annual Report notes, at page 4, the "discovery of a legally mandated transfer of money from the STARPLEX Fund to the District of Columbia Courts and Office of Cable Television, which created a retained deficit in the STARPLEX Fund [as of] December 31, 1993." The combined balance sheet at page 8 of the report notes a liability of \$3.177 million that was owed to the General Fund. In addition, the combined balance sheet indicates that the Armory Board's total assets were \$19.359 million at the end of 1993, of which \$6.234 million consisted of cash and investments in the Starplex Fund. Although the exact date is unclear, I understand that in 1994 before monies in the Starplex Fund were transferred to the Sports Commission Fund, \$1 million was transferred from the Starplex Fund to the General Fund, leaving a balance of \$2.177 million owed to the General Fund.

The Sports Commission's Combined Financial Statement for fiscal years 1997 and 1998 reflects a net liability to the General Fund of \$2.177 million. The statement notes, at page 6, that pursuant to the Consolidation Act, "all assets and liabilities, other than funds designated for military purposes, were transferred to the Commission at book value." Based on conversations that Mr. Sassaman had with Ms. Ward, the exact amount of the assets transferred on the effective

date of the Consolidation Act, August 23, 1994, is unclear. However, the Sports Commission Fund apparently received assets from the Starplex Fund well in excess of \$2.177 million.<sup>8</sup>

## B. Discussion

### 1. The Status of the Armory Board as an Independent Agency

Based on his conversations with Ms. Ward, Mr. Sassaman informs me that the Armory Board's rationale for not transferring the full \$3.177 million was that it was under no legal obligation to transfer the funds – its own revenues – because of its status as an independent agency. Thus, I will address the question of whether the Armory Board's status as an independent agency limited the respective authority of Congress, the Mayor, and the Council to order the transfer of monies.

The monies required to be transferred were the subjects of congressional appropriations acts that were based on budgets submitted by the Mayor and enacted by the Council. In accordance with its constitutionally-based plenary legislative authority over the District, Congress under section 446 of the District of Columbia Home Rule Act ("Home Rule Act"), approved December 24, 1973 (87 Stat. 801; D.C. Code § 47-304), directs generally the use of funds by the District government. See D.C. Code § 47-304 (Supp. 1999) ("[N]o amount may be obligated or expended by any officer or an employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."); see also District of Columbia v. American Fed'n of Gov't Employees, 619 A.2d 77, 87 (D.C.), cert. denied, 510 U.S. 933 (1993) ("every D.C. Appropriations Act remains exclusively an act of Congress"). The Home Rule Act also allows revisions of the District budget, essentially through the same process as the original budget. See D.C. Code §§ 47-301(c), 47-304 (1997 & Supp. 1999). While the requirement that funds be transferred from the Starplex Fund to the General Fund in and of itself is not an appropriation, it is a valid exercise of Congress' legislative power over the District and carries out section 446 of the Home Rule Act insofar as it limits the Armory Board's otherwise broad appropriation to use money in the Starplex Fund. Thus, according to an act of Congress, the Armory Board was obligated to transfer the \$3.177 million in accordance with the two appropriations acts adopted for fiscal year 1994.<sup>9</sup> The fact

<sup>8</sup> According to the Armory Board's 1993 Annual Report, page 24, as of December 31, 1993 the Starplex Fund had at least \$2,759,436 to cover its liability of \$3.177 million to the General Fund. Depending on the Armory Board's earnings and financial management during January 1 to August 23, 1994, it is possible that sufficient funds were transferred to the Sports Commission Fund to satisfy the remaining \$2.177 million liability to the General Fund as well as all other liabilities of the Starplex Fund.

<sup>9</sup> A District governmental entity's status as an independent agency does not free it from the legislative authority of the Council or Congress. Indeed, section 442 of the Home Rule Act, a Charter provision, authorizes the Mayor to include in the budget prepared by him or her

the Sports Commission Fund. Given the requirement in D.C. Code § 47-373(1)(B) that the Sports Commission Fund be maintained in accordance with generally accepted accounting principles, this position of the Office of the Controller – like that of the auditors of the Sports Commission referenced in your letter – supports the proposition that the liabilities as well as the assets of the Starplex Fund should have been transferred to the Sports Commission Fund from an accounting standpoint and, thus, that these liabilities also were transferred from a legal standpoint. It follows that the outstanding liability of \$2.177 million of the Starplex Fund to the General Fund, to the Courts, and to the Office of Cable Television pursuant to the two appropriations acts for fiscal year 1994 was transferred to the Sports Commission Fund.<sup>10</sup>

It is true that section 10 of the Consolidation Act transferred “all monies” to the Sports Commission Fund and did not provide for an accounting of Starplex Fund liabilities.<sup>11</sup> Thus, arguably, because the liability was created in the Starplex Fund, that liability remained with that fund, and the Council’s abolition of the Starplex Fund extinguished the liability in the absence of the requisite transfer. Assuming, however, that Congress intended (as it did) that the Starplex Fund’s outstanding liability of \$2.177 million to the General Fund would continue until it was fully satisfied, the Council would have had no authority to extinguish this liability, which was created under Congress’ exclusive authority to legislate regarding appropriations for the District government. Also, it would be anomalous to conclude that, in the Consolidation Act, the Council intended such a liability to remain with the Armory Board when the liability originated with the Starplex Fund and all the very substantial assets available to assist in satisfying the liability were transferred from the Starplex fund to the Sport Commission Fund. Courts would construe the Consolidation Act so as to avoid this incongruous result. See, e.g., Tibbs v. United States, 507 A.2d 141, 143-44 (D.C. 1986) (citation omitted).

Nor does the argument in your December 18, 1999 letter regarding section 11(c)(6) of the Consolidation Act (D.C. Code § 2-4010(c)(6)) warrant a different conclusion. Section 11(c)(6) merely provides that “[a]ll debts and obligations of the Armory Board associated with the construction, operation, and maintenance of Robert F. Kennedy [“RFK”] Stadium and its motor vehicle parking areas shall become the debts and obligations of the Sports Commission.” It cannot fairly be inferred from this provision that no other debts were to be transferred to the Sports Commission. The rule of statutory interpretation expressio unius est exclusio alterius (meaning the mention of one thing implies the exclusion of another) will not be applied when the

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<sup>10</sup> Indeed, insofar as the source of monies for the Sports Commission Fund is concerned, the legislative history of the Consolidation Act indicates that the new fund was to be created simply through a name change (i.e., the Starplex Fund’s name was changed to the Sports Commission Fund). See Council of the District of Columbia, Committee on Public Services and Youth Affairs, Report on Bill 10-424, “Omnibus Sports Consolidation Act of 1993”, at 10 (1994) [hereinafter “Committee report”].

<sup>11</sup> The Committee report indicates that section 10 was intended to provide for the “capitalization” of the Sports Commission Fund, as opposed to providing for the accounting of assets and liabilities of the Starplex Fund. See Committee report, at 20 (section-by-section analysis).



natural inference from the statutory scheme is that the legislature only intended to clarify what might be doubtful – that the mentioned item is covered – and when applying this rule would produce an unreasonable result. See, e.g., Schook v. District of Columbia Fin. Responsibility & Management Assistance Auth., 132 F.3d 775, 782-83 & n.5 (D.C. Cir. 1997). Here, absent relevant legislative history (nothing in the legislative history of the Consolidation Act supports your argument), the natural inference is that section 11(c)(6) of the Consolidation Act was designed to assure the transfer of RFK Stadium-related debt to the Sports Commission – not to preclude other debts from being so transferred. This inference is reinforced by the incongruity of transferring assets from the Starplex Fund to the Sports Commission Fund without any of the associated obligations. Under these circumstances, I conclude that the Consolidation Act should be construed to vest the Starplex Fund's remaining \$2.177 million liability to the General Fund in the Sports Commission Fund.

If you have any questions concerning this memorandum, please do not hesitate to call John Sassaman, of my staff, or me at 727-3400.

WCW

**Grants Awarded by The  
District of Columbia Sports And Entertainment Commission in  
Fiscal Years 1996, 1997 And 1998**

<b>Fiscal Year</b>	<b>Name of Grantee</b>	<b>Grant Amount</b>	<b>Purpose</b>
<b>1996</b>	Anacostia High School Football Field Renovation	\$76,160	<b>No grant application</b>
	National Guard Armory Summer Camp	700	<b>No grant application</b>
	<b>Total</b>	<b>\$76,860</b>	
<b>1997</b>	Mike McLessee Boys Basketball Camp- D.C. Youth Scholarships	5,000	To provide an instructional basketball camp for District youth
	Langston Jr. Boys and Girls Golf Club	3,000	To offer youth from six years to high school an opportunity to learn the game of golf
	Anacostia High School Track Team Uniforms	3,170	To purchase uniforms for the track team
	Ballou High School Team	2,500	To sponsor student athletes to attend Clemson Tiger Football Camp in Clemson, South Carolina
	D.C., Warriors/D.C. Youth Basketball	5,000	To use basketball as a tool to give male youth an opportunity to develop moral and physical skills
	Sanya J. Tyler Basketball Camp	5,000	To provide scholarships for Washington area girls to attend Basketball Camp held at Howard University
	D.C. Pro/AM Basketball Tournament	5,000	To provide education/basketball activities for youth
	St. Paul Baptist Church Summer Recreation Program	5,000	To provide Christian, spiritual, social, cultural and sports events for youth 15-18
	START, Inc.	5,000	An annual event which allows children to participate and compete in half-mile and one-mile runs for children's literacy
	Dunbar High School Team	3,000	To provide expenses for 40 team members to attend the 1997 Fall football Camp Letts in Edgewater, Maryland
	Oak Hill Youth Center	776	<b>No grant application</b>
	Wilson High School Track	50,000	Assistance in the renovation of outdoor track field
	National Guard Armory Summer Camp	1,500	<b>No grant application</b>
	<b>Total</b>	<b>\$93,946</b>	

