

## **Seattle Ethics and Elections Commission Regular Meeting**

**December 2, 2020**

A regular meeting of the Seattle Ethics and Elections Commission (SEEC) convened remotely. Commission Chair Nick Brown called the meeting to order at 4:01 p.m. Vice Chair Richard Shordt and Commissioners Bruce Carter, Brendan Donckers, Susan Taylor and Judy Tobin were present. Commissioner Hardeep Singh Rekhi was absent. Executive Director Wayne Barnett was present and was joined by staff members Chrissy Courtney, Polly Grow, René LeBeau, and Annie Tran, along with Assistant City Attorneys Teresa Chen and Gary Smith. The Chair thanked everyone for coming and gave congratulations to the commissioners and staff for getting through the year remotely and began the meeting with the first action item.

### **Action Items**

#### **1) Minutes for October 7 regular meeting**

The first action item was a review and approval of the meeting minutes from the October 7, 2020 meeting. The Chair asked if there were any questions or comments regarding the minutes, and there were none. A motion to approve the minutes was made by Commissioner Taylor and seconded by the Vice Chair. The motion was approved unanimously.

#### **2) Election of officers**

New officers were to be elected for 2021 as this was Chair Brown's last meeting as Chair and as a member of the commission. The Chair opened the floor to comments. The Vice Chair thanked the Chair for his hard work during this very straining year as well as the Director and noted that in the past the Vice Chair has moved to the Chair position and he indicated that he was very interested in being Chair and has enjoyed his work on the commission. The Vice Chair noted he had spoken with previous Vice Chair Commissioner Rekhi and Commissioner Rekhi

indicated he would be interested in being Vice Chair again. The Chair said he would support the nominations of both, and Commissioner Carter agreed, so there was a nomination by the outgoing Chair and seconded by Commissioner Carter. Commissioner Taylor agreed. The Chair held separate votes to approve current Vice Chair Shordt to become Chair and Commissioner Rekhi to become Vice Chair in 2021, and both passed unanimously. Chair Brown and Vice Chair Shordt continued in their respective roles for the remainder of the meeting.

**3) Executive Director's merit leave determination (possible executive session)**

The Chair noted that the evaluation criteria had been disseminated regarding merit leave awards. Since there are no merit pay raises for managers this year due to budget constraints, the only consideration before the commission was merit leave. The Chair asked the Director if he had any comments and the Director said that it had been a strange year; the office made significant budget cuts due to the pandemic by keeping positions vacant, and with the unrest this year there was a lot of time spent this year explaining why the SEEC was not the proper venue to be pursuing concerns for many of the concerns received, while still trying to preserve respect for the commission as an institution. The Chair asked if there were any questions from the commissioners. Commissioner Carter asked what was previously approved for the merit leave. The Director said that it had either been five or six days. The Vice Chair said that last year the Director had requested a reduction and the commission disagreed. Commissioner Tobin said to get through the year just as a person is worth a lot, and to shepherd the commission, the Director deserved the full six days. Commissioner Donckers said he agreed with the Director's recollection of previous practices and would recommend six days. Commissioner Carter treated Commissioner Donckers statement as indicating a motion to award six days of a merit award, which was seconded by Commissioner Carter. The motion was unanimously approved without

an executive session. The Chair thanked the Director, noting that this year has been difficult for everyone, but seeing the Director and the staff move the work forward has been commendable and that he had earned the six days. The Director thanked the commissioners for the vote of confidence.

### **Discussion Items**

#### **4) Voucher candidates switching races**

The Chair asked the Director to lay out the issues from the memo. The Director said that with the three positions for city council, city attorney and mayor all on the ballot this year, it would be possible for candidates to switch offices partway through the election year, and a plan to address such a situation should be created. The memo provided was broad at this point, but there were three areas under consideration; the qualification process, the maximum campaign valuation (MCV), and what would happen to the vouchers already assigned and/or redeemed before the switch was sought. The Director said he recommended starting with the first area and working through the memo.

The Chair agreed it would be appropriate to lay out some rules ahead of time and asked the Director about the timing to adopt rules to best provide notice for prospective candidates. The Director answered that by the new year would be best, and by March at the latest, but even if there is not an adopted rule by then, there will at least be guidance from the discussion at this meeting that can be shared with potential candidates.

The Chair said he would begin with the qualification process; from his reading of the memo there was no clear or preferred choice from staff on the various options and asked if that was accurate. The Director agreed, noting that there could be stronger recommendations, but staff wanted to leave it to the commission's discretion as the policymaking body.

