

Philadelphia Committees' Spending on 2016 Democratic National Convention

A special report by Auditor General Eugene DePasquale
November 2017

Introduction

The City of Philadelphia hosted the 2016 Democratic National Convention, an \$86 million four-day event that saw the nomination of the first female major-party presidential candidate, Hillary Clinton. Of that \$86 million, \$10 million came from the Commonwealth of Pennsylvania in the form of a grant through the Department of Community and Economic Development (DCED).

Months after the convention ended, the Philadelphia 2016 Host Committee board came under intense scrutiny by media and Republican legislators for using about \$1 million to pay out what the media called “bonuses” to staff members. Certain members of the Host Committee, however – specifically former Gov. Ed Rendell, Executive Director Kevin Washo and Chief Operating Officer Eliza “Lila” Rose – argue that the bulk of those payouts were instead deferred compensation for work done in the earliest stages of the bid process to bring the convention to Philadelphia. The rest, they said, was divided among volunteers, interns and staff members whose salaries had been kept artificially low until a surplus of donated funds was discovered.

Given that the Department of the Auditor General’s principal legal duty is to verify that state funds are expended appropriately¹, this review focuses on how that \$10 million of taxpayer money was spent. This report contains three observations:

1. Because DCED failed to include a provision requiring that the Philadelphia 2016 Host Committee use the General Assembly-approved \$10 million state grant as a last resort, none of the committee’s \$2.1 million in surplus privately raised funds must be used to pay back the commonwealth;
2. Former Gov. Ed Rendell’s failure to seek Host Committee board approval for \$1.037 million in payouts to staffers and interns went against good business practices; and
3. The Philadelphia 2016 Host and bid committees’ nonprofit statuses might have precluded them from paying out bonuses or deferred compensation to board members Kevin Washo and Eliza Rose.

This review also offers four recommendations, three of which are directed at DCED to strengthen its grant agreements, and one which recommends the IRS review the payouts to Washo and Rose to determine if the payouts complied with IRS regulations.

¹ Pursuant to Section 403 (relating to Audits of entities or persons receiving state aid or an appropriation of money) of The Fiscal Code, 72 P.S. § 403.

Background

The search for a city to host the 2016 Democratic National Convention began in late 2013, former Gov. Ed Rendell said during a June 2017 interview. He and U.S. Rep. Robert Brady, D-Philadelphia, agreed that holding the convention in Philadelphia would be a boon for the city. According to Rendell, Brady asked him to be the chairman, and he accepted.

First, Rendell said, he needed a small committee to put together the bid for Philadelphia to hold the convention. He brought on Kevin Washo, who at the time was vice president at Washington, D.C.-based political consulting firm New Partners; and Eliza “Lila” Rose, who had recently worked as the chief administrative officer for the Democratic Congressional Campaign Committee in D.C. The team was advised by D.C.-based attorney Joseph E. Sandler.

This small group – known as Philadelphia 2016, or the Bid Committee – began pulling together documentation and garnering commitments for the financial support needed to secure the convention through the Democratic National Convention Committee (DNCC). They also began researching how previous national conventions had fared financially – and they discovered the news wasn’t great, Washo and Rose said during June 2017 interviews.

The last four conventions ended in deficits. For example, the 2012 DNC in Charlotte, N.C., ran \$10.9 million in the red, according to published reports. After four years of trying to balance the books, Duke Energy eventually forgave the debt, at a cost of \$6 million to shareholders². Deficits also occurred after at least three other DNC conventions:

- 2000, Los Angeles;
- 2004, Boston; and
- 2008, Denver.

All of those cities also had the benefit of receiving \$18 million from Congress (as did the Republican National Conventions during those years), but in 2014, Congress passed legislation to end federal funding for the conventions³.

In an attempt to prevent the debt incurred by previous convention cities, the DNCC began requiring a letter of credit or loan commitment, plus committed state or public funds, as part of the bid application, Washo said. Specifically for Philadelphia:

- For the loan, Washo and Rose said, the committee secured \$5 million through the Pennsylvania Industrial Development Corporation (PIDC). Financial records filed with the Federal Election Commission show that the PIDC loan was secured Dec. 30, 2014, and that it was paid back in a series of installments before its due date of Dec. 31, 2016.