<b>Fiscal Year</b>	<b>Name of Grantee</b>	<b>Grant Amount</b>	<b>Purpose</b>
<b>1998</b>	Sarah's House After School Recreation Program	9,066.40	To provide soccer and other recreational activities for neighborhood children
	Lydia's House	6,500	Provides parent education, leadership and job readiness training, youth mentoring, after- school child care and other nonresidential services for at risk children and families living in the Anacostia-Congress Heights community
	Football Day Luncheon	8,065	Recognition luncheon for all District high school football teams
	D.C. Coaches Association	5,000	To sponsor Soccer All-Star game
	The Urban Rangers	7,800	To fund Recycle-A-Bicycle Program to provide youth the opportunity to do community service to earn a used bicycle
	Capital Rowing Club-Anacostia	2,000	To teach youth the fundamentals of competitive rowing
	H.D. Woodson Hoop Dreams	5,000	To provide scholarships and expenses for Annual Hoop Dreams Tournament
	D.C. Warriors	5,000	To purchase uniforms, sneakers, and warm-up suits for participants in the program
	START Run for Literacy	5,000	To support an annual event which allows children to participate and compete in half-mile and one-mile runs for children's literacy
	Fort Dupont Ice Arena	20,000	No description of the program
	Grant Presentation Luncheon at RFK	975	<b>No grant application</b>
	Commemorative Plaques	1,950	<b>No grant application</b>
	Mike McLeese Boys Basketball Camp	5,000	To provide an instructional basketball camp for District youth
	Sanya J. Tyler Girls Basketball	5,000	<b>No grant application</b>
	Chris Downing/Regan Music Service Thelonius Monk Institute Performance	515	Pledge to support music equipment rental for Thelonius Monk Institute Performance
	National Guard Armory Summer Camp	5,000	Youth leaders' camp program providing alternative activities such as sports, recreation and academic instruction
	<b>Total</b>	<b>\$92,371.40</b>	

Source: D.C. Sports and Entertainment Commission

[illegible]



# GOVERNMENT OF THE DISTRICT OF COLUMBIA

## Report of Performance Rating

(Prepare in Triplicate - Instructions on Reverse side)

Name of Employee	Title and Grade	Rating Period
Department/Bureau/Division/Branch, etc.		Employee Status
Type of Report Scheduled ( )    Unscheduled ( )	Rater Supervised Employee From                      To	Check one: Administrative ( ) Supervisory ( )    Planning ( )    All Others ( )

### FACTORS FOR RATING

- |  |   |
|--|---|
| <p>1. <b>QUANTITY</b> <input type="checkbox"/></p> <p>_____ Amount of Work</p> <p>_____ Completion of Work on Schedule</p> <p>2. <b>QUALITY</b> <input type="checkbox"/></p> <p>_____ Accuracy</p> <p>_____ Neatness of Work Product</p> <p>_____ Thoroughness</p> <p>_____ Judgment</p> <p>_____ Oral Expression</p> <p>_____ Written Expression</p> <p>3. <b>WORK HABITS</b> <input type="checkbox"/></p> <p>_____ Observance of Working Hours</p> <p>_____ Attendance</p> <p>_____ Observance of Rules Including Safety</p> <p>_____ Economy of Time and Materials</p> <p>_____ Compliance With Work Instructions</p> <p>_____ Orderliness in Work</p> <p>_____ Job Interest</p> <p>_____ Initiative</p> <p>_____ Resourcefulness</p> <p>4. <b>PERSONAL RELATIONS</b> <input type="checkbox"/></p> <p>_____ Cooperation with Co-workers</p> <p>_____ Dealing with the Public</p> <p>_____ Personal Habits</p> | <p>5. <b>ADAPTABILITY</b> <input type="checkbox"/></p> <p>_____ Performance in New Situations</p> <p>_____ Performance in Emergencies</p> <p>6. <b>SUPERVISION AND PLANNING</b> <input type="checkbox"/></p> <p>Effectiveness In:</p> <p>_____ Planning Broad Programs</p> <p>_____ Adapting Work Program to Broader or Related Programs</p> <p>_____ Devising Procedures</p> <p>_____ Laying Out Work and Establishing Standard of Performance for Subordinates</p> <p>_____ Directing, Reviewing and Checking Work of Subordinates</p> <p>_____ Instructing, Training and Developing Subordinates in work</p> <p>_____ Promoting High Morale</p> <p>_____ Delegating Clearly Defined Authority to Act</p> <p>_____ Decision-Making Process</p> <p>_____ Determination and Utilization of Manpower and Materials</p> <p>_____ Efforts to ensure EEO in all appropriate aspects of Recruitment, Hiring, Training, Promoting, Recognition, etc.</p> <p>7. <b>OTHER (specify)</b> <input type="checkbox"/></p> <p>_____</p> <p>_____</p> <p>_____</p> |
|--|---|

### TEMPORARY ASSIGNMENTS OUT OF JOB CLASSIFICATION

Inclusive Dates	Assignment/Duties Assumed	Rating

### COMMENTS

Describe employee's strengths and deficiencies and include other comments. Comments MUST be made for Excellent or Satisfactory Ratings.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### PERFORMANCE RATING ASSIGNED

( ) Outstanding                      ( ) Excellent                      ( ) Satisfactory                      ( ) Unsatisfactory

This rating is based on my personal knowledge and observation of the employee's performance.

This rating has been discussed with me.

Rater: \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Employee: \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_

Reviewer: \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Approving Authority (O & U ratings) \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_

## **AGENCY COMMENTS**

## **AGENCY COMMENTS**

On December 13, 1999, the District of Columbia Auditor transmitted this report, in draft, to the Board of Directors and Executive Director of the District of Columbia Sports and Entertainment Commission and the Interim Director of the Redevelopment Land Agency for review and comment by the close of business Friday, January 14, 2000.

Comments on the draft report were received from Hogan & Hartson, L.L.P. on behalf of the D.C. Sports and Entertainment Commission on February 1, 2000. The Redevelopment Land Agency did not provide comments to the draft report. Where appropriate, changes to the final report were made to reflect the comments. The comments, in their entirety, are included with this report.



HOGAN & HARTSON  
L.L.P.

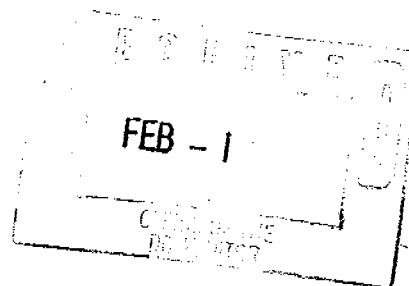
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February 1, 2000

*BY HAND DELIVERY*

Deborah K. Nichols, Esq.  
District of Columbia Auditor  
Office of the District of Columbia Auditor  
717 14th Street, N.W., Suite 900  
Washington, D.C. 20005



Re: Response to Draft Report Entitled "Audit of the District of  
Columbia Sports and Entertainment Commission"

Dear Ms. Nichols:

On behalf of the District of Columbia Sports and Entertainment Commission ("the Commission"), this letter responds preliminarily to the draft report your office circulated to members of the Commission under cover letter dated December 13, 1999 (the "draft report").

Before responding more specifically to the several areas cited in the draft report as meriting the Commission's attention on a forward-going basis, the Commission would like to make four initial points.

First, the Commission notes that the draft report focuses on a prior era of the Commission's activity, embracing fiscal years 1996 to 1998. Since that time, there have been a number of significant changes relating to the Commission, and indeed to the District. Both the District and the Commission are now under new leadership. The District has a new Mayor. The Commission has a new chairman and a new chief financial officer. Furthermore, the Executive Director employed during the period 1996 to 1998 has retired, and a search is underway for his successor. These changes afford the Commission with an opportunity to take a new, fresh look at a number of areas relating to its functioning and activity, and the Commission believes a number of constructive suggestions in the draft report will assist the Commission in this regard.

BRUSSELS BUDAPEST\* LONDON MOSCOW PARIS\* PRAGUE\* WARSAW

BALTIMORE, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA MCLEAN, VA NEW YORK, NY ROCKVILLE, MD

\\DC - 46234/55 - #1022958 v6

\*Affiliated Office

Deborah K. Nichols, Esq.  
District of Columbia Auditor  
February 1, 2000  
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Second, although this response takes issue with a number of items treated in the draft report, at bottom, the Commission is committed to conducting its affairs in a manner wholly consistent with applicable rules and regulations and in accord with appropriate internal controls. To the extent the draft report serves to help identify areas where applicable law may be more "gray" than "black and white," the Commission believes there may be an opportunity for it to seek clarification through new legislation in order that, on a forward-going basis, there is no ambiguity as to the Commission's status and as to which rules and regulations apply. Moreover, to the extent the draft report suggests areas where additional internal controls may be in order or points to areas where lessons may be learned from the past (for example, contracting issues relating to pre-development costs attendant to the MCI Arena Project), the Commission welcomes such suggestions. Indeed, in this regard, the Commission has decided, in part on the basis of the draft report, to establish within its Board of Directors an Audit Committee to be charged with tracking and coordinating these efforts going forward.

Third, while the draft report finds room for improvement relative to several areas of the Commission's activities during the period 1996 to 1998, it is worth noting that the Commission's actions during this time were in full view of a number of responsible parties – none of whom suggested that the Commission was operating in a manner materially inconsistent with applicable rules and regulations or in a manner reflecting anything but good faith. Indeed, the Commission was guided throughout this period by a general counsel who attended Commission meetings and advised Commission staff on a myriad of issues relative to the ongoing activities. A representative of the Chief Financial Officer of the District of Columbia served as a member of the Board of Directors of the Commission. And the Commission was audited annually by the prominent accounting firm KPMG Peat Marwick LLP ("Peat Marwick"). Peat Marwick's annual report was, as a standard practice, transmitted to, among others, the Inspector General of the District of Columbia. These examples demonstrate that, at a minimum, the Commission attempted to operate in good faith in the discharge of its duties. While there is always room for improvement in any organization, and while there are always lessons to be learned from the experience of past undertakings, it would be unfair to portray the Commission as insensitive to its obligations under applicable rules and regulations, and it would be unfortunate if anyone were to draw such a conclusion from the report issued by your office.

