
City Attorney

City of Oakland
Public Ethics Commission
July 11, 2005

In the Matter of) Complaint No. 04-06
) *(Initial)*
) Complaint No. 04-05
) *(Supplemental)*

Steven Edrington and Mari Lee filed Complaint No. 04-06 on November 30, 2004. Complainants supplemented their complaint with additional information and contentions on December 17, 2004, and on April 20, 2005. **Attachments 1A and 1B.**

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Mr. Edrington and Ms. Lee filed Complaint No. 04-06 alleging that employees of a local non-profit corporation, People United For A Better Oakland ("PUEBLO") violated unspecified provisions of OCRA, the California Political Reform Act and other provisions of law by: 1) commingling and using City funds to oppose local ballot Measure FF; 2) failing to register as a political committee to oppose Measure FF; and 3) using its non-profit resources in the political campaigns of Wilson Riles and Measure FF.

This report also contains supplemental information and comments pertaining to Complaint No. 04-05, which the Commission previously considered at its regular meeting of April 4, 2005.

II. BACKGROUND

In November, 2002, Oakland voters adopted Measure EE by a vote margin of 50.9 to 49.1 percent. Measure EE, the so-called "just cause eviction" measure, generally restricts the grounds on which tenants may be evicted from residential property. The measure was brought before Oakland voters via public initiative.

In November, 2002, Oakland voters also adopted Measure FF by a vote of 53 to 47 percent. Measure FF was placed on the ballot by the Oakland City Council as an advisory measure on whether to add approximately one hundred new positions to the Oakland Police Department and to fund violence prevention programs. While Measure FF prevailed, the several ballot measures intended to fund Measure FF failed.

Wilson Riles was a candidate for Mayor in the March, 2002, election. Mr. Riles lost to current Oakland Mayor Jerry Brown.

III. ANALYSIS

A. Use Of City Funds For Campaign Purposes

Complainants allege that money disbursed by the Oakland Fund for Children and Youth ("OFCY") to PUEBLO may have been spent in support of Measure FF. The allegation is similar to the one complainants made in Complaint No. 04-05 -- that OFCY money may have been spent in support of local Measure EE, the so-called "just cause eviction" initiative that appeared with Measure FF on the November, 2002, ballot.

As previously reported in the staff analysis to Complaint No. 04-05, the OFCY is a City Charter-created fund into which is dedicated 2.5 percent of Oakland's unrestricted general fund revenues annually for programs benefiting children and youth. Between December, 2000, and July, 2002, OFCY provided two grants in the combined amount of \$367,752.65 for a particular project administered by PUEBLO -- "Youth 2 Youth For Social Justice" ("Y2YFSJ").

According to OFCY records, Y2YFSJ was established by PUEBLO in 1998 for the purpose of funding and supporting "youth-initiated social justice projects throughout Oakland." The OFCY grant money was allocated to specific youth projects by a youth-led board under the primary direction of PUEBLO employee Lakisha Ealey. Part of the OFCY grant money was allocated to pay the salary of Lakisha Ealey and at least part of the salaries of other PUEBLO employees who worked on the Y2YFSJ project, such as PUEBLO youth coordinator Venus Rodriguez and, to a lesser degree, former PUEBLO executive director Dawn Phillips.

Also during the time OFCY was funding the Y2YFSJ project, PUEBLO administered another youth program, "Youth Of Oakland United" (YOU). Founded in 1995, the YOU program organized children and youth to support or oppose a variety of local issues such as school lunch programs, school suspensions, textbook purchasing and proposed curfews.

According to Mr. Phillips, YOU and Y2YFSY were organized and administered as two separate programs within PUEBLO. He said YOU was primarily overseen by Ms. Rodriguez and was funded through private grants. He said the Y2YFSJ program was funded with OFCY money (together with some private donations) and operated under the primary direction of Ms. Ealey. He acknowledged that Ms. Ealey and Ms. Rodriguez would occasionally share responsibility for the other's programs. He said after the OFCY funding ended in July, 2002, Ms. Ealey worked with Ms. Rodriguez to administer the YOU program until early 2003 when both concluded their employment with PUEBLO.

