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City Attorney

City of Oakland  
Public Ethics Commission  
February 2, 2004

In the Matter of )  
 ) Complaint No. 03-12  
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Complaint No. 03-12 was filed by Ralph Kanz on September 30, 2003.

**I. SUMMARY OF COMPLAINT AND ALLEGATIONS**

Mr. Kanz filed the above complaint alleging that Oakland City Councilmember Ignacio De La Fuente failed to disclose an out-of-state trip on a 1995 Statement Of Economic Interests (Form 700). **Attachment 1.**

**II. BACKGROUND**

On May 12, 2003, Mr. De La Fuente testified at a civil lawsuit filed by the Oakland Raiders football team against a number of persons, including the City of Oakland. The Oakland Raiders sought money damages against the City and other defendants for losses they allegedly incurred in connection with their return to the Oakland Coliseum in 1997. The Oakland City Council took action in July, 1995, to authorize documents and financial instruments related to the Raiders' lease at the Oakland Coliseum and physical improvements at the facility.

**II. ANALYSIS**

Mr. Kanz attaches to his complaint an Oakland Tribune article describing a trip Mr. De La Fuente took to Dallas, Texas, in the summer of 1995 reportedly at the invitation of Al Davis, co-owner of the Oakland Raiders football team. The article states that the purpose of the trip was to take a tour of the Dallas Cowboys football stadium "to view how luxury boxes were being installed at stadiums to generate revenues." **Attachment 2.**

Mr. Kanz questions why this trip was not reported on Mr. De La Fuente's Form 700 for that year.

Under California conflict of interest law, travel payments (including lodging and meals) are generally reportable as "gifts" or "income" on Form 700s. All gifts totaling \$50 or more from a single source must be disclosed. All income totaling \$500 or more from a single source also must be disclosed.

There are a number of relevant exceptions to the basic disclosure requirements that include, but are not limited to: 1) travel payments by one's own public agency as part of one's public service; 2) reimbursement for transportation and lodging within the United States that

is related to a legislative or government purpose and that occurs at an event in which one gives a speech or participates in a panel or seminar; and 3) travel paid from campaign funds or received as an "in kind" contribution. Reimbursements for travel occurring within the United States which is related to a public policy purpose and which is paid or reimbursed by a governmental agency or non-profit organization are not reportable as "gifts" but may be reportable as "income." [See generally Gov. Code §§89501 -- 89506, inclusive; 2 Cal. Code of Regs. §18950.1]

In addition to the above disclosure requirements, no local elected officer may currently accept a gift from any single source that exceeds \$340 in any calendar year. [Government Code Section 89503] Neither may a public official participate in a governmental decision in which he or she has a material economic interest in the donor of a gift or in a source of income that currently totals or exceeds \$340 or \$500, respectively, if that gift or income was received within 12 months prior to the decision. (At the time of this writing, Commission staff could not conclusively ascertain the gift or income thresholds in effect in 1995. The gift threshold in 1998 was \$290; the income threshold in 1998 was \$250.)

Mr. De La Fuente told Commission staff that he has no recollection or personal record of who paid for the airfare to Dallas, lodging, or access to the Dallas football stadium. Commission staff reviewed Mr. De La Fuente's Form 700s and campaign statements that were filed before and after the reported trip. In a semi-annual campaign statement filed for the period July 1, 1994, through December 31, 1994, Mr. De La Fuente reported an expenditure to a local travel agency in the amount of \$824 for costs associated with a trip to Dallas, Texas, on August 12-14, 1994. **Attachment 3.** On page 8 of the statement, Mr. De La Fuente reports a "miscellaneous increase" to his campaign account in the amount of \$933.50, which sum is described as "exact reimbursement for airfare related to City business." **Attachment 4.**

The reported source for the above reimbursement was Oakland Alameda County Coliseum, Inc. ("OACC"), a California non-profit corporation which, at the time, had been established to help finance and operate the Oakland Coliseum. Mr. De La Fuente's campaign treasurer at the time, Henry Levy, confirmed that the reported reimbursement of \$933.50 covered Mr. De La Fuente's airfare of \$824 and a lodging expense of \$169.50. There is no record or mention of who may have provided access to the Dallas stadium for the football game Mr. De La Fuente reportedly attended.

The above record demonstrates that the airfare and hotel costs were ultimately borne by the OACC in the form of a "reimbursement" to Mr. De La Fuente's campaign account. A legal question exists whether the reported reimbursement was actually a "gift," "income," campaign "contribution" from OACC, or a transaction not regulated by the Political Reform Act. If the reimbursement qualifies as a gift or as income he would have been required to list the amount on a Form 700, and would have been prohibited from participating in a decision involving the source of that gift or income. If the reimbursement qualifies as a contribution however, there would be no disclosure or recusal requirement but the contribution could have violated the \$500 contribution limit in effect under the Oakland Campaign Reform Act ("OCRA").

The question of whether the reimbursement constitutes a gift, income or contribution involves a detailed legal analysis which Commission staff believes is probably moot. The

reason is that the California Political Reform Act requires all FPPC enforcement actions to commence within five years after the date of the alleged violation. [Government Code Section 91000.5] OCRA currently has a two-year statute of limitations period which, in 1994, stood at four years. [OCRA §3.12.280(F)] Enforcement of Mr. De La Fuente's obligations under state and local law would have had to commence at least three years ago.

Commission staff notes there is an exception to the Political Reform Act's five-year statute of limitation period. If a person who is alleged to have violated the Political Reform Act engages in the fraudulent concealment of his or her acts, the statute of limitations "clock" does not run during the time the concealment occurs. Under Section 91000.5, "fraudulent concealment" means that a person knows of material facts related to his or her duties under the Political Reform Act and "knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled..."

Commission staff initiated a search of FPPC advice letters, opinions and enforcement actions and could find no history of an otherwise time-barred prosecution proceeding under a "fraudulent concealment" theory. Commission staff also contacted FPPC attorney Al Herndon, who stated it would require "very clear evidence" to support a finding that a public official fraudulently concealed information.

Commission staff believes that it is highly unlikely that the FPPC would seriously entertain an enforcement action were the Commission to refer this matter. The FPPC has previously expressed to the Commission the practical difficulties of opening an investigation into matters occurring as recently as three years ago. In addition, the fact that Mr. De La Fuente disclosed the reimbursement for his trip to Dallas would, in Commission staff's opinion, argue strongly against the inference that he fraudulently intended to conceal information about the trip.

### **III. STAFF RECOMMENDATION**

Commission staff recommends that the Commission dismiss Complaint No. 03-12 on grounds that the Commission is without authority to determine violations of the California Political Reform Act and there appears to be no legal merit in referring a matter to the FPPC that exists well beyond the applicable statute of limitations. Furthermore, the Oakland Campaign Reform Act precludes the Commission's enforcement of any alleged violation occurring more than two years ago.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* 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.*