
City Attorney

City of Oakland
Public Ethics Commission
February 7, 2005

In the Matter of

)
) Complaint No. 04-03
) **SUPPLEMENTAL**

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 AND OPERATIVE LAW

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.

A. Maintenance Of Required Contributor Information

OCRA §3.12.130 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].

Commission staff initially reported that for the campaign reporting periods from January 20, 2002, through February 20, 2002; February 21, 2002, through June 30, 2002; and July 1, 2002, through December 31, 2002, Ms. Brooks initially omitted required contributor information for a number of persons giving \$100 or more. She subsequently amended her campaign statements during 2003 and 2004 to provide complete contributor information for all but 37 contributors.

Ms. Brooks told Commission staff that she lost her campaign records during the campaign and therefore could not complete her filing requirements for the 37 outstanding contributors. All she was able to locate was a stack of photocopies for a select group of contributions, most of which were accompanied with either a business card or a handwritten note providing occupation and employer information about the contributor. Ms. Brooks insists that her campaign maintained this required contributor information for all her contributors and that the photocopies are representative of her campaign's record keeping practices.

Because complete contributor information was never filed with respect to these 37 contributors, and because Ms. Brooks asserts that she lost all of her remaining campaign records, an issue was presented under OCRA §3.12.130 whether Ms. Brooks ever had complete contributor information "on file" in her campaign records at the time the contributions were deposited.

B. 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. §3.12.040]. 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's initial review revealed an entry for accrued expenses (i.e., unpaid bills) for two separately itemized "Visa" accounts. The first showed a balance of \$11,000 and the second a balance of \$8,000. The entries omitted the specific vendors for whose services or products the credit cards were used. Also it was

initially unclear whether the credit card expenditures represented new or additional spending that should have been assessed against Ms. Brooks' voluntary expenditure limit during the campaign.

Subsequent conversations with Ms. Brooks confirmed that the Visa cards were used to pay previously itemized campaign expenses and did not represent additional campaign spending. Ms. Brooks also subsequently identified the specific vendors who were paid by credit card and filed this information with her campaign statements. All products and services paid for by credit card appeared to be for legitimate campaign purposes.

III. EFFORTS AT SETTLEMENT

Commission staff and Ms. Brooks began discussing settlement of the campaign contributor issue last summer. Commission staff and Ms. Brooks submitted a settlement draft for Commission review and approval at the Commission's November 1, 2004, regular meeting. The basic terms of the agreement was that Ms. Brooks would amend her campaign statements to provide missing contributor information and pay a settlement amount of \$250 in exchange for a dismissal of the OCRA allegations.

At the November 1, 2004, meeting, the Commission proposed a modification to the proposal which Ms. Brooks contended exceeded the scope of the Commission's jurisdiction. At its meeting of December 6, 2004, the Commission removed the first modification and proposed another change in the language relating to the Commission's recourse in the event Ms. Brooks did not perform her part of the agreement. The Commission also voted to refer to the FPPC those potential reporting issues arising under state law.

During the course of negotiations in this matter, Commission staff reviewed the electronic database it maintains for Oakland's Limited Public Matching Fund program. Like all other participants in the program, Ms. Brooks was required to submit name, address, occupation and employer information for every check submitted for matching funds. Of the 37 remaining contributors without completed address, occupation and/or employer information, 25 were located in the database with completed information, thus demonstrating that Ms. Brooks did have, at one time, the required information as to these 25 people. Commission staff recently provided that information to Ms. Brooks.

On January 24, 2005, Ms. Brooks filed amendments to her campaign statements providing completed contributor information for 27 of the missing 37 contributors. The remaining 10 contributors are people for whom no information or records could be located despite Ms. Brooks' stated efforts to do so. Ms. Brooks also submitted to Commission staff a settlement payment in the previously agreed amount of \$250, which sum, together with the above amendments, comprise the contemplated performance intended to resolve the outstanding issues under Complaint No. 04-03.

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission adopt the proposed Stipulation enclosed as **Attachment 1** and adopt a motion to dismiss Complaint No. 04-03.

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.*