City of Seattle
Ethics and Elections Commission

September 25, 2014

Dear *******:

I am in receipt of your complaint dated June 23, 2014. For the following reasons, I am dismissing the complaint at this time. If you would like to submit additional information, I will consider opening an investigation.

The Commission's Jurisdiction

The Commission administers the City's Ethics and Elections Codes. We have no jurisdiction over the State's Open Public Meetings Act, so the portion of your complaint that alleges violations of that law lies beyond our power to investigate.

In addition, the Elections Code bars the misuse of City ***facilities*** to promote or oppose a ballot measure. To the extent you allege that officials are misusing their ***positions***, the Commission long ago established that positions are not facilities for the purposes of the Elections Code. *See AO 1995-03E*. Your letter states that you "have received numerous reports of public officials calling opinion leaders with messages opposing I-107." But public officials are free to call people and encourage them to support or oppose a candidate or ballot measure. Only if that call is made from a City office or a City telephone does it raise issues under the City's Elections Code, and your complaint does not provide any evidence that these calls are being made using City facilities. This office does not investigate complaints absent some indicia of evidence that public officials are violating the law.

The Legal and Fiscal Analyses

The rest of your complaint is premised on the claim that the legal memo prepared for the City analyzing Initiative 107 is biased, and that the fiscal analysis, based on the legal analysis, is "preposterous." The fact that there is disagreement over the meaning of the language establishing a City policy that families shall pay no more than ten percent of their family income for child care expenses does not render arguments on either side of that question illegitimate.

For this office to investigate a legal memorandum based solely on an allegation that it is "biased" would establish a dangerous precedent, potentially placing the Commission at odds with the Washington State Bar Association, which is charged with policing the ethical conduct of the State's attorneys. Before undertaking such a dramatic step, I would want to see some evidence of wrongdoing. Your letter indicates that you were gathering public records from the

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City. If you believe that any of those public records support your claim that the legal analysis is biased, please submit them to me and I will reevaluate this dismissal.

Conclusion

Thank you for bringing your concerns to the Commission. If you would like to submit additional documentation, please do so at your earliest convenience. If you would like to appeal this dismissal, you may do so in accordance with Administrative Rule 4.[1]

Very truly yours,

Wayne Barnett
Executive Director

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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.