July 17, 2015

BY E-MAIL

Bill Kirk

Re: Case No. 15-1-0425-1

Dear Mr. Kirk:

On April 25 you wrote to our office alleging that Councilmember Kshama Sawant had illegally used City property for campaign purposes when she co-hosted, together with Councilmember Nick Licata, an affordable housing forum at City Hall while Councilmember Sawant's campaign workers distributed campaign materials and gathered signatures to qualify her for the ballot in the City Hall lobby. While I share many people's concern about campaign activities being conducted in City Hall, I believe that the City rules permitting members of the public to distribute literature and to gather signatures in the lobby mean that that an office holder's campaign (or their opponents) may do so on the same terms as other members of the public. Accordingly, as detailed below, I am dismissing your complaint.

FACTS

On April 23, 2015, Councilmembers Licata and Sawant cohosted an affordable housing forum in City Council chambers. Councilmember Sawant's office led the planning for the event, with staffmember Ted Virdone leading the effort. The forum was an official City event.

The day before the event, Virdone met with Department of Finance and Administrative ("FAS") staff to discuss logistics for the forum. The group decided that if the number of attendees exceeded the Council chambers' capacity, the overflow crowd would use the northwest portion of the lobby and be provided a live feed of the forum. Virdone also requested that tables be set up in the lobby. Virdone requested ten tables to make room available for several organizations invited to participate in the event, including the Seattle Displacement Coalition, the Tenants Union, Socialist Alternative, the Low Income Housing Institute, and the Community Housing Caucus. Councilmember Sawant's office also invited the candidates for the vacancy created by Councilmember Sally Clark's resignation. FAS agreed to allow five tables in the lobby.

Prior to the event, as people were beginning to gather, there were two tables displaying materials produced by Socialist Alternative and the Vote Sawant campaign committee. The Socialist Alternative materials included buttons, a newspaper produced by the organization, and flyers. The Vote Sawant campaign materials included t-shirts opposing Shell Oil, a flyer on Shell Oil, a petition to qualify Councilmember Sawant for the ballot, and a poster of Councilmember

Sawant with a quote from her swearing in speech. Two buckets labeled "Donations" were at each end of the tables. Placards were attached to the two tables: "Volunteer for Kshama's Election," and "Sign here to get Kshama on the Ballot."

City Council candidate Jonathan Grant was also in attendance. He occupied one of the tables and distributed People for Jon Grant campaign literature.

Just before the start of the forum, Virdone approached Polly Grow, a strategic advisor with the Commission, and told her that he was concerned about the perception "that we were taking over" the lobby. (Grow was at a forum for prospective candidates in City Hall's Bertha Knight Landes room.) Virdone informed Grow that he had asked that the two tables displaying Socialist Alternative and Vote Sawant campaign materials and the donation buckets be moved outside.

The two tables were relocated outside the building, along Fifth Avenue. All told, the tables were in the City Hall lobby for approximately half an hour. One table remained in the lobby throughout the event, displaying the petition gathering signatures to place Councilmember Sawant on the ballot.

Campaign finance reports show that the Vote Sawant campaign collected four cash contributions totaling $71 with a receipt date of April 23. Two contributors who contributed $41 in total did not reply to staffs repeated attempts to contact them. Two contributors who contributed $30 both told the Commission's investigator that they contributed the cash at the City Hall event.

LAW AND RULES

SMC 2.04.300 states 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." There is an exception to this prohibition for "[a]ctivities that are part of the normal and regular conduct of the office or agency."

Fleets and Facilities Department[1] Rule 06-03 governs City Buildings and Premises and Rule 05-02 specifically addresses activities at City Hall. Section 5.2.3 (1) of Rule 05-02 states that "[m]embers of the public may, on a first come-first served basis, distribute literature or gather signatures while stationary or circulating around in the first floor lobby without a permit or other prior authorization. Tables or other objects are not permitted in the First Floor Lobby." Section 5.4.2 of Rule 06-03 states that "[s]etting up tables in City buildings…is prohibited except in areas and at times that may be designated, posted, or otherwise permitted or authorized by" FAS.

