

Seattle Ethics and Elections Commission Regular Meeting October 7, 2009

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on October 7, 2009 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Robert Mahon called the meeting to order at 4:02 p.m. Commissioners Ed Carr, Lynne Iglitzin, Nancy Miller, Michele Radosevich, and Bill Sherman were present. Commissioner Tarik Burney was absent. Executive Director Wayne Barnett and staff members Bob DeWeese, Kate Flack, Polly Grow, and Mardie Holden were present, as was Assistant City Attorney Jeff Slayton.

1) Public Comment

There was no public comment.

Action Items

2a) Approval of minutes for May 6, 2009 regular meeting

The minutes were approved, with Commissioner Miller abstaining.

2b) Approval of minutes for September 2, 2009 regular meeting

The minutes were unanimously approved.

3) Consideration of settlement with City official who secured permit on terms unavailable to the general public

The Executive Director presented a settlement agreement with the Superintendent of Parks, who received a permit for his wedding at a location in Discovery Park which is not available to the general public for weddings. This violated one of the core concepts of the Ethics

Code, which is that City officials should not be entitled to things that the average citizen cannot obtain.

Commissioner Miller moved and Commissioner Radosevich seconded that the settlement be approved. Commissioner Sherman asked where the penalty falls in comparison to past resolutions. The Executive Director indicated that he attempts to make settlements proportional, in terms of the severity of offense. Last year, the Commission levied a \$1,000 penalty against Councilmember McIver for awarding a no-bid contract to a firm whose president had just hosted him at her Virgin Islands condominium. This was a significantly less serious offense than that. At the same time, the Commission had approved a \$250 penalty for a woman who had driven a City car to her second job at a mall. This offense is more serious, and Mr. Gallagher is a department head.

Commissioner Iglitzen asked if there was much negotiation before reaching agreement. The Executive Director said that the Superintendent had pointed out that he had already paid \$200 for the permit, and the Executive Director feels that the ultimate total of \$500 he will pay, including this fine, seems to be within the bounds of reason. Commissioner Carr asked about training to be done with the staff, and the Executive Director agreed that this is a ripe teaching moment. The settlement was approved unanimously and signed by the Chair.

Discussion Items

4) DRAFT Legislative Department Policy on Use of Social Media by City Councilmembers

This is a draft internal policy being considered by the City Council. Following discussion in a recent Council committee meeting, this is presented to the Commission in anticipation of several questions being directed to the SEEC regarding Ethics Code considerations. The policy

deals primarily with what City Councilmembers can or cannot do with their own blogs. The primary question is if there are limits to where Councilmembers can link from their City websites. While we don't want to limit Councilmembers from using new social media to engage with constituents, the State has said that an official web site cannot be "one click away" from campaign activity. In other words, an official site should not contain a link to a web site where there is advocacy for candidates or ballot measures. Although the State's opinion is not binding on the Commission, we do look to state interpretations when analyzing our comparable code sections.

Another question is whether or not endorsements or recommendations of commercial enterprises or products on the external blogs would constitute a violation of the Ethics Code. Under the Ethics Code we have said that City resources cannot be used for commercial purposes. Could a Councilmember review a restaurant in their blog if it is linked to from the official City site? Or tell readers that their child is selling cookies or mints? There are several other issues the Council is weighing, including when the Public Records Act may be triggered. The SEEC has not yet been asked for input, but it is anticipated, and the Commission's opinion could be guidance for other blogs in the City.

The Chair described two fact patterns that apply. In one case, a Councilmember has a link that takes the reader away from the City server to a personal blog. In another, a Councilmember has a blog directly on the City's server, in the City Council web site. The Commission has given advice to the latter Councilmember to steer clear of campaign activities on that page, but since the Commission cannot limit personal blogs, the issue is linking from the City web to an outside blog.

Commissioner Sherman questioned the practicality of some of the policy's provisions, such as admonishing against "friending" other Councilmembers, or discouraging use of electronic devices during Council meetings. He noted the policy did not specify to what electronic devices that refers, such as the use of laptops during a meeting. He supported narrowing the fields of ambiguity in the interpretation of such policies as this.

The Chair suggested that the Commission should take the lead to weigh in on specific ethics and elections concerns. He observed that elected officials are in the unique position to choose to link to a personal blog, unlike most employees. He raised the question about whether linking to personal blogs from the City web sites is a misuse of City resources. Linking from the City web to a personal blog that mixes public and private subjects may imply that the City endorses the content of the personal blog.

Commissioner Radosevich asked if telling someone how to find a web site is different from providing a direct link to the outside site. Commissioner Miller said she is not troubled by either a link or an address to a personal blog, as long as the personal blog does not promote commercial or campaign activity, in violation of the Ethics Code. She noted that it is difficult to draw a bright line between such content as "my daughter is selling cookies," and "contact me if you want to buy some." Commissioner Iglitzen questioned the Councilmember's capacity for controlling inappropriate content entered by others. Consensus was that the responsibility to manage content would be the price of maintaining a link from the City site. There is nothing wrong with the personal blog linking back to the Council site, but the opposite could present problems.

Ms. Flack said that one Councilmember's personal blog links to his Facebook page, but the Facebook page can only be viewed by people who have been "friended." The Chair said that

even if directions to a Facebook page are on a newsletter, rather than a web page, if the Facebook page has campaign activity it would be prohibited. Mr. DeWeese pointed out that the SEEC site provides elected officials an easy link to their campaign sites that they could use. Ms. Flack suggested that the City Council could choose to sponsor blogs for each Councilmember on the City Council web site, but is concerned that the public would have difficulty finding the blog.

Commissioner Radosevich said she does not think there is any harm to candidates having a link to their own campaign sites, but the Chair and Commissioner Sherman indicated concern that that would give the elected officials something not available to anyone else, and that it is imperative to create a clear line that preserves Councilmembers ability to have these new fora, but with a clear line from City sponsorship. Ms. Flack asked if the Council, as a group, could have its own Facebook page and blog for discussion of City issues. Assistant City Attorney Slayton pointed out that the Public Meetings Act may prohibit the use of such blogs for town hall types of meetings.

The Commission directed the Executive Director to conduct more research into what other jurisdictions have done, and to what extent people in the City have official or personal blogs. The Chair would like to see a legal analysis of how the current law applies to whether it is permissible to link to a personal blog from a City web, if political or commercial content is permissible, and if the Commission should recommend changes to the law to accommodate this media. The Council meeting presented some specific fact patterns the Commission could address. After receiving a legal analysis, the Commission may propose a new rule or make a recommendation to the Council. Consensus was to promote communication rather than stifle it.

4) Executive Director's Report

a) Budget

The Mayor's proposed budget includes \$611,220 for the SEEC in 2010, which takes us back to 2008 levels. The only ballot measure anticipated in 2010 is a possible public financing measure, so we do anticipate spending very little on the voters' pamphlet in 2010. The Executive Director anticipates low voters' pamphlet outlays, together with the reclassification of our administrative position and furloughs, will enable us to accomplish our required cuts.

b) Staff opening

We are very close to hiring, and expect to have a new person on board for confirmation by the Commission at the next meeting.

Dismissals Still Subject to Appeal

5) Case No. 09-1-0819-1 (Alleged falsification of documents and abuse of process)

The dismissal will be open for discussion at the next Commission meeting. The dismissal references an earlier decision by the Executive Director not to investigate an employee's use of City facilities for non-City purposes. The Executive Director did not open an investigation because he thought that in consideration of the employee's length of service, the amount of information on his City computer did not go beyond the de minimis principle.

The meeting was adjourned at 4:53 p.m.