

\_\_\_\_\_  
City Attorney

*City of Oakland*  
**Public Ethics Commission**  
October 4, 2004

In the Matter of

)  
) Complaint No. 04-03  
)

Complaint No. 04-03 was initiated by the Oakland Public Ethics Commission on February 2, 2004.

**I. SUMMARY OF COMPLAINT AND ALLEGATIONS**

The Oakland Public Ethics Commission ("Commission") initiated this complaint to investigate whether Oakland City Councilmember Desley Brooks maintained required information about certain contributors at the time her campaign deposited checks from those contributors into her campaign bank account. The Commission also directed staff to investigate whether expenditures from Ms. Brooks' 2002 campaign constituted "qualified campaign expenditures" as defined under the Oakland Campaign Reform Act ("OCRA") and required under Oakland's Limited Public Financing Act.

**II. BACKGROUND**

As part of the Commission's jurisdiction over OCRA, Commission staff regularly reviews all campaign statements filed by candidates and officeholders. Currently, Commission staff reviews campaign statements to ensure that candidates and officeholders comply with applicable contribution and expenditure limits. It also reviews the statements to ensure that campaign funds are properly spent.

In 2003, Commission staff reviewed the campaign statements from Councilmember Desley Brooks. Ms. Brooks was a successful candidate in the March, 2002, election in City Council District Six. She also received a total of \$12,769.00 in public matching funds during that election. Commission staff's review triggered several potential compliance issues under OCRA and the California Political Reform Act ("CPRA"). While the Commission has the authority to investigate and enforce violations of OCRA, it must defer to the authority of the state's Fair Political Practices Commission ("FPPC") for enforcement of alleged violations of the CPRA.

### **III. ANALYSIS**

#### **A. OCRA Compliance**

##### **1. Identification Of Campaign Contributors**

OCRA Section 3.20.130 provides that no contribution of \$100 or more shall be deposited into a campaign checking account unless the name, address, occupation and employer of the contributor is "on file" in the records of the recipient of the contribution. This section is related to a CPRA requirement that candidates disclose on their campaign statements the above-stated contributor information for all contributions totaling \$100 or more. [Government Code §84211]. The CPRA also requires that candidates return within 60 days any contributions of \$100 or more for which the campaign does not have on file the name, address, occupation and employer of the contributor. [Government Code §85700].

In Ms. Brooks' initial campaign statement for the period January 20, 2002 through February 20, 2002, has incomplete address, and/or occupation and employer information for the following individual contributors: Kim Luzman, Harry Overstreet, Safi Jiroh, and Elizabeth Callaway.

Her initial campaign statement for the period February 21, 2002, through June 30, 2002, has incomplete address, and/or occupation and employer information for the following individual contributors: Michael Baines, Joan Coleman, Alan Dones, Steve Edrington, Vernon Foster, John Gilmore, Tom Guarino, Rhonda Hirata, Todd Hotten, Sayer Lee, YH Lee, Robert Lewis, Francis Mason, Anthony Pegram, Wiley Pierce, Melanie Shelby, AS Simi, Ravinder Singh, Eric Sandifer, Linda Tangren, Becky Taylor, Vanessa Washington, and MH Young.

Her initial campaign statement for the period July 1, 2002, through December 31, 2002, has incomplete address, and/or occupation and employer information for the following individual contributors: Michele Chenault, Frank Davis, Guy Forkner, Joan Kenley, Frank Kiang, William Merritt, Cecil Reeves, Kevin Riekes, Peter Robinson, and Susan Thorner.<sup>1</sup>

Ms. Brooks told Commission staff that her campaign had the required contributor information at the time the checks were deposited into her campaign checking account. She said however that her campaign records had become misplaced but for some photocopies of checks and contributor information that Ms. Brooks was able to locate and provide to Commission staff. Ms. Brooks said that these photocopies were taken before the checks were deposited and represent proof that her campaign maintained contributor information for all contributions of \$100 or more.