In this complaint, complainants specifically allege that OFCY funds were used to support the activities of Ms. Ealey and Ms. Rodriguez while they participated in political efforts in support of Measure EE ("just cause eviction"), opposition to Measure

FF ("additional police funding") and support for the candidacy of Wilson Riles for Mayor. They contend that so long as these PUEBLO employees were being funded by OCFY grant money, any participation in political activities would constitute an impermissible use of public funds for political purposes. Neither Ms. Ealey nor Ms. Rodriguez could be located for interviews for this report.

As previously reported, Commission staff has been unable to establish a **direct** link between OCFY funds and any specific PUEBLO expenditure or activity in support or opposition to a political activity. The reason is that all OCFY grant money was deposited into PUEBLO's general operating account and commingled with other sources of PUEBLO's revenue. PUEBLO used this general operating account to pay all its operating and administrative expenses, including employee salaries. Thus it is very difficult, if not impossible, to track OCFY dollars to any specific expenditure. Commission staff notes that the Oakland City Auditor is currently conducting an audit of PUEBLO's use of OCFY funds. The City Auditor ultimately may be able to provide additional information on the use of OCFY funds with regard to any political activity.

(Commission staff also previously noted that PUEBLO provided the OCFY with extensive documentation on how money was spent to fund Y2YFSJ projects. This documentation shows that PUEBLO allocated amounts equal to the OCFY grants to fund legitimate Y2YFSJ projects and to pay related administrative costs, such as Ms. Ealey's and Ms. Rodriguez' salaries and office overhead.)

At best, the bulk of complainant's contentions and documents attempts to establish an **indirect** connection between OCFY funds and alleged political activity in connection with Measure FF, Measure EE and Mr. Riles' candidacy:

1. Measure FF

Measure FF was first adopted and placed on the November ballot by the Oakland City Council on July 30, 2002. As stated above, OCFY funding ended in July, 2002. Thus it is unlikely that any alleged political activity in the months leading up to the November election can be traced or related to OCFY funding.

2. Measure EE

Measure EE did not qualify for the ballot until July, 2002. As reported in the staff report to Complaint No. 04-05, most of PUEBLO's alleged campaign support for that measure involved other PUEBLO employees and activities unrelated to PUEBLO's youth programs. However, during the first six months of 2002, Measure EE was the subject of a considerable signature-gathering campaign during the time when OCFY funds were supporting the Y2YFSJ program.

Complainants recently provided Commission staff with an internal account detail showing that PUEBLO paid a total of 19 stipends to YOU participants on June 7 and June 12, 2002. Complainants have suggested that YOU participants were

compensated for signature gathering activities. **Attachment 2.** Mr. Phillips denied that these stipends were used as compensation for political activities and noted that the YOU program had always provided stipends to its participants. While OCFY funds were commingled in the account from which these stipends were paid, this fact alone cannot establish that YOU participants 1) worked on the signature gathering campaign and 2) even if they did, that these stipends served as compensation for such activities.

3. Riles Campaign For Mayor

Mr. Riles mayoral campaign culminated in the March, 2002, election. Complainants provided two documents obtained from PUEBLO computers that purport to demonstrate that PUEBLO staff and youth participants were active in Mr. Riles' mayoral campaign. **Attachments 3A and 3B.** Mr. Phillips told Commission staff that he created both attachments on his personal time while working at Riles campaign headquarters. He believes at some point he copied some of his Riles' campaign material onto a disc that was later fed into the PUEBLO computer system, presumably for use on the Measure FF campaign. (Note the reference to "Wilson" on the phonebanking instructions for Measure FF on Attachment 3B, suggesting that the phone banking "rap sheet" against Measure FF was written over a document used during the Wilson Riles' campaign.) Mr. Phillips denied that he or any other PUEBLO employee worked on Mr. Riles' campaign during PUEBLO work hours.