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Fourth, given the scope and breadth of the draft report, the Commission regrets that your office was unwilling to grant it the forty-five day extension requested for submission of this response. Your office served the draft report on the Commission the week before Christmas, on December 14, and imposed January 14, the end of essentially the first full week after New Year's, as the deadline for submission of the Commission's response. Given that it took your office well in excess of a year and a half to prepare the report, and given that the report covers activities of the Commission for a full three-year period, a modest additional forty-five days for the Commission's careful review and analysis of matters treated in the draft report was an appropriate request. We regret that your office declined to afford the Commission the extension of time requested. The Commission believes the District of Columbia would have been much better served by its careful, thorough review of the matters treated in the draft report than by the truncated review and preliminary response necessitated by your unwillingness to grant the extension of time requested. We believe the public would have been better served had the Commission been afforded additional time in order that it might thoroughly test a number of observations and conclusions in your office's draft report, and we are puzzled that your office was unwilling to accommodate our request.

In any event, the Commission is responding here to the best of its ability given the time limitations your office has imposed. The Commission reserves the right to revise and supplement this letter on the basis of the additional work required. In the meanwhile, we hope the quality of this submission will persuade you that the Commission is approaching the draft report in good faith, and that accordingly, your office will refrain from issuing a final report until the Commission has had time to complete the work required for a complete evaluation of and response to the draft report. The Commission believes it would be possible to submit its final response to your office by the end of February, and hereby formally requests that your office refrain from finalizing and issuing its report until after this has occurred. We look forward to your response to this request. In the event your office declines this request and determines to issue a final report prior to receipt and consideration of a subsequent submission by the Commission, then the Commission requests that your office make this letter an exhibit to your final report.

Having now addressed the matters set forth above, we turn to the several areas relating to the Commission's prior activities that are focused on in the

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draft report. These areas include (1) an accounts payable carried on the Commission's books relating to a D.C. Armory Board transfer from its Starplex Fund; (2) advances, almost entirely since repaid, relating to pre-development costs of the MCI Arena Project; (3) certain expenditures over a three-year period that the Auditor concludes do not appear to relate to the Commission's mission, and six instances during this same period in which the Commission's petty cash fund was used for transactions in excess of \$150.00; (4) internal controls and better paperwork administration attendant to the Commission's community grants program, where the Commission historically has placed special emphasis on the needs and nurture of the children of the District; and (5) certain personnel issues.

### **Legal Status of the D.C. Sports and Entertainment Commission**

As a threshold matter, we observe that many of the observations contained in the draft report are predicated on the apparent conclusion by your office that the D.C. Sports and Entertainment Commission is, for legal purposes at least, essentially in the same status as an agency or department of the D.C. Government and, therefore, subject to the application of rules and regulations that govern the affairs of D.C. Government departments and agencies. With all due respect, we do not agree that the law establishing the Commission, the legislative history behind such law, or the manner in which the Commission historically has been viewed by the D.C. Government itself, compels such a conclusion. In fact, we believe a contrary view is well supported, as explained more fully below. This is an important threshold issue because, if indeed the Commission's status is that of an independent entity as opposed to a D.C. Government agency or department, then many of the rules and regulations which the draft report assumes apply to the Commission in fact do not apply, and this would tend to undercut a number of conclusions by your office that certain prior actions of the Commission may have been inconsistent with applicable rules and regulations.

#### *Statutory Language*

The Commission was created pursuant to the Omnibus Sports Consolidation Amendment Act of 1994, D.C. Code Ann. §§ 2-4001, *et. seq.* Within those provisions, the Commission is defined as:

a corporate instrumentality of the District for the purposes of:

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(1) Promoting, developing and maintaining the District as a location for hosting sporting and entertainment events;

(2) Planning, developing, financing, and maintaining a comprehensive complex of sports, entertainment, and recreation facilities in the District as locations for hosting sporting events; and

(3) Consolidating the District's efforts in promoting and managing sporting events and entertainment.

(b) In addition, an important goal for the Sports and Entertainment Commission is to encourage and support youth activities in the District by, among other ways, sponsoring sporting events for young athletes, attracting national collegiate championships to the District, supporting activities by the Department of Recreation and Parks, and by providing disadvantaged youths with opportunities to attend sporting events.

D.C. Code Ann. § 2-4001(a) and (b). Furthermore, the Commission is described within its authorizing statute as "an independent authority of the District government" and "a corporate body and instrumentality of the District . . . ." D.C. Code Ann. § 2-4003 (emphasis added). In seeming reliance upon this statutory provision, D.C. Corporation Counsel designated the Commission an "independent agency of the District government." See Memorandum from Wayne C. Witkowski, Deputy Corporation Counsel, Legal Counsel Division, to James A. Dalrymple, Executive Director, District of Columbia Sports Commission 4 (July 27, 1999) (the "Corporation Counsel Opinion") (emphasis added).

Furthermore, pursuant to § 1-299.6 of the District of Columbia Code, the Mayor is required yearly to submit to the D.C. Council a chart "detailing the organization and structure of the District government that shall reflect any reorganization plans or legislative changes related to the structure of the District

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government." 1/ The 1996 version of the chart denoted the Commission as a "Statutory Independent Agenc[y]." Similarly, the Commission was deemed a "Statutory Independent Agenc[y] and Authorit[y]" under the 1998 version. 2/ For comparison purposes, the five Charter independent agencies established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act, see D.C. Code Ann. §§ 47-301, *et. seq.*, are listed as "Charter Independent Agencies" on the 1996 chart and as "Statutory Independent Agencies and Authorities" or as "Independent Agencies" on the 1998 version.

### *Legislative History*

In a report from William P. Lightfoot ("Chairman Lightfoot"), Chairman of the Committee on Public Services and Youth Affairs, to All Councilmembers (the "Committee Report"), Chairman Lightfoot relied heavily upon other "sports commissions which operate as quasi-public, independent entities" as examples for the D.C. Sports and Entertainment Commission to emulate. Committee Report at 3 (emphasis added). 3/ Chairman Lightfoot then applied the same description he used in association with these sports commissions, i.e. "quasi-public, independent entities," id., to describe the newly-created D.C. Sports and Entertainment Commission, namely "quasi-public, independent, not-for-profit entity" and "a corporate body which is separate from the District government." Id. at 16-17 (emphasis added). It is important to note that at the time of Chairman Lightfoot's remarks, the bill itself did not describe the Commission as an "independent authority," language which was not added until the next year through the Recreation Act of 1994, D.C. Code Ann. §§ 8-301, *et. seq.*

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1/ The 1999 version of the chart is reformatted, thereby listing entities under the Deputy Mayor in charge of each area. Unfortunately, there is no indication of what entities are independent.

2/ Entities often rely upon these charts in characterizing entities. For example, D.C. Corporation Counsel has relied upon the chart structure in § 1-299.6 to determine the legal status of the D.C. Armory Board. See Corporation Counsel Opinion at 2. Furthermore, the Mayor's Office has characterized the Commission as independent in other documents. Specifically, in the FY 1998 District of Columbia Budget and Financial Plan, the Sports Commission is described as "an independent agency of the District of Columbia . . . ."

3/ Specifically, he focused upon the Los Angeles Sports Commission, the Atlanta Sports Council, the Indiana Sports Commission, and the Maryland Stadium Authority. See id. at 3.

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Underlying the Committee Report is testimony given before the Committee on Public Services and Youth Affairs. For example, Chairman Lightfoot appeared to be echoing the sentiments of the D.C. Armory Board's then-General Manager James A. Dalrymple who emphasized that "[i]t is only through a comprehensive, consolidated effort that the District of Columbia can maintain a competitive edge in the field of entertainment." 12/20/93 Testimony of James A. Dalrymple at 4. Mr. Dalrymple pointed to examples of such consolidated efforts, namely "[t]he experiences of Indianapolis, Atlanta, Miami and New Orleans . . . ." Id. at 3. 4/ He described the commissions established by these municipalities as "more than demonstrat[ing] that sports commissions have emerged as a central force in the promotion of sports and entertainment" due to their "operat[ion] outside the traditional bureaucracy," warning that "[m]any an opportunity has been lost in the bureaucratic tangle." Id. Hence, Mr. Dalrymple emphasized that an independent entity was necessary to carry out the mandate of the D.C. Sports and Entertainment Commission.

George Brown, the Assistant City Administrator for Economic Development, also praised the efforts to "create a unique and viable economic development mechanism" and to establish a Commission that is an "economically healthy and self sufficient entity . . . ." 12/20/93 Testimony of George Brown at 1, 4 (emphasis added). He noted that the bill provided "[t]he opportunity to establish a preeminent commission cresting the wave of the sports industry . . . ." Id. at 3.

Finally, in reports of the House of Representative's Committee on Appropriations (the "H.R. Committee") regarding funds for the District of Columbia generally and the Commission specifically for fiscal years 1996-2000, the H.R. Committee continuously referred to the "Sports and Entertainment Commission" as an "independent agency of the District . . ." H.R. Rep. No. 106-249, at 85 (1999); H.R. Rep. No. 105-670, at 74 (1998); H.R. Rep. No. 105-298, at 78 (1997); H.R. Rep. No. 104-689, at 81 (1996); H.R. Rep. No. 104-294, at 66 (1995) (emphasis added).

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4/ Craig Tartasky, Executive Director of the Sports Division, E.J. Krause & Associates, an international conference and exhibition management firm, likewise focused upon the organization of other sports commissions, particularly the Los Angeles Sports Commission, the Indiana Sports Commission, and the New York Sports Commission, in emphasizing his remarks. See 12/20/93 Testimony of Craig Tartasky at 2-7.

