

## **Seattle Ethics and Elections Commission Special Meeting**

**July 19, 2013**

A special meeting of the Seattle Ethics and Elections Commission convened on July 19, 2013 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bill Sherman called the meeting to order at 4:05 p.m. Vice-Chair Rich Cohan, and Commissioners Brad Axel, Bruce Carter and Kendee Yamaguchi were all present. Commissioners Lorena González and David Mendoza were absent. Executive Director Wayne Barnett and staff members Anthony Adams, Polly Grow, Kate Flack and Gary Keese were present, as was Assistant City Attorney Jeff Slayton.

### **1) Public Comment**

There was no public comment.

### **Action Items**

#### **2) Approval of minutes of June 5, 2013 regular meeting**

Vice-Chair Cohan motioned to approve the minutes from the June 5, 2013 regular meeting. Commission Yamaguchi seconded. The minutes from the June 5, 2013 regular meeting were unanimously approved.

#### **3) Opinion Request from Councilmember Sally Bagshaw**

Assistant City Attorney Gary Smith, appearing on behalf of Councilmember Bagshaw, stated that Councilmember Bagshaw is seeking the Commission's advice because she owns property that is expected to be in the Local Improvement District (LID) associated with the waterfront improvements. He urged the Commission to decide that her involvement in the Council's decisions related to the LID was permissible under the Ethics Code because she will pay for any benefits she receives, leaving her no better or worse off.

Commissioner Axel asked Mr. Smith to elaborate on his argument that Councilmember Bagshaw did not have a prohibited financial interest in the formation of and assessments made under the anticipated LID. Mr. Smith cited to several court cases holding that property ownership alone should not disqualify an elected official from participating in matters relating to an LID.

Commissioner Axel then asked whether this question had arisen before in connection with other Seattle LIDs. Steve DiJulio, an attorney at Foster Pepper retained by the City to provide advice on LID-related matters, said that he was unaware of the question ever coming up in previous LIDs. In response to a further inquiry, Mr. DiJulio said that LIDs were not unusual in the City.

Mr. Smith cautioned the Commission against setting a precedent that would bar councilmembers from participating in matters based solely on their residence.

The Chair asked if the establishment of geographic boundaries for the LID was a legislative or executive action. Mr. DiJulio explained that it is a legislative action, with the potential for aggrieved individuals to appeal through a quasijudicial process. He added that the ordinance establishing an LID (1) describes the improvements in the LID, (2) identifies the estimated costs of the improvements, and (3) describes the boundaries of the LID, together with a variety of other things.

The Executive Director said that under the City's Ethics Code legislation is included in the definition of "matter." He also said cautioned the Commission against focusing its discussion on whether or not Councilmember Bagshaw was using her office to secure some special benefit for herself. He said there was absolutely no reason to analyze Councilmember Bagshaw's questions under the sections of the Ethics Code that bar officials from misusing their office for

their private gain. Instead, the questions before the Commission relate to whether or not she has a financial stake in the outcome that could be construed as affecting her judgment, even subconsciously. The Executive Director recommended that the Commission focus its discussion on whether the Councilmember shared a financial interest with a substantial enough segment of the City's population to fit within the exception to the Ethics Code for broadly shared interests.

Councilmember Bagshaw addressed the Commission and asked them to look to the fact that she shared the same financial interest as everyone else in the prospective LID, not the entire City. The Chair said that while he sympathized with that approach, the language of the Code explicitly requires that the interest be shared with a substantial segment of the City's population.

Commissioner Axel said that he wanted harder numbers on the number of people who would be affected by the prospective LID. The Vice-Chair echoed Commissioner Axel's remarks.

Commissioner Yamaguchi asked if there were any other ways to read the language of the exception in the Code for widely-shared financial interests. She said that if there were no reasonable alternatives to the reading suggested in the Commission's prior opinion, Councilmember Bagshaw should recuse herself from participating in decisions related to the prospective LID.

The Chair suggested holding a decision over to give Councilmember Bagshaw or staff time to research the questions asked by the Vice Chair and Commissioner Axel. Commission Carter agreed that this should not be the meeting to take a vote on this Action Item. The Chair said that he hoped the Commission would be in a position to rule on the request at its regular August meeting.

## **Discussion Items**

### **4) Dismissal of Case No. 12-01-1116-1**

The Executive Director said that the allegation that the employee and the person offered a position were personal friends was not borne out by the evidence developed in the investigation, and so he had dismissed the complaint. The Commission had no questions.

### **5) On-line training update**

Mr. Keese updated the Commission on his work with the Personnel Department to develop and implement an on-line ethics training program for City employees. He said the work was coming along well, and would be ready for testing within a few weeks. Commissioner Carter asked whether there would be consequences if an employee did not score well on the exercises. Mr. Keese said that employees' scores would not be tracked, so there would be no consequences for not performing well on the exercises.

### **6) Executive Director's report**

#### **a) Public financing update**

The Executive Director reported that, per the Commission's discussion, the ordinance was drafted with a provision stipulating that appeals of the City Attorney's Explanatory Statement would be heard by the Hearing Examiner. He also reported that he had discussed with the Public Disclosure Commission (PDC) whether that agency would be willing to handle complaints alleging violations of the Elections Code by campaigns promoting and opposing the ballot measure. The PDC would be willing to enforce the state's Elections Code, but not Code provisions particular to the City of Seattle. The Executive Director did not anticipate this would be a problem, since the key difference between City and State law is the contribution limit, which does not apply to contributions to ballot measure campaigns.

**b) Budget update**

The Executive Director reported that the Commission's recommendation to fund an off-year Video Voters' Guide had survived a preliminary review by the City Budget Office. That does not guarantee that it will be in the Mayor's budget proposal, but it is a good sign

Finally, the Executive Director told the Commission that City Council updated the Commission on the Whistle Blower protection status. It was decided that an amount of \$20,000.00 will apply to emotional damages. The Executive Director asked whether or not there should be a cap for damages during a private cause of action. Chair Sherman felt a cap for damages during private cause of action was not necessary.

**The Special Commission meeting for July 19, 2013 adjourned at 5:45 p.m.**