² “Four years after the DNC, what was the long-term impact for Charlotte?” Harrison, Steve. *The Charlotte Observer*. July 22, 2016. <http://www.charlotteobserver.com/news/politics-government/article91331452.html> Accessed June 16, 2017.

³ “With federal money gone, parties scramble for convention cash.” Barabak, Mark Z. *Los Angeles Times*. May 23, 2014. <http://www.latimes.com/nation/politics/politicsnow/la-pn-gop-2016-convention-financing-20140523-story.html> Accessed June 21, 2017.

- For the public funds, Washo, Rose and Rendell disagreed on the exact time it was secured. Washo said in June 2017 that they secured a verbal commitment in mid-October 2014 for \$10 million from “the administration,” although he could not initially identify whether that was Gov. Tom Corbett’s administration or then-campaigning Democratic gubernatorial candidate Tom Wolf.

Rendell recalled in June 2017 that the verbal commitment for the grant came in January or February 2015 from Wolf, after he had been sworn in.

Rose said her financial records show that the first time the Bid Committee listed the \$10 million grant as part of its cash flow was in December 2014, after Wolf had won Pennsylvania’s gubernatorial race.

The \$10 million amount was chosen, Washo said, because Pennsylvania had provided a \$7 million cash grant for the RNC in Philadelphia in 2000, so the amount was roughly adjusted for inflation.

Because the DNCC required committed public funds to award a city the right to host the convention, it was “very, very important” for Philadelphia to get the \$10 million from the state, Washo said: “It was vital for the state to show the commitment.”

Rose agreed, calling the funding “crucial.”

“(The DNCC) really liked Philly” during the bid phase, she said. “It was down to Brooklyn, Columbus and Philadelphia ... and both of those entities (Brooklyn and Columbus) had pledged public money, and the DNCC pointed that out.”

Garnering the commitment of funds and completing the bid process took six to eight months, from late 2013 through early fall 2014, Rose said. And “no one was getting paid at any point during this phase,” Rendell said.

During this time, Washo was working full time as vice president at Washington, D.C.-based New Partners Consulting Inc., a political consulting firm, but was still averaging eight hours per day, plus weekends, on Bid Committee work, Rendell said. “And Kevin certainly didn’t get paid” by the bid committee, Rendell said.

“You have to remember, (at this point) we have no idea how much this is going to cost,” Rendell said. Though the bid committee had looked at prior conventions for an idea of cost, Rendell said he knew the 2016 convention would garner much more national and international media attention given that it was likely to see the nomination of the first female major-party political candidate. “It was a much different convention in terms of size and scope,” Rendell said.

The Bid Committee received and spent no public money at any time, Rendell, Washo and Rose pointed out.

However, publicly available financial records for the Bid Committee include the committee's 2014 IRS nonprofit Form 990 filing⁴, which lists a \$30,000 compensation payment to Rose. This payment contradicts Rendell's assertion that "no one was getting paid" during the bid phase.

The same IRS Form 990 filing shows that Washo's employer, New Partners Consulting Inc., received \$215,000 from the Bid Committee during 2014⁵. Ultimately, Federal Election Commission filings show, New Partners received a total of \$243,010.

In December 2014, shortly before the Bid Committee learned the DNCC had chosen Philadelphia, a six-person host committee called the Philadelphia 2016 Host Committee was created, Rendell said. This six-member committee was composed of the following, according to Rendell:

- Rendell;
- Washo;
- Rose;
- Julie Coker Graham, president and CEO of the Philadelphia Convention and Visitors Bureau;
- Ken Trujillo, an attorney; and
- Daniel Hilferty, CEO of Independence Blue Cross.

A separate 2014 IRS Form 990 filing for the Philadelphia 2016 Host Committee lists three people as board members, or directors: Rendell, Washo and Rose.

Staff hiring began in earnest around December 2014, when the Host Committee was created, Rendell said.

During a June 2017 interview, Rendell asserted that he told "everybody" when they were hired that "I can't pay you what you're worth (or) what you'd make in the private sector."

"(Rendell) was very adamant when we were hired" that he would try to give staff members "deferred compensation," Washo said in 2017.

Rose said she was keenly aware that salaries – particularly for directors – were not equitable across the board. For example, the director of communications earned less than the director of logistics, she said. Financial records show Communications Director Anna Adams-Sarthou received about \$5,000 per month, while Logistics Director Richard Dziepak received about \$6,400 per month.

