

Seattle Ethics and Elections Commission Special Meeting

July 27, 2023

The July 27, 2023, Seattle Ethics and Elections Commission (SEEC) Special meeting convened in Seattle Municipal Tower Conference Room 1600 and remotely. Commissioner Susan Taylor was present. Chair Zach Pekelis, and Commissioners David Perez, Hardeep Singh Rekhi, Richard Shordt, and Chalia Stallings-Ala'ilima participated via Webex. Vice Chair Kristin Hawes was absent. Executive Director Wayne Barnett was present with staff Cliff Duggan, Polly Grow, and René LeBeau. Chrissy Courtney and Assistant City Attorneys Gary Smith and Joe Levan attended via Webex. Joining the meeting was Josie Olsen, Saka Campaign Treasurer.

The Chair called the meeting to order at 4:07 p.m.

Final Action Items

1. Request for release from Maximum Campaign Valuation

The Chair stated the only matter on the agenda was to hear the petition from Rob Saka's campaign for City Council District 1 ("D1") to appeal the Executive Director's denial of the campaign's request for release from the maximum campaign valuation. The campaign representative is Josie Olsen, campaign treasurer. No representative was present from the Stephen Brown Campaign.

The Chair requested Ms. Olsen state the basis for the appeal and asked the Director to respond to Ms. Olsen's presentation.

Ms. Olsen's understanding is that the Seattle Ethics and Elections Commission staff and the Stephen Brown Campaign worked to establish the fair market value of a billboard and mailer

directed at D1 voters and paid for originally by Eltana Bagels. Reviewing the campaign's most recent C-4 report filed on July 26, Ms. Olsen is looking at \$33,577.77 for billboard design, production, placement, and the mailer's design, printing, postage, and mailing costs. Eltana Bagels's advertising spending had an intended benefit to the campaign. The agreed-upon solution is to have the Brown Campaign repay the costs to Eltana. Ms. Olsen's argument is that not all costs from this business's coordinated advertising effort with the campaign have been accounted for. The mailer includes a coupon that says half a dozen free bagels and spread. The text on the mailer said, "more than \$25 value." Nowhere on the Brown Campaign's C-4 expenses or debts is there mention of this coupon which Ms. Olsen believes should be valued at \$25 per redeemed coupon.

Ms. Olsen highlighted a specific example. In 2016, Mark Mullet's campaign for State Senate had a similar advertising campaign expense. There was a coupon for a free ice cream cone at his ice cream store included in the candidate's campaign mailer. As the coupons were redeemed, the campaign reported an in-kind contribution for the cost of the ice cream. The Washington State Public Disclosure Commission ("PDC") had received a complaint [PDC Enforcement Case #6924] right before the 2016 Primary Election regarding these coupons. The PDC dismissed the complaint stating in part that the Mullet Campaign reported the value of the ice cream as in-kind contributions. The PDC dismissed the complaint because the value of the ice cream was reported – not because the value to the campaign was non-existent. Ms. Olsen said that the coupons have a value, it is a value to the campaign. That has not been reported to date by the Brown Campaign.

The complicating factor here, and the biggest departure from the Mullet ice cream example, is that the City Council race has a spending cap. Unlike the Mullet campaign where the coupons were redeemed and reported on a rolling basis, Seattle campaigns under the Voucher Program have

a hard stop for the value of the campaign. The bagel coupon is valid through the end of August which means the value is contingent on future events. There will be Primary expenses counting against this cap until August 31 if the coupon is considered a value to the campaign.

Ms. Olsen stated that this directly affects the other campaigns in the D1 race who have remained below the (Primary Election) campaign spending limit of \$93,750. After reviewing the July 26 reports, Ms. Olsen noted a value for the Brown Campaign at \$87,440.75 which is approximately \$6,300 away from the cap. Ms. Olsen believes it would take approximately 250 redeemed Eltana Bagel coupons from D1 residents (of the total 40,000 mailers sent) to clearly exceed the cap. This assumes no other funds are being raised the week of July 24. Ms. Olsen did not know how the mailers were evaluated whether by the total number of mailers or just the ones that went to D1 residents.

