City of Seattle

Ethics and Elections Commission

November 5, 2009

**BY FIRST CLASS MAIL**

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Re: Case No. 09 - 2 - 1014 -1

Dear ****,

On October 14, 2009 you filed a complaint with our office concerning Mr. David Beard, co-chair of the Seattle Commission for Sexual Minorities (SCSM).

You allege that Mr. Beard violated the Seattle Elections Code, SMC 2.04.300 when, speaking as part of a City-sponsored National Coming Out Day panel, he urged attendees to support the passage of Referendum 71 (Ref 71).

We have investigated your complaint. Based on information provided by you and others in attendance, we do find reason to believe that Mr. Beard violated SMC 2.04, the City of Seattle election ordinance. In light of the minor nature of Mr. Beard's violation, and his resignation from the board and relocation to Washington, D.C., however, I will seek an administrative dismissal of your complaint.

*Facts:*

On October 8, 2009, "National Coming Out Day," the Seattle Public Utilities Lesbian, Gay Bi-sexual, Transgendered Questioning and Friends Affinity group (SPU LGBTQF group) sponsored a forum for City employees. The forum, held in a City conference room, was attended by City employees and led by a five member panel. The forum panel was to speak to the experience of coming out within the communities they serve. Each panel participant was given approximately 20 minutes to speak. Panel participants represented PFLAG (Parents, Family and Friends of Lesbians and Gays); Lambert House (a center for Gay, Lesbian, Bisexual, Transgender and Questioning youth); the Greater Seattle Business Association (a business association whose members concentrate on expanding economic and business opportunities for the GLBT community) and the SCSM (the City advisory board to the Mayor, Council and departments regarding legislation and policies effecting sexual minorities).

700 Fifth Avenue, Suite 4010, PO Box 94729, Seattle, WA 98124-4729
Tel: (206) 684-8500, Fax: (206) 684-8590, E-Mail: ethicsandelections@seattle.gov, Web: http://www.seattle.gov/ethics
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The panel discussion proceeded as planned by the organizers.[1] At the end of the panel discussion, questions were taken from attendees. One attendee specifically asked about the status of Ref 71. Mr. Beard took the question.

Attendees and Mr. Beard recall him telling the attendees that he was speaking for himself and not for the SCSM, but at this juncture the characterization by attendees and Mr. Beard differs.

Attendees characterize his remarks as "speaking briefly" about his work on behalf of passing Ref 71 and then urging people, as one interviewee put it, "to get out there and be active." Two attendees recall Mr. Beard mentioning participation in phone banks and three recall Mr. Beard urging attendees to speak with conservative friends and explain that the referendum was not about gay marriage but about domestic partnerships.

Mr. Beard denies making comments with this specificity, characterizing his remarks as speaking about the "problems for me" and the reasons "I'm volunteering," giving attendees a factual account of what would happen if the referendum failed.

Mr. Beard and three participants recall him speaking positively about a $100,000 Microsoft Corporation donation to the pro Ref 71 campaign.

*Discussion and Conclusion*

On October 8, 2009, Referendum 71 was a current ballot proposition appearing on the November 2009 general election ballot. City employees, elected officials and persons appointed to public office or agencies must comply with SMC 2.04.300 when using City facilities during an election cycle. SMC 2.04.300 states:

> **Prohibition against use of public office facilities in campaigns.**
> No .... person appointed to ... 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 the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use ... office space, ... [2]

Mr. Beard was appointed to the SCSM and was a commissioner on October 8, 2009. As a member of the Commission on Sexual Minorities he was required to comply with SMC 2.04.300.

There is reasonable cause to believe that Mr. Beard committed a violation of SMC 2.04.300 when, in a City facility speaking to assembled City employees, he spoke and directly

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[1] Organizers of the event specifically informed forum speakers of the agenda – which including nothing related to the November 2009 general election.

[2] SMC 2.04.300 has three exceptions to its coverage; action taken by City Council in an open public meeting; a statement by an elected official in support or opposition to a ballot issue made at an open press conference or in response to a specific inquiry, and activities that are part of the normal and regular conduct of an office or agency. None of these apply.

promoted passage of the Ref 71 ballot proposition by encouraging attendees to assist the Ref 71 campaign by volunteering or speaking with friends.

Though I find that Mr. Beard did violate the election regulations, I will be asking the Commission to administratively dismiss the complaint on the basis that the violation was minor, although not inadvertent, and the public interest would not be served by further proceedings related to this matter. (I understand the term "inadvertent" to refer to the conduct, not the violation.)

The Seattle Election Code and the Seattle Ethics and Elections Commission Administrative Rules provide that the Executive Director may seek an administrative dismissal of a complaint. Administrative Rule G provides in relevant part as follows:

> If the Executive Director has evidence indicating that there are reasonable grounds to believe a violation of SMC 4.16 or SMC 2.04 has occurred, and either (i) the violation was inadvertent or minor, but not both, or (ii) appropriate actions have already been taken to address the allegedly unlawful conduct, the Executive Director may ask the Commission to direct him or her to administratively dismiss the case.

Mr. Beard's remarks were very brief and made in response to a question from a member in the audience who asked about the status of Ref 71. There was no request for monetary contributions and no literature or other promotional material provided. In addition, Mr. Beard has resigned from the Commission on Sexual Minorities and now resides and works in Washington, D.C. Based on the above facts, I find that this violation was minor and, in light of Mr. Beard's relocation to Washington, D.C., I do not believe that further proceedings in this matter would serve the public interest.

You are entitled to attend the Commission hearing at which I will ask the Commission to approve this request for an administrative dismissal. If you wish to address the Commission, you may request that the Chair permit you to do so. I plan to make the request on December 2, 2009, during the Commission's regular monthly meeting. This meeting will be held in Room 4080 of the Seattle Municipal Tower, beginning at 4:00 p.m.

Very truly yours,

Wayne Barnett
Executive Director

cc. Seattle Ethics and Elections Commission
Mr. David Beard
Ms. Julie Nelson, Seattle Office for Civil Rights