"The idea that certain directors (were not paid enough) ... was always on my mind," she said, adding that one of her "main concerns, as a Democrat," was facing criticism that they had paid women and minorities less than they had paid men.

Given the financial struggles of previous conventions, Rose said, "Our goal from the beginning was to raise as much money as possible" to be able to pay the bills. That included keeping salaries "artificially low" until the convention ended, Washo said.

Financial records show that, after the Host Committee was formed, Washo was paid roughly \$13,000 monthly, and Rose was paid approximately \$10,000 per month. Rendell did not directly receive a

⁴ http://990s.foundationcenter.org/990_pdf_archive/465/465453413/465453413_201412_9900.pdf, page 7. Accessed July 6, 2017.

⁵ Ibid, page 30. Accessed July 6, 2017.

paycheck at any time; however, Ballard Spahr, a Philadelphia law firm for which he is listed as “special counsel” received a total of \$408,344 from the Host Committee in “in-kind contributions,” listed as legal services.

The relationship between any host committee and the DNCC is a difficult one, Washo and Rose added, because in essence the DNCC decides how much money should be spent and the host committee must then find a way to raise that amount.

DCED grant

In February 2015, the Host Committee secured the Wells Fargo Center, at 3601 S. Broad St., as the convention’s venue. The venue license agreement between the Host Committee and Spectrum Arena LP, a subsidiary of Comcast Spectacor Inc. that owns the Wells Fargo Center, shows that the committee rented the facility from roughly May 28, 2016, to about Aug. 2, 2016, at a cost of \$5.775 million.

The contract lays out an installment plan for the Host Committee to pay the full amount. All of the payment dates are well before the committee received the \$10 million DCED grant:

- \$1.5 million on execution of the contract (paid March 3, 2015)
- \$500,000 on or around Aug. 1, 2015 (paid Aug. 1, 2015)
- \$500,000 on or around Nov. 1, 2015 (paid Nov. 2, 2015)
- \$1 million on or around Dec. 1, 2015 (paid Dec. 3, 2015)
- \$2.275 million by Jan. 2, 2016 (paid Dec. 24, 2015)

Although the grant was discussed and expected for more than a year, the actual execution of the grant agreement and the expenditure of the grant took a grand total of 13 days.

On July 1, 2016, the General Assembly approved the \$10 million DCED grant in a line item in the 2016-17 budget, listed as “Regional event security.” Records show there was no public discussion in the legislature about awarding the grant.

Six days later, on July 7, 2016, Washo and Rose signed the grant agreement. Along with standard legal language, the 26-page agreement includes a three-paragraph appendix, the third paragraph of which states:

“The Host Committee will use the funds to pay for the infrastructure necessary for the City of Philadelphia to host the Convention including rental and build out of the Convention arena and other facilities, transportation, communications, technology systems, necessary office space and event security.”

That single sentence is the sole section that dictates how the money may be spent. Nowhere does the grant agreement state that the public funds are to be used only after all private money is expended. And nowhere does the document provide a recapture provision for the state to “claw back” any unused private funds.

“Like all economic development grants, they (DCED, with the sign-off of the General Assembly) could have put a claw-back provision in it,” Rendell said in June 2017. “Their theory now is, ‘Well, we didn’t put it in, but you should have done it anyway.’ ... But they don’t do that as a normal course of action.”

Rendell said that, even if the agreement had included a claw-back provision, “we would have signed it, and we would absolutely have abided by it.”

Five days later – on July 12, 2016, only 13 days before the convention began – the \$10 million arrived in a separate Host Committee account designated solely for the grant money, Host Committee bank statements show.

All \$10 million was expended on nine invoices over nine days, records show. Rose said that, despite the fast expenditure, she did her due diligence to ensure the funds were expended in accordance with the grant agreement. “We were very conscientious” about spending the state grant money correctly, Rose said.

Invoices show all of the money was expended for three purposes:

1. **Spectrum Arena LP**, venue rental: **\$5.775 million**
2. **Kirshner Events Inc.**, which handled all production and technology needed to televise the event: **\$2.465 million**
3. **Hargrove Inc.**, which served as the construction manager and general contractor: **\$1.76 million**

In the case of Spectrum Arena, the Host Committee had already paid the venue rental fee in five installments, so the grant funds were used to reimburse the Host Committee, documentation shows.