Ms. Olsen is looking at two main things. One, there's an expense here with these coupons that to-date has not been accounted for, and two, she believes that the potential for this expense puts the Brown Campaign over the spending cap. Therefore, the Saka Campaign should be released.

The Chair had a question regarding the Mullet example of ice cream cones being treated as in-kind contributions. There was no actual disposition from the PDC. The PDC dismissed it because essentially it was moot as the campaign complied with what the complainant was requesting. Ms. Olsen responded that was correct.

The Chair asked if Ms. Olsen was aware of any other opinions or dispositions from the PDC that would support the argument that free bagels should be treated as in-kind contributions. Ms. Olsen stated that they are not aware of anything in particular. However, this would be setting a

precedence that campaigns can work with businesses and provide coupons that have a stated value without a reporting obligation. So, if this value of a half-dozen bagels and spread has a \$25 value in terms of an in-kind contribution, the in-kind would be reported.

The Chair asked what the benefit to the campaign was by someone redeeming the Eltana Bagel coupon. Ms. Olsen responded it has to do with how the mailer was sent out. The mailer has the candidate's name. When the mailer is opened, there's the bagel offer. It's an advertising effect, and it is throughout the City. It could be for fundraising as people are associating the free bagels with the candidate's name recognition.

The Chair asked if Ms. Olsen was saying that a reasonable D1 resident who receives the mailer perceives it as a form of campaign messaging associated with a candidate. The resident then goes and redeems it, gets free bagels, and associates that enjoyment of a bagel with the candidate. Ms. Olsen agreed stating that the campaign is buying attention from residents with \$25 worth of bagels. In this case, Ms. Olsen believes that it would not take many City residents to redeem coupons before the Brown Campaign reaches its threshold.

Ms. Olsen asked the question of whether the Campaign or Eltana was tracking the coupon redemption. She also wondered what will stop a company from saying if you vote for this candidate, come in for your free coffee. Ms. Olsen stated that in the last week or days prior to an election, the timing does matter. If this is not addressed, is the Commission saying that if a business just waits until they are close enough to an election to get attention for a candidate that there's no reporting obligation?

Commissioner Rekhi asked about the number of bagel coupons that were distributed. Ms. Olsen said 40,000 mailers were sent out according to the report. She is not certain what the

correspondence was to figure out the reported value if going off all 40,000 mailers or just the mailers targeted to D1 voters.

Commissioner Rekhi narrowed his question to how the campaign picked who to send the free bagel coupons to. The Director had heard that it was mailed to certain ZIP Codes. Commissioner Rekhi asked if there was a correlation between those ZIP Codes and the voters that the campaign was trying to reach. The Director said there was a high correlation between D1 mailer recipients to the total mailers sent – approximately three out of four were sent to D1.

Commissioner Rekhi wondered if there were some other entities that run promos saying we don't care who you vote for, just vote – and you might get a free ice cream or something else. The Commissioner asked Ms. Olsen if that should be reported as in-kind. Ms. Olsen said that there is a difference between the civic action of voting versus voting for a specific person. The issue here is that in this mailer, there is a name associated with it. In this case, it is saying vote; and here's a name to think about with your free bagel.

Commissioner Rekhi said the reason the mailer says the name is because the candidate is the owner but wondered if there is a different reason for saying his name. Ms. Olsen believes that it is both as the candidate is the owner of the business and is running for office. Ms. Olsen does not know if this has been seen in past elections when the owner was not a candidate, and she does not know that it can be teased out. The mailer and billboards were reported as a campaign expense because they cannot be teased out.

Commissioner Rekhi asked an additional question. If a mailer said it is important to vote, show us you voted (we don't care who you voted for), and you can get a \$25 bagel coupon. If the mailer had the candidate's name on it, would you still take the same position that the mailer should

be considered an in-kind contribution? Ms. Olsen thought that could potentially change the scope. However, there is a campaign value there because when a candidate is running for office, they are running on their name and potentially their reputation. In Ms. Olsen's opinion, as long as the name is present, it would still be a campaign expense in some way, shape or form.

