

Seattle Ethics and Elections Commission Regular Meeting
May 7, 2008

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on May 7, 2008 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue, Seattle, Wa. Commission Chair Michele Radosevich called the meeting to order at 4:05 p.m. Vice-Chair Robert Mahon and Commissioners Tarik Burney and Lynne Iglitzin were present. Commissioners Ed Carr, Mel Kang and Nancy Miller were absent. Executive Director Wayne Barnett and Commission staff members Bob DeWeese, Gwen Ford, Polly Grow and Mardie Holden were present, as was Assistant City Attorney Gary Keese.

1) Public Comment

There was no public comment.

2) Approval of April 2, 2008 Minutes

Commissioner Kang was out of town and submitted his proposed change to the draft minutes via email. Commissioner Kang proposed changing the second sentence in the second paragraph on page three to read: "He said that where a complaint turns solely on a credibility determination that determination should be made by the Commission, as the trier of fact, and not by the Executive Director. Dismissing such a complaint, in effect, discredits the party filing the complaint." Commissioner Mahon made a motion to adopt the minutes as amended, which was seconded by Commissioner Burney. The amended minutes were adopted unanimously.

2) Discussion and vote on settlement with Councilmember Godden regarding violation of SMC 2.04.300.

The Chair recognized David Coons who handed out a statement to the Commissioners outlining his disagreement with the penalty levied against Councilmember Godden for violating the Elections Code. Mr. Coons stated that there are several questions that he wants addressed by

the Executive Director during this discussion and first is how the parties arrived at the number of 33 violations that are listed in the Settlement Agreement. How was the determination made between whether or not it was a violation?

Mr. Coons read his prepared statement to the Commission, advocating for a higher penalty. Mr. Coons said his concerns were that setting too low a fine for this misappropriation of city resources will leave the door open to more and similar abuses by incumbents, and provide a green light for the use of city staff to assist Councilmembers' campaigns. It will set a precedent for using City resources to give incumbents advantages over their challenges with no real consequences.

The next person to speak against the Settlement Agreement was Elaine Packard. She thanked the Commission for making the decision to follow through on the complaint, and said she saw this as a vindication of David Coons's original submission. She expressed two issues that troubled her. First, she believes the fine is too low. According to the Code, the Commission is permitted to fine up to \$5,000 per violation. A Councilperson has committed 33 violations of this particular code and is fined \$150, which is equivalent to \$4.54 per violation. Was there a formula used? How did the Commission come up with \$150? This is a very low number. Second, Ms. Packard said that she was troubled by the Executive Director's statement in December that the complaint came in close to the date of the election and he thought that going public would affect the election. She feels that this statement itself should be looked into and the Commission is the one that should do so.

The next person to come forward to speak against the settlement was David Ward. He handed out a copy of a statement to the Commission. He said that the \$150 fine was so small

that it shows clear disdain for elections ethics. Mr. Ward recommended that paragraphs 5 and 12 of the Proposed Settlement be removed.

The Chair clarified that was a settlement and said that without a release there is no settlement.

Joe Szwaja also spoke against the proposed settlement. He thanked the Commission for taking the time to consider their appeal and for voting to uphold their appeal and for taking this matter seriously. Mr. Szwaja made it clear that it was not right for Councilmember Godden to use her city staff during her campaign and said that he personally had to cut his work hours to 60% and refuse help from some of his colleagues who offered to work on his campaign. They are being paid by the taxpayers to deliver services to the school and not his campaign. The city staff is being paid to work on key issues and not to work on Councilmember Godden's campaign.

Mr. Szwaja also raised concerns regarding the statement made by the Executive Director in December as to why he dismissed the complaint. Mr. Szwaja also said that he was troubled by the fact that he was unable to get a copy of the tape/minutes from that meeting.

The Chair then turned to the Executive Director to explain the settlement. The Executive Director said that after the Commission voted 4-2 to reverse the dismissal, staff went back to the drawing board and conducted a full investigation. Staff interviewed Councilmember Godden and the members of her City Council staff.

Following the investigation, the Executive Director determined that on 33 occasions Councilmember Godden had included details on her calendar which he believed had the affect of assisting her campaign. Those were the allegations on which we settled. We did not find evidence that Councilmember Godden's scheduler was scheduling campaign events on City

time. The evidence we developed showed that the scheduler was communicating with campaign staff, who was scheduling campaign events. This was in accordance with the April, 2005 letter. The issue was the times when there was too much detail in those campaign events, detail which benefited her campaign.

With regards to the fine, we try to be consistent. In the spring we brought you a \$250 penalty for David Namura, Councilmember David Della's Chief of staff, who had drafted a Pro-rebuild editorial on city time, which was the subject of a ballot initiative. The Commission reduced that penalty to \$150. The Executive Director said that he believes that in the end this violation was comparable to that violation. It is 33 instances, but he thinks of this as being a "course of conduct" violation.

