
City Attorney

City of Oakland
Public Ethics Commission
July 11, 2005

In the Matter of

)
) Complaint No. 05-07
)

Ronald Chan filed Complaint No. 05-07 on May 5, 2005.

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Mr. Chan filed Complaint No. 05-07 alleging that the Oakland City Council violated its Rules of Procedure by conducting two votes on an item of business. At the request of the complainant, the Commission also directed staff to determine whether the complain raises any issues under the Brown Act or Oakland Sunshine Ordinance.

Attachment 1.

II. BACKGROUND AND CONTENTIONS

At its regular meeting of April 19, 2005, the Oakland City Council considered agenda item 19, a resolution to waive the application of the so-called "Living Wage" ordinance to workers at the Oakland Zoo. (The Living Wage ordinance permits entities affected by the ordinance to obtain a waiver from the City Council.) Present at the meeting were City Councilmembers Brooks, Brunner, Chang, Nadel, Quan and De La Fuente. Councilmember Reid was absent when the item was called, and the seat for the District Two representative was vacant.

After receiving comments from one speaker and brief comments from councilmembers, Mr. De La Fuente called for a motion. A motion was made and seconded. The vote was tallied and announced as four in favor and two abstentions. Mr. De La Fuente then called for the next item.

During his comments on the next item, Sanjiv Handa noted that item 19 received only four affirmative votes and cited correctly the rule that five affirmative votes are necessary to adopt a motion. Shortly afterwards, Councilmember Reid appeared and took his place at the council dais. At the conclusion of items 20-25 (these items were considered together), the City Clerk announced that the City Council would return to Item 19. Mr. De La Fuente recognized another motion and second to approve adoption of the resolution. The vote was announced as five in favor and two abstentions, with Mr. Reid casting the fifth affirmative vote.

III. ANALYSIS

A. Commission Authority To Determine Violations Alleged In The Complaint

There are two substantive issues presented by this complaint. The first is whether the vote recorded after Mr. Reid arrived violated any provision of the City Council's Rules of Procedures. These Rules of Procedures contain, among other things, the City Council's parliamentary rules. The second issue is whether the City Council violated the Brown Act or Sunshine Ordinance in voting on item 19. Before dealing with these issues, the commission must address whether it has the authority to determine these issues.

City Charter Section 202 and Oakland Municipal Code Section 2.24.010 set forth the Commission's authority to "oversee compliance" with various City regulations and policies. City Charter Section 202 provides that the Commission shall be responsible for "responding to issues with regard to compliance...with city regulations and policies intended to assure fairness, openness, honesty and integrity in City government including , Oakland's Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act..."

The Commission's "enabling" ordinance, Oakland Municipal Code Section 2.24.020, lists the specific laws over which the Commission may "oversee compliance." Nowhere does Section 2.24.010 mention, other than the City Council's "code of ethics", any provision of the City Council's Rules of Procedures as a law over which the Commission has compliance authority. Nor do the Rules of Procedures delegate to the Commission the authority to determine violations of its parliamentary rules.

In the absence of an express delegation of authority to the Commission to determine violations of the City Council's parliamentary rules, Commission staff does not believe the Commission can determine whether the vote(s) taken on Item 19 violated those rules. Commission staff notes that California courts have held that the alleged failure of city councils to abide by their parliamentary rules is not a "jurisdictional issue," meaning that courts will usually not entertain such disputes. One California court has also ruled that the failure to follow parliamentary rules cannot be used to invalidate an action that has otherwise received a requisite number of votes. [City of Pasadena v. Paine (1954) 126 Cal.App.2d 93] Thus even if the Commission were authorized to "oversee compliance" with the City Council's procedural rules, it is not likely the Commission could order the matter re-heard or invalidate the underlying action without the express authority to do so.

On the other hand, there is little question that the Commission may determine violations of the Sunshine Ordinance. This authority is expressly granted in City Charter Section 202, O.M.C. Section 2.24.020(E), and in the Sunshine Ordinance itself (O.M.C. Section 2.20.270). Furthermore, Section 2.20.050 provides that all

meetings of Oakland's local bodies "shall be open and public, to the same extent as if that body were governed by the Ralph M. Brown Act (citations) unless greater public access is required by this ordinance, in which case this ordinance shall be applicable." Based on this provision, the Office of the City Attorney has opined that the Commission may determine violations of the Brown Act as to Oakland's "local bodies."

B. Was There A Violation Of the Brown Act And/Or Sunshine Ordinance?

The possible application of the Sunshine Ordinance or the Brown Act to the present allegation involves the questions of whether the item was properly agendaized, and whether the City Council provided adequate public comment before or during its consideration of the item. Commission staff reviewed the agenda and related materials for Item 19. There does not appear to be any irregularity with the way the item was described or with the agenda-related materials. The videotape of the meeting demonstrates that the City Council recognized one public speaker, Sanjiv Handa, before entertaining a motion to adopt the proposed resolution. The City Council later returned to the item for another motion to approve the resolution. This time, there were five affirmative votes for passage. Since members of the public were permitted an opportunity to comment before the votes, and since the two motions for approval were identical, it does not appear that the City Council violated a provision of the Sunshine Ordinance or Brown Act during its consideration of Item 19. Commission staff also notes that the complainant was not present at the meeting (he watched it on television) and therefore could not have been prejudiced or harmed by any failure to recognize speakers before or during consideration of the item.

IV. STAFF RECOMMENDATION

Commission staff recommends that Complaint No. 05-07 be dismissed on grounds that the Commission does not have the authority to determine violations of the City Council's Rules of Procedure and the facts do not support a conclusion that the Brown Act or Sunshine Ordinance may have been violated.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** 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.*