On hearing no additional comments or questions from the Commissioners, the Chair asked the Director to respond to Ms. Olsen's presentation.

The Director stated that this was a very difficult case. The Director believes in the end he and Ms. Olsen both share a concern with this mailer going out in the election. The Director also contemplated if it is a value to the campaign but wondered how to figure the value when nothing about the mailer, billboard or video actually says the person is running in D1 and is not identified as a candidate. There is an expectation that a lot of voters will see these signs and the mailer and think about the campaign. Coming up with a campaign value was rough, but the Director believes that the amount is fair.

The Director pointed out that the mailer went to people but never said 'vote for me'; it never said "I'm a candidate" – there was nothing about it. The Director believes that \$33,000 is "rough justice."

Commissioner Shordt asked a question regarding the ice cream matter. What was the accompanying campaign literature, and was it a similar letter that went out? Was there a valuation of the actual ice cream amount? Ms. Olsen responded the Mullet campaign had a similar mailer; it was a more typical campaign mailer that had the "paid for by" disclaimer that is critical in these types of advertising. There was a value to the ice cream. Ms. Olsen believes that by the end of the 2016 campaign, over \$1,600 worth of ice cream had been reported as an in-kind from the candidate

who was also the owner of the shop. Ms. Olsen pointed out a difference: The Mullet campaign did not have an expenditure cap, so every time a report was filed, people would be able to see how many coupons had been redeemed on an ongoing basis through the end of the campaign.

The Chair placed the link to the Mullet complaint in the Chat. [<https://pdc-case-tracking.s3.us-gov-west-1.amazonaws.com/1695/6924%20Complaint%20with%20attachments.pdf>]

Commissioner Shordt noted the relief being requested is to remove the cap on the Saka Campaign. The Commissioner wondered what this would mean for any primary or general election if the SEEC decided that this mailer constitutes \$25 for each redeemed piece of literature. The Commissioner was also curious how the Saka Campaign will capitalize on it over the next several days. Ms. Olsen said the Saka Campaign has several days to raise money. People are paying attention, as well as donors, voters, and supporters. If the cap is lifted on the Saka campaign, a lot of funds and information can get out. Ms. Olsen commented that it is a really difficult task to untangle the Primary expense against the cap. She is concerned of the precedent that this is setting. It could potentially say a business can do this or live in an area of not having disclaimers coordinating with campaigns having that name recognition and that advertising.

Based on Ms. Olsen's calculations, the Chair believed that the Brown campaign was \$6,300 away from the cap. The Chair asked the Director to confirm if that was an accurate figure. The Director believed that the campaign was at approximately \$80,000 at the end of the last reporting period and agreed that the campaign was close to the cap.

Ms. Olsen posted in the Chat how she arrived at the number. [As of the Tuesday report's, the value of this campaign is \$87,440.75 (Raised \$78,414.65 + Debt \$9026.10). Approximately \$6300 away from the cap]

Commissioner Shordt asked the Director if the SEEC does not know how many receipts/coupons have been accepted, can a determination be made if it is decided that these count as \$25 contributions. Would the SEEC be able to make a determination that the Campaign has exceeded the limit? The Director said that is not something that has been done in the past. The Director mentioned a conversation with the Brown campaign treasurer on July 28. The treasurer said 378 coupons had been redeemed at that time from around the City with very few (between 5-25) of those from D1.

The Chair said 378 was more than the 250 redeemed offers based on Ms. Olsen's calculations that would put them over the limit, but that still requires confirmation of how far the campaign is from the cap. The Director came up with a figure of \$91,865 if the 378 \$25 coupons were included which is still short of the Primary Election cap of \$93,750.

Ms. Olsen asked what the date was when the 378 coupons were redeemed. The Director responded that the Brown Campaign treasurer was not able to make this meeting but had given the Director that number the day before (July 28). The campaign can figure out how many total redeemed using the computer. However, to figure out how many of those are from D1 was not as simple as they were going through them by hand.

