

Item 12 - Closure Recommendation - PEC 23-38



Ryan Micik, Chair  
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TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: May 29, 2024  
RE: Investigation Summary (Closure Recommendation) in PEC # 23-38, *In the Matter of Jesse Boudart*

**CONTENTS**

**INTRODUCTION** ..... 2

**SUMMARY OF FACTS** ..... 2

    General Background on Jesse Boudart, OakDOT and the Institute of Transportation Engineers.....2

    Boudart Sends ITE Election-Related Emails in October 2023 and November 2023 ..... 4

**SUMMARY OF LAW & LEGAL ANALYSIS**..... 5

    Boudart Did Not Misuse City Resources..... 6

    Boudart Did Not Misuse His City Position..... 9

**RECOMMENDATION**.....11

1  
2  
3  
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**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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**INTRODUCTION**

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3       This case involves allegations that Jesse Boudart, a City employee working with the  
4 Department of Transportation (OakDOT), violated one or more laws under the PEC's  
5 jurisdiction when he used his City email address to send emails to other City email accounts  
6 regarding his candidacy in a private board election for the Institute of Transportation  
7 Engineers (ITE).

8       The investigation showed that Boudart did send the emails in question, but that ITE  
9 materials are frequently used by the Department in the course of its work, and ITE events are  
10 covered by professional development funds. Boudart's supervisors also indicated approval of  
11 his use of City email for purposes of an ITE board election and indicated that he might be  
12 allowed to use paid City time for board meetings, given how related ITE activity is to OakDOT  
13 work. As such, this alleged violation falls within a gray line for misuse of City resources and  
14 position. Given his supervisors' apparent blessing, we are recommending that the PEC staff  
15 defer to the judgment of Boudart's supervisors and recommend to the Commission that they  
16 (1) find that no violation occurred, and (2) issue an advisory letter recommending that  
17 Boudart's supervisors pre-approve any use of City resources for ITE-related election or board  
18 activity.

**SUMMARY OF FACTS**

21  
22       *General Background on Jesse Boudart, OakDOT and the Institute of Transportation Engineers*

23  
24       Jesse Boudart is currently a Transportation Engineer with the City of Oakland's  
25 Department of Transportation (OakDOT).  
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**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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1           The Institute of Transportation Engineers (ITE) is a nongovernmental professional  
2 association. There are several examples available online of City of Oakland materials  
3 referencing or utilizing ITE materials and standards, as well as at least one instance of ITE  
4 and the City collaborating on a transportation-related workshop.

5           City of Oakland Professional Development funds may be used to cover ITE-related  
6 expenses, such as membership dues for ITE. In addition, Ade Oluwasogo, Boudart’s  
7 Supervisor, informed the PEC that the City regularly provides financial support for OakDOT  
8 employees’ membership in organizations such as ITE. Boudart’s Fiscal Year 2023 Professional  
9 Development Allowance Form shows Boudart was reimbursed by the City in October 2023  
10 for the cost of his membership in ITE.

11           Oluwasogo (Boudart’s supervisor) also informed the PEC that City employees may  
12 attend ITE events on City time. When asked specifically if employees could use paid time to  
13 attend ITE board meetings (as opposed to just regular ITE events), Oluwasogo said that  
14 would “most likely” be approved, but would still require a “request for authorization.”  
15 Specifically:

16  
17           **PEC:**           ...[W]ould a city employee be able to use city compensated time for a  
18 board meeting of [ITE]? So like, if Boudart was secretary, could he  
19 attend an ITE board meeting? So not an event or function, but a board  
20 meeting on city compensated time?

21           **Oluwasogo:** I will say yes, that you will still have to request for authorization and  
22 approval.

23           **PEC:**           And do you think it would likely be approved?

24           **Oluwasogo:** Most likely.  
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**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
**In the Matter of Jesse Boudart (PEC # 23-38)**

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1           *Boudart Sends ITE Election-Related Emails in October 2023 and November 2023*

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3           Boudart first send an ITE board-related email from his City email address at 10:35 AM  
4 on Monday, October 23, 2023. The recipients were a combination of City of Oakland  
5 colleagues and other transportation professionals in the San Francisco Bay Are. It read in  
6 relevant part:

7  
8           Hello Fellow Transport Professionals,

9           I'm excited to announce that I'm running for Secretary for San Francisco Bay's  
10 Institute of Transportation Engineers. My platform is simple, let's reboot this  
11 section's activity to pre-pandemic levels. :)

12           There are many transportation professionals in the SF Bay Area performing awesome  
13 projects, and we should hear about them to learn and also inspire us to improve our  
14 region. I'd work toward connecting people together through various events we'd  
15 organize.

