Approved as to Form and Legality**

_____
City Attorney

City of Oakland
Public Ethics Commission
September 3, 2009

In the Matter of)
) Complaint No. 09-06
)

David Mix filed Complaint No. 09-06 on July 13, 2009.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 09-06 alleging that City Council aide Susan Piper 1) is engaged in a "conflict of interest" involving her outside business duties, and 2) used City resources to conduct her business and promote passage of Oakland ballot measures C, D, F and H in the recent July, 2009, municipal election. ***Attachment 1.***

II. BACKGROUND

Oakland ballot measures C, D, F and H appeared on a special mail ballot election on July 21, 2009. The City Council took action to place the measures before Oakland voters in March, 2009. All four measures were designed to raise revenue or reduce expenditures to address Oakland's budget deficit. All four measures passed. Councilmember Jean Quan initially requested their scheduling before the Finance and Management Committee which she chairs. Ms. Piper works for Councilmember Quan.

III. FACTUAL SUMMARY AND ANALYSIS

Ms. Piper told commission staff that she is the sole owner of "Susan Piper Public Relations." She said she conducts the business part-time out of her home. Her current business license with the City confirms these statements. Ms. Piper told Commission staff that she works approximately "three-quarter time" (generally Fridays off) for Councilmember Quan. She says that the hours she works for Ms. Quan are "flexible" due to the nature of her job.

A. "Conflict Of Interest" Between Public And Private Duties

Mr. Mix alleges that the campaign committee, "The Oakland Fund for Measures C, D, F, and H", paid Ms. Piper $3,027.61 for consulting work during the July 21, 2009, election. He bases this assertion on a campaign filing made by the committee on July 7, 2009. ***Attachment 2.*** This "payment" and business relationship with the

committee, he asserts, constitutes a "conflict of interest" between Ms. Piper's public duties and her personal business.

As a factual matter, Ms. Piper told Commission staff that the payment in question had nothing to do with Measures C, D, F and H. The amount in question was for consulting services she performed for the committee when it was organized in opposition to Oakland ballot measure OO during the November, 2008, election.[1] A previously filed campaign report confirms this. ***Attachment 3.*** She told Commission staff that she had not been paid for this work until August, 2009. She said she performed no compensated, professional work with respect to Measures C, D, F and H in the last election.

As a legal matter, a financial "conflict of interest" exists when a local official or designated employee makes, participates in making, or attempts to influence a governmental decision if that decision is likely to have a material financial effect on the official's or employee's personal financial interests. There is nothing to suggest that Ms. Piper participated in a governmental decision involving Measures C, D, F and H that was likely to have a foreseeable, material financial effect on her financial interests. As stated above, Ms. Piper did not receive any compensation from the committee with respect to Measures C, D, F and H. Even if she did, there is nothing in the law or facts that could reasonably lead to a conclusion that any participation in the decision to place Measures C, D, F and H on the ballot (which is not alleged or established) would result in a foreseeable, material effect on any financial interest.[2]

B. Use Of City Resources To Promote Measures C, D, F and H

Penal Code Section 424(a) makes it unlawful for any city officer to appropriate public funds or resources, without authority of law, to his or her own use or to the use of another. Government Code §8314 makes it unlawful for local officers and employees to use public resources for a campaign activity, or personal or other

---

[1] Measure OO proposed an increase in the existing mandatory funding for children and youth-oriented services within the city budget. Measure OO passed by a 53 to 47 percent vote. The adoption of Measure D in the July 21, 2009, election effectively reduced the amount of that increase.

[2] What Mr. Mix may be trying to contend is that Ms. Piper's outside business is "incompatible" with her duties as a City Council aide. City Charter Section 1201 provides in part that "No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with his duties or with the duties, functions and responsibilities of the department or other agency in which he is employed." City Charter Section 1201 authorizes the City Administrator to determine which specific activities will be considered "inconsistent, incompatible or in conflict with" an employee's duties or responsibilities. Administrative Instruction No. 595 identifies the activities the City Administrator considers to be incompatible with a City employee's public duties. ***Attachment 4.*** While some of the proscriptions are vaguely worded, none specifically prohibits City employees from engaging in outside campaign consulting activities for hire. In any event, the Commission is not authorized to make determinations under City Charter Section 1201 or its implementing Administrative Instruction No. 595.

purposes which are not authorized by law. Government Code §8314 does not apply to the "incidental or minimal" use of public resources, such as the "occasional telephone call" or the referral of "unsolicited political mail, telephone calls and visitors to private political entities."

Mr. Mix alleges without any factual basis that "since [Ms. Piper's] public relations business has no established office or facilities, or designated working hours, she is using the Council office and the City facilities to conduct her business and promote these measures." Ms. Piper strongly contests this allegation. As stated above, she performed no professional work on behalf of Measures C, D, F and H. She said she conducts her business from her home, on her own time, using a separate and personal cell phone, computer and supplies. Commission staff contacted Richard Cowan, chief of staff for Ms. Quan, who stated his office maintains strict policies regarding use of City time and resources for outside activities. He said that employees are not permitted to use office telephones for personal business and that personal business calls be taken outside City Hall. He said that he instructs persons calling on political or campaign-related issues to avoid using City telephone numbers and email addresses and instructs employees to refer them instead to the appropriate outside committees, persons or organizations.

In the absence of any information demonstrating more than an "incidental or minimal use" of City resources, Commission staff concludes there is no factual basis for Mr. Mix's allegation that Ms. Piper improperly used City resources in support of Measures C, D, F and H.[3]

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss complaint No. 09-06 on grounds that there are no facts to support a conclusion that Ms. Piper violated financial conflict of interest laws or misappropriated City resources in support of ballot measures C, D, F and H.

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.*

---

[3] Complaint No. 09-06 highlights an occasional issue with respect to complaints that allege, without any factual basis, violations of law. The extent to which a respondent, or Commission staff, should be required to develop exculpatory or incriminating information, respectively, in response to unsupported allegations should be addressed in the next review of the Commission's General Complaint Procedures.