The Chair asked the Director if the \$33,000 that the Director and the Brown campaign worked out as a fair number to be reported include the D1 mailers? The Director said it included D1 mailers that went to registered voters. The Chair asked how many billboards were included in that amount. The Director responded that there were three billboards in D1. The Chair noted that there were four other billboards as well. The Director said that most of the remaining billboards were in North Seattle.

The Chair asked the Director to explain the exclusion of the billboards outside of West Seattle. The Director responded that the three billboards were the most visible to D1 residents. The Director believes that \$33,000 for a campaign effort that never mentions the campaign is as close as it can get.

The Chair questioned that the SEEC usually does not think of campaign expenditures being discounted based on the efficacy or inefficacy of the mailer or the billboards. If the billboards or mailers had been funded directly by the campaign, there would be no question that it would count as a campaign expenditure. The question is, if this is a campaign expenditure that seems reasonable, then shouldn't it all be counted, regardless of whether it is effective in reaching the targeted audience or not.

The Director believes the problem is that it cannot be denied there is a benefit to Eltana Bagels but how to figure out how much of this is assigned to the campaign and how much of it is assigned to the bagel company. The Chair wondered if that is really the Commission's role. If it was agreed that a purpose of the mailer and the billboard was to effectively drum up support for this campaign based on the evidence, the Chair does not think that conclusion is probably inescapable. Especially when three-quarters of the mailers went to West Seattle where there is no Eltana location. The Chair thinks that the messaging is unmistakable. When two and two are put together, this is a campaign advertisement. If it is that, then why does the value have to be parsed here and there? Couldn't it be said it is intended to benefit the campaign and it is going to be counted against the campaign?

The Director responded that it could be done but chose not to discuss further with the Chair explaining it was not the first place he would go. The Chair understood the reason and appreciated that it was brought to the Commission's attention.

Commissioner Shordt asked if that were the approach that had been taken, would the cumulative amount of the mailer and the billboard and the video have resulted in release for the Saka Campaign because the evaluation would definitely put the Brown campaign as exceeding the cap. The Director said taking the total cost of the entire advertising campaign, he thought the cap would be exceeded considering the 40,000 mailers in addition to all of the billboards. The Chair said it was reported that the cost for all of the billboards in the City was \$17,000.

The Chair asked if there were any other questions from the Commissioners, the Director, or Ms. Olsen.

Commissioner Taylor wanted to confirm that the coupon value is the fair market value and not the manufacturers cost of making the bagel. [Per Eltana's menu 6-\$3.25 bagels plus \$4.50 spread equals \$24.00 before tax.] The Director believed that the SEEC deals with fair market value. However, there may be there may be some processes where it is the candidate's own resources, or the candidate works for a manufacturer.

Commissioner Stallings-Ala'ilima heard from the conversation that the SEEC has not dealt with this issue before. One of the questions the Commissioner had is about the future elections and campaigns. If one campaign exceeds the limit then the other campaigns are also allowed to exceed the limit. Commissioner Stallings-Ala'ilima is concerned that the SEEC limits would kind of go out the door. The Commissioner would like to hear if a solution has ever been considered and if

there are other types of penalties. Is there a penalty to the Brown campaign if the Commission decides the campaign has overspent?

The Director responded that there will be a penalty for the Brown campaign. In terms of the effect on the campaign's limits, it is believed that Mr. Brown is paying for the whole campaign expense of \$33,000 out of his own pocket. The Director stated that they are trying to make sure that no candidate would want to attempt this again.

Commissioner Stallings-Ala'ilima wondered if something like this would make a candidate ineligible, i.e., not be on the ballot. The Director said that the SEEC cannot remove a candidate from the ballot. However, in terms of Democracy Voucher Program participation, it is an open question. The Director is working to come up with a penalty that will not be seen as a cost of doing business. The penalty should not make more of it nor less of it than it deserves.

