

July 5, 2018

BY EMAIL

Seattle Ethics and Elections Commission

RE: Appeal of Executive Director's dismissal of Case No. 18-2-0605-1

Introduction:

On June 5, 2018, the Freedom Foundation submitted a complaint to the Seattle Ethics and Elections Commission (SEEC) alleging eight candidates for public office in Seattle violated Seattle Municipal Code 2.04.601 by accepting campaign contributions in 2017 from labor unions that had received more than \$250,000 in the preceding two years under a contractual relationship with the city.

On June 18, 2018, SEEC Executive Director Wayne Barnett dismissed the Freedom Foundation complaint.

It is our position that the Executive Director lacked a rational basis for his dismissal and, in accordance with Rule 4 of SEEC Administrative Rules, we request the Commission reverse the dismissal.

Summary of Original Complaint:

Seattle Municipal Code 2.04.601 provides:

“No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who in the prior two years has earned or received more than \$250,000, under a contractual relationship with the City. No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution for himself or herself or for any political party, political committee, campaign committee or public office fund,

directly or indirectly from any entity or person who in the prior two years has earned or received more than \$250,000, under a contractual relationship with the City.”

Data obtained by the Freedom Foundation from the Seattle Department of Finance and Administrative Services under the state Public Records Act indicate at least eight unions received more than \$250,000 in dues and fees during this period under a collective bargaining agreement with the City of Seattle, including: (1) Professional and Technical Employees Local 17; (2) Seattle Police Officers Guild; (3) International Association of Fire Fighters Local 27; (4) International Brotherhood of Electrical Workers Local 77; (5) Laborer’s International Union of North America Local 1239; (6) Washington State Council of County and City Employees; (7) United Association of Plumbers and Pipefitters Local 32; and (8) International Brotherhood of Teamsters Local 117.

SEEC records indicate these unions contributed a total of \$79,800 to eight candidates, including: Mayor Jenny Durkan and mayoral candidates Ed Murray, Jessyn Farrell and Bob Hasegawa; City Councilmembers Lorena Gonzalez and Teresa Mosqueda; and City Attorney Pete Holmes and city attorney candidate Scott Lindsay.

Accordingly, under the plain reading of the ordinance, these candidates violated SMC 2.04.601 by accepting campaign contributions from labor unions — which are “a person or entity” — that have “earned or *received*” (emphasis added) more than \$250,000 during the preceding two years under a collective bargaining agreement — which constitutes “a contractual relationship” — with the City of Seattle.

Sufficient evidence exists to conclude the candidates had at least constructive knowledge that accepting the contributions was unlawful.

Summary of Executive Director’s Dismissal:

The Executive Director dismissed the complaint based on his view that labor unions are not city “contractors” as he chose to define them. The dismissal states:

“In interpreting this provision [SMC 2.04.601], Commission staff has looked to the plain meaning of the term ‘contractor.’ Merriam-Webster’s Collegiate Dictionary (Tenth edition) defines contractor as ‘one that contracts or is party to a contract: as (a) one that contracts to perform work or provide supplies...’ ... In other words, where payments to an entity are not for goods or services provided by that entity to the City, staff does not interpret those payments as triggering SMC 2.04.601.”

Further, the dismissal notes that, “...this staff interpretation that not every entity that receives money from the City is a contractor has not been put four-square before the Commission...”

Response to the Executive Director’s Dismissal:

The Executive Director’s dismissal lacks a rational basis and should be reversed by the Commission.

The fundamental flaw in the dismissal is the Executive Director’s reliance on the dictionary definition of the term “contractor.” While a dictionary definition may be appropriate for common usage or even for guidance as to a term’s meaning when no definition is provided by the law, it cannot supplant, for legal purposes, the definition provided by the law itself.

