



October 13, 2020

VIA EMAIL ONLY

Re: Case No 20-1-0914-1

Dear M*****:

Thank you for writing to express your concerns to the Seattle Ethics and Elections Commission. We received your letter on September 14, 2020.

The Commission is a body with a limited jurisdiction. Unless something falls within the prohibitions of SMC 4.16.070 it does not violate the Ethics Code, regardless of whether some – or even all – of the City’s residents believe it to be unethical. SMC 4.16.070 covers three broad areas – conflicts of interest, abuse of official position or City resources for private gain, and gifts.

The Elections Code is also implicated by your letter. That law primarily deals with contributions to and expenditures by campaign committees, but also prohibits the use of City resources to promote or oppose candidates or ballot measures.

Before turning to the issues raised in your complaint, I need to address one other preliminary matter. Page 5 of your letter begins, “While *making no accusations*, the issues outlined above are gravely concerning to Black Lives Matter Seattle King County.” SMC 4.16.090 lays out the complaint procedure under the Elections Code, and it begins with this sentence: “Any person may file a complaint *alleging a violation* of this chapter.” (Emphasis added.) It continues: “The written complaint shall state *the nature of the alleged violation(s)*, the date(s), time and place of each occurrence, and name of the person(s) *alleged to have violated* this chapter.” This is the first time in my time as Executive Director that I have received a request for an investigation that expressly disavows making any allegation of wrongdoing. I offer this reply in the interests of clarifying for you and the City’s residents where the Commission’s jurisdiction begins and ends. I cannot answer as to how the Commission would respond should you wish to appeal any or all of the conclusions I reach below.

FINDINGS

As I previewed above, the vast majority of the issues you identify are not in the Commission’s jurisdiction. Even if “members of the City Council did question African American or other people of color employed within the City of Seattle about SPD response and actions towards protesters around the East Precinct” (Incident #1), that conduct would not violate the City’s Ethics Code. Even if the “council [did not] act[] for

the benefit of public peace when engaging law enforcement outside the East Precinct” (Incident #5), that conduct would not violate the City’s Ethics Code. Even if some City Councilmembers “sought to limit, discredit, or discount information provided to City Council from local and/or state fire officials regarding hazards within, around, or under the East Precinct” (Incident #7), that conduct would not violate the City’s Ethics Code.

All but one of the incidents detailed in your letter falls outside of the scope of the ordinances the Commission administers. The incident that does raise issues within the Commission’s jurisdiction is Incident #3, which I will reproduce here:

3. Whether members of the City Council did fail to properly steward City resources to the benefit of all residents, when on or about June 9, 2020 Councilmember Sawant provided access to City Hall outside of operating hours and in defiance of a public health order to reduce the spread of COVID-19, and;

- a. Whether such an action violated Wash. Rev. Code § 42.30.030, and;*
- b. Whether or not such action was a proper or responsible use of City resources, and;***
- c. Whether or not such action was designed and intended to serve the best interests of the whole of the City, and;*
- d. Whether the involved City Councilmembers violated the rights of the public in holding a meeting where direct action was taken in attempt to remove another government official, and;***
- e. Whether such action was coordinated with others outside of the Office of the City Council, and;*
- f. Whether or not such action would be considered appropriate by a reasonable person.*

The bolded subsections (b and d) are the only ones that raise issues under the laws the Commission administers.

Subsection b raises issues very similar to those raised in a complaint that I dismissed in April alleging that Councilmember Sawant’s use of her office to promote a rent strike and a May Day car caravan to support that strike were improper uses of City resources in violation of SMC 4.16.070.B.2. The Commission unanimously upheld that dismissal at its June 10 meeting. The hour-long City Hall event on June 9 involved issues of public concern. Questions around the conduct of the police force and the budget and the City’s leadership are all legitimate issues to be discussed by the City’s elected leadership in City facilities under the City’s Ethics Code. If the meeting was in defiance of the Governor’s public health order, or RCW 42.30.030, those are matters for agencies other than the Ethics and Elections Commission to decide.

Subsection d would raise issues under the Elections Code if any organizing or fundraising to support a recall effort had taken place in the City Hall lobby at a time when the building was closed to the public. The Elections Code bars the use of City resources to promote or oppose a candidate or a ballot measure.

Every account of the June 9 event that I have reviewed makes note of calls for the Mayor's resignation at the event, and the crowd chanting "Jenny Durkan's got to go." When I asked you to clarify what actions you were referencing in your letter, you told me you were talking specifically about Councilmember Sawant's calls for the Mayor to resign at the City Hall event.

The Mayor's resignation would not involve an election. An effort to impeach her would be an exercise of the City Council's authority under Article V, Section 10 of the City Charter. Neither would trigger the provisions of the Elections Code.

CONCLUSION

I am declining the invitation to investigate the matters raised in your September 14 letter. As I said at the outset, the Commission is a body with limited jurisdiction. Your letter raises issues that the Commission is not empowered to investigate.

In declining to open an investigation, I take no position on the gravity of the issues you raise. But but they are issues traditionally resolved by elections, when officeholders are answerable to the public for their decisions while in office.

Very truly yours,

/s/

Wayne Barnett
Executive Director

Cc: Seattle Ethics and Elections Commission