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[1] The Fleets and Facilities Department was merged into FAS in 2010.

DISCUSSION

SMC 2.04.300. In order to establish a violation of this section of the law, two things must be true. First, the use of facilities for campaign purposes must either be made by or authorized by an elected official or a City employee. Second, the use of facilities for campaign purposes must be a use unavailable to anyone other than an elected official or City employee.

Commission staff has long advised those subject to SMC 2.04.300 that they do not violate SMC 2.04.300 when they engage in activities that any member of the public may engage in. When they engage in such activities the use is "normal and regular," and therefore does not violate the law. Just as the Ethics Code's bar on employees using City facilities for other than City purposes excepts "City property which is available on equal terms to the public generally (such as the use of library books or tennis courts)," so too the Elections Code does not deny City officials the opportunity to use City facilities in the same manner as anyone else. The Elections Code's bar on the use of City facilities for campaign purposes is intended to deny incumbent an advantage over their challengers. For example, if public library rental policies would allow a challenger to rent a library meeting room for a campaign event, then an incumbent could also rent the same room on the same terms for their own campaign event.

Distribution of Literature and Signature Gathering. Here, the FAS rules governing the use of the City Hall lobby expressly permit members of the public to distribute literature and to gather signatures. This describes the conduct that the Grant and Sawant campaigns engaged in. It is significant that the rules, although they presumably could, do not prohibit distributing campaign literature or gathering campaign-related signatures.

To be sure, that same rule does not permit the unauthorized use of tables, but in this case FAS authorized the use of five tables. The general rule governing City facilities allows tables when permitted or authorized by FAS. (And the Director takes notice of the fact that tables are frequently present in the City Hall lobby.)

Accordingly it is my determination that the literature distributed and signatures gathered by the Vote Sawant and People for Jon Grant campaigns does not constitute a violation of SMC 2.04.300 because literature could have been distributed, and signatures gathered, by any candidate. The use was both normal and regular.

Campaign Contributions. The FAS rules do not, however, authorize members of the public to solicit or accept contributions in the City Hall lobby. The Elections Code therefore prohibits those subject to that law (officeholders and public employees) from soliciting campaign contributions in the City Hall lobby or authorizing the use of City Hall to solicit contributions.

The evidence collected by the Commission staff, though, does not indicate that either Councilmember Sawant, or her staff, or any other City officer or employee, authorized the solicitation or acceptance of campaign contributions. Indeed, the evidence shows that Virdone asked the campaign volunteers to remove the tables with the signs soliciting contributions and

the contribution buckets from the building, which was done after approximately 30 minutes. Therefore, Councilmember Sawant and her staff did not solicit or accept contributions, or authorize others to solicit or accept contributions, in City Hall in violation of the Elections Code.

Finally, the Director rejects the claim that the entire affordable housing forum was little more than a "front" for a campaign event. Affordable housing is an important issue facing Seattle, as evidenced by the Mayor's creation of a Housing Affordability and Livability Agenda advisory committee shortly after taking office. And none of the interviews conducted nor documents reviewed by Commission staff support the claim that the forum was driven by campaign considerations. And even if the forum ***was*** driven by campaign considerations, it would be a dangerous precedent for the Commission to peer behind otherwise permissible uses of facilities during an election year to determine whether they were motivated by campaign considerations.

CONCLUSION

For the foregoing reasons, I am dismissing your complaint. If you wish to appeal, you may do so in accordance with Administrative Rule 4.[2]

This dismissal should not be interpreted as an endorsement of campaign activities in City Hall. In my years of public service, I have never before seen campaign activity openly

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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.

conducted in a government facility. This was clearly an occurrence that troubled many members of the public.

If the City wishes to prevent the use of City Hall for campaign activities in the future, changes to the rules permitting signature gathering or the distribution of literature would seem to be the most appropriate vehicle for making that change. At a minimum, the rule could expressly prohibit signature gathering promoting or opposing a candidate for office or a ballot measure, or the distribution of campaign literature.

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Councilmember Kshama Sawant