In the case of Kirshner Events, a \$2.465 million payment was due on July 15, 2016 — just three days after the grant was deposited. “Had that money not come in that week ... I would not have been able to pay that bill on the 15th,” Rose said. Records that the Host Committee filed with the Federal Election Commission show that Kirshner Events received a total of \$10.2 million for its work on the event, including \$2.465 million from the state grant.

In the case of Hargrove Inc., the \$1.76 million for construction and construction management was a fraction of the \$14.8 million the company received for its work on the whole event, according to FEC filings.

A review of the detailed invoices and respective contracts with Hargrove Inc. and Kirshner Events showed that neither contract was competitively bid. Joseph Sandler, the Host Committee’s counsel, pointed out that, according to Article X of the grants agreement with DCED, contracts must be competitively bid only if the grant funds will cover 50 percent of the full contract. In both cases, the amount the grant funded was significantly less than 50 percent of the full contracted amount.

The convention

From July 25, 2016, through July 28, 2016, the Democratic National Convention took place in Philadelphia. Data from the Philadelphia Convention and Visitors Bureau (PHLCVB) indicates the DNC drew more than 54,000 visitors to the five-county Philadelphia region. Among those visitors were delegates from all 50 states and 19,250 members of the local, regional, national and international media.

The event generated a total economic impact of \$230.9 million, according to the PHLCVB. That includes \$11.1 million in local and state taxes, the PHLCVB’s data shows.

“The state got back its \$10 million without question,” Rendell said in June 2017. “In fact,” he added, “on raw dollars, the state made its \$10 million back ... swifter than the average DCED grant.”

The financial clean-up

Once the convention ended, the financial reconciliation work began, Rose said. “In August and September, I was hyper-focused on ensuring there was nothing outstanding that I was unaware of,” she said.

Records show that the separate account for the DCED grant money was closed Sept. 7, 2016.

Also in September 2016, as Rose was still receiving invoices and paying them from the Host Committee account, Rendell spoke at a news conference and said the committee had approximately \$4 million left over. “But,” he said in June 2017, “I also told them we still had bills to pay.”

Rose continued to pay those bills through September, and she said it wasn’t until mid-October 2016 that she felt comfortable that they had raised enough money to cover all their expenses.

“I wasn’t certain until (the two largest vendors) came back and said, ‘No changes, no surprises,’” Rose said in June 2017.

It was in November 2016, Rose said, that “the dust had settled” and she could determine the account’s surplus, which came to about \$2.1 million.

Rose said she never considered suggesting that they use the leftover money to pay back a portion of the state grant: “In my mind, that money had been spent. It was put into a separate account, and that account was closed. ... The money had been given and approved for the appropriate purposes.”

Observation 1: Because DCED failed to include a provision requiring that the Philadelphia 2016 Host Committee use the General Assembly-approved \$10 million state grant as a last resort, none of the committee’s \$2.1 million in surplus privately raised funds must be used to pay back the commonwealth.

The Department of Community and Economic Development had 18 months between Gov. Wolf’s swearing-in in January 2015 and the execution of the \$10 million grant agreement with the Philadelphia 2016 Host Committee in July 2016.

Instead of using that time to craft a legal agreement tailored to this situation’s specifics, however, it appears DCED simply used boilerplate language for 24 pages, then tacked on three paragraphs as Appendix A⁶ that gave the Host Committee considerable leeway in how it could spend the money with no provisions for recapturing “excess” funds. The first two paragraphs do little more than extol the virtues of the City of Philadelphia and the résumés of Host Committee members:

“The Philadelphia 2016 Host Committee for the Democratic National Convention is a nonprofit organization responsible for raising money and offering the city’s fantastic amenities to create a multifaceted, weeklong presentation of events in one of America’s most iconic cities. The Host Committee is comprised of leaders of varying backgrounds who represent the area’s diverse business community; cutting-edge innovation and technology section; renowned arts and cultural outlets (both institutional and emerging); small, minority-owned and –operated businesses; the booming hospitality and restaurant industries; and beyond.

