

DRAFT MINUTES

Seattle Ethics and Elections Commission Regular Meeting
October 3, 2007

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on October 3, 2007 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA. Commission Chair Bruce Heller called the meeting to order at 4:04 p.m. The chair, Vice-Chair Mel Kang and Commissioners Tarik Burney, Robert Mahon, Nancy Miller and Michele Radosevich were present. Commissioner Lynne Iglitzin arrived at 4:08 p.m. Executive Director Wayne Barnett and staff members Harley Anders, Bob DeWeese, Gwen Ford and Polly Grow and Mardie Holden were present, as was Assistant City Attorney Gary Keese.

1) Public Comment

There was no public comment.

Action Items

2) Approval of meeting minutes for September 5, 2007 regular meeting

The Chair called for approval of the minutes for the September 5, 2007 meeting. Commissioner Mahon asked to delete the word “further” from the following sentence: “Commissioner Mahon made a motion to adopt Rule 9 without further amendments....”

Commissioner Miller made a motion to accept the amended minutes, which was seconded by Commissioner Radosevich. The motion passed unanimously.

3) Discussion and possible vote on amendments to Elections Code Rules.

Rule 5. The Chair asked Mr. Fred Hyde to come forward to discuss the standard for exempting campaigns from the Elections Code’s disclosure requirements. Mr. Hyde stated that since the last meeting he had a chance to meet with the City Attorney’s office to go over the proposed language as it now appears in the draft rule, which they all agreed on. He agreed with

the deletion of the last sentence in the proposed rule he'd submitted. Gary Keese agreed with Mr. Hyde's statement.

Commissioner Radosevich made a motion to adopt the modified rule, which was seconded by Commissioner Mahon. Rule 5 was adopted unanimously.

Rule 6. The Executive Director provided the Commission with a revised attribution rule. It incorporates the Los Angeles Rule and melds it with the State's rule to create a laundry list of situations in which we will aggregate contributions of different persons. The major change is in Section A. It eliminates the prior rule and replaces it with (a) the test from the state and (b) the bright line test from Los Angeles based on objective standards. The Executive Director said that he spoke to Richard Vincent, a treasurer, who had some concerns about the rule regarding contributions from local and national unions, but that rule mirrors the state's rule. The Executive Director stated that he had not received comments from any other treasurers.

Commissioner Mahon asked why under most of the rules we're aggregating contributions, but then in subsections 13 and 14 we're instead attributing contributions. He suggested that subsections 13 and 14 belong in 6.C, where we have Attribution Rules telling treasurers that certain contributions should be treated as contributions from someone else, rather than aggregating the contributions.

In response to a question from Commissioner Iglitzin, Commissioner Radosevich explained that the purpose of the rule is to prevent persons or corporations who control other persons or corporations from using those persons or corporations to contribute to a candidate in excess of the limit that the law allows. The rule is designed to be a test to decide when a person or corporation "controls" another person or entity.

In response to a question from Commissioner Miller, the Executive Director said that Los Angeles's rules have been in place for approximately three years and, according to L.A.'s Executive Director, the rules have worked very well. The Executive Director said that treasurers may be able to answer questions about the composition of a company's board with a search of the Secretary of State's online records.

Commissioner Radosevich made a motion to adopt Rule 6, which was seconded by Commissioner Miller. The motion carried with 6 in favor and Commissioner Mahon opposed.

Rule 7. The Executive Director spoke with the PDC about the requirement that campaigns report payments to subvendors. This is an auditing tool for us. Staff member Polly Grow last month called a treasurer because the payment they reported for Robocalls was lower than what we've seen on other reports. The rule helps us to "follow the money." His other concern is strategic. If we were to eliminate this rule it could trigger a scenario whereby someone would complain to the PDC, which would have no choice but to take up an enforcement matter involving a Seattle candidate, since the violation wouldn't be actionable by the Commission. For thirty years, the PDC has ceded the field of regulating Seattle races to this agency. If we began to adopt standards that differ from the state's, arguably we subject our candidates to a second level of potential enforcement and lend credence to the argument that the Commission's work should be performed by the PDC.

Commissioner Radosevich made a motion to adopt Rule 7, which was seconded by Commissioner Miller. The motion carried with 5 in favor and Commissioners Burney and Mahon opposed.

Rule 8. The Executive Director reviewed the Federal law governing independent expenditures, and reported that it is far more complex than our rule. He recommended that the

Commission adopt Commissioner Mahon's initial suggestion, which was to make the "per se" rule apply only to persons with material inside knowledge regarding a campaign.

Commissioner Mahon made a motion to adopt Rule 8, seconded by Commissioner Miller. The motion passed unanimously.

Rule 10. Prohibition Against Use of Public Office Facilities in Campaigns

Commissioner Radosevich made a motion to adopt Rule 10, which was seconded by Commissioner Mahon. Commissioner Miller made a friendly amendment to change the last line of paragraph A from "as a part of their normal conduct" to as a part of its normal conduct." The amendment passed unanimously.

Rule 11. Winding up a Campaign

Commissioner Radosevich made a motion to adopt Rule 11, which was seconded by Commissioner Mahon. The motion passed unanimously.

