

**Seattle Ethics and Elections Commission Special Meeting
September 10, 2014**

A special meeting of the Seattle Ethics and Elections Commission convened on September 10, 2014 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Chair Bill Sherman called the meeting to order at 4:03 P.M. Vice-Chair Rich Cohan and Commissioners Bruce Carter, Brendan Donckers, Eileen Norton and Kendee Yamaguchi were in attendance. Commissioner Brad Axel was not in attendance. Executive Director Wayne Barnett and staff members Anthony Adams, Polly Grow, Kate Flack and Gary Keese were present. Assistant City Attorney Jeff Slayton was also in attendance.

1) Public Comment

Chris Leman gave public comment. He first asked the SEEC to reconsider the Executive Director's dismissal of the complaint filed against the City's Department of Information Technology. Mr. Leman said that the Commission was provided inaccurate information and that the Executive Director did not deal with the complaint appropriately. The Chair invited Mr. Leman to submit something in writing.

Mr. Leman also urged the Commission not to approve the minutes of the July 24 special meeting. He said the summarization was prejudicial and asked for the Commission to require a transcript of the meeting.

Mr. Leman objected to the proposed settlement involving Councilmember Bagshaw because he said it only addressed part of the conduct that was the subject of the complaint. He said the Director had failed to deal with the complaint insofar as it alleged that the Councilmember had spoken in favor of the Metropolitan Parks District at a City event. Mr. Leman asked for a dismissal of that portion of the complaint so that it could be appealed.

Lastly, Mr. Leman urged the Commission to reject the advice that the Director was proposing be provided to the Seattle Channel. He said that the Director's proposed guidance would authorize officials to promote their own candidacies and ballot measures on the Seattle Channel.

Action Items

2) Regular meeting minutes for May 7, 2014

Vice-Chair Cohan moved to approve the minutes for the May 7, 2014 meeting, and Commissioner Yamaguchi seconded. The minutes for the May 7, 2014 meeting were unanimously approved.

3) Regular meeting minutes for July 2, 2014

Commissioner Donckers moved to approve the minutes for the July 2, 2014 meeting, and Vice-Chair Cohan seconded. The minutes for the July 2, 2014 meeting were unanimously approved.

4) Special meeting minutes for July 24, 2014

The Chair noted Mr. Leman's objections to the minutes, but said that the minutes are intended to serve as a summary of the meeting and the decisions made by the Commission. Since the meetings are recorded by the Seattle Channel, transcribing the entirety of each meeting is not necessary.

Vice-Chair Cohan moved to approve the minutes for the July 24, 2014 special meeting, and Commissioner Yamaguchi seconded. The minutes for the July 24, 2014 special meeting were unanimously approved.

5) Settlement with City employee who participated in matter in which a family member had a financial interest (\$750)

This was a case in which an SDOT employee, Dahvee Enciso, supervised his brother-in-law. The Director explained that he had arrived at a \$750 penalty because the case was similar to a case involving an SPU employee from a couple years ago in which that employee had paid a \$750 penalty. In that case, the employee had not been forthcoming about his business relationship with a consultant, and in this case Mr. Enciso had not been forthcoming about his familial relationship for several months.

Commissioner Carter moved to approve the settlement agreement, and Commissioner Donckers seconded. The settlement was unanimously approved.

6) Settlement with City official who brought campaign materials to a City-sponsored event (\$150)

The Director explained that this settlement arose out of the fact that Councilmember Bagshaw Settlement brought campaign materials promoting the Metropolitan Parks District to the Mayor's Office for Senior Citizen's (MOSC) coffee hour on July 17, 2014. Councilmember Bagshaw acknowledged violating the Elections Code and agreed to pay a \$150 penalty. The Director said the low fine was the result of the Councilmember's confusion over the nature of the event, and was consistent with a penalty levied several years ago for a violation of the same section of the law.

The Chair asked the Director to respond to Mr. Leman's objections to the limited scope of the settlement. The Director said that every settlement is the result of negotiations between the parties, and that he and the Councilmember were able to find common ground on the allegations involving the campaign literature. The Director said there is an exception in the law that permits elected officials to respond to direct inquiries that was relevant to the Councilmember's comments at the coffee hour. That legal issue, coupled with the inherent difficulty in

establishing who said what at an unrecorded meeting, convinced him that this settlement was an appropriate resolution of this matter.

The Chair asked the Director whether he had explored holding MOSC accountable for any Elections Code violations. The Director replied that this event could have occurred without a violation, so he did not think that it was possible to prove that MOSC had violated the law. What they had done was poorly communicate the nature of the event to the speakers.

Commissioner Yamaguchi asked whether the fine was commensurate with fines levied in other cases where campaign literature was distributed at a public meeting. The Director replied that he was not familiar with any similar cases.

