



CITY OF OAKLAND
Public Ethics Commission

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
Simon Russell, Investigator
DATE: October 21, 2019
RE: Case No. 15-04; *In the Matter of Friends of Desley Brooks for City Council 2014*

INTRODUCTION

On or around January 2, 2015, the Public Ethics Commission (“PEC”) received a formal complaint alleging that on August 23, 2013, both Melanie Shelby and her company, Gray, Greer, Shelby, and Vaughn (“GGSV”), made two \$700 contributions (the legal maximum at the time) to City Councilmember Desley Brooks. According to the complainant, these contributions that the Desley Brooks campaign received should have been aggregated under the Oakland Campaign Reform Act (“OCRA”). As a result, the Brooks 2014 campaign received a single contribution that was \$700 over the legal limit.

SUMMARY OF LAW

OCRA limits the total dollar amount that a person may contribute to a candidate for city office. For the November 4, 2014, election, a person was prohibited from making contributions in excess of \$700 to any single candidate for city office who accepted the voluntary expenditure ceiling.¹

A “person” is defined under OCRA as any individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.²

Per OCRA, there are various scenarios under which contributions made by multiple persons shall be aggregated. One such scenario (an “ownership or management” theory) states that contributions from different entities shall be aggregated if they share common ownership or management.³ Another scenario (a “direction and control” theory) states that the contributions of an entity whose

¹ Oakland Municipal Code (“OMC”) section 3.12.050. All statutory references and discussions of law pertain to the OCRA’s provisions as they existed at the time of the violations.

² OMC section 3.12.040.

³ OMC §3.12.080(A)(1)-(4). More precisely, contributions from different entities shall be aggregated under an “ownership or management” theory if any of the following apply: the entities share the majority of members of their boards of directors; the entities share three or more, or a majority of, officers; the entities are owned or controlled by the same majority shareholder or shareholders; or the entities are in a parent-subsidary relationship. *Id.*

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contributions are directed and controlled by any person shall be aggregated with contributions made by any other entity whose contributions are directed and controlled by that same person.⁴

FINDINGS

At all times relevant to this case, Shelby was the sole registered manager of GGSV. In an interview with the PEC, Shelby stated that she has always been the sole “managing director” of GGSV throughout its existence. When asked to explain how she fit into the overall leadership structure of the company, Shelby described herself as providing “leadership” for the rest of the company.

Desley Brooks was a successful incumbent candidate for Oakland City Council in the November 4, 2014, election, and accepted the voluntary expenditure ceiling for the November 4, 2014, election. At all relevant times, *Friends of Desley Brooks for City Council 2014* was Brooks’ controlled committee. Shelby made two contributions, one for \$700 from her personal account and another for \$700 from her business account, to the Brooks campaign on August 23, 2013.

The contributions at issue in this case are the following:

Date Made	Amount	To:	From:
08/23/2013	\$700	Friends of Desley Brooks	Melanie Shelby
08/23/2013	\$700	Friends of Desley Brooks	GGSV

In an interview with the PEC, Shelby confirmed that she or GGSV made all of the contributions at issue in this case.

The Brooks campaign was terminated in 2019.

PENALTY ANALYSIS

Count 1: Receiving aggregated contributions over the legal limit, OCRA 3.12.050, 3.12.080

Per the PEC’s penalty guidelines, the baseline penalty for a violation of the contribution limit is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contributions is \$700, which brings the baseline penalty to \$1,700. The Commission would generally seek forfeiture of the unlawful contribution amount but in this case, the Desley Brooks Campaign has been terminated and the account closed.

⁴ OMC § 3.12.080(C).

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The penalty guidelines also state that an advisory or warning letter may be used for any minor violations without any aggravating circumstances. An advisory letter is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of “a potential or proven low-level violation.”

In determining an appropriate penalty amount, the PEC may consider the following aggravating and mitigating factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC’s enforcement activity in a timely manner;
8. The relative experience of the respondent.

Here, the seriousness of the harm caused by this violation was minimal and the age of the case may detrimentally impact the Staff’s ability to complete a review of the allegations in light of the Respondent’s terminated campaign.

VIOLATIONS

Count 1: Receiving a Campaign Contribution Over the Legal Limit

Melanie Shelby and Gray, Greer, Shelby & Vaughn LLC, made contributions totaling \$1400 to *Friends of Desley Brooks for City Council 2014*, a committee controlled by a candidate for city office who had accepted the voluntary expenditure ceiling for the November 2014, election. Because Melanie Shelby controlled and directed the contributions for the entity, both contributions made by those entities are aggregated for the purposes of the contribution limit. As such, by receiving contributions totaling \$1400 from Melanie Shelby and her company, *Desley Brooks for City Council 2014* received \$700 in excess of the \$700 contribution limit.

CONCLUSION

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For the November 2014 election, the maximum amount that a candidate-controlled campaign committee that adopted OCRA's expenditure ceiling could receive from a single person was \$700 per election.⁵

Here, staff recommends issuing an advisory letter to the Brooks Campaign rather than pursuing a monetary fine, in the interest of justice. Prior to 2014, there had been a lack of training for candidates regarding campaign finance rules. All of the contributions were reported publicly by the committees; there was no intent to conceal. The amount of time that has passed since the alleged violations occurred, coupled with the fact that Brooks is no longer in office, also significantly diminishes the public interest in moving forward with this case. Lastly, nothing in the history of this case indicates that any of the delays in the investigation or interviews of the Brooks campaign in this case were due to bad-faith actions of either party.

As for why we are not obtaining forfeiture of the contributions made over the limit, the passage of time means that the Brooks committee is no longer in existence, so there is nothing for them to disgorge.

RECOMMENDATION

Staff recommends issuing an advisory letter to the *Friends of Desley Brooks for City Council 2014* campaign committee for receiving the aggregate contributions.

⁵ Oakland Municipal Ordinance § 3.12.050(B)(F).