

Seattle Ethics and Elections Commission Special Meeting

May 29, 2019

A special meeting of the Seattle Ethics and Elections Commission (SEEC) regarding an Appeal of the City Attorney's Explanatory Statement for Seattle Proposition No. 1 convened on May 29, 2019 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Brendan Donckers called the meeting to order at 4:03 p.m. Vice Chair Hardeep Singh Rehki and Commissioners Eileen Norton, Susan Taylor and Richard Shordt were present. Commissioners Nick Brown and Bruce Carter were absent. Executive Director Wayne Barnett was joined by staff members Polly Grow, Marc Mayo and Chrissy Courtney. Assistant City Attorneys Jeff Slayton and Gary Smith were in attendance, with Gary Smith representing the City Attorney's Office.

Before proceedings began, Commissioner Taylor disclosed that she is a member of the Friends of the Library association.

Chris Leman, the appellant, was invited to speak regarding his written appeal. Mr. Leman asked if the commission was planning on going into executive session and the Chair informed him that this was a quasi-judicial matter and as such was exempt from the Open Public Meetings Act. Mr. Leman averred that the Voters' Pamphlet is a very important document and is the responsibility of the SEEC and must be held to the highest standards of impartiality. In particular, Mr. Leman's complaint was that the language and topics and the order of them in the explanatory statement are subjective and exhortative and do not meet the requirements of law to be concise and factual but are so subjective that they distract and motivate voters in certain ways. Mr. Leman is bringing a ballot title challenge to the King County Superior Court and there is a

law regarding ballot titles that he would like applied to the explanatory statement that requires impartiality.

The words “renew”, “enhance”, “community”, and “investment” are used inappropriately per Mr. Leman. Mr. Leman said the use of the word “community” in the explanatory statement becomes an advocacy word and that “enhance” is highly colored language and is not used in the levy ordinance in the same way and “continuing” or “increasing” would be preferred alternatives. According to Mr. Leman the use of the word “investment” is using inferences and metaphors that are business related and it is an advocacy word not used in the proposition in the same way.

Mr. Leman continued to address paragraphs two and three and asked that in place of the subjective and exhortative language of the law department’s original statement to actually quote the provisions in the levy ordinance. Mr. Leman believes the reader requires more explanation of the budget process and using illustrative examples that cannot be promised is a different matter than the use of illustrative examples when there are more than a few examples and certain ones have been chosen. Mr. Leman brought the minutes from the June 6, 2012 SEEC meeting and the explanatory statement from 2012 ordinance and passed those documents around and encouraged the commissioners to discuss his appeal.

Assistant Attorney Gary Smith representing the City Attorney’s office stated that the clear and concise language of the explanatory statement was created with the voter’s perspective in mind. The questions that were being answered were those such as What is the proposition? What is the purpose of this increase? How much will it cost? And what will it bring to the city? Mr. Smith said these main points are in the introductory paragraph due to space constraints and because there are likely to be readers who only read the introductory paragraph. Mr. Smith also

noted that the 500-word limitation constraint was kept in mind with the illustrative examples of the six program elements that are in the levy and noted that the budget process was addressed in the second to last paragraph. Mr. Smith stated that rather than quote the provisions of the levy, it seemed more useful to describe the purpose of the levy and the process of allocation of funds, and the six categories of library services defined in the levy.

Other objections that the City Attorney's Office (CAO) believes warrant attention are Mr. Leman's objection to the use of the words "enhance", "investment", and "renew" as key words, and Mr. Smith stated the renewal language is commonly used in ballot titles or levy measures in other jurisdictions. Mr. Smith continued that since the statement is not a legal document a Merriam-Webster dictionary definition rather than a legal definition was deemed more appropriate. "Enhancement" is used in the ordinary sense of the definition. The business definition of "investment" is a standard usage. Mr. Smith noted that the suggested amendments under the Hours and Access paragraph would be acceptable to the CAO as well as the suggested revisions in paragraph four, as long as the 500-word limitation is met as well. Commissioner Norton requested that an Oxford comma be inserted as well, between Green Lake, and University since they are separate branches. Mr. Smith requested that the commission uphold the remainder of the prepared statement.

Attorney Slayton offered that the standard of review is not clearly defined, but the result should be a fair and concise explanation of the levy, and said the de novo review would be appropriate and is the most friendly to the appellant. Vice Chair Rehki asked if the SEEC could edit the statement and Mr. Slayton said that the commission could rewrite the entire statement if they so choose. The Chair asked if the 2012 levy has any bearing on the current levy and Mr.

Slayton said no. The Chair reassured Mr. Leman that no decisions would be made outside the public view. The Chair called for questions for either Mr. Leman or Mr. Smith.

Commissioner Shordt asked both if they would like to have the title settled during the current meeting or wait for Mr. Leman's filed suit to be resolved in superior court. Mr. Smith said they would like a decision to be made as expeditiously as possible because they believe that regardless of how the title issue goes in court, it is unlikely that it would materially affect the statement. Mr. Leman said that he believed it would be a terrible mistake to rush into a decision and that there would be a significant chance that confusion would be compounded. Mr. Leman urged the commission to hold on this item and requested a chance to respond to the CAO's response to his brief. Mr. Smith indicated that the response was sent to Mr. Leman via email, Mr. Leman said he did not receive the email and the Chair indicated he would give Mr. Leman a chance to speak.

