City of Seattle

Ethics and Elections Commission

September 22, 2010

By E-mail

Michael O'Brien
O'Brien for Seattle
604 North 45th Street
Seattle, WA 98103

Re: Late-filed reports

Dear Councilmember O'Brien:

On September 21, 2010 the O'Brien for Seattle committee (the "Committee") filed several amendments to its 2009 reports. Since significant transactions were not timely and accurately accounted for, I am imposing a $500 penalty.

FACTS

On September 8, 2010, you called the SEEC to report that a 2009 campaign invoice of $1,400 from your media consultant had not yet been paid. You also discovered that a $592.84 check for catering in December 2009 had been issued in December but had never been reported. Subsequently, you notified us that a check to the Mercury Group had bounced earlier this summer, and was still outstanding.

On September 19, 2010, you notified us that you deposited $800 into your campaign account on September 17, 2010 and delivered a new check to the Mercury Group later that same day.

In response to staff's request, you provided us with copies of the Committee's bank statements from September 1, 2009 through August 31, 2010. In reviewing the Committee's statements and campaign disclosure reports, we learned that the $1,400 invoice that had originally caused you to contact us had in fact already been paid. We also confirmed that the catering invoice had been paid but not reported. However, there remain the following significant issues:

- You filed a C-3 reporting a March 31, 2010 deposit of $4,700 from your personal funds. Bank records, however, show that deposit actually being made on May 11, 2010.

- You reported an expenditure on March 29, 2010 to pay off an outstanding obligation of $3,894.29 to the Mercury Group for media advertising in late October and early

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GCIU 804-M

November 2009. Your check to the Mercury Group bounced in May, and the invoice, as noted above, went unpaid until September 17, 2010.

RELEVANT LAW

The SEEC's Elections Code Administrative Rule 4B states that "[r]eports that (i) do not contain substantially all required information, (ii) are not submitted in a Commission-approved format, or (iii) **contain knowing errors or substantial omissions of fact**, are not considered filed, and subject the committee to late filing penalties" (Emphasis added.)

Administrative Rule 6.H.3 requires committees to pay debts within 90 days or less, or the debt is treated is a contribution from the unpaid vendor.

I find that the two transactions noted above trigger Rule 4B, and that therefore both of the initial reports were considered unfiled until September 21, 2010. The situation is exacerbated by the fact that your committee owed the Mercury Group an amount equaling more than five times the contribution limit for almost an entire year. While I could charge the Committee with violations of the Elections Code, I have elected to exercise my authority to impose civil assessments for late filings to bring this matter to a close without further delay.

LATE FILING PENALTIES

The Seattle Elections Code authorizes the Commission's Executive Director to impose late filing penalties of $10 per day for each day each report is late filed. During the final seven days before the election, those penalties increase to $50 per day. SMC 2.04.330.B through D.

In determining a suitable penalty, I took into account the significant activity that was misreported. I am particularly troubled by the fact that you owed the Mercury Group approximately $4,000 for almost a full year. On the other hand, you cooperated fully with staff, and all of this activity occurred *after* the election, so voters were not denied any information about your committee when they cast their ballots. Balancing these factors, I am levying a fine of $500.

NEXT STEPS

You may appeal the Executive Director's assessments to the Commission by **4:00 PM, Wednesday, October 6, 2010** pursuant to Administrative Rule 4. Please deliver to the Commission office a check in the amount of $500, payable to the City of Seattle, or an appeal **no later than 4:00 PM on Wednesday, October 6, 2010**.

CONCLUSION

A major purpose of the Seattle Elections Code is to give the public timely access to accurate information about the finances of each political committee. Please ensure that the

reports filed by your committee are accurate, so that you can avoid additional penalties in the future.

If you have any questions, or have information that we have not considered in this letter, please call me at 684-8577.

Very truly yours,

Wayne Barnett
Executive Director

cc: James Walsh, Treasurer
Seattle Ethics and Elections Commission
Doug Ellis, Acting Director, Public Disclosure Commission