

February 2, 1995

No. 95-1E

Re: Request For Advisory Opinion No. 94-2A-1229-1, Councilmember Newsletter

Dear *****:

You ask if the Ethics Code or the Elections Code prohibits you from using City funds to send a newsletter about the City's Comprehensive Plan to residents of West Seattle, when your name will not be on the ballot in 1995, the newsletter will not contain messages from or articles about individuals whose names will be on the ballot in 1995, you believe that misinformation has been given to West Seattle residents and West Seattle residents have reacted negatively to the Comprehensive Plan. The brief answer is no, the Codes do not prohibit the use of City funds for a proposed newsletter, under the conditions stated.

STATEMENT OF FACTS

In the Fall of 1994, after months of neighborhood meetings, hearings and review, the City Council passed the City's Comprehensive Plan. Shortly after the Plan was passed some Seattle residents, many from West Seattle, expressed concern about the plan.

In response to the negative reaction, especially in West Seattle, Councilmember Tom Weeks proposes to use City funds, City paid time and City equipment to draft, publish and distribute a newsletter to West Seattle residents. In the newsletter, he proposes to provide factual information about the Comprehensive Plan, its goals and policies to counter what he believes are false statements that have been made by the Comprehensive Plan opponents. The newsletter will not contain messages from or articles about individuals whose names will be on the ballot in 1995. Councilmember Weeks' name will not appear on the ballot in 1995; he was reelected to a four year term in 1993.

ANALYSIS

1. The Code of Ethics Would Not Prohibit A Councilmember From Using City Funds and Facilities To Draft, Publish And Distribute A Newsletter To West Seattle Residents To Provide Factual Information About The Comprehensive Plan.

The Code of Ethics prohibits City officers and employees from using their City positions primarily to achieve a private benefit. SMC 4.16.070(2)(a) provides that no current City officer or employee shall:

Use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the officer or employee, rather than primarily for the benefit of the City; or to achieve a private gain or an exemption from duty or responsibility for the officer or employee or any other person.

A Councilmember's use of City funds and facilities to produce a newsletter is a question of first impression for the Commission. Since Councilmember Weeks will not be on the ballot in the year in which he proposes to mail the newsletter, the proposed contents of the newsletter will be factual information about the Comprehensive Plan, its goals and policies, and the proposed newsletter will be mailed to all residents in an area in which the Comprehensive Plan was questioned, it would not appear to a reasonable person that this proposed use of City resources would be primarily for a private benefit.

The Code of Ethics prohibits City officers and employees from using City funds or facilities for other than a City purpose. SMC 4.16.070(2)(b) provides, in relevant part, that no current City officer or employee shall:

Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any City funds or City property, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose;

In *Op Sea Ethics & Elects Comm'n 34 at 3*, we advised that the purpose of the Code of Ethics is to foster the proper operation of democratic representative government. The Commission cited SMC 4.16.020(A), which states in relevant part that the proper operation of democratic representative government requires public officers and employees be responsible to the people and the Code will not be construed to restrict public officials from performing the informational duties of office.

4.16.020 Purpose.

A. The City finds that the proper operation of democratic representative government requires that public officers and employees be independent, impartial, and responsible to the people;.....This chapter is not to be construed so as to impair the ability of City officers and employees to participate in ceremonial, representational, or informational functions in the pursuit of their official duties.

The proposed newsletter, as described in the facts above, appears to be an effort by Councilmember Weeks to be responsible to the people and to perform an informational duty of his office. As a member of the City Council who reviewed, debated and voted on the Comprehensive Plan, he has factual information that may not be readily available to City residents. By providing such factual information, he will inform Seattle residents and will put himself in a position to be questioned about that information and his actions regarding the Comprehensive Plan. Thus, he will also be responsible to the people. Consequently, we believe that the proposed newsletter would serve the purpose of the Code.

2. The Elections Code Does Not Prohibit A Councilmember From Using City Funds and Facilities To Draft, Publish And Distribute A Newsletter To West Seattle Residents To Provide Factual Information About The Comprehensive Plan, During A Year In Which His Name Will Not Appear On The Ballot.

The Elections Code prohibits the use of public facilities to assist a candidate. SMC 2.04.300 provides in relevant part:

No elected official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the officer or agency;

Since Councilmember Weeks' name will not appear on the ballot in 1995, he was elected to a new four year term in 1993, and since the proposed newsletter will not contain messages from or articles about any individual whose name will appear on the ballot in 1995, the use of City facilities to produce a newsletter that will contain factual information about the City's Comprehensive Plan, its goals and policies, distributed to residents of an area that has questioned the Plan is not a use to assist a campaign for election. If the newsletter carried messages from or about public officials or others whose names will appear on the ballot in 1995, the use of City funds and facilities for the proposed newsletter would be a prohibited use of City facilities to assist a candidate.

In an effort to offer more specific guidance for future proposed newsletters, we offer the following. So long as none of the offices of the City elected officials regularly produces a newsletter, we would consider the use of City facilities to produce a newsletter during the calendar year in which the elected official's name will appear on the ballot a violation of this provision.

CONCLUSION

Neither the Code of Ethics nor the Elections Code prohibits a City Councilmember from using City funds and facilities to draft, publish and distribute a newsletter that will contain factual information about the City's Comprehensive Plan, its goals and policies and which will be sent to all residents of an area that questioned the Plan, so long as the Councilmember's name will not be on the ballot in the year in which the newsletter is published and the newsletter does not contain messages from or articles about anyone else whose name will appear on the ballot in that calendar year. Such use of City funds and facilities is for a City purpose and is not to assist a candidate.

The Commission's advisory opinion is based upon the facts as stated above. The Commission does not investigate the facts. Please be aware that modification of the facts might cause the Commission to reach a different conclusion. In addition, Commission advisory opinions are narrowly drawn to interpret the ordinances that the Commission is authorized to administer.

They do not address whether the proposed action is prudent, good public policy or effective management practice.

FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION

Carolyn M. Van Noy,
Executive Director

This action was reviewed and approved by the Commission at its meeting of February 1, 1995.
The Commission members voting to take this action were:

Timothy Burgess, Chair
Emilia R. Castillo
Catherine L. Walker
Jeri A. Rowe

Not in attendance:
Lue Rachelle Brim-Donahoe