“To relieve the burden of the City of Philadelphia in hosting the 2016 Democratic National Convention, the Host Committee raises and expends funds that the City would otherwise have to expend to rent and build out the Convention facilities, transport delegates and Convention participants, provide office space, communications, technology and other infrastructure needed to put on the convention. This event will generate economic benefits estimated to exceed \$250 million for local businesses, will stimulate economic development and promote the image of the City, thereby attracting additional Convention business, major events and additional tourism.”

Again, only one sentence in the appendix dictates how the Host Committee may spend the \$10 million grant:

“The Host Committee will use the funds to pay for the infrastructure necessary for the City of Philadelphia to host the Convention including rental and build out of the Convention arena and other facilities, transportation, communications and technology systems, necessary office space and event security.”

As previously stated, invoices show that all \$10 million of the state grant was spent in accordance with the requirements of the DCED grant agreement.

⁶ See Appendix A

However, the criticisms by those angered by the payouts could have been addressed if the grant agreement had included language that did the following:

1. Required the Host Committee to use the \$10 million in taxpayer dollars as a last resort, forcing it to rely on private donations first to pay its bills.
2. Included a claw-back provision stating that if the Host Committee had any surplus of private funds, the surplus should first go toward paying back the state's \$10 million.

In September, the Department of the Auditor General filed a Right to Know request with DCED to determine if any of its contracts have ever contained such a provision. The request specifically asked for:

- Any and all contracts from 2007-2017 that contain a provision specifying that any privately raised funds that exceed the requisite amount needed for the project be returned to the state to offset the grant amount, and
- Any contracts that contain a claw-back provision that relates to privately raised funds.

DCED issued a reply⁷ on Sept. 29, 2017, stating that it did not have any records that meet either of those criteria.

Without ever using such language in its grant agreements, the state fails to provide a mechanism to recoup taxpayer money.

In summary, none of the committee's \$2.1 million in surplus privately raised funds must be paid back to the state in this instance. However, DCED should be proactive in using this as an example of the need to begin including recapture language in each of its grant agreements to ensure that state funds are used only as a last resort and/or if the grantee fails to meet any of the other terms and conditions of the agreement. This practice would help address some of the commonwealth's current budget deficits and would allow DCED to provide assistance to more grantees.

⁷ See Appendix B

Observation 2: Former Gov. Ed Rendell’s failure to seek Host Committee board approval for \$1.037 million in payouts to staffers and interns went against good business practices.

When Rendell learned in fall 2016 that the Host Committee had \$2.1 million in surplus privately raised funds, he said, he believed it was time to pay the “deferred compensation” he said he promised to staff when they were hired.

“I could have brought the (Host Committee) board in, but they had never met,” Rendell said. “I never consulted with the board. Perhaps I should have.”

Rendell said he alone decided how much money went to Washo, the executive director; and Jason O’Malley, the chief fundraiser.

“Kevin (Washo) and Lila (Rose) had no responsibility for these decisions,” Rendell said in June 2017. “If there’s blame to go around, it lies with me, not them.”

Washo received \$310,000, and O’Malley received \$220,000; both amounts were paid out on Nov. 21, 2016, from the Bid Committee account, according to financial records.

“Jason (O’Malley) got the only true bonus, based on his position as the main fundraiser,” Rendell said in June 2017. “Bonuses are common in that industry for a job well done.”

Having one board member make decisions on additional financial spending without consulting the rest of the board goes against good nonprofit business practices.

Also paid out of the Host Committee account on Nov. 21, 2016, was a total of \$110,000 to five people Rose characterized as “volunteers.” Among those “volunteers” was Annie Heckenberger, who is listed as the Host Committee’s Director of Digital and Social⁸; she received a \$50,000 payout. Financial records show she did not otherwise receive a salary.

On Nov. 25, 2016, records show, 12 people whom Rose characterized as “staff” received a total of \$383,609. Those payouts are listed as “salary,” and they include \$43,238 to Rose.

Finally, between Nov. 30 and Dec. 23, 2016, 27 people received an “intern stipend” of \$500 each. Two people who received the stipend, however, also received other payouts:

- Nate Urban, who received \$15,000 for “consulting services – administrative” on Nov. 21, 2016; and
- Rebecca Chariton, who received a \$7,840 payout on Nov. 25, 2016, as a “staff member.” Records show she also received a monthly salary of about \$1,500 for eight months in 2016, receiving a total of about \$20,000 in 2015-16, although she is not listed as a member of the Host Committee staff⁹.

