City of Seattle

Ethics and Elections Commission

July 6, 2012

Re: Case No. 12-2-0703-1

Dear Mr. ****:

On July 3, 2012, you filed a complaint with our office alleging violations of the law barring the use of public resources to promote or oppose a campaign, primarily by the Seattle Public Library (the "Library") through officers and employees of the Library. After business hours on July 3, you delivered 29 exhibits to our office. As I communicated to you, I am going to sever one of your claims from the others, so that you will have an opportunity to file an appeal before Tuesday, July 10, which may be heard by the full Seattle Ethics and Elections Commission at its July 11 meeting. There is not sufficient time before the Commission's July meeting to resolve your other allegations.

You allege that the Library's fact sheet (attached to this letter as Exhibit A) unlawfully promotes the levy, and that its placement in high-profile locations throughout the Library system is also unlawful. As I told you in May, I reviewed different iterations of the fact sheet in March of this year, and ultimately approved the production and posting of the fact sheet.

SMC 2.04.300 provides that "[n]o 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."

The test I administer when applying SMC 2.04.300 to City publications was articulated by the Commission in the supplementary opinion it issued in *In re Nickels* in 2006. That opinion states:

> It is not sufficient to ask simply whether a document is "informational vs. promotional." Many documents will have attributes of both.... The key question is whether, to a reasonable person, the activity or document appears PRIMARILY designed to influence the outcome of an election, or PRIMARILY designed to be informational with only an incidental effect of assisting a" campaign.

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I am also mindful of guidance offered by the Public Disclosure Commission ("PDC"), which states that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." *Interpretation 04-02*, p. 3. Interpretation 04-02 goes on to state: "The PDC will presume that every agency may distribute throughout its jurisdiction an ***objective and fair presentation of the facts*** for each ballot measure." *Id.*, p. 4 (Emphasis added).

Language of the Fact Sheet

Turning to the fact sheet, I find the first section – "The Challenge" – to be primarily informational, as well as fulfilling the Library's "responsibility… to inform the general public of the operational and maintenance issues facing" the Library.

I similarly find the second section – "The Process" – to be a straightforward account of the planning that went into the formulation of the levy proposal.

I find the third section – "The Levy" – to be a straightforward recitation of the plans for spending levy proceeds, and an accurate reflection of the entirety of the levy ordinance. You allege that the use of the word "will" promises a level of certainty to voters that the Library cannot claim in light of the language of the ordinance. I do not believe that this single word is powerful enough to render the entire fact sheet unlawful. The public expects the City to explain its plans for using levy proceeds. Absolute certainty is not the standard for inclusion in a fact sheet.[1] If it was the standard, the fact sheet could not serve its purpose of informing a member of the public what he or she can expect if they vote for the levy. (And I should say that if voters do not know what to expect from a levy, they will not be armed with the knowledge to rise up if and when the City fails to do what voters expect it to do with the levy proceeds.)

Looking at the fact sheet in its totality, I find its tone and tenor to be informational and not promotional in nature. The timing of the fact sheet's production and dissemination is not unusual for a levy fact sheet – it was produced shortly after the Council voted to place the Library Levy on the ballot.

The fact sheet does have one flaw, which I thank you for pointing out. The version that I approved earlier this year closed with a paragraph including language that the "levy will provide an estimated $17 million **a year**." That sentence was cut from the final version, I suspect in an effort to fit the document on to a single page. The fact sheet now includes one erroneous

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[1] City agencies routinely produce fact sheets explaining the planned uses of levy proceeds, despite the fact that levy ordinances routinely contain language similar to the language in the Library Levy. For example, the Families and Education levy voters approved last November provided in Section 6 that "[i]n the annual City budget or by separate ordinance, the City shall from year-to-year determine the Education-Support Services and funding allocations that will most effectively achieve the Levy goals and outcomes." Section 5 of that ordinance states that "***[u]nless otherwise directed by ordinance***, Proceeds shall be deposited in the Education-Support Services Fund." (Emphasis added.) There is similar language in the existing Housing Levy and the existing Parks and Green Spaces levy. Even under the 1998 levy approving funding for the construction of several new libraries, which you cite approvingly, a two-thirds vote of the City Council could have directed the spending to other uses. The supermajority requirement made that outcome less likely, but did not eliminate it altogether.

reference to the levy providing $17 million, without pointing out that that is an annual figure. (It does still contain language stating that the "cost to a median home owner would be approximately $52 per year.") Still, the fact sheet should provide voters with either the annual cost and the number of years that the levy will be in effect, or the total amount to be collected. I will bring this to the Library's attention Monday morning.

