Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
March 1, 2010

In the Matter of)
) Complaint No. 09-15
) **SUPPLEMENTAL**

Anthony Moglia filed Complaint No. 09-15 on November 17, 2009. The Commission considered a preliminary staff report at its regular meeting of February 1, 2010. The Commission directed staff to provide additional information which is set forth below.

I. SUPPLEMENTAL FACTUAL SUMMARY

The Commission directed staff to provide additional information pertaining to 1) a copy of the actual email exchange between Mr. Moglia and Ms. Quan cited in Mr. Moglia's complaint; 2) an assessment of whether providing a hyperlink on a City-maintained website to an officeholder's campaign website violates any provision of law; and 3) the extent to which City staff time or other City resources are used to respond to inquiries or replies communicated to or through Ms. Quan's campaign website.

A. Provide A Copy Of The Email Exchange Between Ms. Quan And Mr. Moglia Provided In The Preliminary Staff Report

In his complaint, Mr. Moglia refers to an email exchange he had with Ms. Quan in which he claims to have complained to her about a "blatant violation of Penal Code 424(a) and Government Code Section 8314." He alleges that her response was "I just got another email saying this goes too far. Oh well." The Commission requested staff to obtain a copy of the actual email exchange. Ms. Quan forwarded to Commission staff a copy of the email exchange. ***Attachment 1.***

B. Does Providing A Hyperlink On A City-Maintained Website To An Officeholder's Campaign Website Violate Any Provision Of Law?

Commission staff reported in its preliminary staff report that Ms. Quan, like every other elected official in Oakland, either maintains a website on the City's computer system or uses the City's system to link a viewer to an outside website. These outside websites are maintained by the officeholders using campaign or officeholder funds. The Fair Political Practices Commission ("FPPC") has advised that constituent newsletters are an appropriate use of campaign and officeholder funds so long as the purpose of the newsletters reasonably relate to a "legislative or governmental purpose."

The preliminary staff report stated that Ms. Quan uses the City's computer system to link the viewer to her outside website [JeanQuan.org] for the purpose of maintaining an electronic newsletter and communicating with constituents. The staff report also revealed that from this outside website viewers can be linked, upon request, to a second outside website paid for by Ms. Quan's 2010 mayoral campaign committee. It is at this second website that viewers can sign-up to receive information about her mayoral campaign. It was this degree of attenuation between the City's computer system and her two outside websites that caused Commission staff to recommend the Commission take no action to refer Mr. Moglia's allegations that Ms. Quan misused City resources to another law enforcement agency.

While not reflective of the facts in this complaint, the Commission nevertheless requested an assessment of whether providing a hyperlink on a City-maintained website to an officeholder's campaign website violates any provision of law. A review of all elected officials' websites maintained on or linked through the City's computer system reveals that no elected official directly hyperlinks to a campaign website, although some allow a link between their officeholder-funded websites and a campaign-related website. As cited in the preliminary staff report, Government Code Section 8314(b)(2) creates an exception from the rule prohibiting the use of public resources for campaign or other personal uses not authorized by law. The exception applies to the so-called "incidental and minimal use" of public resources within which the exception allows "the referral of unsolicited political mail, telephone calls, and visitors to private political entities."

Thus it appears that public officials may occasionally refer visitors to "private political entities" so long as such referrals are "incidental and minimal." What is unclear is whether the ongoing access to a campaign website, directly or indirectly through the City's computer system, constitutes something more than an "incidental and minimal" use of public resources. Commission staff recommends that the Commission direct staff to work with the Office of the City Attorney to develop more specific guidelines for the use of the City's internet service by elected officials.

C. Is City Staff Time Or Other City Resources Used To Respond To Inquiries Or Replies Communicated To Or Through Ms. Quan's Campaign Website?

Several members of the Commission questioned whether communications sent to Ms. Quan's campaign website resulted in a use of City time or other resources to respond. Commission staff contacted Ms. Quan who stated that she tries to maintain a separation between campaign activities and the ongoing constituent services her office legitimately provides using public funds. She said her City office staff is instructed to refer any communications relating to her Mayoral campaign to her campaign volunteers and/or to her campaign website. She also stated that during her campaign activities, she and her supporters are sometimes approached with questions pertaining to her official duties. She said those requests are referred to her City office staff for handling. Ms. Quan thus denies using City staff time to respond to campaign inquiries other than the time spent making the

referral itself.

Respectfully submitted,

Daniel D. Purnell
Executive Director

From: Tony Moglia [mailto:tonymoglia@consultant.com]
Sent: Saturday, October 31, 2009 12:43 PM
To: Quan, Jean
Subject: Re: Happy Halloween Events & Dia do los Muertos, Instant Runoff Vote Controversy, Meet the Chief #356

Well maybe your message from campaign site
to your newsletter should be consistent!?

Sent from my iPhone

On Oct 31, 2009, at 12:01 PM, "Quan, Jean" <JQuan@oaklandnet.com> wrote:

If you were on my campaign site you would see a more partisan view. I just got another email saying this goes too far. Oh well.

Jean Quan, Council Member, City of Oakland 1 Frank Ogawa Plaza, 2nd Fl
Oakland, CA 94612 (510)238-7004 http://www.jeanquan.org
To subscribe to our weekly newsletter:
http://www.jeanquan.org/news.htm#subscribe

From: tony moglia [mailto:tonymoglia@consultant.com]
Sent: Sat 10/31/2009 11:44 AM
To: Quan, Jean
Subject: Re: Happy Halloween Events & Dia do los Muertos, Instant Runoff Vote Controversy, Meet the Chief #356

Fair is fair -

I found your **What's the Controversy Over Instant Run-Off Elections?** in your recent Oakland City Council News quite self-serving. In appearing to take the high, moral ground, by asking, Why DO **We** Care?, it was obviously evident that you were hiding behind the East Bay Express, Robert Gammon article, letting 'him' bash Perata, rather then **YOU** bash Perata. Does Gammon support you for mayor? I feel Perata's questions are legitimate and should be considered.

If you want to play that game, let's look at what the IRV would do for **YOU**. Need to raise less money, more time to campaign (increase name recognition), larger turn-out of voters in November than in June . . . Why not run your campaign 'out front' and say, publicly what you feel, rather than hiding behind others articles appearing to stand on higher moral ground? Not a quality I'd like to see in the mayor's office.

** *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.*