Commissioner Mahon asked for clarification of the fact that Councilmember was not violating the Ethics Code 33 times but in authorizing her staff to calendar campaign events as she did had committed a single violation.

The Executive Director stated again that the fine is consistent with past penalties. In regard to his statement in December that he did not want to influence the election, he may have chosen his words poorly, but what he was getting at was that the complaint came in October and it was simply impossible for us to have an investigation and resolve this complaint prior to the election.

The Chair asked the Executive Director to address a question that was raised by several people at the meeting, which was how would we deal with this issue going forward. The Executive Director said that a clarification will go out to city offices making clear that the information that is acceptable is time, place and contact information. If this settlement is approved, then we will go out and make it clear to the officeholders what can and cannot appear

on their city calendar, and once that advice is clear and if there are future violations of that clear advice then he believes we would be looking at penalties that might exceed \$250. Right now, though, there is advice out there that is subject to misinterpretation. If the settlement is approved a letter will go out to Councilmember's office clarifying the new rules of the road.

Commissioner Mahon made a motion to approve the settlement agreement regarding violation of SMC2.04.300, which was seconded by Commissioner Iglitizin. The motion carried unanimously.

Commissioner Mahon asked whether or not the manner in which the Commission handles settlements exposes the settling party to liability if the Commission does not approve the settlement. Mr. Keese said that he did not think so, because the agreement states expressly that it is null and void if not approved. The Executive Director said that it is best to have the subject vested in the process and have the document signed before presenting an agreement to the Commission for approval.

4) Advisory Opinion 08-03 (Revised)

The Executive Director noted that the 1992 opinion on moonlighting was attached to this opinion, and said that he had revised the draft of Advisory Opinion 08-03 to reflect the Commission's thoughts at the last meeting. The revised draft clarifies circumstances under which an employee can moonlight or do outside work that is similar to what they do for the City.

The Executive Director noted one change that had been recommended by the Law Department. The opinion should be changed throughout so that it no longer says that the work "cannot" be done on City time, but that the department "will not allow" the work to be done on City time.

Commissioner Mahon commended the Executive Director for the redraft of Advisory Opinion 08-03 and said that he appreciated his efforts. Commissioner Mahon made a motion to approve Advisory Opinion 08-03, which was seconded by Commission Iglitizin. The motion carried unanimously.

Before moving on to the next agenda item, Executive Director Barnett brought to the attention of the Commissioners one more action item, which is scheduling a hearing for the Commission to decide the case involving Councilmember McIver. He said that he and Councilmember McIver's counsel had tentatively agreed to a hearing on June 18th. Commissioner Iglitizin stated that she would be out of town on that date. With only three commissioners at the meeting who could commit to a hearing date of the 18th, the Executive Director withdrew his scheduling request and indicated that he would try to schedule a hearing in the near future.

5) SMC 4.16.070.2.c and employees working behind the scenes on matters involving their department.

The Executive Director stated that this issue comes up very rarely. The issue is the circumstances under which a city employee can assist someone "behind the scenes" in a matter before their department. There is a city department that had just done a review and is looking at people providing assistance not behind the scenes, but openly. In the context of that review, a question arose about whether or not employees could perform work that they didn't sign their name to but somehow had a hand in preparing.

The two past opinions that discuss assistance to others that would violate the Ethics Code hinge on the employee's relationships with others in the department. It seems inherent in that analysis that your workmates have to know of your involvement. There are a couple problems with this analysis, though. First, it makes the code less restrictive for current employees than for

former employees. Second, it relies on the silence of the employee's partners or clients. What do we do if they reveal the employee's role?

The Executive Director proposed broadening the analysis to include as "reasonable persons" the employee's prospective customers. It seems likely that an employee's work provides them with a competitive advantage when it comes to getting clients. A reasonable client, given an opportunity to hire someone who works for the permit-issuing department, or the contract-awarding department, would likely choose to hire an "insider." The Commission agreed with the Executive Director's analysis.

6) Financial Interest Statements

The Executive Director stated that we're still counting forms, but we are at about 85% reported. After the initial count, we will go back and follow-up with those employees that have not returned their forms. In 2007, we ended up with approximately a dozen employees that did not file who were active city employees at that time.

7) Executive Director's Report

The Executive Director announced that we are currently hiring to replace Harley Anders. We conducted nine first round interviews and by the end of this week will be able to invite back some finalists. Ideally, we will have someone to present to the Commission at our next meeting. The Commission has to confirm new staffmembers.

The Campaign Public Financing Advisory Committee's first meeting is tomorrow, with Commissioners Radosevich and Mahon as members. That process is scheduled to last approximately six weeks.

Meeting adjourned at 5:10 p.m.

Minutes respectively submitted by Gwendolyn Ford, Administrative Staff Analyst