

## **Seattle Ethics and Elections Commission Regular Meeting October 1, 2008**

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on October 1, 2008 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue, Seattle, Wa. Commission Chair Michele Radosevich called the meeting to order at 4:05 p.m. Commissioners Tarik Burney, Ed Carr, Mel Kang were present and Commissioner Nancy Miller attended via conference call. Commissioners Robert Mahon and Lynne Iglitzin were absent. Executive Director Wayne Barnett and Commission staff members Gwen Ford, Kate Flack, Polly Grow and Mardie Holden were present, as was Assistant City Attorney Jeff Slayton.

### **1) Public Comment**

There was no public comment.

### **2) Approval of September 3, 2008 Minutes**

Commissioner Burney made a motion to accept the minutes as presented, which was seconded by Commissioner Carr. The motion carried unanimously.

### **3) Ethics Code Review – Disclosure of confidential information and post-employment restrictions**

The Executive Director drew commissioners' attention to their packets, which included a memo from him, a letter from Jeannie Hale of the Seattle Community Council Federation, Washington State law on post-employment restrictions, as well as post-employment restrictions from Massachusetts, San Francisco, Los Angeles, and the federal government.

The Commission agreed to start the discussion with “confidential information.” The code as it stands right now says in the title “Disclosing Privileged Information” and in the body of the prohibition it says “disclosing privileged or proprietary information.” The Executive Director believes that it is too narrow grounds on which to bar the release of information. There

is very little City information that is privileged. And the Executive Director say that he doesn't believe the word "proprietary" fits very well within the City's context. To the average person, "proprietary" means ownership and trade secrets. The Executive Director said it would be better if we use confidential information, which is what the state uses. He would define "confidential" as anything that is not accessible to someone who files a public record request. The purpose here is to try and come up with some objective standards that the Commission Commissioners can use in interpreting what this law means.

Assistant City Attorney Slayton said that the state law for municipal officers also uses the word confidential. Staff member Polly Grow said that the City also has a lot of training and systems in place for the Public Disclosure Act. The Executive Director said that if it is a public record then it is not a violation of the code to release it. It is not that you have to establish a violation of the public record act to prove a violation.

The Executive Director said that one of the problems with the code is that it is so unique that it is difficult to look for guidance to other codes. If our code paralleled the State's Code, then we could look to their interpretations for guidance. The Chair said that this does seem like a step forward and does provide a brighter line than the Commission has had in the past.

The Executive Director said that he did not expect the Commission to vote on the language. He's looking for objections to the language. His plan is to circulate the document as a "Commission Draft" at the end of the Commission's review.

Commissioner Kang stated that he would like to see the link between "confidential information" and "public records request" so that it takes into account things that could be confidential but not subject to a public records request for example, discussions during a job interview. Assistant City Attorney Slayton said that he believes it does do that.

The Executive Director made reference to the letter from Jeannie Hale, President of the Seattle Community Council Federation, which urges the Commission to draft the code so that it can be understood by laypeople. The Executive Director urged the Commission to propose changes that are as clear and precise as possible. Because employees can be fined, the code should be written in a way that is more precise than it is right now. Our goal as staff and Commission is to translate the legal language into documents, training materials, brochures and pamphlets that are accessible to City employees and understood by the layperson. Assistant City Attorney Slayton said that precision is most important, since we are imposing penalties. If the law is too vague in terms of what is or what isn't a violation it may not be enforceable.

### **Post-employment Restrictions**

The Executive Director briefly ran through the Code's current post-employment restrictions. The real meat of the section is that for one year after leaving the City a former employee cannot assist anyone in proceedings involving the agency with which they were formerly employed, or on a matter in which they were officially involved, participated or acted in the course of your City employment.

The Executive Director turned briefly to the provisions of other codes. In Massachusetts, if you participated in any particular matter it was not a year bar but a lifetime bar, and it is the same for San Francisco, Los Angeles and maybe the Feds. Once you've been involved in a particular matter you can't ever help anyone else on the other side of the table. This is worth keeping in mind since the common perception of our code is that it is harsh. This is an area where our code is less restrictive than a lot of other codes dealing with former employees.

Washington state also does not limit the bar to a year. Under state law, no former state officer or state employee may at any time subsequent to his or her state employment assist

another person whether or not for compensation in any transaction involving the former state officer or state employee participated at any time during their state employment. With our code, within one year you can be back on the other side of the table from your former colleagues dealing with exactly the same issue you handled while employed with the City.

In San Francisco and Los Angeles there are different standards for high level employees. In San Francisco you can't deal with your former department, but if you were with the Mayor's office or the Council then you cannot deal with anyone in City government. The Feds have that same concept. If you are a high level public employee there are more restrictions on who you can communicate with on behalf of other people once you've left. What you see running through these codes is a focus on barring people from using their knowledge of particular factual circumstances, particular matters, using that knowledge to benefit private parties.

Assistant City Attorney Slayton stated that what we are trying to prevent is "revolving door" influence. It is not that you care about people going out there and earning a living – that's great – but what you don't want is the people left behind at the City making judgment based on their old friends and not on the facts. You are trying to prevent the people left behind from taking that under consideration, which needs to be stopped. The harm is being done when the people left behind are influenced by it. Then the harm to the public is they are not deciding based upon what's right for the public but based on their friendship with their old colleague.

Assistant City Attorney Slayton also pointed out that you don't want to have people making the decision before they leave in anticipation of going to work somewhere else. The Executive Director said he was going to make a recommendation that the Commission amend Section 1 to make it clear that people can't participate in matters involving firms with which they are negotiating for future employment.

