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City Attorney

*City of Oakland*  
**Public Ethics Commission**  
January 5, 2004

In the Matter of )  
 ) Complaint No. 03-16  
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Complaint No. 03-16 was filed by David Mix on December 3, 2003.

**I. SUMMARY OF COMPLAINT AND ALLEGATIONS**

Mr. Mix filed Complaint No. 03-16 alleging that a committee formed in support of the proposed Wildfire Prevention Assessment District ("Wildfire District") failed to file timely campaign statements pursuant to the California Political Reform Act.

***Attachment 1.***

**II. BACKGROUND**

On November 4, 2003, the Oakland City Council took a series of actions to initiate the creation of the Wildfire District within the City. If approved, the district would permit a financial assessment on real property located within district boundaries to fund services and programs for fire suppression, prevention and preparedness.

An assessment district is not a separate governmental agency but a defined area of property specially benefited by certain public improvements. Under California law, the assessments must be apportioned and levied according to a benefit formula approved by the legislative body. State law governs the process by which benefit assessment districts are formed.

California law provides for a number of different types of benefit assessment districts. Some have unique procedures governing their formation. In 1996, California voters adopted Proposition 218, which established substantial additional requirements for the imposition of property taxes, including benefit assessments. The legislation implementing Proposition 218 (the "Proposition 218 Omnibus Implementation Act") made numerous changes to the procedures used to create benefit assessment districts. One of the key changes was to consolidate the procedures used to create such districts by expressly overriding other procedural statutes that conflict with its provisions.

[Government Code §65753(a)]

### III. ANALYSIS

The proposed Wildfire District is being formed under Government Code Section 50078.2. This section expressly authorizes local agencies to create benefit assessment districts for fire suppression services. Under the Proposition 218 Omnibus Implementation Act, a local agency may form a benefit assessment district by taking the following actions:

- 1) causing the preparation of an "assessment engineer's report" that identifies the properties to be included in the district and establishes the method for assessing them;
- 2) adopting a series of resolutions expressing the intent to form a district, approving the engineer's report and setting a date for public hearing;
- 3) mailing notice of the public hearing to property owners within the district together with a "ballot" on which the property owners may express their support or opposition to the proposed assessment; and,
- 4) tabulating the ballots to determine whether a "majority protest" exists. ***Under Proposition 218 and its implementing legislation, the legislative body may not impose the assessment if a majority protest exists.*** [Cal. Const. Art.XIIID, Sec. 4(e); Government Code §53753(e)(3)]

The state law authorizing fire assessment districts additionally requires that local agencies follow the above-stated "majority protest" procedures contained in the Proposition 218 Omnibus Implementation Act in order to establish this type of district. [See Government Code §§50078.6; 53753]

Mr. Mix contends that a group named "Keep Oakland Firesafe" has raised money and made expenditures supporting the adoption of the proposed Wildfire District. He claims the group is a political "ballot measure" committee that has failed to file timely campaign statements prior to the tabulation of the majority protest ballots. He bases his contention on language contained in the authorizing legislation for fire assessment districts which states: "An election called by a legislative body pursuant to this article is subject to all provisions of the Elections Code applicable to elections called by the local agency." [Government Code §50078.13]

The issue raised by his complaint is whether the above-stated "majority protest" procedures contained in the Proposition 218 Omnibus Implementation Act and which are required for the adoption of a fire assessment district constitutes an "election" to which the filing requirements of the California Political Reform Act apply.

This issue has been analyzed at least twice by the Fair Political Practices Commission (FPPC). In its "Ewing" Advice Letter (No. A 97-061) and its "Bush" Advice Letter (No. I-02-015), the FPPC has concluded, based on express provisions of state

law, that the above-stated "majority protest" procedures governing the formation of a benefit assessment district do not constitute an "election" for purposes of the California Constitution, the California Elections Code or the campaign reporting provisions of the California Political Reform Act. **Attachments 2A and 2B.** Thus the FPPC has concluded that any group raising or spending money to advocate support for a benefit assessment formed under "majority protest" procedures is not considered a political committee and does not have any filing requirements under the Act.

Commission staff contacted Mari Lee, treasurer for "Keep Oakland Safe." Ms. Lee told Commission staff that the group initially filed a pre-election statement with the Office of the City Clerk because the group was unsure whether the California Political Reform Act would apply to its advocacy in support of the Wildfire District.

The language referring to "elections" in the statute authorizing fire assessment districts appears to have little relevance or applicability after the adoption of Proposition 218 and its implementing legislation. Proposition 218 and its implementing legislation simply do not authorize the use of typical election procedures as a way to create benefit assessment districts. Furthermore, the statute authorizing fire assessment districts no longer contains its previous language that permitted a local agency to call a district-wide election in the event there was a majority protest to a proposed assessment district. Finally, the implementing resolution and ordinances adopted by the City Council to initiate the Wildfire District do not call for or authorize a district or City-wide election in connection with its formation. The implementing resolution and ordinance expressly state that the City Council "shall not impose, extend or increase the assessment to which there was a majority protest." **Attachment 3A and 3B.**

#### **IV. STAFF RECOMMENDATION**

The Commission does not have the authority to determine or enforce violations of the California Political Reform Act. Pursuant to Section III.B.1. of the Commission's General Complaint Procedures, the Commission may refer this matter to the FPPC for further investigation.

Commission staff recommends that the Commission dismiss Complaint No. 03-16 on grounds that the facts and law fail to support a finding that a violation of the law may have occurred. It is also highly unlikely that the FPPC will pursue this matter based on the conclusions contained in their "Ewing" and "Bush" advice letters.

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.*