The Chair invited Mr. Leman to speak, and Mr. Leman asked the Director how the public could appeal his decision not to sanction Councilmember Bagshaw's speech at the coffee hour. The Director said that if anyone was dissatisfied with the settlement, they should urge the Commission to reject it.

The Chair thanked Mr. Leman for expressing his concerns, but said that settlements provide an opportunity for people to agree to violations they might otherwise feel compelled to fight, reducing the need for litigation. He also said that settlements can help to educate people on the law. He said he would be supporting the settlement. Commissioner Carter said that he, too, would be supporting the settlement.

Vice-Chair Cohan moved to approve the settlement, and Commissioner Carter seconded. The settlement agreement was unanimously approved.

Discussion Items

7) Advice to the Seattle Channel regarding programming (Introductory discussion)

The Chair stressed at the outset that this was a Discussion item, not a draft advisory opinion.

After the Director provided an overview of his memorandum, the Chair asked the Director to clarify which elements of his memo he believed were compelled by the City's Elections Code and which were instead designed to help the Channel avoid violations.

The Director said that he would like to see the Commission create "safe harbors" for the Channel, much as the Commission had done with its Gift Rule. The point was not to say "cross this line and you have violated the Elections Code." The point was instead to give the Channel guidance on when they were "safe."

Commissioner Yamaguchi asked that staff examine how other municipal channels handle elections-related issues. The Vice-Chair commented on the slippery slope of linking to other news sites because in the current days of social media it is difficult to determine what is a news site and what is not.

Commissioner Donckers asked why the Director proposed that there be no questions from the host on ballot measures on either *Ask the Mayor* or *Council Conversations*, but that there be an opportunity for limited discussion of ballot measures on *City Inside/Out: Councilmember Edition*.

The Executive Director said that the individual-focused format of *Ask the Mayor* and *Council Conversations* made him less comfortable with discussions of ballot measures on those shows. The more rapid-fire, news-focused *City Inside/Out: Council Edition* struck him as different in a way that made him more comfortable with a brief discussion of a ballot measure.

Commissioner Norton asked about screening questions from the public on the call-in-shows. Megan Erb, a producer with the Seattle Channel, said that the Channel had changed the format of *Ask the Mayor* from a monthly call-in show to a quarterly one with a live audience. Questioners are not screened, they line up to ask their questions.

Commissioner Carter complimented the Seattle Channel on how he was treated while participating on a panel. He said he detected no desire to favor the City's position.

The Chair invited comment from Mr. Leman, who said that what was being proposed was the unraveling of some of the most important protections of the Elections Code. He said the Channel was permitted to illegally promote the Metropolitan Parks District. He said that only shows with both proponents and opponents present should be permitted on the air, and said that the Seattle Channel should no longer be allowed to provide free campaign publicity for incumbents.

Mr. Leman also said that municipal channels in other cities primarily broadcast public meetings. When they deal with ballot measure and candidates they do so in debates in which there are clear and fair opportunities for both parties to be heard.

Commissioner Carter asked Mr. Leman how he felt about the Seattle Channel covering Seattle City Council meetings, since they only feature incumbents. Mr. Leman was in favor of airing Council meetings.

Commissioner Yamaguchi asked for a staff response to Mr. Leman's statement that the Seattle Channel is the only municipal channel in the country that broadcasts interviews of councilmembers. She said it was her experience that the Seattle Channel was not unique in that respect.

Ms. Erb said that other municipal stations have programming similar to that aired on the Seattle Channel.

The Chair suggested that the Commissioners take a month to consider the issues and that the Commission take up the conversation again at its October meeting.

8) Case No. 14-2-0403-1 (DRP personnel participation in poll)

The Director summarized the case, and said that his dismissal had not been appealed.

There were no questions from the Commission on the dismissal.

9) Executive Director's report

The Director informed the Commission that the Mayor would not include funding in his budget proposal for the SEEC to hire a temporary employee to assist with auditing through the 2015 elections, when all nine Council seats are on the ballot. Instead, the budget office said that the Commission should ask for funding in a supplemental budget if the need develops to bring on a new employee.

The Commission discussed the practicality of asking for funding in 2015, since any need for a new staff member would likely emerge early in the year. Mr. Slayton said that the first quarter supplemental budget is usually submitted in April or May. The Director reminded the Commission that as an independent agency it can seek funding directly from the City Council regardless of whether the Mayor includes the proposal in his budget.

Commissioners asked that the Director place this matter on the agenda for the next meeting.

The Director also informed the Commission that with the expiration of the Seattle Public Schools contract, he had laid off staff member Chris Thomas.

The September 10, 2014 special meeting of the Seattle Ethics and Elections Commission adjourned at 5:45 P.M.