Based on the above, Commission staff cannot draw a connection between OCFY funding and political activity on the campaigns involving Measures EE, FF and Mr. Riles. Any connection between City funds and political activity is attenuated by 1) the commingling of OCFY funds into PUEBLO's general operating account, and 2) the timing of OCFY payments as it related to the alleged political activities.

B. Failure To Register As A Political Committee In Opposition To Measure FF

Complainants next contend that PUEBLO ran a "shadow campaign" out of its headquarters in opposition to Measure FF. They contend that PUEBLO's financial transactions and "in-kind" activities required them to organize as a political committee under the California Political Reform Act (CPRA) and to meet timely financial disclosure requirements.

Complainants have submitted a number of documents which they contend demonstrate how PUEBLO members and employees organized a political campaign against Measure FF. These documents were obtained by the complainants from PUEBLO's computers, with the exception of the check copy contained in Attachment 9.

Attachment 4 appears to be a cover letter and form seeking endorsements and contributions for the "No On Proposition FF" effort. (Note that replies are directed to "Lakisha Ealey @ PUEBLO." Note also that the letter refers to weekly "campaign meetings" every Tuesday at 10:00 a.m. at PUEBLO headquarters).

Mr. Phillips acknowledged that this letter was sent to a small mailing list of parties interested in Measure FF.

Attachment 5 appears to be a "No On FF Campaign Phone-Banking Rap" from the "No on Measure FF campaign." Again, references are made to contact Venus (Rodriguez) or Lakisha (Ealey) at PUEBLO headquarters for more information. Mr. Phillips told Commission staff that telephones at PUEBLO offices were used in phone banking activities in opposition to Measure FF.

Attachment 6 appears to be handbills and voter guides that the complainants allege PUEBLO employees and members produced in opposition to Measure FF. Mr. Phillips told Commission staff that PUEBLO produced some materials in-house and some were professionally printed (see check for printing expenses at Attachment 9.)

Attachment 7 appears to be several calendars showing campaign activities by PUEBLO employees presumably during work hours in opposition to Measure FF.

Attachment 8 appears to be the minutes taken at September 9, 2002, "Ally" meeting at which activities in opposition to Measure FF are discussed. It demonstrates a level of PUEBLO staff time and resources planned for the Measure FF campaign.

Attachment 9 appear to be electronic check registers for direct PUEBLO payments for the "No on Measure FF" campaign. (Note the check register and check copy of a \$1,050 payment made by PUEBLO to "Tumis" printing company for "No on FF handbills.")

Attachment 10 is a letter which Mr. Phillips told Commission staff was sent to parents of youth participating in PUEBLO's YOU program. The letter arguably draws a connection between Ms. Rodriguez's job duties as the YOU program director and efforts to defeat Measure FF. Mr. Phillips acknowledged that youth participating in the YOU program also worked on the campaign to defeat Measure FF.

Attachment 11 appears to be the minutes of a Board of Directors meeting at which plans to oppose Measure FF are discussed.

1. Did PUEBLO's Activities On Measure FF Trigger A Reporting Requirement Under The Political Reform Act (CPRA)?

Under the CPRA, contributions to, and expenditures by, candidates or committees can trigger campaign reporting obligations. A person qualifies as a "**committee**" (and thus incurs campaign reporting obligations) if it receives contributions of \$1,000 or more; makes "independent expenditures" of \$1,000 or more; or makes contributions of \$10,000 or more in a calendar year. [Government Code

Section 82013] Once a person qualifies as a committee, the CPRA imposes periodic filing obligations to disclose financial activities.