Beginning with the qualification issue, the Vice Chair said he wanted to ask about whether a candidate could transfer the contributions for a city council position to a mayoral or city attorney position since it was possible to do so between city council positions 8 and 9 for non-voucher candidates. The Director answered that non-voucher candidates currently had to get permission from the contributor to transfer their contributions to a new position, but for those candidates who were switching between the same positions, such as between city council positions 8 and 9, permission was not required in order to transfer the contributions. The Director noted that one of the questions before the commission was whether contributor permission should also be required for voucher candidates.

The Chair asked the Director what the process was for candidates switching positions in terms of how they get the permissions from the contributors and what documentation was required. The Director answered that it begins with the SEEC providing the candidate with a list of the contributors to whom they can make their appeal, since the law assumes that the first contributions raised are the first contributions spent. So only unspent funds from contributors would be the ones who required permission. The Director noted that in the non-voucher context, campaigns do not have to provide the documentation of the permissions gathered to the SEEC, but the campaigns are required to keep it on file in case questions arise. The Director said he believed that City Attorney Holmes was the most recent example of such a situation, where he switched from running for city council to city attorney and in that case email permissions were accepted from contributors. The Director also noted that the Washington State Public Disclosure Commission (PDC) does not accept text messages as a method for communicating permissions. Commissioner Tobin said it sounded incredibly complicated and asked if vouchers were going from one candidate to another within the district races, then would they have to go through the

same process. The Director answered that with districts it seemed very remote due to the residency requirements for candidates. Commissioner Tobin said if someone switched from city council to mayor then she would have a problem with switching the vouchers over because she might support them to be on city council, but maybe not as mayor. The Director agreed and said that was why it was suggested that permission be required from contributors to voucher candidates as well.

Commissioner Carter said that if someone wanted to switch from city council position 8 to 9 that seemed like it should be unhindered, since they are both at large positions, it was the same constituency, and the contributor's purpose was the same. The Chair said that it may be a more significant issue for the other hypotheticals but if a preferred candidate was already running for one of the city council positions then it could be an issue. Commissioner Carter asked the Chair if that meant he thought that candidates should not be allowed to switch automatically between city council position 8 and 9. The Chair said yes, because if someone announced for city council position 8 and sought qualification and then wanted to switch to challenge an incumbent, then the Chair could see reasons why there might be requirements for notice in that case.

The Chair asked if Commissioners Taylor or Donckers had comments. Commissioner Taylor said that her gut feeling was that it was great to be talking about it in advance and she thought it was important that there should be some expectation message ahead of time, before this happened. Commissioner Taylor continued that she liked the strictest, cleanest, easiest process, to start fresh somehow, rather than getting into the mess of getting permission or interpreting donor intent. Commissioner Taylor said she was open to hearing what everyone had to say, but she had a bias for it being clean as fiduciaries for public funds.

Commissioner Donckers said that he agreed that ease of administration was important, and of equal importance was donor intent. Commissioner Donckers continued that the hypothetical of switching from one at large city council position to the other did not give him great concerns on the qualification front, but he had significant concerns about anyone switching from a legislative seat to an executive seat. That makes a big jump in donor intent and trying to glean permission from those who had provided contributions in the earlier race seemed chaotic. Commissioner Donckers said he liked the idea of it when donor intent was clear, but he would support a clean switch and redo for the new seat.

The Chair said he thought it probably made sense to go through each of the scenarios, although there were overlapping issues, and he asked the Director if he had any response to the comments so far. The Director said that he appreciated the desire for the process to be clean, but in the past, there was some feeling that getting ten dollars from 400 people was too much. There were few candidates who actually qualified for the at large positions in 2017 and so the Director wanted to caution that if someone had asked for those qualifying contributions from a community that didn't have a lot of wealth, that would be a concern. Commissioner Donckers said in response that the potential pushback being described by the Director would be from a candidate or a campaign that would be putting themselves in the position of making the change. Commissioner Donckers said that wouldn't necessarily be gaming, a candidate should certainly be allowed to make such a switch in positions, but there was a certain strategic analysis to such a switch and that comes with a cost. Commissioner Donckers said the cost shouldn't be bootstrapping the clear intent of donors that supported a prior race. If a donor supported a candidate in one race, then in theory, the candidate should be able to get them to support them in

a different race. Commissioner Donckers said he understood concern about a pushback, but it did not outweigh for him the cost and the huge jump that would need to be made in donor intent.