In total, the additional payouts amounted to \$1,037,109, financial records show.

⁸ <http://www.phldnc.com/committee/>

⁹ <http://www.phldnc.com/committee>

During the six months leading up to the convention, Rendell said, “Our staff averaged 14, 15 hours a day, 15-plus hours on Saturdays and Sundays.”

Without the deferred compensation, Rendell said, “If these people had been paid by the hour, they wouldn’t have made minimum wage.”

Quarterly statements the Host Committee filed with the FEC show that Washo and Rose continued to earn regular monthly salaries through March 2017, a full eight months after the convention ended. Rose’s regular salary began in September 2014 and, through March 2017, she earned roughly \$255,000. That amount, paid out in varying amounts over 30 months, does not include the \$43,238 payout she received in November 2016 nor the \$30,000 she was paid by the Bid Committee in 2014. According to Rose’s online résumé¹⁰, she continued to work as managing director for the National Democratic Redistricting Trust until February 2015; however, the Host Committee is listed as her sole employer from then through March 2017.

Washo’s regular salary of about \$13,000 per month began to be paid in March 2015, financial records show. Over the next 24 months – through March 2017 – he received about \$310,000. That amount does not include the \$310,000 payout he received in November 2016. Also in November 2016, Washo began working full-time at Cozen O’Connor¹¹ as a government relations principal for public strategies. This timeframe means Washo was collecting a full-time salary at Cozen O’Connor during five months of his collecting a full Host Committee salary.

¹⁰ <https://www.linkedin.com/in/lilarose/> Accessed Nov. 13, 2017.

¹¹ <https://www.cozen.com/news-resources/news/2016/cozen-o-connor-public-strategies-grabs-dnc-host-committee-director> Accessed Nov. 13, 2017.

Observation 3: The Philadelphia 2016 bid committee and Philadelphia 2016 Host Committee’s nonprofit statuses might have precluded them from paying out bonuses or deferred compensation to board members Kevin Washo and Eliza Rose.

When Philadelphia 2016, the Bid Committee, registered as a nonprofit in Pennsylvania, it did so as a traditional 501(c)(3). According to an IRS Form 990 filed Nov. 19, 2015, for calendar year 2014, the Bid Committee had five directors. Among those listed is Washo, whose given title is executive director.

The nonprofit status of the Philadelphia 2016 Host Committee is more complicated.

Although the IRS granted the 2016 Republican National Convention’s host committee traditional 501(c)(3) nonprofit status shortly after it applied, it did not do the same thing for the Democratic National Convention’s host committee.

Rose said the Host Committee appealed the IRS’ denial of 501(c)(3) status and did not receive notice of the final denial until shortly after the convention occurred in July 2016.

“Our feeling ... was that it was really unfair to grant it to the Republicans in Cleveland but not to the Democrats in Philadelphia,” Rose said in June 2017.

According to IRS documentation regarding the denial of the 501(c)(3) status that Rose provided, the IRS determined that the Philadelphia 2016 Host Committee did not qualify for that status in part because it did not adequately prove that it existed solely to “lessen the burdens of government.”

Language contained within the denial indicates that the IRS found that the Host Committee also did not qualify in part because its Articles of Incorporation detailed its purposes as broader than those allowed within the federal 501(c)(3) status. The IRS also pointed out problems with the language contained in the Host Committee’s Master Contract with the Convention Center, which made it appear as though the committee existed at least partially to lessen the financial burdens of the center itself, not of city government.

Instead, the committee claimed 501(c)(6) status, which puts it into the same nonprofit category as chambers of commerce and business leagues. According to the IRS website:

“Section 501(c)(6) of the Internal Revenue Code provides for the exemption of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

No paperwork or application must be filed to obtain 501(c)(6) status; instead, organizations may simply self-identify as such. However, they must adhere to similar regulations regarding nonprofits, such as filing annual IRS Form 990 statements that attest to the organization’s structure, mission, programs and financial activities.

For the Philadelphia 2016 Host Committee, the most recent IRS Form 990 filing is dated Nov. 19, 2015, and covers the time period of Dec. 23, 2014, through Dec. 31, 2014. According to page 7 of that

document, the nonprofit had three board members: Rendell, listed as director and president; Washo, listed as director, executive director and treasurer; and Rose, listed as director, secretary and COO.