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The Senate Committee on Appropriations echoed that characterization in its fiscal year 1997 report. See S. Rep. No. 104-328, at 74 (1997).

*Organization of Other Sports Commissions Relied Upon in the Legislative History*

Maryland Stadium Authority

Much the same as the Commission, the Maryland Stadium Authority ("MSA"), a statutorily-created authority, is described as a "body corporate," which is "an instrumentality of the State and a public corporation," and is "an independent unit in the Executive Branch." Md. Code Ann., Fin. Inst. § 13-702 (emphasis added). Furthermore, the MSA has many similar characteristics to the Commission. For instance, the Governor with the advice and consent of the Senate appoints the members of the MSA, and the MSA has "broad power to regulate the use and operation of its facilities and to charge fees therefor." Kelly v. Marylanders for Sports Sanity, Inc., 530 A.2d 245, 246 (Md. 1987). The MSA also has the power to borrow money, issue bonds, and acquire property needed to construct and operate facilities. See id. Finally, the MSA must submit a budget "reflecting the operating and capital program" to the Maryland Department of Budget and Fiscal Planning. Id. at 247.

New Jersey Sports and Exposition Authority

The statutory description of the New Jersey Sports and Exposition Authority ("NJSEA") again is similar to that of the Commission. The NJSEA is named a "corporate agency of the State," "a public body corporate and politic," and "an instrumentality of the State [performing] essential governmental functions . . . ." N.J. Stat. Ann. §§ 5:10-2, 5:10-4(a). While this alone sheds little light on its legal status, it is important to note another provision of the statute which states that "[t]he act shall be construed liberally to effectuate the legislative intent and purposes of the act as complete and independent authority for the performance of each and every act and thing herein authorized and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers." N.J. Stat. Ann. § 5:10-26. Accordingly, the NJSEA appears to be independent.

The NJSEA also has similar characteristics to the Commission. Its members are "appointed by the Governor with the advice and consent of the Senate



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...," and are appointed for fixed terms of four years with removal only for cause. N.J. Stat. Ann. §§ 5:10-4(b) and (c). And the NJSEA has similar statutory powers of the Commission, including the right to sue and be sued, to acquire and dispose of revenues, to make contracts, to establish rules and regulations for the use and operation of its projects and activities, and to issue bonds and notes. See N.J. Stat. Ann. §§ 5:10-5, 5:10-10. Finally, the NJSEA must submit an annual report for approval by the Governor and Legislature. See N.J. Stat. Ann. § 5:10-19.

#### Louisiana Stadium and Exposition District

According to its governing statute, the Louisiana Stadium and Exposition District (the "District") is "a body politic and corporate and political subdivision of the State of Louisiana," and "an instrumentality of the State of Louisiana, exercising public and essential governmental functions . . . ." La. Rev. Stat. Ann. § 47(A) and (C). Similarly, the governing statute declares that "[t]he District shall not be subject in any respect to the authority, control or supervision of any regulatory body of the State or any political subdivision thereof . . ." La. Rev. Stat. Ann. § 47(C) (emphasis added). The District is authorized to sue and be sued, enter into contracts, levy taxes, collect fees and rents, incur debt, and issue bonds. See La. Rev. Stat. Ann. § 47(D). Despite its independence, the District is likewise subject to audits annually by the Legislative Auditor. See La. Rev. Stat. Ann. § 47(C).

Given the reliance in the Committee Report and testimony before the Committee on Public Services and Youth Affairs regarding these independent entities as models, 5/ it is likely the legislative branch intended to establish the D.C. Sports and Entertainment Commission as a similarly independent entity.

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5/ Other entities relied upon in the legislative history similarly are described as independent. For example, a 4/22/85 Miami Herald article noted that the cities of Tampa and Miami "both have independent sports authorities . . ." (Emphasis added). The Tampa Authority was described as consisting of seven board members including "four members picked by the county commission, one by the governor, one county commissioner and one city commissioner." Id. at 2. The article specifically noted, however, that "[t]he board doesn't answer to city or county government." Id.

The Miami Sports and Exhibition Authority ("MSEA") was described as needing "no approval from the city commission" even though the city commission appoints its nine members. Id. And the independence of MSEA was confirmed in a United States District Court opinion. See Florida

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*Caselaw Establishing Characteristics of Independent Entities*

Whether the Commission is classified as an instrumentality or an agency, 6/ there is strong support for the argument that the Commission is an

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Panthers Hockey Club, Ltd. v. Miami Sports and Exhibition Authority, 939 F. Supp. 855, 857 (S.D. Fla. 1996) ("MSEA is an independent and autonomous authority of the City.") (emphasis added); see also Op. Fla. State Att'y Gen. 98-34 at 1 (1998) ("[T]he [MSEA] was created by the City of Miami as an independent and autonomous agency of the city . . .") (emphasis added).

6/ The regularly relied upon definition of "agency," contained within the DC APA, see, e.g., D.C. Code Ann. § 1-1529; KiSKA Constr. Corp.-U.S.A. v. Washington Metro. Area Transit Auth., 167 F.3d 608, 611 (D.C. Cir. 1999), notes that both subordinate and independent entities fall under that term. For example, the broadest of the two definitions defines a subordinate agency as "any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law." D.C. Code Ann. § 1-1502(4). Accordingly, under D.C. law, agency is a broad term covering many differing types of entities.

There is an area of uncertainty, however, regarding whether the terms "agency" and "instrumentality" are synonymous. Some courts imply that the terms "agency" and "instrumentality" are the same. See Lebron v. National R.R. Passenger Corp., 513 U.S. 374, 394, 395, 398 (1995) (characterizing "independent corporations" as analogous to "the 'independent agencies' of the Executive Branch proper," and concluding that Amtrak was "no different from the so-called independent regulatory agencies," and therefore, Amtrak was "an agency or instrumentality of the United States . . .") (citations omitted); see also, e.g., 28 U.S.C. § 1603(b); Federal Land Bank of St. Louis v. Priddy, 295 U.S. 229, 231-32 (1935); Cannon v. U.S., 645 F.2d 1128, 1133 n. 14 (D.C. Cir. 1981) (interpreting legislative history to apply to "all Federal agencies, including corporate instrumentalities"); Gonzalez v. Freeman, 334 F.2d 570, 580 n. 1 (D.C. Cir. 1964); Dollar v. Land, 154 F.2d 307, 311-12 (D.C. Cir. 1946). But see North New York Sav. Bank v. Federal Sav. and Loan Insur. Corp., 515 F.2d 1355, 1356 (D.C. Cir. 1975) (implying each term describes separate characteristics in using both terms within the same description); Doe v. McMillian, 374 F. Supp. 1313, 1314 (D.D.C. 1974).

A District of Columbia court addressing the issue specifically questioned whether the terms are equal without coming to a conclusion. While first noting that "[t]he terms 'an agency of government' and 'an instrumentality of government' are often regarded as having the same meaning" and pointing out that the definition of each term in Webster's New World Dictionary includes the other, the court continued that "[n]onetheless, there is some authority to suggest that these terms may be distinguished." District of Columbia Housing Auth. v. District of Columbia Dept. of Human Rights and Local Bus. Dev., 733 A.2d 338, 342 n. 8 (D.C. 1999) (citations omitted). The court pointed to the Supreme Court's primary distinctions between these types of entities in that an "instrumentality is primarily responsible for its own finances" and is "run as a distinct economic

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independent body not susceptible to the administrative control of the D.C. Mayor. When faced with a similar question, the District of Columbia Court of Appeals has determined that similarly treated entities are independent. In the context of determining if the Mayor had the authority to reduce the D.C. Public Library's appropriations in order to balance the budget, the Court determined that the D.C. Public Library was an independent agency. See Hazel v. Barry, 580 A.2d 110, 111 (D.C. 1990). After the court noted that the D.C. Public Library was listed as a "statutory independent agency" in the relevant version of the § 1-299.6 chart, the court found that the Library was an independent agency over which "the Mayor does not have authority to control daily operations or to determine or implement Library policy . . . ." Id. The court continued by describing the Library as "independent of the Mayor 'in terms of its policy choices, personnel choices, in a whole plethora of areas'" listed under its statutory duties and powers. Id. at 114.

As discussed above, the Commission has been consistently listed as an independent agency under the applicable versions of the § 1-299.6 chart. Accordingly, under Hazel, the Commission is an independent agency with independent control of its "policy choices, personnel choices" and areas of control listed under §§ 2-4005, 2-4006, 2-4007, 2-4008, 2-4010, 2-4011, 2-4012, 2-4013, 2-4017, and 2-4018. Id. at 114. This analysis is further buttressed by the fact that employees hired after the establishment of the Commission are not District employees and are not subject to D.C. Comprehensive Merit Personnel System. See

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enterprise . . . not subject to the same budgetary and personnel requirements with which government agencies must comply." Id. (quoting First Nat'l City Bank v. Banco Para El Comercio Exterior De Cuba, 462 U.S. 611, 624 (1983)). To the extent that the Commission is not subject to the same personnel and budgetary requirements as subordinate D.C. agencies and it operates from funds received independently of any governmental entity, it is distinguishable from a governmental agency.

On the other hand, at least one court applying District of Columbia law has used a main characteristic of an instrumentality – the ability to sue and be sued – to prove that an entity was not an independent agency. See Crew v. Barry, Civ. A. No. 79-1383, 1979 WL 33, at \*2 (D.D.C. Sept. 25, 1979) (finding that the Office of Human Rights and the Commission on Human Rights were "not independent agencies" because they lacked the capacity to sue and be sued); Dollar, 154 F.2d at 311 (noting that a main characteristic of an instrumentality is the ability to sue and be sued); Delaware River Joint Toll Bridge Comm'n, Penn.-N.J. v. Colburn, 310 U.S. 419, 428 (1940); Weyerhaeuser Steamship Co. v. U.S., 372 U.S. 597, 601 n.5 (1963), judgment recalled on other grounds by 374 U.S. 820 (1963). This is also a characteristic of the Commission. See D.C. Code Ann. § 2-4006(1).