16           Hoping to receive your vote of confidence! If you are an ITE Member, elections open  
17 November 1st.

18  
19           Boudart received the following email from then-OakDOT Director Fred Kelley in  
20 response to that email:

21  
22           Excellent Jesse

23           Good luck in advance. Is it possible to make all staff aware of these meetings in  
24 advance ?

25           Thanks

26           Fred

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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1 Boudart sent a second email from his City email address at 9:00 AM on Thursday,  
2 November 9, 2023. Again, he sent it to a combination of City of Oakland colleagues and  
3 other transportation professionals in the Bay Area. It read in relevant part:

4 Fellow Transport Professionals, the time to vote in the ITE election is now!

5 Again, I'm running for the San Francisco Bay Area chapter Secretary, and would  
6 cherish your vote of support.

7 My platform is simple, let's reboot this chapter's activity to pre-pandemic levels :)

8 There are many transportation professionals in the SF Bay Area performing awesome  
9 projects, and we should hear about them to learn and also inspire us to improve our  
10 region. I'd work toward connecting people together through various events we'd  
11 organize.

12 Thank you and get out there and vote!

13 Elections close November 30th.

14  
15 **SUMMARY OF LAW & LEGAL ANALYSIS**

16  
17 Following its investigation, PEC staff analyzed the evidence gathered to determine  
18 whether any violation of the following law(s) had occurred:

- 19  
20
  - Misuse of City Resources (OMC § 2.25.060(A)(1); or
  - Misuse of City Position (OMC § 2.25.060(A)(2)).

21  
22  
23 We have determined that no violation of either law occurred. Our analysis is described  
24 below.

25 All statutory references and discussions of law pertain to the referenced statutes and  
26 laws as they existed at the time of the violations.

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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1 All definitions of terms are the same as those set forth in the Government Ethics Act  
2 (“GEA,” Oakland Municipal Code Chapter 2.25), either directly or as apparent from the  
3 context. For terms that are not defined in GEA, the definitions set forth in the state or local  
4 law that is cited as the source of the relevant provision governs its interpretation.<sup>1</sup>

*Boudart Did Not Misuse City Resources*

8 Under GEA, a Public Servant may not use or permit others to use public resources for  
9 a campaign activity or for personal or non-City purposes not authorized by law.<sup>2</sup>

**Element 1: Public Servant**

13 GEA defines “public servant” to include any full-time or part-time employee of the  
14 City.<sup>3</sup> Boudart is an employee of the City of Oakland.

**Element 2: Use of Public Resources**

18 GEA defines “public resources” to include “any property or asset owned by the City,  
19 including but not limited to... equipment... computers... and City-compensated time.”<sup>4</sup>

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22 <sup>1</sup> OMC § 2.25.030(A).

23 <sup>2</sup> OMC § 2.25.060(A)(1).

24 <sup>3</sup> OMC § 2.25.030(D)(3).

25 <sup>4</sup> OMC § 2.25.060(A)(1)(a)(iii).

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
**In the Matter of Jesse Boudart (PEC # 23-38)**

---

1           The PEC has previously found that the use of a City email account falls within the scope  
2 of this law.<sup>5</sup> Here, Boudart both sent his emails from a City account, and also sent the emails  
3 to certain City email accounts. Boudart’s emails were sent at 10:35 AM and 9:00 AM  
4 respectively, which is within normal working hours and presumably was on Boudart’s City-  
5 compensated time. As such, this element is satisfied.

6  
7           **Element 3: Campaign activity or personal or non-City purposes not authorized by law**

8  
9           GEA defines “campaign activity” as any activity constituting a contribution as defined  
10 in California Government Code Section 82015 or an expenditure as defined in California  
11 Government Code Section 82025.<sup>6</sup> However, those state law provisions only apply to  
12 candidates running for “state, regional, county, municipal, district or judicial office.”<sup>7</sup> These  
13 are limited to public offices for which contributions and expenditures are raised and reported  
14 under the PRA – not a private professional association board. Therefore, Boudart’s emails  
15 were not sent for a campaign purpose as defined under GEA.

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16  
17 <sup>5</sup> PEC # 16-14 (Count 46), *In the Matter of Thomas Espinosa*. See also PEC # 18-45 (Count 1), *In the Matter of Justin*  
18 *Berton*, in which the use of a City social media account and associated “followers” list was found to violate the  
19 *Misuse of City Resources* law, which is similar to the use of a City email account and recipient list including City  
20 employees.

21 <sup>6</sup> OMC § 2.25.060(A)(1)(a)(ii).

22 <sup>7</sup> Cal. Govt Code §§ 82015 and 82025 state that they refer only to payments for “political purposes,” which is  
23 defined under § 82025 as pertaining to campaigns for “elective office” (82015 does not provide a definition of  
24 “political purpose” but 82025 does, and we can assume that the meaning would be similar for both based on  
25 the common application of these laws). Cal. Govt. Code § 82023, defining “elective office,” does not offer a  
26 precise definition of the term “office” but based on how this law is situated within the overall context of the  
27 Political Reform Act (PRA), it is reasonable to interpret the term “office” to apply only to offices for which  
28 candidates are required to file campaign statements under the PRA listing their contributions and expenditures  
as defined under §§ 82015 and 82025.