Ms. Brooks has agreed, as part of a proposed Stipulation in this matter, to file amendments to her campaign statements that will provide the required

---

<sup>1</sup> Copies of campaign statements are on file and available for review in the City Clerk's office.

contributor information for the above-named individuals. (Commission staff notes that Ms. Brooks filed an amendment in February, 2004, to her campaign statement of July 1, 2002, through December 31, 2002, that provided most but not all of the required contributor information for that period.) She has also agreed to submit a settlement payment in the amount of \$250 as consideration for the resolution of this complaint.

**Attachment 1.** As the stipulation more fully provides, nothing in the settlement payment is intended to mean or imply that the payments are an admission of any violation under local or state law.

## 2. Qualified Campaign Expenditures

Both state and local law require candidates for elective office to spend the contributions they receive for legitimate campaign purposes. An expenditure of contributions made during a campaign for local office constitutes a "qualified campaign expenditure" if the expenditure is made "for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for city office." [O.M.C. §3.20.040]. Candidates who receive public matching funds are required to use the matching funds only for "lawful qualified campaign expenditures." [O.M.C. §3.13.140]. As stated above, Ms. Brooks received public matching funds during the March, 2002, election.

Commission staff reviewed the expenditures reported on Ms. Brooks' campaign statements. All itemized expenditures appear to constitute "qualified campaign expenditures" within the meaning of OCRA. An issue was initially raised whether two reported credit card payments of \$12,000 and \$9,000, respectively, on Ms. Brooks' campaign statement for the period February 21, 2002, through June 30, 2002, represented payments for "new" and/or unitemized expenditures. **Attachment 2.**

Ms. Brooks told Commission staff that she used two VISA credit cards to pay expenditures previously reported and itemized in her campaign filings. She told Commission staff that the credit card purchases did not represent "new" or unreported expenditures. When advised that the campaign statements required candidates to specifically identify the vendors who received \$100 or more in credit card payments, Ms. Brooks filed an attachment to two separate campaign statements which purport to demonstrate and explain which of the previously reported expenditures were paid using the two credit cards. **Attachment 3.**

While there may be issues with the manner in which Ms. Brooks reports the use of the credit cards on her campaign statements (see discussion in Section III.B.2, below), there is nothing on her campaign statements that indicates that these credit cards were used other than for the reportedly legitimate expenditures listed on Attachment 3.

### 3. Other OCRA Issues

OCRA generally limits the amount that contributors can contribute to an election to local office. For those candidates who choose to voluntarily limit campaign expenditures, contributions are capped at \$600 per person and \$1,100 per broad-based political committee. (Ms. Brooks elected to limit campaign spending during her March, 2002, election to \$96,000, the amount permitted for the District Six election.) There was no indication on any campaign statement that Ms. Brooks received contributions exceeding OCRA's contribution limits or exceeded the voluntary expenditure cap of \$96,000 for the District Six race.<sup>2</sup>

#### B. California Political Reform Act Compliance

The remainder of issues involving Ms. Brooks' campaign statements are triggered by provisions contained in the CPRA. The issue before the Commission is whether to refer any of the following issues to the FPPC for further investigation.

##### 1. Late Campaign Filings

The CPRA and its regulations establish deadlines for filing campaign statements. Generally, candidates and officeholders must continue to file timely campaign statements for as long as their campaign accounts exist, even if there is no activity during the reporting period.

The following chart shows the initial filing activity for Ms. Brooks' March, 2002, campaign committee:

Reporting period	Date Due	Date Filed	Weeks Late	Date Amended
1/1/01-9/30/01	10/10/01	10/16/01		
10/1/01-12/31/01	1/10/02	1/11/02		
1/1/02-1/19/02	1/24/02	1/24/02		
1/20/02-2/20/02	2/21/02	2/21/02		
2/21/02-6/30/02	7/31/02	8/27/02	4	
7/1/02-12/31/02	1/31/03	8/28/03	29	11/10/03 & 2/6/04
1/1/03-6/30/03	7/31/03	8/20/03	3	11/10/03
7/1/03-12/31/03	1/31/04	2/6/04		
1/1/04-6/30/04	8/2/04	8/5/04		

<sup>2</sup> As discussed in greater detail in this report, several of Ms. Brooks' campaign statements do not consistently conform to the content and format requirements of the CPRA. Thus it is difficult to track precisely how money was spent during her campaign. Nevertheless, even if all questions about campaign spending were construed prejudicially to Ms. Brooks, there is still no basis to conclude, from the face of her campaign statements, that her campaign exceeded the voluntary expenditure ceiling applicable in the March, 2002, District Six election.