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D.C. Code Ann. § 2-4017; see also *infra* pp. 28-30. And the fact that the Commission must submit a budget to the Mayor annually, see D.C. Code Ann. § 2-4013(r)(1), does not necessarily mean it is not an independent agency. See Hazel, 580 A.2d at 112-13; see also D.C. Code Ann. §§ 9-602, 9-603(a)(6)(A) (requiring Washington Convention Center Board of Directors, which is statutorily designated as an independent agency, to submit an annual budget), 31-103, 31-104.2(d)(1) (requiring Board of Education to submit budget), 47-304.1 (authorizing Mayor to reduce amount appropriated to an independent agency in order to "balance the District's budget for the fiscal year."); Arrington v. District of Columbia, 673 A.2d 674, 684 (D.C. 1996) (describing D.C. General Hospital Commission as an "independent agency" which is required to submit its budget to the Mayor).

There are other factors used to determine if an entity is independent. In Foster v. U.S., 615 A.2d 213, 218 & n.11 (D.C. 1992), the D.C. Court of Appeals described the Parole Board as an "independent agency" within "the Executive Branch of the District of Columbia government" because its members are "appointed by the Mayor subject to confirmation by the Council of the District of Columbia" and due to its designation on a § 1-299.6 chart. See also D.C. Code Ann. § 24-201.1(a). This is the same procedure employed to appoint members of the Commission, see D.C. Code Ann. § 2-4004(a), and all other independent agencies in the District of Columbia. See, e.g., D.C. Code Ann. §§ 1-603.1(13) (listing independent agencies), 1-1303(a) (Board of Elections and Ethics), 2-302 (D.C. Armory Board), 5-412(a) (Zoning Commission), 9-602 (establishing the Washington Convention Center Board of Directors as "an independent agency" with members that are "appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia"), 43-401 (Public Service Commission); Arrington, 673 A.2d at 684 (describing D.C. General Hospital Commission as an "independent agency" with members appointed by the Mayor with the consent of the Council); Dankman v. District of Columbia Board of Elections and Ethics, 443 A.2d 507, 513 n.11 (D.C. 1981) (noting Board of Education is an independent agency whose members are appointed by the Mayor with the advice and consent of the D.C. Council).

The Supreme Court in Humphrey's Executor v. U.S., 295 U.S. 602, 625-26 (1935) further indicated that bodies whose members are appointed to fixed terms are independent. Accordingly, the Commission's members are appointed for a set four-year term. See D.C. Code Ann. § 2-4004(b). Another characteristic

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identified in Humphrey's Executor as a characteristic of an independent body was when an entity is "free to exercise its judgment without leave or hindrance of any other official or any department of the government." 295 U.S. at 625-26. The Commission also possesses this freedom and its judgment extends to a broad range of areas.

Excluding the budgetary process, the purposes of the Commission are to:

- (1) Promot[e] the District as a location for holding sporting events which will enhance the District's economic development . . . ;
- (2) Provid[e] community outreach and grassroots recreation for all residents of the District, especially children;
- (3) Coordinat[e] the development, construction, and implementation of new facilities and related infrastructure, and the improvement of existing facilities in the District . . . ;
- (4) Manag[e] and maintain[] facilities in the District . . . ;
- (5) Promot[e] and market[] sports events in the District and participat[e] in such sports events . . . ; and
- (6) Own[] and operat[e] professional sports franchises in the District.

D.C. Code Ann. § 2-4003. In order to carry out these mandates, the Commission is authorized to appoint an Executive Director, who serves at the Commission's pleasure and is authorized to direct and supervise the administration and management of the Commission, approve all accounts for salaries, make per diem payments and allowable expenditures, and hire personnel as the Executive Director deems necessary. 7/ See D.C. Code Ann. § 2-4005. The Commission is further

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7/ In fact, Commission personnel hired by the Executive Director after 1997 are clearly not even considered to be District Government employees and they are exempt from normal D.C. personnel rules and regulations. See D.C. Code Ann. § 2-4017; see also *infra* pp. 28-30. Instead, the

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authorized to "[m]ake, amend, carry out, and enforce any rule it deems necessary; . . . [a]cquire, hold, use, and dispose of its income, revenues, funds and monies . . . ; [b]orrow money and issue revenue bonds . . . ; [e]nter into contracts [and] agreements. . . ; [and d]o any and all things necessary or convenient to carry out the purposes of this chapter and to exercise the powers expressly granted in this chapter." D.C. Code Ann. § 2-4006. Unlike other dependent agencies, no approval of any of these actions is required from the Mayor or other executive member. See Accardi v. Shaughnessy, 347 U.S. 260, 269-70 (1954) (Jackson, J., dissenting) (citing one factor showing that the Board of Immigration Appeals is not an independent agency as because "[i]t operates under [the Attorney General's] supervision and direction, and its every decision is subject to his unlimited review and revision.").

A final factor that likewise points to independence is identified in Lebron, 513 U.S. at 398 and Weiner v. U.S., 357 U.S. 349, 352-53 (1958) as when the executive's authority is limited in removing independent entity members. Under the Commission's enabling statute, the Mayor is only able to remove a Commissioner for cause. See D.C. Code Ann. § 2-4004(e) ("The Mayor may remove a member of the Board for failing to establish or maintain District residency, misconduct, neglect of duty, or other cause, as defined by the Board in its by-laws after notice to the member."). This characteristic is also evidenced by other D.C. independent agencies. See, e.g., D.C. Code Ann. §§ 1-1304(d)(1) (Board of Elections and Ethics), 43-401 (Public Service Commission); see also 16 U.S.C. § 792 (Federal Power Commission); 42 U.S.C. § 3502(10) (Federal Energy Regulatory Commission); Weiner, 357 U.S. at 352 (Federal Trade Commission members are only removable "by the President for inefficiency, neglect of duty or malfeasance in office."). Accordingly, for all these reasons, regardless of whether the Commission is an agency or instrumentality, the Commission is independent.

As the foregoing analysis demonstrates, ample authority supports the argument that the Commission is an independent entity. Therefore, the Commission is not the same as a D.C. Government agency or department and not automatically subject to rules and regulations otherwise applicable to subordinate agencies, such as those covering use and investment of funds, procurement, and personnel.

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Commission is authorized to promulgate rules and regulations governing its personnel. See D.C. Code Ann. § 2-4017.

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## Noted Areas in the Draft Report

As noted above, the draft report focuses on five areas: (1) an accounts payable carried on the Commission's books relating to a D.C. Armory Board transfer from its Starplex Fund; (2) advances relating to pre-development costs of the MCI Arena Project; (3) certain expenditures over a three-year period and their relationship to the Commission's mission, and six petty cash fund matters; (4) internal controls and other issues related to the Commission's community grants program; and (5) certain personnel issues. While the broader analysis above – namely, the legal status of the Commission and the extent that status exempts it from or otherwise affects it in relation to certain rules and regulations that might otherwise apply were the Commission a subordinate department or agency of the D.C. Government – obviously bears significantly on these five areas, beyond that discussion, the Commission believes the following points merit consideration as to each of the five specific areas.

*(1) An accounts payable carried on the Commission's books relating to a D.C. Armory Board transfer from its Starplex Fund.*

The draft report states that the Commission is obligated to pay a \$2.177 million item noted on its books as an accounts payable and recommends such payment. See Draft report at 11-12. The draft report appears to base this conclusion upon the opinion of the D.C. Corporation Counsel issued July 27, 1999. See id. In that opinion, D.C. Corporation Counsel began by determining that the D.C. Armory Board's status as an independent agency did not hamper Congress' ability to mandate a transfer of funds from the Starplex Fund to the D.C. General Fund. See Corporation Counsel Opinion at 6-7. The opinion then reasoned that this obligation was a permanent liability that would continue until fulfilled. See id. at 7. Finally, based upon an analysis of applicable accounting principles and statutory language, see id. at 7-9, D.C. Corporation Counsel concluded that "the Consolidation Act should be construed to vest Starplex Fund's remaining \$2.177 million liability to the General Fund in the Sports Commission Fund." Id. at 9.

The Commission begins by noting that the mere fact that the \$2.177 million liability has continuously appeared as an accounts payable on the books of the Commission does not mean that it is a legitimate obligation that the Commission is obligated to pay. Indeed, on the basis of our review to date, we

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conclude that, with respect to the Starplex Fund, Congress did not mean to transfer this debt or obligation of the D.C. Armory Board to the Commission.

Pursuant to the District of Columbia Appropriations Act, 1994, Pub. L. No. 103-127, 107 Stat. 1336, at 1343-44 (1993), and the District of Columbia Supplemental Appropriations and Recissions Act, 1994, Pub. L. No. 103-334, 108 Stat. 2576, at 2597 (1994), the D.C. Armory Board was required to transfer from its Starplex Fund a total of \$3.177 million to the D.C. General Fund for distribution to other governmental entities. The D.C. Armory Board meeting minutes reflect that the D.C. Armory Board 8/ voted, in September 1994, to pay \$1 million of that sum under protest. See 9/24/94 Minutes of the D.C. Armory Board at 1-3, 7-8. That Board noted that the requirement to pay the sum was illegal and undertook efforts to have the matter resolved. See id. In the meantime, as the draft report notes, the Commission's financial statements carried a \$2.177 million item as an accounts payable since fiscal year 1995.

While the D.C. Armory Board's status as an independent agency may not have limited the authority of Congress, the Mayor, and the D.C. Council to order the transfer of funds from the D.C. Armory Board's Starplex Fund to the General Fund or to other entities, see Hazel, 580 A.2d at 112-14, it does not automatically follow that the liabilities of the Starplex Fund were transferred along with the assets to the Commission. As demonstrated from the analysis of the statutory language and legislative history below, this obligation is not automatically that of the Commission.