Commissioner Rekhi questioned if there was another corporation or sponsor that ran the same advertisements with the candidate's name on it without saying that person is running for office, would that be treated in any particular way? The Director responded that this is a case of first impression, that it is a kind of one-off. The Director is not sure this situation has been seen before or will ever be seen again.

Commissioner Rekhi asked if something is happening at the locations as far as campaign advertising or comments made by Eltana employees. The Director responded that he has no insight into the situation. The Director said that most of the coupons are being redeemed by people who live closer to the bakeries than who live in West Seattle. Therefore, most of the people who are redeeming the coupons would not be fruitful campaign targets.

Commissioner Perez raised the concern that it is conflating business advertising with campaigning and that it seems the Commission is getting close to doing that here. Seattle will have business owners who sometimes run for office. The business owners do have to continue running their business. The Commissioner noticed documents indicated that the billboard advertising came up because Lamar Advertising (which is a long, well-known billboard company) was running a sale. The Commissioner does not know if the Commission would want to then conflate that spend. Even if it occurs in the district, it's about the business. Commissioner Perez raised a concern about releasing the campaign based on conflation of business expense with campaign expense.

Commissioner Rekhi is also concerned about campaigns skirting disclosure laws by clothing them in some sort of legitimate business expense. For example, has the candidate's name been seen on coupons or mailers in the past? If not, it is hard to know the motivations behind the company. Whether the aim is to get the candidate's name out there or whether the aim is to drive business to the bakeries.

Commissioner Perez thinks that is where the Commission starts questioning or getting perilously close considering if this was a business expense or not. Hypothetically, perhaps Eltana concluded that by putting a face on the bagel they will sell more bagels. If it says vote, it would be clear. If it says buy bagels, and the Commission is ruling campaign by implication, it is a really murky ground. The Commissioner thinks that it should be either explicitly campaigning or not.

Commissioner Perez wondered how the math would be affected if these Eltana advertising expenses were considered as campaign expenses. The Director responded that if every Eltana expense was associated as a campaign expense, it would exceed the cap. If it is done by coupons specifically redeemed by D1 voters, it would be likely under the cap.

Commissioner Perez questioned if it was being said buy coupons for D1 voters even though the coupons are the same as coupons being sent throughout the City with no verbiage difference. The Director said the campaign is looking at redeemed coupons with ZIP Codes ending in a '6'. The campaign attributes these to D1. Commissioner Perez considers then it would be a campaign expenditure because of graphic proximity. The Director reiterated that the campaign would be well shy of the cap. Commissioner Perez does not agree with the premise that the Commission should consider it a D1 expense. If the Commission considers this a complete campaign expense, which at best is mixed but not explicit, the Commissioner is concerned there is a lot of inference.

Commissioner Stallings-Ala'ilima followed with a question if the campaign's cap would be reached if the cost of the billboards was included. The Director thought that the cap would be reached. The Director questioned that if the entire billboard campaign was counted, would the Commission really want to look that deep into the campaign. Or if only the D1 billboards were counted – or if none of them were counted? The Director explained that the billboards were not a large expense. The D1-only expense is \$5,000 out of a total billboard expense of \$17,000.

Commissioner Shordt inquired if in the Director's conversations with the Brown Campaign the campaign helped provide accounting related information. Reviewing the campaign's draft C-4, is it their intention to update the form and file. The Director said that the campaign had filed their C-4 which is basically the same.

Commissioner Shordt said it seemed that the campaign is accepting that this is in many respects campaign related. The Commissioner asked if the Saka Campaign is appealing the Director's decision of not granting a release from the maximum campaign value and contribution limits. The Director responded that if he had granted the release, it would have been a release from

the contribution limit as well as from the maximum campaign valuation. However, the Director denied the campaign both of those. Commissioner Shordt wanted to clarify that the Saka Campaign is not limited to any amount over \$93,000 that they could raise in the coming days. If that is accurate, the Commissioner could use the word ‘unlimited.’