An "**independent expenditure**" is an expenditure "made in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee." [Government Code Section 82031]

A "**contribution**" not only includes monetary payments, but can also include "[t]he payment of salary, reimbursement for personal expenses, or other compensation by an employer to an employee who spends more than 10% of his compensated time in any one month rendering services for political purposes. . ." The payment of such salary and/or reimbursement is deemed a contribution **by the employer** if 1) the employee renders services at the request or direction of the employer, or 2) the employee, with the consent of the employer, is relieved of any normal working responsibilities related to his employment in order to render the political services." [2 Cal. Admin. Code Section 18423(a)]

In light of the above law and documents, it appears that there is at least a question of whether PUEBLO qualified as a political committee that should have made periodic filings of its financial activities in connection with Measure FF. Attachment 8 strongly suggest that PUEBLO made more than \$1,000 in independent expenditures for "No of FF handbills." The activities described in Attachments 4, 7, 8, and 10 suggest that PUEBLO employees Lakisha Ealey and Venus Rodriguez spent more than 10 percent of their work hours in September, 2002, developing or distributing communications advocating the defeat of Measure FF.

During Commission staff's interview with Mr. Phillips, he said that PUEBLO only raised approximately \$300 to defray costs associated with the Measure FF campaign and spent less than \$1,000 on its efforts to oppose the initiative. (Commission staff identified \$250 in direct contributions associated with PUEBLO's efforts to defeat Measure FF.) After being presented with the phone banking information, handbills and campaign calendars described above, he acknowledged that some campaign activity was conducted at PUEBLO's Park Street headquarters. He said that the names of Ms. Ealey and Ms. Rodriguez were mainly used to provide a "point of contact" but that the actual work was performed by many volunteers. Again, the above attachments suggest that Ms. Ealey and Ms. Rodriguez acted more than mere "points of contact" in the Measure FF effort. Attachments 7 and 11 indicate that the PUEBLO Board as well as its executive director had at least some knowledge that these campaign activities were taking place by PUEBLO employees at PUEBLO offices.

C. Use Of Non-Profit Resources In Support Of A Political Campaign

Complainants contend that PUEBLO employees worked in support of Measures EE and FF in violation of their tax status as a 501(c)(3) non-profit corporation and their own by-laws.

1. Political activities by a tax-exempt organization

According to Mr. Phillips, PUEBLO operated during 2002 as a 501(c)(3) tax exempt corporation. As a general rule, no organization qualifying as a 501(c)(3) organization may devote a "substantial part" of its activities to influence legislation or public ballot measures. In determining whether the activity is substantial, the Internal Revenue Service (IRS) will generally consider a variety of factors including the time devoted by employees and volunteers, and any expenditures devoted by the organization to the activity.

Corporations qualifying under as a 501(c)(3) corporation are required, in most cases, to describe in detail all its political ("lobbying") activities on a separate schedule of its federal income tax return (Form 990). Under no circumstances are 501(c)(3) organizations permitted to engage, participate or intervene in a campaign for elective political office. A pdf version of PUEBLO's Form 990 filed for 2002 and available from the California Attorney General's website does not include any schedule describing any political activities and answers either "no" or "not applicable" to questions relating to any political ("lobbying") activities.

Commission staff has reviewed the material submitted and notes there is information to support a contention that PUEBLO employees and members devoted a portion of their activities and PUEBLO resources in favor of the adoption of Measure EE and the defeat of Measure FF. Whether these activities, in the aggregate, were enough to constitute a "substantial part" of PUEBLO's activities to compromise PUEBLO's tax exempt status is beyond the expertise of Commission staff to analyze and the authority of the Commission to determine.

2. Political activities contrary to by-laws

Article III of PUEBLO's bylaws states in relevant part:

"The corporation has been formed under the California Nonprofit Corporation Law for the purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the corporation shall consist of carrying out propaganda, or otherwise attempting to influence legislation and the corporation shall not participate or intervene in any political campaign (including the publication or distribution of statements) on behalf of any candidate for public office or for or against any cause or measure being submitted to the public for a vote."

Complainants contend that PUEBLO participated in political activities that were in conflict with its own bylaws prohibiting the organization from participating or intervening in any political campaign on behalf of a candidate or measure. They claim that the documents identified above support the contention that PUEBLO's involvement with Measures EE and FF violated its own rules prohibiting such activities.

