City of Seattle

Ethics and Elections Commission

October 13, 2011

Re: Case No. 11-2-1006-1

Dear ****:

On October 6, 2011, you lodged a complaint with our office regarding City payments to the Cascade Bicycle Club (Cascade) and Transportation Choices Coalition (TCC). You allege that these two organizations are using City money to make contributions to Streets for All, the committee promoting adoption of the $60 Vehicle License Fee (VLF) this November. For the reasons I articulate below, I am dismissing your complaint.

Relevant Law

SMC 2.04.300 provides that "[n]o elected official nor any employee of his or her office… 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…."

Analysis

1. City payments to Cascade

Cascade is actually two distinct legal entities: the Cascade Bicycle Club, and the Cascade Bicycle Club Education Foundation. There is also a third entity that I reference below – a political action committee (PAC) affiliated with the Cascade Bicycle Club, named "BikePAC". PACs accept contributions and make expenditures to support campaigns.

I reviewed the invoices that support the approximately $220,000 that the Seattle Department of Transportation (SDOT) has paid to Cascade's Education Foundation since the start of 2009. (I found one $425 invoice dated from January 2009 from the Cascade Bicycle Club, the rest were all from the group's Education Foundation.) Almost $190,000 – more than 85 percent of SDOT's total payments to Cascade since 2009 – were payments made under a contract between SDOT and Cascade's Education Foundation in connection with SDOT's

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Bicycle Education Program. Cascade's Education Foundation sent its final invoice under this contract at the end of 2010.

In addition to the payments made for services provided in connection with the Bicycle Education Program, SDOT also paid Cascade's Education Foundation $22,850 between February 2009 and September 2010 for services rendered in connection with SDOT's Commuter Trip Reduction Program, and $5,879 between January 2009 and October 2010 for services related to SDOT's Safe Routes to School program. SDOT's only payment to Cascade – again to the Education Foundation –for services provided in 2011 is a $1,500 payment in April for the group's sponsorship of a Bike to Work breakfast.

The only other City department with significant payments to Cascade is the Parks Department, which paid Cascade's Education Foundation approximately $27,000 since the start of 2009. Approximately $16,000 of those payments went to the Department's purchase of bike helmets from Cascade, which the department sells at cost to promote safe cycling. Cascade has invoiced the Parks Department for only $2,040 in 2011, for helmet sales in the first seven months of the year.

I spoke with Craig Benjamin, Cascade's Policy and Government Affairs Manager, and Mr. Benjamin told me that none of the City payments to Cascade have been used for political activity. He told me that Cascade does not use funds it takes in through its Education Foundation for campaign purposes. According to Benjamin, staff is paid with Cascade Bicycle Club funds.

To date, the Cascade Bicycle Club has made $8,375 in in-kind contributions to Streets for All. BikePAC has contributed $3,000 to Streets for All.

Based on the foregoing, it is my determination that the City's payments to Cascade and Cascade's Education Foundation do not violate the law barring the use of public money for campaign purposes. The payments are supported by invoices for services performed, and the law currently does not bar City vendors from participating in election campaigns. I note that many City vendors, not only Cascade, contribute to candidates for City office and for and against ballot issues.

I further note that the vast majority of these payments predate the establishment of the Seattle Transportation Benefit District (STBD) in September 2010, and the STBD's decision to place the VLF measure on the ballot in August of this year.

I find no reasonable cause to believe that City money has been spent in violation the Elections Code.

2. City payments to TCC

TCC is not, like Cascade, a City vendor. It is a membership organization to which the City and several other jurisdictions belong. In the last three years, the City has paid annual membership dues totaling $12,000 per year.

I reviewed TCC's by-laws, which say the following about funds received from public agencies: "It is the policy of Transportation Choices Coalition to use public agency funding for policy and education programs, in accordance with the organization's 501 (c) 3 status. Public agency funds are not used for lobbying."

In 2009, TCC reported spending more than $335,000 on policy and education programs, and in 2010, it reported spending more than $343,000 on policy and education work. Through the first eight months of 2011, TCC's records show more than $300,000 has been spent on policy and education work.

Rob Johnson, TCC's Executive Director, told me that TCC has not used any public agency funds to make contributions to Streets for All. To date, TCC has made a $4,000 contribution to Streets for All, and also made an in-kind contribution valued at $1,375.

Based on the foregoing, it is my determination that the City's payments to TCC do not violate the law barring the use of public money for campaign purposes. In the past three years, the City has paid TCC $36,000, and TCC has spent almost one million dollars on education and policy work. Again, to trace those $36,000 to campaign activity and not to education and policy work would effectively establish a rule that organizations to which the City pays membership dues cannot participate in an election campaign. I do not read the Elections Code to establish such a rule.

I note that the State Auditor reviewed public agency payments to TCC in 2008, and concluded that the payments did not violate the law, despite TCC's political activity. This office similarly failed to pursue charges that spending by TCC on a March 2007 ballot measure regarding the Alaskan Way Viaduct violated the bar on using City funds for campaign purposes.

Conclusion

For the foregoing reasons, I am dismissing your complaint. I want to make it clear that my role is a limited to determining whether or not there is reasonable cause to believe that City facilities have been misused in violation of the Elections Code. (I assume for the sake of this dismissal that City funds constitute City "facilities" under the Elections Code.) It is not my role to review whether City expenditures are wise or prudent, and I take no position on the wisdom of the City expenditures discussed above.

If you wish to appeal this dismissal, you have 21 days in which to do so. Commission Administrative Rule 4, available at www.seattle.gov/ethics/etpub/AdminRules.pdf, spells out the appeal process.

Thank you very much for contacting us with your concerns.

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission *(name and address of complainant redacted)*
Cascade Bicycle Club *(name and address of complainant redacted)*
Transportation Choices Coalition *(name and address of complainant redacted)*