City of Seattle

Ethics and Elections Commission

July 26, 2012

Re: Case No. 12-2-0703-1 (Part II)

Dear ****:

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. On July 6, I dismissed the portions of the complaint that dealt with the Library Levy Fact Sheet and its placement in library branches. The Commission affirmed my dismissal on July 18. I now turn to the other issues you raised in your complaint. I address them in the order in which you presented them.

Allegation #1: The City's use of the short hand "Library Levy" in lieu of the full ballot title – "Regular Tax Levy Including Seattle Public Libraries" – violates the bar on using City facilities to promote a levy.

I am dismissing this allegation. The use of the phrase "library levy" does not promote a vote for the levy. The ballot title for the 2011 Families and Education Levy was "Regular Tax Levy Including Families and Education." The ballot title for the 2008 Parks and Green Spaces Levy said that it "increased property taxes for six years for parks purposes." Calling the levy the "Library Levy" does not constitute a use of City facilities to promote the levy.

Allegation #2: Statements in the Library Levy Fact Sheet, the Blue Book, and on the Library web site promote the levy.

I dismissed your allegations that the fact sheet was promotional on July 6, and I am dismissing your allegation that the web site is promotional here. The web site provides in-depth information to individuals who go in search of information that cannot be addressed in a one-page fact sheet. My review of the web site satisfies me that it is primarily informational.

The Blue Book – short hand for the 52-page proposal submitted by the Library to the City Council and the Mayor urging that they place a library levy on the ballot – is different. The Library prepared it before there was a ballot measure. It opens with a letter from the City Librarian and the Library Board President to the City Council and the Mayor urging that they place a Library Levy before the voters. The bulk of the first 17 pages of the document make the library's case for placing a levy on the ballot. Pages 18 through 44 describe the impact of the proposed levy on each of the library's locations in a manner that is primarily informational. The eight pages that round out the document span the spectrum from purely informational (page 52 is

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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a map showing the location of libraries throughout the City) to promotional (page 46 is entitled "Supporting Neighborhood Vitality").

The question of how to handle the Blue Book posed a dilemma for the Library and the SEEC staff. On the one hand, the Blue Book is a public, historical document, and one that a resident seeking to understand why the City Council had placed this measure on the ballot could reasonably want to review. On the other hand, the promotional nature of some of the Blue Book made its use in the City's legitimate efforts to provide the public with information about the levy fraught with peril. Further complicating the question was the fact that the Brown Book, prepared in anticipation of the 1998 Library measure and strikingly similar in tone and content to the Blue Book, was distributed by the Library throughout that election campaign without objection.

SEEC staff advised the Library to make the Blue Book available to the public as a historical document, but not to distribute the entirety of the Blue Book part of its informational effort. Based on the PDC's "Guidelines for Local Agencies," staff did advise that one page of branch-specific information from the Blue Book could be posted at each branch. Page 20 of the PDC's Guidelines permit agencies to post "objective and fair information at an agency or at a future site regarding anticipated improvements to be funded by a ballot measure that is **specific to that agency or site**." (Emphasis added.) Staff also advised that a page of detailed financial information from the Blue Book (page 50) could be posted as well, because it was primarily informational.

On April 16, the Library's Communications Director sent out a system-wide notice that one copy of the entire Blue Book had been delivered in a three-ring binder "to every branch and Central Library public service desks and Welcome Desks." The binders were to be placed "in a visible location for the public and staff to access." Finally, 30 to 50 "printed copies were also included for each location for patrons who request a copy, particularly patrons without access to a computer."

On June 11, after further consultations with this office, Library staff sent out a second system-wide notice stating that the reference copies should be kept behind the desk.

It is my conclusion that there is reasonable cause to believe that the Library's display of the entirety of the Blue Book between April 16 and June 11 is a minor violation of the Elections Code. I believe that any violation was minor in light of the fact that the Library sought clarification from the SEEC once questions had been raised, and promptly directed that the binders be removed from display after receiving clarification from SEEC staff. This occurred more than a month before voters began receiving their ballots in the mail, and before media coverage of the August election began in earnest. And from the start, the Library directed that take-home copies of the Blue Book be made available only to people who requested them.