As the above chart indicates, there are three reporting periods for which Ms. Brooks' campaign statement was more than one week late. The most significant is for the semi-annual reporting period of July 1, 2002, through December 31, 2002. Ms. Brooks received notification letters from Commission staff and the Office of the City Clerk that some of her campaign statements were overdue. **Attachment 4.** While Ms. Brooks ultimately filed campaign statements for all outstanding reporting periods, the fact remains that some of the statements were significantly late.

## **2. No Itemization Of Vendors For Credit Card Purchases**

When a candidate uses a credit card to purchase goods or services during a campaign, the CPRA requires the candidate to provide the name of the credit card company, the address and the amount owed on the appropriate reporting schedule. The candidate is also required to itemize as a "subvendor" the name and address of any person or company that received \$100 or more in credit card payments.

As described earlier, Ms. Brooks indicated on her campaign statement for the period February 21, 2002, through June 30, 2002, that her campaign had used two VISA credit cards to charge \$12,000 and \$9,000, respectively, in campaign expenditures. **Attachment 2.** On February 6, 2004, Ms. Brooks amended a previous campaign statement in part by attaching the one-page sheet identified in this report as **Attachment 3.** While Attachment 3 purports to identify the vendors whose goods or services were paid by the credit card companies, the list fails to specify which vendors were paid by which credit card company and how much each vendor was paid. In addition, there is a discrepancy of \$3,149.50 between the amounts attributed to each itemized vendor in previous campaign statements and the \$21,000 Ms. Brooks reportedly incurred on her two credit cards to pay these vendors.

## **3. Misplaced Campaign Records**

The CPRA imposes a duty on candidates, treasurers and elected officers to maintain campaign records for a minimum of four years after the reporting period to which the records relate. [Government Code §84104]. Ms. Brooks has advised Commission staff that she can locate only a portion of her records for the March, 2002, campaign. Included in the misplaced records are invoices for expenditures incurred during the election. The lack of these records make it impracticable for Commission staff to confirm any of the expenditure amounts reported on the campaign statements.

## **4. Reporting Of Personal Loan**

In the campaign statement for the period February 21, 2002, through June 30, 2002, Ms. Brooks reported a personal loan of \$4,500 to her campaign committee. **Attachment 5.** Such loans are permissible under the CPRA and OCRA. Since her initial disclosure, Ms. Brooks has not filed a required Schedule B showing the current balance of all outstanding loans to her campaign committee and any payment

towards the outstanding balance of any loan. Thus there is no current information regarding the status of the loan since she initially reported it.

## 5. Missing/Late Contributor Information

As discussed in Section III.A.1. above, Ms. Brooks initially failed to disclose all required contributor information on several of her campaign statements. On February 6, 2004, Ms. Brooks filed an amendment to her campaign statement of July 1, 2002, through December 31, 2002, in which she provided most of the required contributor information.

Ms. Brooks has agreed to provide the missing contributor information as part of her settlement of OCRA's requirement that this contributor information be on file with the campaign. However the state also requires that this information be timely reported and "on file" in the records of the candidate. The CPRA also requires candidates to return not later than 60 days of receipt any contribution of \$100 or more for which the candidate "does not have on file in the records of the candidate or committee the name, address, occupation and employer of the contributor." It is unclear how the FPPC might interpret or enforce this provision as to campaign records that were at one time within the candidate's possession but were subsequently misplaced. Ms. Brooks' proposed Stipulation with the Commission cannot resolve this potential issue under the CPRA.

## IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission adopt the proposed Stipulation enclosed as **Attachment 1**. Pursuant to the Commission's General Complaint Procedures Section III.B.1., the Commission has the discretion to forward to the FPPC those issues identified in this staff report for further investigation and action.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

---

*\*\* City Attorney approval as to form and legality elates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*