
City Attorney

City of Oakland
Public Ethics Commission
June 6, 2005

In the Matter of

)
) Complaint No. 05-05
)

Orna Sasson and Cynthia Shartzter filed Complaint No. 05-05 on March 30, 2005.

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Ms. Sasson and Ms. Shartzter filed Complaint No. 05-05 alleging that City Council President Ignacio De La Fuente violated the Oakland Sunshine Ordinance and the City Council's Rules of Procedure/Code of Ethics by making a biased statement before receiving public comment on an item at the City Council's February 15, 2005, meeting. **Attachment 1.**

II. ANALYSIS

At the City Council meeting of February 15, the City Council took action on an item relating to Affordable Housing Development Financing. The item consisted of a series of eight resolutions authorizing affordable housing development loans to various projects throughout the City.

The item was previously considered by the City Council's Community and Economic Development Committee ("CEDA Committee") at its meeting of February 8, 2005. The CEDA Committee unanimously recommended adoption of the item to the full City Council. Mr. De La Fuente is a member of the CEDA Committee and voted to recommend its adoption to the City Council. The minutes of the CEDA Committee indicate that the complainants appeared and spoke against the item.

After the City Clerk called the item at the February 15, 2005, City Council meeting, Mr. De La Fuente stated:

"[The] decision of the Committee, chaired by Vice Mayor Brunner, was unanimous. . .I need a motion. . .so speakers know where we are going."

As he spoke these words, a motion was made and seconded to adopt the item pursuant to the Committee's and staff's recommendation. A total of seven speakers then

addressed the City Council, including the complainants. After brief deliberation, the City Council unanimously approved the item.

The complainants allege that Mr. De La Fuente's statement was evidence of a bias in favor of the item before he considered public testimony. Complainants contend the statement was "disrespectful" to members of the public and possibly violative of due process and the City Council's Code of Ethics.

A. Bias And Due Process

It does not appear that the City Charter nor the Commission's enabling ordinance [O.M.C. §§2.24.010 et seq] provides the Commission with the jurisdiction to determine issues of "bias." Allegations of bias are typically not enforced by governmental or law enforcement agencies -- they are private causes of actions that are asserted in court by the person whose rights to a fair hearing have allegedly been violated. In other words, the complainants would have to seek a remedy in court for such allegations.

California courts distinguish between the kind of bias that requires disqualification from decision-making proceedings, and the mere expression of opinions, attitudes or beliefs about various issues or policies. The first type of bias requires a clear demonstration of personal interest or involvement in the outcome of a decision that effectively constitutes a violation of due process and the right to a fair hearing. [See BreakZone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205, 1233-1241.] The second type does not rise to an actionable level.

B. Code Of Procedure/Code Of Ethics

The complainants allege that the statement was a violation of the City Council Code of Ethics that was intended to "honor public input and ensure courteous and attentive listening to all public discussions."

The relevant provisions of the Code of Ethics state:

"4. Provide fair and equal treatment for all persons and matters coming before the Council.

"...10. Listen courteously and attentively to all public discussions at Council meetings and avoid interrupting other speakers, including other Councilmembers, except as may be permitted by established Rules of Order."

Commission staff has consistently raised issues about the administrative enforceability of the Code of Ethics. Most are too vague and/or ambiguous to give adequate notice of what type of conduct will or will not constitute a violation. Since paragraph 12 of the Code refers to the "censure" by the City Council of any member who "willfully violates the rules of conduct contained in this Code of Ethics," the

Commission has in the past considered whether to forward specific complaints to the City Council for consideration.

As to the specific merits of complainants' contentions, Commission staff observed no evidence that Mr. De La Fuente favored one set of speakers or the other in the recognition of public speakers. There was also no indication that the speakers were in any way treated discourteously; Mr. De La Fuente's only comment was a call for a motion before the speakers were recognized. The complainants were not interrupted during their presentation. Based on these facts and the principles set forth in the City Council Code of Ethics, Commission staff concludes that none of the principles was willfully violated.

III. STAFF RECOMMENDATION

Commission staff recommends that Complaint No. 05-05 be dismissed on grounds that the facts fail to support a finding that a violation of the Oakland Sunshine Ordinance or the City Council Code of Ethics occurred.

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.*