PUEBLO was formed in 1999 as a California nonprofit public benefit corporation. As such, the Office of the Attorney General has the authority to investigate the transactions and relationships of nonprofit corporations and their trustees to determine whether the purposes of the corporation are being carried out in accordance with the terms and provisions of its articles of incorporation or other instruments. [Government Code Section 12588] The Commission does not have the authority to determine the questions of corporate governance that complainants raise.

IV. SUPPLEMENTAL REPORT TO COMPLAINT NO. 04-05

At its regular meeting of April 4, 2005, the Commission considered Complaint No. 04-05. In that complaint, complainants alleged that a political committee formed to support Measure EE, "Just Cause Oakland," failed to file required campaign statements and to report significant expenditures and contributions in connection with ballot Measure EE. The complainants also alleged that PUEBLO used OCFY funds in support of Measure EE.

After its investigation, Commission staff found that the political committee admittedly omitted a significant amount of financial information from required campaign disclosures before and after the election. There is also information to suggest that the political committee omitted other financial information. Commission staff recommended these findings be referred to the Fair Political Practices Commission (FPPC) for further investigation.

At the April 4 meeting, the Commission provided both the complainants and the respondents additional time to provide information pertaining to Complaint No. 04-05. The complainants additionally submitted **Attachment 12** to support their contention that the Just Cause Oakland political committee in support of Measure EE received significant in-kind contributions in the form of paid staff assistance from other organizations. They also submitted **Attachment 13** which purports to show that the Just Cause Oakland political committee made a donation in the amount of \$5,000 from campaign funds to support PUEBLO's Just Cause Oakland tenants rights project. This purported donation has never been reflected in any of the political committee's campaign filings. Just Cause Oakland's campaign treasurer Mamie Chow declined to respond to Commission staff's questions regarding Attachments 12 and 13, stating the letter from the committee's attorney, Hunter Pyle, (see next paragraph) would be the committee's only response to further Commission inquiries.

On April 20, 2005, Commission staff received a letter from Hunter Pyle, an attorney who asserts representation of the Just Cause Oakland political action committee. Mr. Pyle contends that the Commission lacks the authority to investigate the allegations contained in Complaint No. 04-05 or to refer those allegations to the FPPC. He states that his client is taking "all appropriate steps" to ensure its campaign statements conform to the law. **Attachment 14.**

Commission staff disagrees with Mr. Pyle's analysis of the Commission's authority. Section III(B)(1)(e) of the Commission's Complaint Procedures states in full:

"After review by the City Attorney for form and legality, the Executive Director may recommend in writing, after an investigation, that: (1) [t]he complaint be dismissed for any or all of the following reasons. . . (e) The complaint should be referred to another governmental or law enforcement agency better suited to address the issue." (Emphasis added.)

The Commission's Complaint Procedures clearly direct the executive director to investigate a complaint **before** recommending either to dismiss it or to schedule the matter for hearing. The City Attorney advises that a public agency's power to investigate must be provided in or implied from the law it is attempting to enforce. Determining whether a matter is within the scope of its jurisdiction, however, is a proper matter for an agency to investigate. [Citations available.] While the Commission does not have the authority to determine violations of the Political Reform Act, it does have the authority to investigate alleged violations of the Oakland Campaign Reform Act **under which the Complaint 04-05 was filed.** The City Attorney also advises that to the extent Commission staff becomes aware of potential violations of other laws during an investigation under OCRA, the Commission may make referrals to other agencies. Making such referrals has long been the practice of the Commission.

V. STAFF RECOMMENDATION

Commission staff re-asserts its previous recommendation that the Commission refer Complaint No. 04-05 pertaining to the Just Cause Committee's late and possibly still missing financial information to the FPPC for review. Commission staff also recommends that the Commission refer to the FPPC those portions of Complaint No. 04-06 that pertain to PUEBLO's alleged activities in support of Measure FF. Earlier this year, the Office of the Attorney General has requested copies of the staff reports on Complaint Nos. 04-05 and 04-06, so a referral from the Commission on the remaining issues of corporate governance would appear to be unnecessary.

Respectfully submitted,

Daniel D. Purnell

*** City Attorney approval as to form and legality relates 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.*