The fact that Washo's and Rose's names are on the committee's list of directors appears to present a potential problem with their receiving the payouts in late 2016: They are directors, or shareholders, of the nonprofits, and yet IRS regulation states in part that "no part of the net earnings ... (may inure) to the benefit of any private shareholder or individual" of the nonprofit. However, the IRS might view the payouts differently because Washo and Rose were also staff members and may have received the money for their work as such.

What is clear is that Washo's and Rose's payouts were not paid for with state government funds. But, based on information obtained during this review, the Department of the Auditor General is forwarding this matter to the Treasury Inspector General for Tax Administration and the IRS Commissioner for review and whatever further action it may deem appropriate to determine if there was any possible noncompliance by the Philadelphia 2016 Host and Bid committees with the provisions of the federal Internal Revenue Code and its related regulations.

Chief Fundraiser Jason O'Malley, who received a \$220,000 payout, was not listed as a nonprofit director on any official paperwork.

Recommendations

We recommend that DCED:

1. Ensure all future grant agreements include provisions that address the following:
 - a. that the commonwealth be the payer of last resort,
 - b. that any surplus grant funds be returned to the commonwealth, and
 - c. that require any surplus privately raised funds be used to pay back the commonwealth for grant funds up to the full amount of the grant.
2. Ensure all future grant agreements more specifically reference certain applicable state laws/regulations and equivalent federal laws/regulations if applicable either within the body of the agreement or in an appendix.
3. Require that all grants, subgrants, contracts, subcontracts or other agreements in excess of \$10,000 for construction, production, machinery and equipment, services, etc., be competitively bid.

We recommend that the Internal Revenue Service (through the Treasury Inspector General for Tax Administration):

4. Closely review the documentation regarding the Philadelphia 2016 bid committee's and Philadelphia 2016 Host Committee's nonprofit statuses and their board compositions to determine whether the \$310,000 payout to Kevin Washo and the \$43,238 payout to Eliza Rose complied with the Internal Revenue Code, its associated regulations and IRS guidelines.

Appendix A

The Philadelphia 2016 Host Committee for the Democratic National Convention is a nonprofit organization responsible for raising money and offering the city's fantastic amenities to create a multifaceted, weeklong presentation of events in one of America's most iconic cities. The Host Committee is comprised of leaders of varying backgrounds who represent the area's diverse business community; cutting-edge innovation and technology sector; renowned arts and cultural outlets (both institutional and emerging); small, minority-owned and -operated businesses; the booming hospitality and restaurant industries; and beyond.

To relieve the burden of the City of Philadelphia in hosting the 2016 Democratic National Convention, the Host Committee raises and expends funds that the City would otherwise have to expend to rent and build out the Convention facilities, transport delegates and Convention participants, provide office space, communications, technology and other infrastructure needed to put on the convention. This event will generate economic benefits estimated to exceed \$250 million for local businesses, will stimulate economic development and promote the image of the City, thereby attracting additional Convention business, major events and additional tourism.

The Host Committee will use the funds to pay for the infrastructure necessary for the City of Philadelphia to host the Convention including rental and build out of the Convention arena and other facilities, transportation, communications and technology systems, necessary office space and event security.

Event Support \$10,000,000

Appendix B



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 29, 2017

Amy Gulli
Department of the Auditor General
229 Finance Building
Harrisburg, PA 17120

RTKL-2017- 150

Dear Ms. Gulli:

On September 22, 2017, the open-records officer of the Department of Community and Economic Development (the "Department") received your written request for information. The Department is responding to your request under the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL). You asked for: any and all contracts from 2007-2017 that contain a provision specifying that any privately raised funds that exceed the requisite amount needed for the project be returned to the state to offset the grant amount, and any contracts that contain a claw-back provision that relates to privately raised funds.

The Department does not have the records that you request in its possession, under its custody or its control. Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, OOR Dkt. AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (*see, e.g.* section 67.506 (d)(1))." The Department does not have any grant contracts which contain the indicated provisions.

However, you have a right to appeal this response in writing to Erik Arneson, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR: 1) this response; 2) your request; and 3) the reason why you think the record exists under the custody or control of the agency. Also, the OOR has an appeal form available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.



