

Seattle Ethics and Elections Commission Regular Meeting

August 1, 2012

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on August 1, 2012 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bill Sherman called the meeting to order at 4:01 p.m. Vice-Chair Tarik Burney and Commissioners Bruce Carter, Rich Cohan, Lynne Iglitzin and David Mendoza were all present. Executive Director Wayne Barnett and staff members Anthony Adams, Kate Flack, Polly Grow, and Chris Thomas were present. Assistant City Attorney Gary Smith was also in attendance.

1) Public Comment

There was no public comment.

Action Items

3) Advisory Opinion regarding offer of reduced rent to City employees

The Executive Director told the Commission that a developer proposed making up to 100 apartments available at reduced rent for one year. The units would be available to Seattle firefighters, police officers, and teachers. Because approximately 5,000 individuals would be eligible for the discount, many of them with no regulatory authority whatsoever, the Executive Director recommended that the Commission adopt an opinion finding that the program did not violate the Ethics Code's bar on employees accepting gifts that could appear intended to influence their official judgment. The Executive Director said that if firefighters and police officers did take advantage of the offer, those departments could look at whether or not

individual assignments were appropriate, but that was no reason to view the entirety of the program as an unlawful gift.

Commissioner Iglitzin asked whether the decision would set a precedent, and the Director replied that it would only to the extent the facts were similar.

Commissioner Carter moved to approve the Advisory Opinion, and Commissioner Iglitzin seconded. The Advisory Opinion was adopted on a unanimous vote.

2) Request for Administrative Dismissal of Second Allegation in Case No. 12-2-0703-1 (Part II) and

4) Appeal of Case No. 12-2-0703-1 (Part II) (1st, 2nd and 6th allegations)

Because the two agenda items grew out of the same set of facts, the Commission consolidated its consideration of the two items.

Chris Leman urged the Commission to replicate the PDC's procedures, which expressly put agencies on notice that getting advice from the PDC will not preclude an enforcement action against the agency.

Mr. Leman then presented his appeal of the Executive Director's dismissal of his allegations relating to the use of the term "Library Levy." Mr. Leman said that the term is not "objective and fair." Mr. Leman said that there is just one reference to the phrase "library levy" in the ordinance. He also said that the City Council can redirect funds by ordinance, so this cannot truly be called a library levy.

The Executive Director told the Commission that there is nothing inherently promotional about the phrase “library levy.” He also said that it is not uncommon for the City to use a short-hand term to describe a levy.

Following a vote to hear the appeal, Commissioner Mendoza said that even the *Seattle Times* in urging a vote against the levy called it a library levy. Commissioner Carter concurred, calling the use of the term “library levy” a topical statement.

Commissioner Cohan motioned to affirm the Executive Director’s dismissal, and Commissioner Iglitzin seconded that motion. The Commission voted unanimously to affirm the Executive Director’s dismissal.

The Chair then asked the Executive Director to address his request for an administrative dismissal of Mr. Leman’s second allegation, dealing with the Library’s placement of a 52-page booklet originally prepared for and presented to the City Council as part of the Library’s effort to persuade the Council to put the levy on the ballot (the “Blue Book”). Commission staff had advised Library staff to make the Blue Book available to patrons as a historical document for reference purposes, but the Library had distributed the book in a binder to each of the libraries and that book was available to patrons who did not request it. After being alerted to the fact that the book was being made available in this fashion, the Executive Director told the Library in early June that the book should be behind the desk, available only to patrons who requested a copy. In light of the fact that the book had not been distributed widely, and in light of the fact that the Library placed it behind the counter for the final stretch of the campaign, the Director recommended that the Commission dismiss the matter as a minor violation of the Elections Code.

Chris Leman told the Commission that the fact that violation occurred early in the campaign did not diminish the seriousness of the violation. He then addressed the fact that the Library still had excerpts from the book available in the libraries, addressing the impacts on all of the branches. He said that the language in the blue book is highly promotional.

The Vice Chair said that he found the quotes on each of the site-specific pages promotional. Commissioner Iglitzin said that she was not persuaded that the site-specific pages were any less promotional than the other pages of the book. The Chair said that he thought most of the text on the site-specific pages was informational, but that he found the quotes in the margins to be promotional.

In response to a question from the Chair about his rationale for seeking an administrative dismissal, the Executive Director said that he also credited the Library's responsiveness to his request to put the Blue Books behind the desk.

Mr. Leman told the Commission that the posting of the Blue Book on the Library's web site was also a misuse of City facilities to promote the Levy. Commissioner Iglitzin asked the Director what his reply was, and the Director said that a patron had to first click on a link to get information on the levy, and then click on a second link to read the Blue Book. He said this was consistent with Commission staff's admonition to the Library to make the Blue Book available to patrons as a historical document.

Commissioner Carter said that he, too, was troubled by the notes in margins of the site-specific pages. Commissioner Cohan said that he was concerned by some of the language in the discussion of needs, but thought that the description of what the levy would do was not

promotional. Mr. Leman said that he disagreed with Commissioner Cohan because the description of what the levy would do is speculative and inaccurate.

The Vice Chair said that he found the entire tone of the site-specific pages to be promotional, and not a minor violation. The Chair said he tended to agree.

The Executive Director said that if there was a problem with the posting of the site-specific pages, then the responsibility fell on his shoulders. He had advised the Library that they could post the site-specific pages in the branches. Commissioner Carter reiterated that his objection went to the quotes in the margins. The Chair said that if the Library had simply cut off the sides of each page he would not have had a problem with the site-specific pages.

The Executive Director clarified that the Commission had different issues to resolve. He was seeking an administrative dismissal of the Library's decision to have the entirety of the Blue Book available in Library branches between mid-April and mid-June. Mr. Leman was appealing his outright dismissal of the complaint regarding the posting of the site-specific pages in the branches.

Commissioner Cohan made a motion to agree with the Executive Director that it was improper to display the Blue Book, and that it was a minor violation. Commissioner Carter seconded the motion. The Commission passed on a vote of 5-1, with the Vice Chair casting the dissenting vote.

Following a unanimous vote to hear the appeal on the site-specific pages, Commissioner Mendoza made a motion to deny the appeal and Commissioner Iglitzin seconded. The Commission deadlocked on a 3-3 vote, with Commissioners Mendoza, Iglitzin and Carter voting

to deny the appeal, and the Chair, Vice-Chair and Commissioner Cohan voting to grant the appeal. Lacking a majority to affirm the appeal, the appeal failed.

Mr. Leman asked the Commission to remand the case to the staff, and the Vice Chair indicated that was not an option. The Executive Director told the Commission that he would be communicating the Commission's discussion to the Library, and that he believed the odds that they would not act on the Commission's objections to the site-specific information were remote.

Discussion Items

5) Executive Director's report

New Commissioner Lorena González was confirmed by the Seattle City Council. Commissioner González will make her debut at the October 3, 2012 Regular Commission meeting.

The Regular Commission meeting for August 1, 2012 was adjourned at 5:50 p.m.