### *Statutory Language*

The Sports and Entertainment Commission Fund (the "Fund") was "created for the exclusive benefit of the Sports and Entertainment Commission . . .

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8/ Before the Commission Board could be properly constituted, the D.C. Armory Board was authorized to act as the Interim Sports Commission pursuant to § 2 of the Armory Board Interim Authority Emergency Amendment Act of 1994. The decision to pay the \$1 million requested to the General Fund was made by the D.C. Armory Board even before this authorization was granted. See Corporation Counsel Opinion at 2; 9/24/94 Minutes of the D.C. Armory Board at 1-3, 7-8. Accordingly, it was the D.C. Armory Board – and not the Commission – which decided whether to make this initial payment.



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." D.C. Code Ann. § 2-4009 (emphasis added). The assets used to establish that fund were "[a]ll monies other than funds designated for military purposes held by the Armory Board in the Starplex Fund and in the District of Columbia Commission on Baseball Fund on August 23, 1994 . . . ." Id. (emphasis added). This transfer was to be "immediate[]" and the fund are to be "used for any lawful purpose of the Sports and Entertainment Commission." Id. (emphasis added).

Therefore, according to the very language employed in enacting the Fund, monies from the Starplex Fund are intended for the exclusive use of the Commission to carry out the purposes of the Commission. This language becomes meaningless if the Commission is saddled with the obligations of another entity imposed before the Commission came into existence. Under the Auditor's and D.C. Corporation Counsel's reading, assuming the monies transferred were sufficient to cover this obligation, 9/ an undetermined portion of the Fund's assets would be already committed to other purposes. Thereby, the Commission would receive limited benefits from the assets in the Starplex Fund and any benefit received certainly would not be exclusive, as required. Furthermore, if a portion of the funds goes to cover other entities' expenses, the monies would not be spent "for . . . lawful purposes of the Sports and Entertainment Commission" as noted by the statute. It is not within the Commission's enumerated purposes to support court functions, the operation of the cable industry, or any other agency or department receiving the benefit of these funds through the General Fund. Accordingly, the statutory

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9/ It appears from D.C. Corporation Counsel's opinion that there is some discrepancy as to whether more than \$2.177 million was transferred into the Fund. In footnote 8 of its opinion, D.C. Corporation Counsel stated:

[A]s of December 31, 1993 the Starplex Fund had at least \$2,759,436 to cover its liability of \$3.177 million to the General Fund. Depending on the Armory Board's earnings and financial management during January 1 to August 23, 1994, it is possible that sufficient funds were transferred to the Sports Commission Fund to satisfy the remaining \$2.177 million liability to the General Fund as well as all other liabilities to the Starplex Fund.

Corporation Counsel Opinion at 6 n.8 (emphasis added). In sharp contrast to this statement, the D.C. Corporation Counsel also stated that "it appears that assets well in excess of \$2.177 million . . . were transferred . . . ." Corporation Counsel Opinion at 2.

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language would be meaningless if an amount of the Starplex Funds is deemed to have been previously earmarked for other purposes besides those benefiting the Commission.

The statute also contains a provision noting that "[a]ll debts and obligations of the Armory Board associated with the construction, operation, and maintenance of Robert F. Kennedy Stadium and its motor vehicle parking areas shall become the debts and obligations of the Sports and Entertainment Commission." D.C. Code Ann. § 2-4010(c)(6) (emphasis added). First, the use of the word "monies" in § 2-4009 is sharply contrasted with the use of "debts and obligations" here. Given that all words are assigned their natural meanings in the first instance and the presumption that different terms within the same statute indicate an intent to establish different meanings, see Newspapers, Inc. v. Metropolitan Police Dep't, 546 A.2d 990, 1001 (D.C. 1988) (citing National Insulation Transp. Comm. v. ICC, 683 F.2d 533, 537 (D.C. Cir. 1982)) (other citations omitted); see also O'Gilvie v. U.S., 519 U.S. 79, 96 (1996) (citations omitted); TransBrasil S.A. Linhas Aereas v. Department of Transp., 791 F.2d 202, 205 (D.C. Cir. 1986) (citations omitted), reading "monies" in § 2-4009 to include past debts and obligations of the D.C. Armory Board undercuts the use of the phrase "debts and obligations" in § 2-4010(c)(6). A more persuasive reading is that the reference to monies in § 2-4009 is limited to the actual assets in the Starplex Fund while § 2-4010(c)(6) discusses the transfer of a limited number of debts and obligations formerly of the D.C. Armory Board. In using the different terminology in adjacent sections, we believe that the legislative branch intended to distinguish these concepts. See James Parreco & Son v. District of Columbia Rental Housing Comm'n, 567 A.2d 43, 46 (D.C. 1989) ("[W]ords are important, and the burden on a litigant who asks the court to disregard their plain import is not a light one.").

Second, § 2-4010 shows that the Council knew how to transfer "debts and obligations" from the Armory Board to the Commission when that is what it intended. In contrast to D.C. Corporation Counsel's argument, there is no legislative history showing that there was confusion regarding whether this debt was meant to be transferred, supporting D.C. Corporation Counsel's argument that this provision was meant to clarify the issue as opposed to excluding the transference of other debts. See Corporation Counsel Opinion at 8-9. If the legislative branch had intended to transfer other D.C. Armory Board obligations to the Commission, it would have so stated.

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Third, another separate statutory section again supports this analysis. In § 2-4012(c)(3), the legislative branch set forth obligations of the Commission to transfer funds to the D.C. General Fund. See D.C. Code Ann. § 2-4012(c)(3) ("If, at the end of a fiscal year, tax revenues transferred to the Sports and Entertainment Commission fund are not required to pay preconstruction costs for the arena and debt service and debt service reserves on Sports and Entertainment Commission bonds and capital replacement reserves, the excess shall be transferred, in cash, to the General Fund of the District."). By excluding other obligations to transfer funds to the General Fund, the section again supports the argument that the Commission is not saddled with that obligation.

#### *Legislative History*

Finally, the legislative history supports the idea that the legislative branch intended the Commission to receive sufficient funds to enable it to initially function as a self-sufficient entity. In the Committee Report, Chairman Lightfoot noted that the Starplex Fund would be sufficient to "fund the creation" of the newly-established Commission "as well as the first few years of operation . . . ." Committee Report at 8. If Corporation Counsel's construction of the statute is followed and a portion of the original amount in the Starplex Fund was intended for other D.C. entities' use, the goal to establish the nearly-formed Commission as a self-sufficient entity would be in jeopardy.

Furthermore, Chairman Lightfoot generally noted that a depleted coffer would reduce the Commission's ability to borrow funds and increase the cost of borrowing, and that appropriations would soon be necessary to sustain the Commission if "funds continue to be diverted to other District agencies." *Id.* at 9. These same consequences would follow from a determination that the \$3.177 million obligation was originally transferred to the Commission.

For all these reasons, the Commission strongly believes that contrary to the conclusion of the draft report, the more persuasive analysis of the law is that the Commission is not under an obligation to pay the \$2.177 million at issue in the draft report to the General Fund. Furthermore, the Commission intends to evaluate the legal basis of seeking the return of the \$1 million paid to the D.C. General Fund prior to the Commission being constituted.

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*(2) Advances, almost entirely since repaid, relating to pre-development costs of the MCI Arena Project*

The draft report makes two main observations relating to this issue. First, the draft report concludes that "the Commission's participation in this privately sponsored project appeared not to be completely consistent with its authority under D.C. Law 10-152 in that the law is silent concerning the Commission's financial participation in such projects." Draft report at 13.

Second, the draft report takes issue with the means used by the Commission in participating with the program. Specifically, the draft report notes that even though "the Commission assumed the role of paymaster, the agent in charge of paying invoices," id. at 12, it failed to take an active role in negotiating the contracts that it was then obligated to pay. Id. at 13-14. Instead, the Redevelopment Land Agency ("RLA") and the Mayor's Office handled those negotiations and the Commission merely signed the contracts. See id. at 14. The draft report also states that the Commission paid invoices submitted to it without determining whether the noted services charged had actually been performed and were consistent with the scope of work called for by the contract and that the fees charged were reasonable and were within the limits established by the contract. See id. at 13-15. Furthermore, the draft report faults the Commission for failing to ascertain whether RLA or the Mayor's Office were performing these functions and for failing to obtain the approval of these offices prior to paying such invoices. See id. Finally, the draft report criticizes the Commission's alleged failure to document its agreement for repayment with the RLA, see id. at 12, and the continuation of payments after RLA received the proceeds from its \$53 million loan. See id. at 18. The draft report concludes that this lack of "coordination, the lack of established points of accountability between the three offices, and inadequate internal controls over the review, approval, and payment processes" was partially responsible for the over \$200,000 in disbursements made by the Commission in excess of the amounts set forth in the contracts, all but \$45,000 of which has been reimbursed by RLA. See id. at 15.

Prior to the first meeting of the newly-created Commission and its Board, an understanding apparently was reached between the RLA and the D.C. Armory Board. See supra note 8. According to notations in the D.C. Armory

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Board's meeting minutes, the Commission would pay for pre-development costs associated with the MCI Arena Project and receive reimbursements from the RLA by way of proceeds from a \$53 million loan. See 9/24/94 Minutes of the D.C. Armory Board at 3, 6-8. Over \$5.8 million was paid by the Commission for pre-development costs – an amount far below the \$53 million in loan proceeds received by the RLA – and it appears that the Commission has been reimbursed for all but approximately \$45,000. See Draft report at 16-17.