Administrative Rule 3G authorizes me to request that the Commission administratively dismiss any violation that I determine to be either minor or inadvertent. Finding reasonable cause to believe that any violation of the Elections Code here was minor, I will ask the

Commission to administratively dismiss the portion of your complaint that deals with the display of the Blue Books.

Allegation #3: Publication of the Blue Book was timed to promote the Levy.

I am dismissing this allegation, because it is not supported by the record. The levy proposal was developed over months, and the Council hearing on the proposal was held on March 23. The final version of the Blue Book was sent to the printer on April 2 and the Council voted to place the measure on the ballot on April 9. The timing of the printing was driven by the legislative calendar, not by an intention to promote the levy.

Allegation #4: The City Budget Office developed the Library's 2013 budget projections earlier than the projections for other departments, and in doing so promoted the levy.

I am dismissing this allegation as unsupported by any evidence. The City Budget Office (CBO) in November of 2011 projected a $40 million shortfall for 2013. The fiscal note for the levy ordinance states: "The City Budget Office currently projects a $40,000,000 General Fund shortfall in 2013. Based on this projection, the Library's proportional share of 2013 cuts would amount to a $5,000,000 reduction to the Library's 2013 baseline budget (2012 General Fund appropriation adjusted for inflation)." The CBO is routinely involved in the preparation of fiscal notes for legislation, and I see no reason to interpret their involvement in or the timing of the preparation of this fiscal note as constituting an effort to promote the levy.

Allegation #5: The contract with Sue Tupper to "provide expert advice to enhance the effectiveness of the public engagement and planning efforts" for a possible levy proposal violates the Elections Code.

I am dismissing this allegation as unsupported by any evidence. Although Ms. Tupper did work on the Library campaign in 1998, that work does not disqualify her from performing work for the Library itself 14 years later. A review of the financial reports filed by the 2012 campaign committee does not include any payments to Ms. Tupper. And while I did recommend that Ms. Tupper's contract be amended or supplemented with language clarifying the scope of her work for the Library, I believe that the Chief Financial and Administrative Officer's January 26 e-mail to all of the relevant parties accomplished that by making clear that the "messaging" Ms. Tupper was being paid to develop was messaging around the Library's public engagement and planning process, and not campaign messaging. The talking points from Ms. Tupper's January 25 presentation to the Library Board are consistent with her contractual obligation to assist the Library in planning for a possible levy proposal.

Allegation #6: The Library provides free and subsidized use of City facilities to the Seattle Public Library Foundation, dominant funder of the levy campaign.

I am dismissing this allegation because the SEEC staff investigation concluded that the Foundation is operationally separate from the Library. Computers, printers, supplies, phone lines, data storage, software, web usage and remaining operational costs are managed and paid through

the Foundation's financial officer. The bare fact that the Foundation operates out of the Library, and that the Librarian and a member of the Library Board hold two non-voting positions on the Foundation's 35-member board is not sufficient to establish that City facilities are being used to promote the levy, with the Foundation serving as a conduit. I further note that the Foundation's Executive Director sought advice from this office in March of this year for her and the Foundation's administrative assistant. SEEC staff advised Foundation staff not to conduct campaign activities from the Foundation's office in the Library. There is no evidence that Foundation staff failed to follow this advice.

Conclusion

For the foregoing reasons, I am dismissing your complaint except for the allegation that the display of the Blue Book violates the Elections Code. I do find reasonable cause to believe that the display is a minor violation of the Elections Code, and will accordingly ask the Commission to administratively dismiss that allegation.

If you would like to appeal my dismissal of most of your allegations to the full Commission, you may do so under Administrative Rule 4.[1] If you would like to oppose my request to the Commission that they administratively dismiss the allegations surrounding the display of the Blue Book, you may do so during the public comment period for the meeting, or ask the Chair to recognize you to speak to that issue when I make the request to the Commission.

Very truly yours,

Wayne Barnett
Executive Director

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

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[1] 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.