Availability of the Fact Sheet

Consistent with my determination that the fact sheet is primarily informational, I authorized the Library to make the fact sheet available at libraries throughout the system. The library distributed information regarding the 1998 Library Levy at library locations, and information regarding the 2003 Fire Facilities and Emergency Response Levy was distributed at fire stations. I do not find it an unlawful promotion of a ballot measure to make an informational piece available at locations where interested readers are likely to find the information

Conclusion

For the foregoing reason, I am expeditiously dismissing that portion of your complaint relating to the Library Levy fact sheet, so that you will have the opportunity to appeal my dismissal to the Commission in time for any appeal you file to be heard at the Commission's July 11 meeting.

If you would like to appeal this dismissal to the full Commission, you may do so under Administrative Rule 4.[2]

Very truly yours,

Wayne Barnett
Executive Director

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[2] Rule 4 APPEALS

A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.

B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.

C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.

D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.

E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.

F. The Commission shall act on the request at the next meeting at which it may be practicable by:

1. deciding whether to review the Executive Director's decision; and
2. if it decides to do so, either affirming, reversing, or amending the decision.

G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.

cc: Seattle Ethics and Elections Commission (*name and address of complainant redacted*)
Marcellus Turner, City Librarian (*name and address of complainant redacted*)

Exhibit A

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LIBRARIES FOR ALL

The Seattle Public Library

Library Levy Fact Sheet

The Challenge

As a result of constraints on the city's general fund in recent years, The Seattle Public Library has been closed for one week each year since 2009, 15 of the 26 branch libraries are currently closed two days a week, and the Library's collections budget has been cut by more than 13 percent since 2009. The Library has cut 190 hours a week of service system-wide - the equivalent of closing four branches.

In 2013, we face additional cuts. The city Budget Office has told the Library to prepare for an estimated $5 million cut to the 2013 Library budget. A reduction of that size will impact patron services. For example, the current (2012) Library budget for books is $5 million, and the annual cost of operating a large, heavily used branch library open seven days a week is approximately $1.2 million.

In 2011, there were nearly 7 million patron visits to the Central Library and branch libraries. There were another 7.6 million virtual visits.

The Process

Over the last two years, the Library has involved over 39,000 residents in strategic planning for the Library's future and setting priorities for Library services. In community surveys, focus groups, panel discussions, five open houses, and three community meetings, the people of Seattle came together to identify the priorities for Library services: hours, collections, computers and online services, and maintenance.

The Levy

The Library, in collaboration with the City Council and Mayor Mike McGinn, has developed a Library levy that will provide $17 million to stabilize funding and address the four areas identified by the community. The levy will:

- Add Sunday hours at 15 branches
- Restore seven-day-a-week service at the Columbia and Northgate branches
- Restore on-site reference staff at eight branches that lost it in 2010
- Increase the number of new titles by 14% and expand e-content by 45%
- Increase number of items a person may place on hold to 50
- Provide regular replacements for computers, software, printers and copiers
- Provide high-speed Internet access and network reliability in every neighborhood
- Make it easier to use Library digital materials and resources by creating a true "virtual library" with improved website design, functionality, integration and accessibility
- Fully fund a program of repairs to extend the life of all libraries in Seattle by addressing ongoing care of roofs, heating, cooling and plumbing systems, restrooms and equipment such as book sorting machines
- Keep libraries clean and functional by providing specialized cleaning, repairing and replacing furniture as needed and providing regular service to core building systems

In addition, the levy will provide $5 million to address the city Budget Office's estimated $5 million cut to the 2013 Library budget.

The levy will be on the Aug. 7 ballot. The cost to a median home owner would be approximately $52 per year or 15 cents per $1,000 of assessed value.

For more information, visit www.spl.org and select "Libraries for All" or call 206-386-4636.