As to the first point above, the draft report in essence concludes that the Commission does not have the authority to become involved in projects employing private funds to build sporting facilities. The Commission respectfully disagrees and strongly believes that this project falls squarely within its area of authority. The Commission's statutory mandate lists one of its purposes as "[p]lanning, developing, financing, and maintaining a comprehensive complex of sports, entertainment, and recreation facilities in the District as locations for hosting sporting events . . . ." D.C. Code Ann. § 2-4001(2) (emphasis added). The Commission is likewise authorized to "[d]etermine the location of, develop, establish, construct, erect, acquire, own, repair, remodel, add to, extend, improve, equip, operate and maintain facilities to the extent the Sports and Entertainment Commission deems necessary to accomplish the purposes of this chapter." D.C. Code Ann. § 2-4007(2). The term "facility" is defined as "[a]ny stadium, arena, or recreation site owned and operated by the District government or under direct control of the Sports and Entertainment Commission or any stadium or arena owned or financed by the Sports and Entertainment Commission in whole or in part . . . ." D.C. Code Ann. § 2-4002(3)(A). Finally, the Commission is authorized to "[d]o any and all things necessary or convenient to carry out the purposes of this chapter and to exercise the powers expressly granted in this chapter." D.C. Code Ann. § 2-4006(15). No distinction is made regarding whether such facilities can be partially funded from private sources. Accordingly, pursuant to these provisions, the Commission possesses the statutory authority to participate in the financing of various sporting facilities within the District of Columbia, including the MCI Arena Project.

Development of the MCI Arena Project as a location within the District of Columbia to hold sporting and entertainment events has been a tremendous asset to the city. It has aided in the redevelopment of the surrounding downtown area, enhanced the number of large, well-publicized sporting events being held

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within the District of Columbia proper – including providing facilities for the Washington Wizards, the Washington Capitals, and numerous local collegiate teams – and likely encouraged famous sporting figures, such as Michael Jordan, to become associated with those D.C. sports teams, and represents increased opportunities to hold entertainment events in the District, including concerts, skating shows, and various exhibitions. On balance, the Commission considers the project a huge success for the city and its future. The Commission takes strong exception to any suggestion in the draft report that its participation in connection with the MCI Arena Project was inconsistent with the Commission's mission.

As to the second point above, the Commission notes that mechanisms and procedures employed by the Commission relative to contract formation and performance were established prior to the creation of the Commission and, thereby, were inherited as opposed to created by the Commission. In any event, as to the specific contract-related matters treated in the draft report, as of the date of submission of this response we are still evaluating issues as to methods used in the past to monitor, administer, and pay the contracts at issue. With respect to future contracting issues attendant to projects that may be undertaken in coming years, the Commission will carefully consider the suggestions in the draft report relative to improved internal controls and checks and balances that may be helpful or appropriate in connection with the Commission's involvement in such future projects.

Finally, the Commission understandably would be concerned by any suggestion that matters treated in the draft report might merit review by the Office of the Inspector General. As to issues relating to the MCI Arena Project, the draft report does not specify which specific actors, actions, or contracts the Auditor believes deserving of review by the Inspector General, and accordingly, it is difficult for the Commission to evaluate and comment further upon this suggestion. However, in any event, on a forward-going basis, the Commission is committed to the development of sound internal accounting and procurement controls to guide its actions in connection with future projects.

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*(3) Certain expenditures over a three-year period that the Auditor concludes do not appear to relate to the Commission's mission, and six instances during this same period in which the Commission's petty cash fund was used for transactions in excess of \$150.00*

The draft report takes issue with certain expenditures that the Auditor believes do not relate to the Commission's mission and takes issue with certain petty cash matters. The draft reports concludes that during the fiscal years 1996 to 1998, the Commission expended approximately \$36,000 in expenses for refreshments at official events and for other purposes, including modest holiday gifts. See Draft report at 18, 20. Further, the draft report concludes that the Commission's petty cash fund was used for six – mostly emergency – purchases of more than \$150 each, for a total of \$1,700. See id. at 21-22. Despite these observations, however, the draft report notes that “the Auditor found that the Commission’s . . . [petty cash] funds were adequately safeguarded against theft, waste, and abuse.” Id. at 22.

In highlighting these purchases, the draft report holds the Commission to standards applicable to subordinate agencies of the District of Columbia government, including restrictions applicable to entities operating from appropriated funds. See id. at 19-21 (citing D.C. Mun. Regs. tit. 27, § 1815.1; General Accounting Office, Principles of Federal Appropriations Law 4-82, 4-128 (2<sup>nd</sup> ed. 1992)) (other citations omitted). As discussed at length above, however, the Commission is not a subordinate agency but an independent agency. Furthermore, it does not appear that the Commission operates by use of so-called “appropriated funds.”

The Commission's funding is consistently derived from “other funds” as opposed to being “appropriated” or “derived by transfer from the general fund.” See District of Columbia Appropriations Act, 1997, Pub. L. No. 104-194, 110 Stat. 2356, at 2362-64 (1996); see also Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 1501, at 1511 (1999) (from “other funds”); Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681, at 132 (1998) (from “other funds”); District of Columbia Appropriations Act, 1998, Pub. L. No. 105-100, 111 Stat. 2160, at 2167 (1997) (from “other funds”); Omnibus Consolidated Recissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, at 85 (1996) (from “other funds”); H.R. Rep. No. 104-294, at 66

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(1995) (recommending funding from "other funds"); D.C Armory Board/D.C. Sports Commission Mission Statement for FY 1996 and FY 1997 at 1. In fact, in some reports from the Senate Committee on Appropriations, the Committee described the funds as being:

derived from the operations of the commission . . . .

All funds recommended are earned from  
tenant and clients. Additional revenue is earned  
from parking fees and concessions sales from  
events held at the armory facilities.

S. Rep. No. 105-75, at 39 (1997); S. Rep. No. 104-328, at 57 (1996); see also S. Rep. No. 106-88, at 58 (1999); S. Rep. No. 105-254, at 56 (1998). The House of Representative Committee on Appropriations echoed this characterization noting that part of the Commission's mission is to be "operated as nearly as practicable on a self-supporting basis." H.R. Rep. No. 106-249, at 84 (1999); H.R. Rep. No. 105-670, at 74 (1998); H.R. Rep. No. 105-298, at 78 (1997). Likewise, the FY 1999 Budget at page F-32 noted that the Commission "operates solely from revenues it generates from events." Accordingly, the Commission does not appear subject to the standards set forth in the draft report applicable to appropriated funds.

The Commission further notes that appropriate official entertainment is essential to the Commission's statutory purpose. The Commission believes that official entertainment and refreshments at certain official events are important to its mission, e.g., to fostering good relations and to helping to convince potential event sponsors and promoters that the District of Columbia is able to support their needs. The Commission believes such expenditures, if reasonable, are within the Commission's authority to fulfill its purpose of "[p]romoting, developing and maintaining the District as a location for hosting sporting and entertainment events . . . ." D.C. Code Ann. § 2-4001(a)(1); see also D.C. Code Ann. § 2-4006(15) (The Commission is authorized to "[d]o any and all things necessary and convenient to carry out the purposes of this chapter . . . .").

Notwithstanding the foregoing, however, the Commission agrees with the draft report's conclusion that its funds should be used only for purposes consistent with its mission, and that it may be appropriate to consider adoption by the Commission of a policy stating the types of expenditures that are acceptable. As



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with other areas covered in the draft report, this is an area that the Commission intends to focus on going forward, including whether additional statutory authority (or clarification) is needed. The Commission also intends to review its petty cash policy in view of suggestions contained in the draft report.

*(4) Internal controls and better paperwork administration attendant to the Commission's community grants program, where the Commission historically has placed special emphasis on the needs and nurture of the children of the District*

In reviewing the Commission's grant program, the draft report makes observations regarding three main areas. First, the draft report faults the Commission for not complying with its preliminary and final rules and regulations promulgated to govern its grant program. See Draft report at 22-23. Specifically, the draft report alleges that the Commission provided grants to entities that were ineligible under its proposed grant guidelines, to entities that failed to submit completed grant applications, or the grants were not approved at official board meetings. See id. at 22-28. Second, the draft report observes that the responsibilities and authority of the Commission's Community Outreach Committee, the committee responsible for administering the Commission's grant program, is unclear. Specifically, as to its authority, the draft report questions whether that committee has been given authority to award grants of less than \$5,000 without prior Board approval. See id. at 26-27. As to its responsibilities, your office notes that grant files are not well-organized, the committee's monitoring of grant programs to ensure that funds were used only for grant purposes is inadequate, and no site visits occurred to verify the nature and existence of organizations prior to approval and to monitor grant spending after approval. See id. at 27. Finally, the draft report recommends that the Commission employ broader marketing techniques as only 75% of the amount set aside for grants in 1996 to 1998 was actually awarded. See id. at 28.

With respect to its community grants program, the Commission would make the following observations. To carry out its purpose of "encourag[ing] and support[ing] youth activities in the District . . .," D.C. Code Ann. § 2-4001(b), the Commission instituted a grant program. The draft report focuses upon twelve grants given in fiscal years 1996 to 1998. These grants consisted of: 1) \$135,430 for seven grants to various D.C. Public Schools; and 2) five grants to community

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organizations providing sporting opportunities to D.C. youth. See Draft report at 25-28. 10/ These twelve grants included the following types of gifts:

- \$776 to provide 18 basketball uniforms and 2 pairs of athletic shoes to Oakhill Youth Center for use by D.C. youth who could not otherwise afford them;
- \$3,170 to purchase track team uniforms for the Anacostia High School track team;
- \$3,000 in registration fees allowing members of the Dunbar High School football team to attend the YMCA football camp;
- \$8,065 and \$975 for expenses associated with ceremonies to honor the remarkable achievements of local D.C. high school sports teams. For example, one luncheon was to honor Woodson and Anacostia High School football teams named the 1998 City Champions and second place winner in D.C.;
- \$5,000 in 1997 and 1998 to provide youth scholarships allowing inner-city young women to attend the Sanya T. Tyler youth basketball camp; and
- multiple grants totaling \$50,000 for improvements to the Wilson High School track.