In this case, the term “contractor” is not used anywhere in the text of Chapter 2.04 SMC. Instead, SMC 2.04.601 simply applies the prohibition to “any entity or person who in the prior two years has earned or received more than \$250,000, under a contractual relationship with the City.” Though it doesn’t refer to such entities as “contractors,” it does not need to; the law clearly defines the prohibited entities.

The Executive Director’s dismissal acknowledges that the unions in question are “party to contracts with the City” and that “[t]he City transmits deductions from City employees’ paychecks to the unions.” In effect, he admits the unions meet the criteria established by SMC 2.04.601. Nonetheless, the Executive Director arbitrarily finds the unions’ contributions do not “[trigger] the application of SMC 2.04.601” because the unions provide no services to the city. But providing

services to the city is a criterion not found in the law itself; it is extracted from the dictionary definition of “contractor” and improperly inserted into the law by the Executive Director’s interpretation.

It might be convenient to informally refer to a person or entity prohibited from making contributions under SMC 2.04.601 as a “contractor,” but that does not mean the dictionary definition of the term gets to supplant the plain language of the law itself.

Had the law been intended to apply only to “contracts to perform work or provide supplies” as imagined by the Executive Director, it would have said as much. The fact that the law applies to “contractual relationships” involving the mere “*receipt*” of funds indicates the law was intended to apply broadly to situations beyond those involving the earning of payment by the provision of goods or services.

The Executive Director may point to the caption for SMC 2.04.601 as the justification for his use of the dictionary definition of “contractor.” The caption reads: “No Campaign Contributions from City Contractors or their PACs.” However, SMC 2.04.690 (passed as part of Initiative 122, as was SMC 2.04.601) specifically states, “Captions provided are not substantive.”

It is wholly inappropriate for the Executive Director to limit the scope of SMC 2.04.601 by substituting a substantively different dictionary definition for that provided by the plain language of the law. Even a cursory review of the principles of statutory construction confirms the Executive Director’s novel interpretation of the law must be rejected. For instance, a definitive treatise on the subject states:

- “The title cannot control a statute’s plain words...”¹

¹ 2A NORMAN J. SINGER & SHAMBIE SINGER, STATUTES AND STATUTORY CONSTRUCTION § 47:3, at 292 (7th ed. 2014)

- “When a legislature does define statutory language, its definition usually is binding on courts, even if the definition varies from a term’s ordinary meaning.”²
- “Courts accord great weight to statutory definitions because they presume such definitions accurately reflect legislative intent. A statute itself furnishes the best evidence of its own meaning, and if an act’s intent can be ascertained clearly from its own provisions, that intent prevails and courts do not resort to other aids for construction.”³
- “...[A]s a rule, the more general words of a heading do not control the more specific words of an act, except as their generality may indicate an act should have wider operation than is suggested by a statute’s other words. Most modern courts address the issues of headings and marginal notes with a simple, blanket statement noting that they ‘may consider a section’s heading and notes, however a section’s heading and notes have no effect on a statute’s scope or application because they are not part of the law.’”⁴
- “But courts do not give much, if any, weight to section headings, comments, or notes... where a statute’s meaning is otherwise clear and unambiguous.”⁵
- “...[T]hese rules mean that section headings and notes may be another helpful resource to interpret an ambiguous statute, but headings and notes are not binding, may not be used to create an ambiguity, and do not control an act’s meaning by injecting a legislative intent or purpose not otherwise expressed in the law’s body.”⁶

² *Id.* at 306

³ *Id.* at 310

⁴ *Id.* at 343-44

⁵ *Id.* at 346-47

⁶ *Id.* at 347

The Executive Director's dismissal relies on the reversal of these legal principles and fundamentally alters the meaning of the law passed by Seattle voters, narrowing it in such a way as to excuse the actions of certain unions and political officials who violated the plain language of the law.

Accordingly, the Executive Director's dismissal of the Freedom Foundation's complaint should be reversed by the Commission and appropriate enforcement action taken against the candidates and labor unions that acted in violation of SMC 2.04.601 during the 2017 elections.



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