Rule 12. Commissioner Mahon asked whether or not State law still requires the public inspections that no one ever comes to. Staff member Polly Grow said that State law does make records available, but by appointment only.

Commissioner Mahon made a motion to adopt Rule 12, which was seconded by Commissioner Miller. The motion passed unanimously.

Rule 13. Miscellaneous

Commissioner Radosevich made a motion to adopt Rule 13, which was seconded by Commissioner Kang. The motion passed unanimously.

Rule 14. The Executive Director said that our rule barring a whole set of people from making office fund contributions is on weak ground. The better argument is that it is beyond our rulemaking authority to do this. He is proposing to eliminate the rule, but recommend that

Council adopt the restriction by ordinance. The Executive Director said that he had not spoken to the Council about this matter, because the Commission had not formally adopted his recommendation and he didn't want to get out ahead of the Commission.

The Commission decided to leave the rule in place until such time as the Council enacts these changes. No motion was needed for this rule.

The Executive Director provided some background on the proposed ordinance. It incorporates the bar on contractors making public office contributions into the Seattle Municipal Code Section that governs public office contributions. He tried to tighten up the language since this will be law if it is adopted. The policy, though, will remain the same. He said that he would present this to Councilmember Sally Clark because the SEEC is under her jurisdiction.

Commissioner Radosevich made a motion to recommend the Ordinance to the Council, which was seconded by Commissioner Mahon. The motion passed unanimously.

The Executive Director said that the rules are not effective until they are filed with the City Clerk. The SEEC can direct him to hold off on filing them with the City Clerk's Office. He recommended that campaigns be allowed to file their last major report, due December 10, before the new rules go into effect.

4) Discussion and possible vote on amendments to the Administrative Rules

The Executive Director reported that since the last discussion he'd made a couple changes to the administrative rules. The new draft vests in the Commission, not the Chair, the authority to waive the rules and to authorize a non-party to participate in enforcement proceedings. He's also added to the rule regarding preliminary investigations and complaints the requirement that the complainant should provide some factual basis for the complaint. Under our current rules, if someone says "I read on a blog that the Mayor took a bag of cash from a

developer” technically, he would have to assume those allegations are true and initiate a full investigation. The standard really doesn’t work. He’d like a rule that at least provided for the ability to ask a complainant to back up a complaint with something concrete. This doesn’t say that the Executive Director cannot initiate an investigation based on those bare facts, but makes it clear that the office can’t be required to go on fishing expeditions. If the Commission disagrees with a dismissal, they can always overturn it.

Commissioner Miller made a motion to approve the Administrative Rules, which was seconded by Commissioner Radosevich. After some discussion about whether the Chair or the Commission should have the authority to waive deadlines, the Commission concluded its discussion of the rules, and agreed to revisit the issue in November.

Discussion Items

6) Dismissal of Case No. 07-2-0816-1 (Allegation that Mayor used City resources for campaign purposes)

There were no comments or questions.

7) Late Filing penalty for Tim Burgess for Seattle City Council 2007 (\$100)

There were no questions or comments.

8) Process for filling vacancy on the Commission

The Executive Director gave the Commissioners a copy of a draft press release and explained his proposal for considering applicants. There is no exemption under the Open Meetings Act for choosing a new commissioner, so this all should be conducted in public session. The press release has not been sent out pending the Commission’s approval. He stated that Michael Gilmore handles the Mayor’s Boards and Commissions and has shared with him his list of people in the community who they get in touch with when there is an opening.

Commission Iglitzin made a motion to send out the press release and utilize the public process proposed by the Executive Director, which was seconded by Commissioner Miller. The motion passed unanimously, with Commissioner Heller abstaining.

The Commission then took up the issue of whether to elect a new chair to serve out the remainder of Commissioner Heller's term as chair. The term of the newly elected Chair would end January 1, 2008. The Executive Director stated that the Commission will take nominations in November and vote on the nominations in December for the Chair to start serving in January. Vice Chair Mel Kang announced that he was not interested in serving out the remainder of Commissioner Heller's term as Chair. Commissioner Miller made a motion to elect Commissioner Radosevich as the Chair to complete the remainder of Commissioner Heller's term as Chair, which was seconded by Commissioner Mahon. The motion passed unanimously, with Commissioner Heller abstaining.

9) Discussion on Mini Campaign Reporting Rules

Staff explained the rationale for exempting campaigns that don't raise or spend a great deal of money from the disclosure requirements.

10) Executive Director's Report

The Executive Director said that Gwen had again done "Yeoperson's" work producing the City's portion of the General Election Voters' Pamphlet. He also announced that Mardie Holden and Polly Grow did a great job with the Video Voters' Guide. He said that the Voters' Pamphlet and Video Voters' Guide fly below the Commission's radar, but absorb an enormous amount of staff time. They are two projects that take up a lot of time and attention during the elections and everyone did a great job.

The meeting adjourned at 5:35 p.m. to honor Bruce Heller, who is leaving the Commission for an appointment to be a Superior Court judge.

Minutes respectfully submitted by Gwen Ford, Administrative Staff Asst.