

Item #6c - 19-13 Staff Report



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TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: August 18, 2021
RE: Case Analysis for PEC Complaint No. 19-13; In the matter of Matt Hummel, prepared for the September 2, 2021, Public Ethics Commission Meeting

BACKGROUND:

On September 27, 2018, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran called the Respondent Matt Hummel to warn that he would receive a “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement , failure to file an accurate Campaign Statement and Failure to file Termination. On November 11, 2018, Staff emailed the first in a series of communications that the Respondent was in violation of the Campaign Reform Act. In April 2019, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that the Respondent, despite multiple warnings and offers of assistance, did not electronically file the required campaign filings pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

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

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

TIMELINE OF EVENTS:

9/27/2018 PEC Filing Officer contacted the Respondent with a warning notice of Non-filer Non-compliance.

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10/02/2018 PEC Filing Officer telephoned the Respondent and gave him notice of Non-filer Non-compliance.

10/26/2018 PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

11/07/2018 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.

2/19/2019 PEC Filing Officer emailed a notice of Non-filer Non-compliance to the Respondent.

2/21/2019 PEC Filing Officer telephoned the Respondent regarding his Non-filer Non-compliance status.

2/27/2019 PEC Filing Officer emailed an amended Non-filer Non-compliance letter to Respondent.

3/04/2019 PEC Filing Officer emailed letter to Respondent detailing potential fines.

3/05/2019 PEC Filing Officer telephoned the Respondent's Treasurer.

3/27/2019 PEC Filing Officer emailed a 10-day notice to the Respondent that the matter of the Non-filer Non-compliance report would be submitted for formal Enforcement Procedures.

4/19/2019 Respondent contacted the Filing Officer and acknowledge receipt of the Non-filer Non-compliance notice.

4/23/2019 PEC Filing Officer spoke with Treasurer regarding the amendments that were required in the Respondent's filings.

4/25/2019 PEC Filing Officer contacted the Respondent to reiterate that the filings must be amended and the remining forms must be submitted electronically.

4/30/2019 PEC Filing Officer emailed the Respondent expressing continued concern about his non-responsiveness.

5/09/2019 PEC Filing Officer provided technical assistance to the Respondent and notified him that the campaign could not Terminate with a remaining balance.

7/24/2019 PEC Enforcement via formal letter offered to the Respondent an early resolution settlement offer.

9/17/2019 PEC Enforcement notified Respondent via formal engagement letter and warned that in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures. Mailed certified mail.

11/16/19 PEC received a signed copy of the certificate of receipt from the USPS verifying the letter was received and signed confirmation.

FACTUAL SUMMARY AND ANALYSIS:

In 2018, the Respondent was a candidate for Oakland City Council District 4 and established a committee for Matt Hummel for Oakland City Council. The Respondent had run a previous campaign for City Council in 2016. In 2018, the Respondent's campaign for City Council was unsuccessful. After the conclusion of the election season, he failed to file the following:

1. Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018;
2. (Accurate) Campaign Statement for the period of January 1, 2019 through June 30, 2019; and
3. Termination Form

The PEC Filing Officer made multiple attempts to gain the Respondent's compliance, including imposing daily late fees (\$280). Despite PEC best efforts to gain the Respondent's compliance, he did not submit the required campaign filings.

In July 2019, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent did not respond to Enforcement.

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and confirmed that the address the PEC used to mail the Non-filer notice was the same as that associated with the Respondent. Staff also forwarded an additional copy of the Non-filer Non-compliance notice, certified mail. The USPS returned proof of delivery and a signed copy of the certification card. The PEC sent several email notices and the Filing Officer spoke to the Respondent and his Treasurer multiple times in an attempt to assist Hummel in submitting his required filings. The Respondent acknowledged to Staff that he had received the Non-filer notices. He failed to file the outstanding forms or amend the incorrect forms he had filed with the PEC.

VIOLATION(S):

The Respondent violated the following Oakland Municipal Code sections:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

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On or about February 1, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of July 1, 2018 through December 31, 2018.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file an accurate Annual Campaign Statement for the period of 01/01/2019 through June 30, 2019.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

Around September 30, 2019, Respondent, Matt Hummel, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a campaign Termination form.

PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following 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.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent had experience with a campaign for elected office.
2. The Respondent has demonstrated knowledge of the rule and was aware of the filing obligations.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.