
City Attorney

City of Oakland
Public Ethics Commission
March 1, 2004

In the Matter of)
) Complaint No. 03-06
) **SUPPLEMENTAL**

Complaint No. 03-06 was filed by David Mix on May 1, 2003.

I. SUMMARY OF COMPLAINT AND ANALYSIS

At its regular meeting of September 8, 2003, the Commission considered a preliminary staff report pertaining to Complaint No. 03-06. The staff investigation for Complaint No. 03-06 was consolidated with two other related complaints Mr. Mix had filed against the Office of the City Attorney. **Attachment 1 (relevant portions only).**

Mr. Mix alleged in Complaint No. 03-06 that the Office of the City Attorney would not provide him with a copy of a written legal opinion he believes was prepared for the Oakland Museum Department and/or former Oakland City Councilmember Dick Spees. He based his belief that such a document exists upon an entry in the minutes of an October 18, 2001, Oakland Museum Foundation Board of Directors' meeting that states the Oakland City Attorney's Office had "ruled" that non-Oakland residents could collect signatures for an Oakland ballot measure.

The City Attorney's Office denied it prepared any written opinion on this subject. Mr. Mix contends that the City Attorney's Office deliberately withheld copies of the opinion. He argues that the Office of the City Attorney previously denied that it had another document he was seeking and then later found the document. He believes the same situation could exist in this case.

During its initial investigation, Commission staff contacted Dennis Power, Director of the City's Museum Department, who stated that it was local campaign consultant Larry Tramutola, and not the City Attorney, who reportedly advised one of the board members on the question of ballot petitions. He said the board neither requested nor received any written opinion by the Office of the City Attorney on this subject. Based on this set of facts, Commission staff recommended that the Commission dismiss the complaint.

At the September 8, 2003, meeting, the Commission approved Mr. Mix's request that he be allowed to pursue mediation with the Office of the City Attorney in this matter. Commission staff subsequently confirmed with the City Attorney's Office that it never

prepared an opinion for Mr. Spees, the Museum Department or the Museum Foundation. Thus neither mediation nor adjudication appears to be a practicable way of resolving Mr. Mix's allegation.

Mr. Mix spoke with Commission staff recently and expressed his desire to withdraw Complaint No. 03-06. Under Section VII of the Commission's General Complaint Procedures, the Commission may nevertheless choose to retain jurisdiction of a complaint even if the complainant requests dismissal.

II. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 03-06 for the reasons given in its initial staff report.

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.*