City of Seattle
Ethics and Elections Commission

June 23, 2014

Re: Case No. 14-2-0403-1

Dear **********:

We received your April 3, 2014 letter alleging that Seattle Department of Parks and Recreation (DPR) Acting Superintendent Christopher Williams and Acting Deputy Superintendent Eric Friedli misused City facilities to promote a ballot measure in violation of Seattle's Elections Code. We investigated the allegations, and for the following reasons I am dismissing your complaint.

FACTS

On May 20, 2013, the City Council passed Resolution 31454, establishing a 15-member Parks Legacy Plan Citizens' Advisory Committee (Committee). Council directed the Committee to explore and advise on a potential 2014 ballot measure to fund DPR. The Committee was charged with identifying and prioritizing DPR's current, short, and long-term needs; determining funding levels to meet those priorities; and exploring funding vehicles. The Committee met monthly through the summer and twice monthly beginning in the fall.

On December 13, 2013 the Committee issued a draft "Interim Report of the Parks Legacy Citizens' Advisory Committee." Under a section of the report entitled "Next Steps" the interim report stated that there would be three open houses in late January, as well, as polling done in January, with the results provided to the Committee in February. These opportunities for public input were to "inform the Committee's final recommendations in March."

Records reflect that the first discussion of the poll took place at a December 3, 2013, meeting at the Bullitt Center. Acting Superintendent Williams and Acting Deputy Superintendent Friedli both attended the meeting. Friedli described the meeting as a "group brainstorming session." The record supports this description.

The first in-depth discussion of the poll attended by DPR personnel took place on December 18, 2013, again at the Bullitt Center. Friedli described this meeting as a "tutorial" on polling mechanics and methodologies delivered by EMC Research.

The final meeting before the poll went into the field was held at DPR headquarters on January 15, 2014. Friedli was the only DPR employee in attendance. The purpose of the meeting was to finalize the language to be used in the poll.

The poll was conducted between January 16 and 23, 2014. EMC surveyed 703 likely 2014 Primary election voters. The Foundation, the Seattle Aquarium, and the Woodland Park Zoo paid for the poll. The poll results are appended to this letter.

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The Committee issued its final report, recommending a ballot measure to create a metropolitan parks district, on March 6. On March 17 the Committee co-chairs presented the Committee's recommendation to the City Council's Committee on Parks Funding. On April 28, 2014, the City Council voted to place a measure on the August ballot asking voters whether or not to create a metropolitan parks district.

DISCUSSION

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 the promotion of or opposition to any ballot proposition."

In *AO 94-1E*, the Commission opined on when an issue of interest becomes a ballot proposition subject to SMC 2.04.300. The opinion states:

> An issue of interest does not become a ballot issue, under the law, until some paperwork is in progress to perfect certification. An issue of interest becomes a ballot issue when the first step is taken for certification.... The first step for certifying a City ballot issue…is either: (1) the collection of signatures for citizen initiated initiative, referendum or Charter amendment; or (2) passage of a Council resolution for a levy election or Council initiated Charter amendment. See Seattle City Charter Article IV and Article XX (1992).
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> RCW 42.17.130 and SMC 2.04.300 only prohibit use of facilities to promote or oppose a ballot issue, not an issue of interest that has not yet become a ballot issue.

While I have cautioned City departments about communications that are intended or likely to influence public opinion prior to certification of a ballot measure, in the case of a poll that danger is less significant, and the binding 1994 advisory opinion controls. In December and January, the Committee was still exploring three options for a funding measure, and undertook a poll of the one funding mechanism that had not previously been used to raise money for Seattle's parks. *There was no ballot proposition to promote or oppose* when the Acting Superintendent and Deputy Superintendent participated in the development of the poll. They were fulfilling the duty assigned to them by the City Council, assessing the options for a funding measure.

To be sure, the participation of DPR personnel in a poll of registered voters does raise issues under the Public Disclosure Commission's Guidelines for Local Governments in Election Campaigns, which at page 25 state that "[a]gencies shall not target registered voters or other specific subgroups of the jurisdiction in conducting their election-related surveys." But the Guidelines are an "educational tool," intended to assist agencies in complying with the law. The SEEC is an enforcement agency, charged with enforcing the law when there is evidence of a

violation. I cannot say that by participating in the development of the poll attached to this letter that anyone at the City promoted a ballot measure in violation of City law.

CONCLUSION

Although I am dismissing your complaint, I thank you for bringing this matter to our attention. If you would like to appeal this dismissal, you may do so under Administrative Rule 4.[1]

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Christopher Williams, Acting DRP Superintendent
Eric Friedli, Acting DPR Deputy Superintendent

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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.