The major change the Executive Director is recommending is replacing the work “assist” with “appear” in the section dealing with proceedings involving an employee’s former agency. There was some consensus last year that this section was too sweeping. He took the word “assist” and made it “appear” to get at the idea that we don’t want you communicating with your former agency. The Executive Director said that we want to be very broad in barring people with even assisting with matters in which they participated. There should be a second level for appearing in any matter involving your agency whether you participated or not. He would be very comfortable with losing the word “proceedings” because he has always struggled with how narrow that term is and substitute “matter.” “Matter” is more broadly defined and includes “proceedings” but also include legislative and rule-making process and contracts.

The Chair stated it seems to her that “transactions” and “proceedings” are narrower than legislative rule-making. The Executive Director said that “transactions” is used several times in our code and is not defined. In the state code, “transactions involving the State” is essentially our definition of “matter” and for some reasons the State drafters used that term whereas other jurisdictions use the term “particular matter.” Commissioner Kang said he agree with the “assist” and “appear” business and on general matters just involve your former agency. He likes the idea of considering more than a one year bar should apply to specific matters under 2 and distinguish between the kinds of contacts, such as medium level, low level and high level employees and the kinds of contacts elected officials can have. The Executive Director said that he is partial to San Francisco’s code.

The Chair requested that the Executive Director check on the definition of “communicating” for the purpose of influencing. It was brought to the attention of the Commission by Assistant City Attorney Slayton that San Francisco also has a provision for a

waiver. The Executive Director recommended to the Commission not to get into the business of waiver requests because he believes that it draws the Commission too much into the nitty gritty of policy-making. There ought to be laws that apply across the board.

The Executive Director asked whether or not the Commission would be interested in lengthening the bar beyond a year for a particular matters in which the employee participated. The Chair does not think the life-time ban is a good idea but wanted a longer period of time, perhaps two years. Commissioners Kang, Carr and Burney agreed on the recommendation, which will be prepared as a draft and sent out. The Executive Director also brought up the question of waivers. The Commission decided against a waiver provision, which seems unnecessary since the bar is recommended to be changed from one year to two.

The Executive Director next turned to the section of the code dealing with City employees who go to work for other governments or return to work for the City. He thinks the reference to “acting on behalf of a governmental agency” lacks precision. To some extent, every government contractor is acting “on behalf of” a governmental agency. He thinks that referring to those acting “as employees or agents” of a government adds a level of precision. That is the concept that the Commission is trying to get at. There are legal concepts we can use to determine whether or not someone is acting as an agent, which would pick up lawyers in private practice acting in behalf of a governmental entity.

#### **4) Executive Director’s Report**

The Executive Director announced that the Voters’ Pamphlet has been distributed. He also stated that it takes an enormous amount of time to put together the Voters’ Pamphlet. The Pamphlet consists roughly of 16 pages and the Executive Director thanked Gwen for her hard work in getting it out. The Executive Director said that there are a couple of dismissals

contained in their packet but both are still subject to appeal so, therefore, the Commission will not be discussing those two today.

The Executive Director said that Commissioner Kang wanted to discuss the decision to release to the media his letter to Suzanne Skinner asking her to reconsider her determination that Councilmember McIver could be indemnified for his fine. The Executive Director said that he released a letter on Tuesday the 26<sup>th</sup> and by the end of that week it would have been up on our website. There was never a question of *whether* this was going to be a public document, it was only a matter of *when* it was going to be a public document. The Executive Director believes that we have an obligation when we are doing things that are newsworthy to make them known.

Commissioner Kang stated that as he understood it we do not have a policy of always releasing or always posting this information on our website. He said the question was a legal one: did the ordinance justify the payment or not? Somebody within the scope of our regulatory scheme had a dispute with us as to what the law says and what it means. Commissioner Kang said that he does not think it is appropriate to use the press to change their position on that legal point. He said that we are a public agency with legal processes that we can use, but to sic the media on someone is not proper.

The Chair said that because we are a public agency we can't do any of this in secret and the fact that there was a communication with another City department and not directly with Councilmember McIver was, in fact, an effort to avoid getting into a dispute with a particular person. It was the City Attorney's office that made the determination and it was the City Attorney's office that we responded to and the Executive Director did consult her and the Vice Chair about that as well. It seems to her that it was appropriate to engage in normal

correspondence with another City Department over a legal item that was in dispute. There is absolutely no reason why that should be secret.

Commissioner Kang stated that he has a problem when we initiate that process. He believes that the press should do its job checking out the website, etc., but when we're dealing with public officials, elected officials and people that are prominent in the community –he believes it makes the job of enforcing the Code all the more difficult if we get away from just using the legal tools at our disposal.

The Chair stated that this was not a surprise to Councilmember McIver that it was going to be released. Commissioner Kang said that regardless of whether or not the information was going to be released anyway, and regardless of the fact that Councilmember was ill-advised politically, he feels those things were not justification to release the information in the first place. The point is that the information was released not in the normal course. When we did that, we become another political player, especially when it is highly predictable that this would cause some political damage to Councilmember McIver. The Chair said this was not a special case at all. She didn't see any reason why this should not have been released or in a future case like this should not be released. It seems to her that any documents that follow onto an official enforcement action should be publicly available as soon as possible, which should be the normal expectation.

The Commission elected not to schedule a mid-October meeting to continue discussing the Code. It appears that things are moving right along in terms of the discussion on the Code.

Minutes respectfully submitted by Gwendolyn Ford, Administrative Staff Analyst.

Meeting adjourned at 5:57 p.m.