The Chair asked the Director whether this is an expenditure under the Elections Code. If the funds expended for the billboards and the mailings are properly considered campaign expenditures, the Chair assumes it would go towards the maximum campaign valuation. The Director responded yes; that is what's in the record right now; that's how we get to the \$33,000 as an expenditure. The Chair asked if more than that \$33,000 should also count as an expenditure, and it puts them over the limit, then the Commission does not have any discretion but is required to grant the Saka Campaign’s request. The Chair noted the definition of “expenditure” in SMC 2.04.010 includes “...anything of value for the purpose of assisting, benefitting or honoring any candidate, or assisting in furthering or opposing any election campaign.” The Chair views this as a very broad definition. The Director agreed.

The Chair asked the Director if there was any other SEEC Administrative Rules that further distill the definition of “expenditure” in a way that might be relevant here. The Director replied that he is not aware of any other rules.

Commissioner Stallings-Ala’ilima asked if SEEC legal counsel was present at the meeting, and whether the Commissioners might be able to go into executive session to ask questions of counsel. The Chair responded that the Commission’s legal counsel was present, and it was the Chair’s intention for an executive session to be held with counsel after questions of the applicant and the Director were finished.

Commissioner Stallings-Ala'ilima asked the Director if he had seen any discussion or interpretations of what it means to benefit a candidate, whether that is the candidate in their personal capacity versus their candidate capacity. Or is there a difference between the two? The Director said there is candidate capacity when we think about benefitting the candidate. That is part of following the Elections Code. The Director could not think of another similar case that was encountered over the last 20 years.

Hearing no additional questions, the Chair thanked Ms. Olsen and the Director for their participation. At 5:00 p.m. the Chair called for an executive session estimated to last 15-20 minutes before rejoining the regular meeting.

The regular meeting resumed at 5:37 p.m. The Chair mentioned that quasi-adjudicated matters are not subject to the Open Public Meetings Act but felt it would be helpful to come back on the record for the benefit of the public.

The Chair said during the executive session, it was realized that some of the Commissioners may choose to recuse themselves. Commissioner Perez stated that he had contributed to the Saka Campaign months prior to becoming a Commissioner and therefore recused himself from the vote. Commissioner Stallings-Ala'ilima also recused herself from considering this matter based on her familiarity with Mr. Saka and his campaign.

The Chair noted that despite the two recusals there was still a quorum of four Commissioners to vote on this matter. Based on the executive session discussion, the Chair distilled his views as follows. Under the unique circumstances presented in this particular case, the Chair finds that the funds Eltana Bagels spent citywide on both the mailers and the billboards do constitute campaign expenditures under the definition set forth in SMC 2.04.010 that must be

attributed to the Brown Campaign for City Council. With those expenditures, The Brown Campaign does exceed the maximum campaign valuation limit. Therefore, the Commission is required by the Elections Code to grant an opponent's request for relief from the maximum campaign valuation as well. It is the Chair's view to grant the appeal from the Saka Campaign, as an opponent, to exceed the maximum campaign valuation as well as it does not involve independent expenditures relief from the democracy voucher candidate contribution limits.

The Chair concluded that if the other Commissioners share that view, it would be appropriate to have a motion to grant the appeal to reverse the Director's denial and allow the Saka Campaign to exceed the maximum campaign valuation limit. Commissioner Shordt made the motion and Commissioner Taylor seconded the motion. Hearing no further discussion, the Chair asked for a vote in favor of granting the Saka Campaign's request to exceed the MCV and the Democracy Voucher Program's candidate contribution limits. The Chair, and Commissioners Rekhi, Shordt, and Taylor voted in favor of granting the request. The Chair announced the motion carried and the Director's denial of the Saka Campaign's request to exceed the MCV is reversed. The SEEC grants the Saka Campaign's request.

The Chair thanked everyone, especially the Commissioners for being able to make time for this important meeting on short notice. The Chair also thanked Ms. Olsen and the Executive Director for participating and presenting helpful facts. The Chair adjourned the July 27, 2023, SEEC Commission Special Meeting at 5:42 p.m.