The Director said he wanted to clarify that what was being proposed would not be an automatic transfer of funds, the funds would only be transferred if the candidate went back to the contributor and got written permission to change the contribution to the new position. If the position were instead that even with written permission from the contributor those contributions made to the earlier campaign could not be switched, then the candidate would have to seek an entirely new contribution. Commissioner Donckers said it would incentivize the candidate to make a strategic decision about which seat to run for early in the process and he did not think that was a bad thing.

The Chair said he agreed in part with what Commissioner Donckers was saying, but if there was a circumstance change that was unanticipated, and it was not a strategic decision, then there may be cases where there would be an unnecessary burden on the candidate, and in the spirit of the program the desire was to encourage participation, particularly from those who do not traditionally participate as frequently as others. The Chair asked the Director on the administrative front what the anticipated burdens would be for managing the process of getting permission from contributors to switch contributions. The Director said it would depend on how strict the request to the candidates would be. If it was just getting emailed permissions, then that would not necessarily be a burden on the SEEC. However, the first in and first out process would not work, since the early money would likely be the qualifying contributions, so they would have to find a way to sync that up with the current procedure, since you cannot ask a contributor whose money has already been spent, if they will allow for the transfer. If the commission would prefer to have someone just start over, then how to get permission would not be a bridge to cross.

The Vice Chair asked if there was an average dollar amount for the qualifying contributions, because if those were low money amounts, then they would likely have been spent already, but even if it was spent for a different race, it wouldn't be wasted from the voter perspective. The Director said that for one candidate that was running a low budget campaign, he believed that most of their qualifying contributions were just ten dollars. Commissioner Tobin said that the vouchers were meant to bring more candidate participation and that was being accomplished, but when a candidate was in a position for council, it didn't seem to matter if they switched. Commissioner Tobin continued that there should not be additional barriers to those who want to switch from position 8 to position 9, and it seemed too complicated and burdensome to require a candidate to go backward, rather than going forward in their campaign.

The Chair noted that the hypotheticals do blend together, but addressing hypotheticals two and three, asked if someone had qualified, then what would happen with the voucher money. The Director said this was an issue, because there was a focus group with treasurers and the one who participated said that he thought the MCV would start over for each position. The Director continued that if that were the case you could have someone who received the full MCV for one position and then received another full MCV for the second position. The argument in favor of the MCV starting over would be that the original funds were spent towards campaigning for a position that was no longer being sought, but the Director cautioned that he did not think that you could say that all of the funds spent for the first campaign were of no use to the second campaign effort. Commissioner Tobin said she agreed, and the Chair said if someone was purchasing things that would be transferrable, then those spent funds could count towards either race. The Director said that he was not sure whether the commission wanted get involved in drawing the lines between which purchases could count towards both campaigns, and he would not



recommend it, but he would recommend that whatever the candidate spent in voucher money on the first position should count towards the new position's MCV, otherwise this could be used as a loophole to get additional public dollars, and could give someone an advantage in a race.

Commissioner Donckers asked if there was guidance from the state or federal level that addressed such situations, and whether there was malleability in the funds, in terms of rolling over the contributions. The Director said that in a previous race, where candidate Ed Murray switched from running for a state legislative seat to mayor of Seattle, the contribution limit maximum for the city was allowed to be transferred once the candidate received permission from the donors. Commissioner Donckers said that was helpful, since the state level didn't seem to have concerns about money being switched between offices with permission from the contributors as long as it obeyed local limits. The Director said he thought that was on some level an administrative system for permitting the transfer, so that someone would not be refunded a 1,000 dollars and then be required to re-write a check for 700 dollars. Commissioner Carter asked about a hypothetical county executive running for governor and if they had a war chest from a prior campaign and they wanted to spend it for the new position, could they go and get permission. The Director said he believed so but was out of his lane. Commissioner Carter then asked if someone were running within the city and coming from a different race, then would they need to have permission, and the Director said he thought so, but was not certain about that hypothetical.

Commissioner Taylor said she wanted to clarify whether the staff recommendation for hypothetical two was that all of the voucher funding received for the first position should be attributed to the MCV for the second position. The Director answered yes.

