



October 20, 2009

Re: Seattle Ethics and Elections Complaint; October 12, 2009

Thank you for contacting the Seattle Ethics and Elections Commission (SEEC). I received your October 12, 2009 memo to SEEC Executive Director Wayne Barnett, and after preliminary review of your complaint, under SMC 4.20, the Whistleblower Code and SMC 4.16 the Ethics Code, I have determined that an investigation is not warranted. I am writing to briefly share my reasoning.

The SEEC addresses violations of SMC 4.16, the Ethics Code, when current City employees' behavior falls within one of three general categories. First, we address situations when employees improperly use their position, City facilities or City property primarily for benefit of themselves or others. Second, we address situations when an employee fails to disqualify themselves from acting on behalf of the City when they or someone close to them has a financial interest in City business. Lastly, we address situations where employees accept or solicit items of value when it appears the intention was to influence a City action.

SMC 4.20 the Whistleblower Code gives the SEEC a mandate to investigate "improper governmental conduct." Improper governmental conduct is defined as a violation of federal, state and local laws; an abuse of authority; the creation of a substantial or specific danger to the public health or safety, or a gross waste of public funds. Several matters are specifically excluded from the definition;

"improper governmental action" excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, reemployment, performance evaluations. ...." SMC 4.20.850(C)(2).

You raise several concerns in your October 12<sup>th</sup> letter, all but one are beyond the SEEC mandates held in both SMC 4.16 and SMC 4.20.

The 1992 SCL contract with URS, an engineering consulting firm, and Mr. Davis' high scoring of a potential consultant both do not fall under the definition of "improper governmental conduct." Additionally, there is no evidence in your complaint that even suggests that there was a financial interest or other improper relationship existing between the vendor and Mr. Davis.



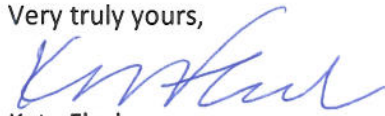
Mr. Davis' dissatisfaction with SCL management, his possible supervisory shortcomings and his possible disregard for SCL workplace expectations are all personnel or departmental /management issues that we have no authority to address.

We have made inquiries regarding Mr. Davis' possible misuse of a City owned laptop and camera provided to him as part of his City employment. I spoke with Mr. Andy Strong, Mr. Davis' manager, and found that the laptop was in fact purchased by SCL for Mr. Davis' sole use. Mr. Strong is taking steps to assure that the camera will be made available to all staff when needed.

Based on our preliminary inquiry, the SEEC will not be opening an investigation. If you would like to appeal this determination, you may do so under the Commission's Administrative Rule 4.<sup>1</sup>

Thank you for your letter. While it is my determination that these particular complaints do not violate the Ethics Code nor constitute improper governmental action, the SEEC relies on alert and engaged employees like you to report potential wrongdoing to our office.

Very truly yours,



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<sup>1</sup> Rule 4 APPEALS

- A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.
- B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.
- C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.
- D. A request for review shall state the grounds therefore, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.
- E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.
- F. The Commission shall act on the request at the next meeting at which it may be practicable by:
  - 1. deciding whether to review the Executive Director's decision; and
  - 2. if it decides to do so, either affirming, reversing, or amending the decision.
- G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.