In making its awards to the community, the relatively new Community Outreach Committee of the Commission has focused upon the needs and nurture of the children of the District of Columbia. In order to accomplish that purpose, the Commission instituted grant regulations. See D.C. Mun. Regs. tit. 19, § 3300, *et. seq.* Under those guidelines, district-based, not-for-profit organizations and other legally-constituted groups or government bodies that “possess the demonstrated capacity to develop and implement sports and recreation programs within the

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10/ The draft report also focuses upon a grant provided in fiscal year 1999 to the Shaw Community Outreach Committee to support Thanksgiving Day Food Baskets. See id. at 28.

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District of Columbia" are eligible to receive funds. See D.C. Mun. Regs. tit. 19, § 3301.2. 11/ The guidelines also specify the Commission's priorities, which include projects – including capital projects – designed to promote and encourage sports and recreation activities among disadvantaged youth and youth within designated D.C. enterprise zones. See D.C. Mun. Regs. tit. 19, § 3302.1.

As this letter is being written, we have as yet been unable to perform an independent evaluation regarding the individual specific grants highlighted in the draft report. The Commission intends to conduct such a review and, as appropriate, to devise guidelines documenting the Community Outreach Committee's authority and responsibility. Also as appropriate, the Commission will update its grant regulations and consider mechanisms for monitoring the grant process both before and after grants are awarded. The Commission also intends to consider improved marketing techniques that might better inform the public regarding the availability of funds.

*(5) Personnel issues*

Finally, the draft report focuses upon personnel issues, including the award of bonuses for the Commission's former Executive Director, the detailing of certain employees, and the payment of bonuses and travel expenses to a Commission consultant. On these issues, the draft report evaluates the Commission's actions against standards applicable to subordinate agencies established by the District's Comprehensive Merit Personnel Act and described in the District's Personnel Manual. In doing so, the draft report focuses upon three main areas. 12/ While the facts relating to these areas are still under review by the

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11/ The only entities excluded under these final and binding regulations are individuals and Advisory Neighborhood Commissions. See D.C. Mun. Regs. tit. 19, § 3301.3. The draft report points to no grants made to these ineligible groups.

12/ The Commission notes that after a discussion of the former Executive Director's current salary and benefits, the draft report presents no recommendation as to this issue. See Draft report at 29-31. Regardless, the Commission would note that the former Executive Director had extensive experience in performing similar functions for the D.C. Armory Board. Furthermore, at the time his salary and benefits were established, the Commission was charged with providing facilities and support to a major league sports team, the Washington Redskins. While it is unfortunate that the Redskins decided to relocate outside the District of Columbia after the expiration of their lease, the former Executive Director was able to help secure another major league sporting team – D.C. United

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Commission at the time this letter is being prepared, at a minimum the Commission is able to offer the following observations.

First, the draft report states that the Commission was required, but failed, to comply with the requirements of the District Personnel Manual in not completing form DCSF-52 and providing other documentation when it detailed one of its employees to the Office of the Secretary between approximately April 2, 1995 and August 30, 1997. See Draft report at 32-33. Yet, employees hired by the Commission are specifically not considered "employees of the District." D.C. Code Ann. § 2-4017. Instead, the Commission was charged, pursuant to § 2-4017, with creating its own personnel rules and regulations. And former District employees who were then employed by the newly-created Commission can opt out of coverage under the District's Comprehensive Merit Personnel Act. See D.C. Mun. Regs. tit. 18, § 3400.2. Thereby, Commission employees are not subject to normal personnel requirements, including the requirement to document the detailing of its employees using a specific form. See D.C. Mun. Regs. tit. 8, § 800.1(i) (noting that the chapter is not applicable to "[a]ny other employee excluded by law."). The foregoing notwithstanding, however, the Commission does agree that clearer guidelines as to the detailing employees might serve to avoid further confusion. This is an area the Commission intends to focus on going forward; it is not at all clear whether, in the future, the issue of "detailing" employees will even be an issue for the Commission.

Second, the report focuses upon the \$20,000 annual bonus provided to the Commission's former Executive Director during the years 1996 to 1998. See Draft report at 31-32. And indeed, the Commission Board meeting minutes reflect that bonuses for calendar year 1996 and 1997 were approved by the Commission. While documentation may be lacking specifying which aspects of the former Executive Director's performance in 1996 and 1997 were most noteworthy, implicit within these awards is the Board's approval of the Executive Director's performance and a finding that the former Executive Director's actions fulfilled the expectations of the Commission. Moreover, we would note that a more detailed finding to that effect was provided in conjunction with the approval of the former Executive

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-- as well as continue to increase the income provided to the Commission through providing facilities and coordinating accommodations for Olympic sporting events. Accordingly, for these and other reasons, there would appear to be ample basis for concluding that the Executive Director continued to merit the salary and benefits negotiated in 1994, along with modest annual increases.

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Director's calendar year 1998 bonus. In fact, for 1998, a written evaluation was prepared which broke down the Executive Director's performance in several areas – including quantity, quality, work habits, personal relations, adaptability, and supervision and planning – and noted his performance in each area was outstanding. For the reasons stated above, we do not believe the Commission can be faulted based on the theory that it must comply with the rules and regulations set forth in the District's Personnel Manual. Nonetheless, with respect to the draft report's recommendations, the Commission agrees that performance ratings measuring the new Executive Director's performance in relation to the Commission's mission and goals is appropriate, and that it is also appropriate for the Commission to articulate periodic goals and objectives for its Executive Director.

Finally, the draft report focuses upon \$15,000 in bonuses, and less than \$2,000 in travel expenses, 13/ provided to a consultant for the Commission between calendar years 1996 and 1998. See id. at 33-36. The draft report argues that providing these funds to the Administrator of the Office of Documents and Administrative Issuances was improper in that that employee was a District employee, the practice did not comply with District Personnel Manual, Part II, Chapter 18, subpart 2.4 regarding "Engagement in Outside Employment While in Leave Status," and the Commission lacked authority to make such payments. See id.

First, the Commission possesses statutory authority to hire "advisors, consultants, and agents, including, but not limited to, financial advisors, accountants, and legal counsel . . . ." D.C. Code Ann. § 2-4006(11). There is no statutory requirement that a written contract is undertaken or that only non-District employees be utilized. In fact, the Commission's regulations only require that the Executive Director approve the contract. See D.C. Mun. Regs. tit. 19, § 3405.1.

Second, the Commission is statutorily authorized to "fix the[] compensation" of any consultants, advisors, and agents. See D.C. Code Ann. § 2-

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13/ Again, while the draft report makes no specific recommendation regarding the payment of travel expenses to consultants, advisors, or agents of the Commission, the Commission notes that this may be an area in which the Commission might establish appropriate guidelines and procedures for the future.

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4006(11). As that term is normally understood to encompass the payment of salary benefits, and bonuses, see Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809 (1989) (noting phrase "pay or compensation" includes benefits); Commissioner of Internal Revenue v. Lo Bue, 351 U.S. 243, 247 (1956) (holding that compensation, for tax purposes, is any "assets . . . transferred by an employer to an employee to secure better service . . ."); Pan American World Airways, Inc. v. Civil Aeronautics Board, 683 F.2d 554, 560 (D.C. Cir. 1982) (reading term "compensation" in a contract to be broader than the term "salary," and thereby, includes bonuses), it would appear that it was within the Commission's statutory authority to pay a bonus to the Administrator of the Office of Documents and Administrative Issuances.

Finally, even if the Administrator of the Office of Documents and Administrative Issuances was subject to certain rules and regulations covering outside employment and district leave regulations under the District Personnel Manual, which might limit his ability to act as a paid Commission consultant, it does not automatically follow that the Commission is obligated to follow those same rules and regulations given that the Commission is an independent entity with its own personnel authority. See, e.g., D.C. Code Ann. §2-4017; DPM, Part I, Chapter 18, § 1800 (applying provisions to District employees); DPM, Part II, Chapter 18, Subparts 1.3(B) (applying provisions to "subordinate agencies" and holding each subordinate agency "responsible for enforcing the law and chapter 18 of D.C. personnel regulations . . ."), (D) (noting that "[t]he primary responsibility for the maintenance of high standards of ethical conduct in the District government must rest with each person. In the last analysis, the effectiveness of any regulation or standard of conduct depends on the full cooperation of and the exercise of sound judgment by the individual employee."); DPM, Part II, Chapter 18, Subpart 1.4 ("The chapter applies to all employees and special Government employees of District government agencies under the personnel authority of the Mayor.") (emphasis added). Accordingly, the Commission does not find a basis for criticism regarding its relationship with the Administrator of the Office of Documents and Administrative Issuances.

As noted above, the Commission understandably would be concerned by any suggestion that matters treated in the draft report might merit review by the Office of the Inspector General. As to issues relating to personnel practices, the draft report does not specify which specific actors or actions the Auditor may believe

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deserving of review by the Inspector General, and accordingly, it is difficult for the Commission to evaluate and comment further upon this suggestion. However, in any event, the Commission believes, consistent with certain of the recommendations in the draft report, that it is appropriate for it to review its policies with respect to compensation of personnel, including bonuses to consultants, agents, or advisors, and the documentation of the terms of their employment. The Commission intends to undertake such a review.

### Conclusion

This letter constitutes the Commission's preliminary response to the draft audit report. This response is preliminary in the sense that there is additional work required before the Commission can fully respond to the draft report. Accordingly, as noted above, the Commission hereby formally requests an extension of time until February 28, 2000 for submission of its final comments, and that your office refrain from finalizing and issuing its report until after receipt and evaluation of the Commission's final response. Should your office decline this request and determine to issue a final report prior to receipt and consideration of a subsequent submission by the Commission, then the Commission requests that your office make this letter an exhibit to your final report.

Thank you for your consideration.

Very truly yours,

HOGAN & HARTSON L.L.P.



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Vincent H. Cohen  
Douglas A. Fellman

cc: Members, Board of Directors, D.C. Sports  
and Entertainment Commission