**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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*Boudart Did Not Misuse His City Position*

No public servant may use their position, or the power or authority of their office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the public servant, to a candidate, or to any other person.<sup>9</sup>

**Element 2: “Public servant”**

It has already been established that Boudart is a public servant.

**Element 2: “Use of position, power, or authority”**

This element is not further defined in the law.<sup>10</sup> Therefore we must rely upon context, past PEC practice, and a commonsense, reasonable understanding of the term.

The PEC has little precedent for prosecuting similar cases. A comparison might be made to a case (PEC # 20-04, *In the Matter of Manuel Altamirano*) involving a City parking technician who used his non-public access to City offices and phone lines to contact two colleagues for purposes of offering a bribe. The PEC’s theory in that case was that by virtue of the official’s City position, he enjoyed access to his colleagues in a manner that non-officials did not; and that he used that privileged access for improper purposes. While not explicitly

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<sup>9</sup> OMC § 2.25.060(A)(2).

<sup>10</sup> The definition of “use” found in OMC § 2.25.060(A)(1)(a)(iv) applies only to a use of “public resources.” The phrase “public resources” does not appear in OMC §(A)(2) (the misuse of position provision), therefore the definition of “use” in OMC § 2.25.060(A)(1)(a)(iv) does not apply to it.

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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1 stated in that case, it might also be argued that the respondent only knew which particular  
2 employees to target based upon his specialized knowledge of the department that he had  
3 obtained by virtue of his City employment. The PEC found probable cause of a violation, and  
4 the matter is currently set for a hearing.<sup>11</sup>

5 Boudart's case is somewhat similar in that he used his access to his own and  
6 colleagues' email addresses to contact people for purposes of getting potential votes in the  
7 ITE election. While City email addresses are not difficult for members of the public to deduce  
8 (generally being the employee's first initial plus their last name, followed by  
9 @oaklandca.gov), Boudart did seem to have curated his recipient list based upon his  
10 knowledge of individual employee's duties and perhaps familiarity with or even membership  
11 in ITE. This is not information generally known to the public, and would have been obtained  
12 by Boudart in the course of City duties. This element is therefore satisfied.

13  
14 **Element 3: "Induce or coerce"**

15  
16 This element is not further defined under GEA. Taking a broad application of the word  
17 "induce," it is clear that Boudart's actions were an inducement in the commonsense meaning  
18 of the term, in that he was attempting to persuade his colleagues to vote for him in the ITE  
19 election. Therefore this element is satisfied.

20  
21 **Element 4: "Provide a private advantage, benefit, or economic gain to a public**  
22 **servant or any other person."**

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26 <sup>11</sup> PEC # 20-04a (*In the Matter of Manuel Altamirano*), Count 3.

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
***In the Matter of Jesse Boudart (PEC # 23-38)***

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1           This element is not further defined under GEA. But we have demonstrated above that  
2 when applied to the misuse of City resources law, Boudart’s actions appear to have been more  
3 for a public rather than a private purpose. While the definition of “private” for purposes of  
4 the misuse of City position law is not necessarily coterminous with that of the misuse of City  
5 resources law, there does not seem to be a logical or policy reason to make a distinction in  
6 this particular case. Boudart’s supervisors either expressly (Oluwasogo) or implicitly (Kelley)  
7 approved of Boudart’s actions, and the PEC is reluctant to impose its own judgment over that  
8 of the relevant Department when analyzing a potential misuse of City position, unless there is  
9 no rational basis for the Department’s conclusion. The evidence of OakDOT’s past use of ITE  
10 materials and allocation of professional development funds for ITE activities lends a rational  
11 basis to the Department’s blessing of Boudart’s actions in this case. Therefore, Boudart’s  
12 actions were for a public rather than a private end, and this element is not satisfied.

13  
14           **Element 5: “Intent”**

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16           This law requires a specific intent to induce or coerce someone in order to confer a  
17 private benefit, gain or economic advantage. Here, Boudart’s actions were for a public  
18 purpose, therefore he cannot have had the intent to use his position for a private purpose.  
19 This element is not satisfied.

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21           **RECOMMENDATION**

22  
23           Based on the foregoing, PEC staff recommends that the Commission:

- 24  
25           1. Find that Respondent JESSE BOUDART did not violate any of the laws enforced by the  
26           PEC; and

**Item 12 - Closure Recommendation - PEC 23-38**  
**Investigation Summary (Closure Recommendation)**  
*In the Matter of Jesse Boudart (PEC # 23-38)*

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2. Issue an advisory letter to Respondent JESSE BOUDART that he may want to directly obtain his supervisors' approval before using any City resources in furtherance of ITE board activities.