Commissioner Norton asked when the superior court was due to rule on the ballot title and Mr. Smith answered that there was no current hearing scheduled. Commissioner Norton said that she believed the title was a different matter and she did not believe the commission needed to wait to rule on the explanatory statement. Mr. Slayton concurred that there was no need to wait as did Vice-Chair Rehki. The Director noted that Seattle Municipal Code requires quickness. Mr. Leman was given a copy of the CAO's response to his brief to review and the Chair noted that Mr. Leman would be given additional time for his response.

The Chair called for executive session for legal advice at 4:46 p.m. with the intent to return at 5:00 p.m. while Mr. Leman read the CAO rebuttal and prepared to respond. The commission returned from executive session at 4:52pm and the Chair agrees with the compelling argument that decisions will be on the record, however the quorum will be lost at 5:30 p.m. so

the attempt will be made to fit everything into the next 36 minutes. Mr. Leman said he was startled that the brief he submitted to the SEEC was not then submitted to the CAO. The majority of the suggestions were agreed to by the CAO, but per Mr. Leman, none of the important suggestions. Vice-Chair Rehki asked if the redline version is the one that Mr. Leman wants to be used and Mr. Leman confirmed it was the version he wants to be considered.

The Chair asked the commission to begin working with the actual language. Vice-Chair Rehki said he would not adopt the first paragraph changes suggested by Mr. Leman and Commissioner Taylor concurred. Commissioner Taylor does not like taking out the description of the usage, which as a voter is the main thing of concern. Vice Chair Rehki, Commissioners Taylor, and Norton agree the uses should be in the statement. Commissioner Norton would not be opposed to pulling up the language about the prior levy.

The commission discussed the suggested revisions and the Chair noted that he believed the direct quotation of the ordinance defeated the purpose of a concise and clear statement. Commissioner Norton said she did not feel the need to accept any of the changes to the second paragraph and Commissioner Taylor concurred that it seemed to make things more confusing. Commissioner Norton said that the illustrative examples of the six categories are similar but the additional language that has been suggested is just more words that say the same thing. Vice Chair Rehki agreed with Commissioner Norton. Commissioner Norton also proposed that the language about the budget process could be pulled up or be left below the examples. Commissioner Shordt stated that he believed the budget discussion should be towards the end because it conforms to the standard and reads and flows better in that arrangement.

Vice Chair Rehki suggested that the third section be kept as originally proposed by the CAO version, and the program elements and subsections additional language suggested be struck

because it is not concise or helpful. Commissioner Norton said that she would not accept any of the suggested changes to the original for the third section. Discussion continued on a suggested line by line basis.

Mr. Leman stated that the commission failed to discuss his substantive points, and Commissioner Norton disagreed that the distinction being drawn was a real difference. Vice Chair Rehki informed Mr. Leman that these documents were reviewed outside of the meeting and this is not the first reading for anyone present.

Mr. Leman said that he can't understand why the law department didn't respond to his brief. Mr. Leman also said the illustrative examples were to be defined differently in his version of the statement and he doesn't feel that any of the commissioners have acknowledged the language stating that the funds will be spent on those categories is not accurate, and that the statement is false because the budget process is different. Mr. Leman stated that he will be required to appeal this decision already. Commissioner Norton said that Mr. Leman's additions in section four were not helpful, they were confusing. Vice Chair Rehki concurred with Commissioner Norton.

Mr. Leman says quoting from the ordinance is critical and it has to be accurate and he is desperate to get the understanding of the commission. Mr. Slayton said that this levy and the 2012 levy are distinct, and the 2012 levy does not apply to the current ordinance. The current levy language says that there will be investment in the six categories identified. The first definition of illustrative is exactly what was intended. The budget process will determine spending in the six categories and the language in the ordinance reads that the six categories will have investments. Commissioner Taylor asked if they could choose only three of the six

categories and Mr. Slayton said the language indicates that they have to spend something in each of the six categories, but they cannot use the money for purposes outside of the six categories.

Vice Chair Rehki noted that if they only spend in some of the categories, that is an issue that would be taken up by a different body, the issue before the commission is just the statement and whether it accurately represents the ordinance. Commissioner Shordt agrees the “shall” and the “will” as used in the ordinance mean the six categories as represented seem accurate.

Mr. Leman interjected that he would like to rebut Mr. Slayton’s statement that the 2012 levy and the current levy have nothing in common. The Chair noted that the commission was not held to a stare decisis doctrine that binds the commission to what happened in 2012, the review was de novo. The Chair offered to Mr. Leman that the commission has been persuaded on some issues, and called for any final comments from the commission. The statement as edited by the commission was 505 words. Mr. Leman said the decision being reached was faulty and he believed the voters would be misinformed and he would be appealing the decision.

A motion to adopt as final the commission-edited version of the statement was made by Commissioner Norton and seconded by Vice-Chair Rehki. The motion passed unanimously.

Mr. Slayton offered a procedural suggestion that the code says the decision is final and there shall be no recourse to a hearing examiner. In 2012 Mr. Leman also moved to have reconsideration and Mr. Slayton wanted clarification on whether the commission will hear an appeal. The Chair indicated that there was no appeal beyond the commission and there was no dissent from the rest of the commissioners. The Chair thanked Mr. Leman and the commissioners for their time.

The Special Commission meeting of May 29, 2019 adjourned at 5:23 p.m.