

Item 10b - Dismissal Letter to Complainant

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

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Ralph Kanz



Re: PEC Complaint No. 21-08; Dismissal Letter Regarding City of Oakland Redistricting Commission

Dear Mr. Kanz:

On December 23, 2021, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 21-08) that the City of Oakland Redistricting Commission may have violated an unspecified provision of the Oakland Sunshine Act and the California Brown Act by failing to post the Commission meeting notice and agenda to email subscribers for its December 13, 2021, “Special meeting.” The complaint also alleged that agenda related materials, including comments by Commission members on proposed maps or consultant plans were not made available to the public. After a close review of your complaint and relevant law, we found that there are insufficient facts to establish a violation of the Oakland Sunshine Act or any other provision within the jurisdiction of the PEC.

The Oakland Sunshine Act provides “that all local bodies calling a special meeting shall provide notice by... (3) delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber...” (OMC 2.20.070 (A) (1-3) Notice and Agenda requirements Special meetings).

The Sunshine Act also provides that “(n)otwithstanding any other provision of this ordinance, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the local body taken at the meeting for which the agenda or the agenda-related material was not timely received.” (O.M.C. 2.20.090 (D) Agenda related Materials as public records: Agenda subscribers).

Lastly, the Sunshine Act provides that “No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the item at least forty-eight (48) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethic Commission alleging the failure to permit the timely inspection or copying of a public

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record unless he or she has requested and participated in mediation as specified in Section 2.20.070 (C).” (O.M.C. 2.20.070 Limitation of Actions).

The preliminary investigation confirmed that the City of Oakland Redistricting Commission scheduled a “Special meeting” to occur on December 13, 2021. The Commission properly gave notice to the City Clerk’s Office and complied with the notice provisions of the Sunshine Act, except that the Commission did not distribute the notice, agenda and agenda-related materials to its subscriber email list.

Although the Redistricting Commission did not distribute the notice and agenda to its subscriber email list, you did have actual notice of the December 13, 2021, Special meeting. You reported that you received information about the meeting date and time from a different source and even though the meeting had already commenced (you reported you did not know how much time had elapsed from the time you joined and the commencement of the meeting), you, attended the meeting. You also gave public comment on multiple agenda items during the Special meeting, including informing the Commission that you had not received the notice or the agenda. If a complainant has actual notice (by attendance) the Sunshine Act prohibits the filing of a complaint with the Public Ethics Commission alleging a violation of the of the Sunshine Act notice provisions.

Even if you did not have actual notice, or received late notice, OMC section 2.20.090(D) absolves the Commission from having its actions invalidated merely on the grounds that an agenda subscriber failed to receive the agenda materials.

The Sunshine Act further requires that any person alleging the failure of a government body, like the Redistricting Commission, to permit the timely inspection or copying of a public record are prohibited from filing a complaint with the Public Ethic Commission, they must first request to participate in a mediation. Here, it was alleged that the Redistricting Commission failed to provide the agenda and agenda related materials including recorded (written/taped/videoed) comments by Commission members regarding proposed maps. If you had requested recorded (written/taped/videoed) comments made by Commissioners, and those records have not been provided for review, you can contact our office to request mediation.

Because the Commission’s alleged conduct does not constitute a violation of the Sunshine Act requiring action, or any other provision within the jurisdiction of the PEC, we are dismissing the allegations against the Redistricting Commission pursuant to the PEC’s Complaint Procedures. The PEC’s Complaint Procedures document is available on the PEC’s website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 9, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish.

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You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large, sweeping initial "K".

Kellie Johnson,
Enforcement Chief