
City Attorney

City of Oakland
Public Ethics Commission
August 30, 2004

In the Matter of)
) Complaint No. 04-02
)

Pamela Drake filed Complaint No. 04-02 on February 3, 2004.

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Ms. Drake filed Complaint No. 04-02 alleging that Dr. Randolph Ward and the Oakland Board of Education ("School Board") violated the Oakland Sunshine Ordinance and Brown Act by limiting public access to a School Board meeting on January 28, 2004. **Attachment 1.**

II. BACKGROUND AND ANALYSIS

On January 28, 2004, the School Board held a special meeting to consider, among other items, a plan to close five elementary schools. The School Board allotted five hours to receive public comments on the plan. Comments directed to the closing of each particular school were apportioned one hour each. **Attachment 2.**

Ms. Drake provides a detailed account of her experience at the January 28, 2004, meeting. **Attachment 3.** In summary, Ms. Drake asserts: 1) there was a large and intimidating police presence at the meeting; 2) fire safety laws, which she contends are not typically enforced, were enforced that day as a means of limiting attendance at the meeting; 3) members of the public had to obtain a ticket to attend the meeting and ticketholders were entitled to attend only one-hour of the meeting before the room was cleared.

Board Secretary Edgar Rakestraw told Commission staff that additional police officers were present at the January 28 meeting because of the large number of people interested in the school closure issue. He also stated that there had been some personal threats made towards Dr. Ward over this issue. He said that the ticket system used for this meeting was on a first-come, first-served basis. Since most people were concerned about a particular school, the ticket system was implemented to ensure that all the people who wanted to speak about a particular school could do so. Once the time allotted for each school had passed, the room was cleared to permit people interested in the next school to enter the chambers. He denied that a person had to be

either a teacher or parent in order to attend the meeting. He said people only had to indicate which school they were interested in to obtain the appropriate ticket.

Mr. Rakestraw also told Commission staff that a live video feed was available in the building for those unable to gain access to the meeting chambers.

A. Police Conduct

Commission staff perceives nothing about the conduct of police officers that Ms. Drake describes that triggers an open meeting violation. While Commission staff acknowledges that Ms. Drake found their presence to be "intimidating," nothing she describes about their actions gives rise to a potential violation of open meeting laws. Their efforts to manage the flow of people into and out of the hearing room and to keep aiseways clear do not appear to be unreasonable under the described circumstances.

B. Ticket System

Ms. Drake also describes a situation in which she had to obtain a ticket in order to attend the portion of the public hearing dealing with Burbank Elementary School. She alleges she had to pose as a teacher or as a parent from that school to enter the meeting chamber. Mr. Rakesdraw states that the tickets were available to everyone on a first-come, first-served basis.

On its face, there appears to be nothing inherently wrong with the ticketing system described by Mr. Rakesdraw. California courts have recognized that local agencies have "wide discretion" in adopting rules concerning the conduct of their proceedings. This discretion must be exercised reasonably and not in an arbitrary or capricious manner. Courts will generally not disturb the discretion of a local board or commission except upon convincing evidence of "fraud, arbitrary action or an abuse of discretion." [See generally Dry Creek Valley Assn. v. Board of Supervisors (1977) 67 Cal.App. 3d 839, 846; 74 Ops.Cal.Atty.Gen. 89, 94.] Because of the need to manage a large number of people with a specific interest in the closure of a particular school, Commission staff conclude that the ticketing system (as described by Mr. Rakestraw) was an unreasonable way of conducting the public hearing.

On the other hand, conditioning a person's attendance at a public meeting based on his or her status as a parent or teacher may not be appropriate. The Brown Act expressly provides that members of the public "shall not be required, as a condition of attendance at a public meeting. . .to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance." [Government Code Section 54953.3].

The Sunshine Ordinance states that meetings of local bodies shall be "open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act unless great public access is required by this ordinance, in which case this ordinance shall be applicable." [O.M.C. Section 2.20.050]. It can be

argued that limiting the attendance to the School Board's meeting to parents or teachers would be a violation of open meeting laws.

Commission staff has no reason to doubt the veracity of Ms. Drake's account. However, it cannot verify whether her experience represented an isolated case or a widespread departure from the School District's stated policy without interviewing a very large number of people. Commission staff has not undertaken such an extensive preliminary investigation since Ms. Drake was not actually denied access to the meeting. By gaining access to the meeting chambers, there is little harm or prejudice of which she can complain. This would obviously not be the case if the complaint were filed by someone who was denied a ticket based on their inability to meet a particular status or criteria.

C. Commission Jurisdiction

Finally, Commission staff questions whether the Commission has jurisdiction over the School Board for purposes of enforcing open meeting laws. Oakland Municipal Code (O.M.C.) Section 2.24.020 authorizes the Public Ethics Commission to "oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act." The City of Oakland "supplemented" the Brown Act and Public Records Act with the adoption of the Oakland Sunshine Ordinance in 1997.

The public meeting provisions of the Sunshine Ordinance apply to "local bodies." A "local body" is defined in relevant part as "any board, commission, task force or committee which is established by City Charter, ordinance, or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners." [O.M.C. §2.20.030(E)]

Section 404 of the Oakland City Charter establishes the Oakland Board of Education (School Board). On its face, it appears that the School Board meets the definition of a "local body" under the Sunshine Ordinance since it is "established by City Charter."

On the other hand, City Charter Section 404(a) states that "[t]he provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter." Nothing in the City Charter speaks to the conduct of public meetings by the School Board. In the absence of express language on this subject, it appears that the City Charter requires the state Education Code to govern the conduct of School Board meetings.

Education Code Section 35145 provides that meetings of "any" school board shall be conducted in accordance with the Ralph M. Brown Act, the state's open meeting law. Thus a question is raised whether the City Charter prevents the Sunshine Ordinance from applying to the School Board by deferring to the state Education Code all regulation of School Board meetings.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 04-02 on grounds that there is no information to support a finding that Ms. Drake was unreasonably or illegally denied access to a public meeting. The Commission may wish to express its concerns to the School Board over Ms. Drake's allegations to ensure that that School Board policy regarding access to public meetings is implemented uniformly in the future. Alternatively, if the Commission decides to conduct further investigation or to pursue a formal hearing, then Commission staff recommends that the Commission first determine, based on advice from the Office of the City Attorney, whether the Commission has jurisdiction over the School Board under the Sunshine Ordinance.

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.*