Commonwealth Keystone Building | 400 North Street, 4th Floor | Harrisburg, Pennsylvania 17120-0225
Tel: 717-783-8452 | Fax: 717-772-3103 | 866-GO-NEWPA | newPA.com

Should you have any questions regarding this letter, please contact Jennifer Fogarty, Deputy Agency Open Records Officer at jefogarty@pa.gov or (717)720-7336.

Sincerely,



Christopher C. Houston, Chief Counsel
Governor's Office of General Counsel
Department of Community and Economic Development
Office of Chief Counsel
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120

Enclosure

AGENCY ATTESTATION OF NONEXISTENCE OF RECORD

Agency: Department of Community and Economic Development

Name of Requestor: Amy Gulli

RTKL Request: 2017-150

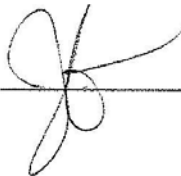
Date: September 29, 2017

Records Requested: any and all contracts from 2007-2017 that contain a provision specifying that any privately raised funds that exceed the requisite amount needed for the project be returned to the state to offset the grant amount, and any contracts that contain a claw-back provision that relates to privately raised funds.

Attestation pursuant to 42 Pa.C.S.A. §6103(b), relating to lack of a record.

I, Jennifer Fogarty, am the Deputy Agency Open Records Officer for the Department of Community and Economic Development, and I make this statement under penalty of perjury as more fully set forth in 18 Pa. C.S. § 4904. Pursuant to 65 P.S. § 67.502(a)(1).
As the Deputy Agency Open Records Officer:

- 1) I am to make a good faith effort to determine whether the agency has possession, custody or control of the record requested, pursuant to 65 P.S. § 67.901;
- 2) I have made a thorough inquiry of any designated and/or reasonably likely records custodians for the records requested, above; and
- 3) based on the information provided to me, I do hereby affirm that, to the best of my knowledge, information and belief, such records do not exist within our agency.

Date: 9/29/2017 Signature: 

Appendix C

Philadelphia 2016 committees' timeline

2014

April 18 – Philadelphia 2016 bid committee (Kevin Washo, Eliza Rose and former Gov. Ed Rendell) registers as a nonprofit.

April – Bid Committee applies to Democratic National Convention Committee (DNCC) to hold convention in Philadelphia.

December — Bid Committee begins including \$10M commitment from state in its cash flow estimates to DNCC.

Dec. 23 – The Philadelphia 2016 Host Committee (Kevin Washo, Eliza Rose, former Gov. Ed Rendell, Julie Coker Graham, Ken Trujillo and Daniel Hilferty) registers as nonprofit in Pennsylvania.

2015

Feb. 12 – DNCC chooses Philadelphia to host convention, signs master agreement with Host Committee.

Feb. 12 – Host Committee signs deal to hold convention at Wells Fargo Center, agrees to \$5.775M venue license fee.

Feb. 13 – Media quotes Rendell saying that Gov. Tom Wolf agreed to provide \$10M state grant.

2016

July 1 – State House and Senate pass Senate Bill 1073 (General Appropriations bill), which includes line item authorizing a \$10M grant through DCED for “regional security” for the convention.

July 7 – Washo and Rose sign 26-page DCED grant agreement.

July 12 – S.B. 1073 becomes law without Gov. Wolf’s signature.

July 12 – \$10M grant deposited into separate Host Committee account with Amalgamated Bank.

July 15-20 – All state grant money expended.

July 25-28 – Democratic National Convention takes place.

Aug. 7 – Host Committee files post-convention report with Federal Election Committee

Sept. 7 – Amalgamated Bank account that held state \$10M grant dissolved.

Mid-November — \$2.1M surplus realized

Nov. 21-25 – \$1.037M in “deferred compensation” distributed to employees and volunteers.

Dec. 21-23 – \$1.205M donated to charities that directly helped the convention occur.

2017

March — Washo and Rose collect final salary payments.

May – News stories based on FEC filing break about “bonuses” being handed out.

May 17 – Bid Committee files articles of dissolution with state.

December – Anticipated closeout of Host Committee and its accounts.

Philadelphia Committees' Spending on 2016 Democratic National Convention

A special report by Auditor General Eugene DePasquale