The Director asked if the commission had any thoughts about being in the fact finding role determining which expenditures should count towards the first vs. second position's MCV. The Chair said that would be a very intense and time sensitive fact finding role, and it seemed that the number of circumstances where this is likely to happen is fairly low, but that assumption may or may not be correct. The Chair continued that there could be certain set categories of expenses for someone to demonstrate which expenses were transferrable between both positions, but that would still be a very intense fact finding role. The Vice Chair asked hypothetically whether during a district council election cycle there could also be an at large or mayoral race. The Director answered that no, not under the normal course of things, but it could happen in the case of a special election. Currently the district races are not held on the same years as the citywide races. The Vice Chair said that made sense and asked what would happen if a candidate had already gone over their spending limits for a position with a greater MCV and then the candidate switched to an office with a lower MCV. The Director said that the answer to that would be filing week, since it seemed almost unimaginable that a campaign would be able to spend 400,000 dollars prior to the second week of May. The Vice Chair said that his sense was that whatever was spent on the MCV for the first position should be counted against the MCV for the second position, which takes the commission out of determining which expenses would or would not count. Commissioner Tobin said that if someone got started as a city council person and then wanted to run for mayor, and if she'd already given them her vouchers, and couldn't switch them, then she would be angry, and they should have to go back and get permission from contributors for the first position.

The Chair said maybe they should move on to the third hypothetical, since there was some overlap with the second, and asked if the Director would like to say anything more than

what was in the memo. The Director said that the third item was dealing with vouchers once someone has already qualified, and the question is whether permission can be sought to transfer vouchers, similar to other contributions, or are the vouchers assigned to the campaign for the first position sought just considered null and void. The Chair said that he thought it would be counter to the contributor's intent to transfer that voucher to a different position whether from city council position 8 to 9 or from city council position 9 to mayor. The Chair said that prior to the meeting he thought the administrative burdens would be too great to allow candidates to seek permission to transfer contributions and vouchers, but if the commission set forth standards to require some kind of written record for the permission, while it would increase the administrative burden, it did not seem as challenging as he initially thought. The Director said that was one of the concerns, whether the permission should be allowed through email, or whether the commission wanted to require another signature to be validated by King County Elections. The Vice Chair asked if there was a check the box type feature on the vouchers that would allow someone to switch, which might cut down on the administrative burden. The Director said that he didn't think that would be allowed under the law the way it is currently written, and more practically, the vouchers were about to go to the printers, so there cannot be changes to the physical vouchers themselves now.

The Chair said he thought that for all of these issues, there were a couple big picture items, the cleanest way would be to say it is all automatically transferable or not, and the Chair said he keeps going back to the interest of the voters and it sounded to him like most commissioners were reluctant to allow easy switching from council races to other races, but were more flexible for council to council races. The Chair noted that it sounded like some formal guidance was needed from the commission at the conclusion of the January or February meeting.

The Director agreed, and Commissioner Carter said that he heard no support for someone to get additional funding through switching races. The Chair said he thought that was true at this point in the discussion, but as the Vice Chair noted, there was also the consideration of someone moving from a race with a higher MCV to a lower MCV. The Director said that he could see requiring the candidate to refund to the program all the money over the lower MCV limit. Commissioner Tobin said that if someone had gotten that far into it, then it seemed too theoretical, and the commission was maybe anticipating more trouble than they were going to have. The Director said that the issue could be an open seat, because if someone created an open seat, since they are like gold in an election, it might not be as unlikely, but the filing week in May was the latest this would all shake out.

The Chair said that creating a record of permission could be accomplished and he thought that was the best way to protect the participation of the public, and to address the idea of gaming the system, it doesn't eliminate the burden on the campaign to get the permissions, and there could be a form or some other way that would allow for donations to be switched as long as you get the donor's permission. The Chair asked the Director for next steps and the Director said that he would reconnoiter with staff, since there was some sense of the thinking broadly, by creating a mechanism for candidates, with donor intent as the touchstone, to be able to transfer either contributions or vouchers to a different race, and with little to no support for letting a candidate start over with a new MCV. The Chair said he agreed, and collectively there was no eagerness to make the process easy, but maybe the permission getting would be challenging enough.

**5) Dismissal of Case No. 20-1-0914-1**

The Chair moved to the dismissal memorandum and asked if the Director had anything to add. The Director said he would just add that this was an example of the kinds of issues reported

to the office during 2020 which, while not discounting in any way the concerns of the complainant, really were not within the scope of the ethics commissions responsibilities.

The Chair asked if this was the same issue as previously reviewed. The Director said there was coverage in the press around the complaint and the letter might have been seen in the Seattle Times. The Chair asked if the commissioners had been sent the original complaint. The Director said he did believe the original complaint along with the dismissal was sent around. Commissioner Tobin concurred that the Director had sent it around. Commissioner Donckers left the meeting at 5:09 p.m. There was no appeal of the dismissal. Commissioners Tobin and Taylor agreed that the Director did a good job laying out what the SEEC does and does not do in his response to the complaint.

**6) Democracy Voucher Program report**

René LeBeau, program manager, said that everything was on track and there will be a sign off on the official artwork on Friday in Kent. The paper for printing the vouchers has been ordered, and all the other preparations are on schedule. There have been more people requesting online vouchers, there were around 450 so far this year and there will be more efforts to get more residents signed up ahead of the paper voucher printing and mailing.

There has been more activity on social media, with over seven thousand views on the various platforms. There have been two training sessions for the community based organizations with about 30 people participating and there will be additional trainings for those who are new to providing outreach with the program. Also, there has been a toolkit created for the community based organizations doing outreach, to provide them with resources. There was a remote training with a candidate and there are also now five videos posted that are narrations on using vouchers to run for office, so those are available on YouTube and some of the more complex aspects are

explained for candidates, as well as a walk through on the website. Ms. LeBeau asked if there were any questions.

Commissioner Carter asked Ms. LeBeau about young adults age 16 who currently are eligible to register to vote when they turn 18, and if they registered a week before the primary, would they be eligible to receive vouchers prior to turning 18. Ms. LeBeau said that the voter information for those under age 18 cannot be released for purposes other than voting. But as people become newly registered or age eligible then that person will be in the newest file from King County Elections and there are new files requested regularly and new vouchers are issued to those who are in the new file. In 2019 vouchers were sent out to the newly registered or newly age allowed up until October. Commissioner Carter said then if someone was turning 18 at the end of October, that means the program would not get notice of their registration until they turn 18. Ms. LeBeau concurred and Commissioner Carter continued that this was something to be aware of since there will be a group of people who will be newly registered during the first half of the year and could become eligible to use vouchers by the election. Ms. LeBeau agreed and said that two of the community based organizations who received funding for 2021, the Washington Bus and the Vera Project, which were also recipients of the Voter Education Fund, are continuing the youth engagement that was already going on with these organizations. Commissioner Carter said that was good because in his work registering voters, he thought the high schools were very responsive grounds. Ms. LeBeau said she would follow up on that. The Chair asked if there were any other issues administering the program due to Covid, or anything that the commission should be aware of in terms of restrictions for the next few months. Ms. LeBeau said that in terms of administration of the program, she was working with the facilities department in order to allow staff to be in the office safely, and there are some concerns about

how campaigns and the community partners are going to contact people, so the program was trying to be flexible, and supportive and she was confident that the year will go well and they are definitely looking forward to the energy of the election year. The Chair thanked Ms. LeBeau and moved to the final item on the agenda.

**7) Executive Director's report**

The Director began his report by noting that next Tuesday, December 8th, the Chair and the Director would be before the Governance and Equity Committee of the city council to discuss the new lobbying law. This proposed legislation, which was sent to the council pre-Covid, could conceivably be passed into law before the year is out. The city will be working remotely through July 5, 2021 but with the vouchers there will need to be some in person processing, but not everyone would be back in the office at one time. The Director thanked Nick Brown for Chairing this past year and thanked the commission and the staff for getting through this year unlike any other. The Chair thanked the Director and said that staff and the commission had made it a good year under trying circumstances. The Chair continued that it was a pleasure serving, and he had hoped to serve longer but he was spread a bit too thin and was happy to turn it over to the new Chair Shordt and Vice Chair Rekhi. Commissioner Carter said that he too would be leaving at the end of this year and he enjoyed being a part of the commission in his nine years, he thinks that this has been a wonderful community to work in, and the work had been performed in the public interest, and he thinks it worked very well. The Chair thanked Commissioner Carter for his service and nine years was more than anyone could expect and was very impressive. Commissioners Tobin and Taylor agreed and thanked both Commissioner Carter and the Chair. The Director said that he was hoping to confirm that Commissioner Carter would be available until he was replaced by appointment, and Commissioner Carter said he

would serve until he was succeeded. The Chair said he and the Director would try to make sure they emphasized the need for the replacements for the departing commission members.

**The Regular Commission meeting of December 2, 2020 adjourned at 5:26 p.m.**

DRAFT