

DRAFT MINUTES

Seattle Ethics and Elections Commission Regular Meeting September 5, 2007

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on August 1, 2007 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA. Commission Chair Bruce Heller called the meeting to order at 4:06 p.m. Chair Bruce Heller, Vice-Chair Mel Kang and Commissioners Tarik Burney, Robert Mahon, Nancy Miller and Michele Radosevich were present. Commissioner Lynne Iglitzin arrived at 4:09 p.m. Executive Director Wayne Barnett and Commission staff members Harley Anders, Gwen Ford and Polly Grow were present and staff member Mardie Holden arrived at 4:20 p.m.

1) Public Comment

There was no public comment.

Action Items

2) Approval of meeting minutes for August 1, 2007 regular meeting

The Chair called for approval of the minutes for the August 1, 2007 regular meeting. The Chair and Commissioners Miller and Mahon each pointed out typographical errors. Commission Miller made a motion to accept the corrected minutes, and Commissioner Mahon seconded. The motion passed unanimously.

3) Settlement between the Executive Director and Friends to Elect Bruce Harrell Committee (\$150 penalty for failing to include sponsor identification on approximately 54,000 robocalls)

4) Settlement between the Executive Director and Venus for Seattle City Council Committee (\$150 penalty for failing to include sponsor identification on approximately 3,750 robocalls).

The Commission took up the two settlements together. The Executive Director stated that last year the SEEC fined three campaigns for failing to include sponsor identification on robocalls. The requirement is unique to Seattle law, and the Executive Director pointed out that these fines have been relatively small because many campaign professionals don't yet appreciate the difference between State and City law.

Commissioner Miller asked how the Executive Director arrived at a \$100 penalty for the Velazquez committee's robocalls and \$150 for the Harrell committee. The Executive Director said he did not want to go below \$100 for this type of penalty, because a fine that is too small will not have a deterrent effect. The \$150 for the Harrell committee is in line with the fine levied last year against Councilmembers Drago and McIver for a similar number of calls.

Commissioner Miller made a motion to approve the settlement between the Executive Director and Friends to Elect Bruce Harrell Committee, which was seconded by Commissioner Radosevich. The settlement was approved unanimously.

Commissioner Radosevich made a motion to approve the settlement between the Executive Director and Venus for Seattle City Council committee, which was seconded by Commissioner Mahon. The settlement was approved unanimously.

5) Discussion and possible vote on Advisory Opinion 07-1E (Valuation of event tickets for campaign finance reporting purposes)

The Executive Director said that the issue of how to value tickets to sold out events has come up a couple of times at the staff level, and he thought it was a good idea to bring the issue to the Commission.

The Executive Director explained that general admission tickets ranged in price from as little as \$102 to as much as \$383 and he believes that the only practical way to value tickets is at

“face value” or at the price the person paid for the tickets. The Commissioners discussed the practical obstacles to determining the value of a ticket on the secondary market. Commissioner Radosevich stated that the federal government just adopted a rule that says “face value” is “market value” because otherwise, people would frequently argue that the ticket is worth less. Commissioner Kang stated that given the purpose of the rule and the problem that the Commission is trying to solve, it seems reasonable to use the price paid whether its “fair market value” or the price paid in the secondary market. Commissioner Mahon said that the opinion, while administratively easy to apply, really doesn’t capture the “fair market value” of a ticket.

Commissioner Miller made a motion to adopt Advisory Opinion 07-01E, which was seconded by Commissioner Radosevich. The Advisory Opinion was approved unanimously.

7) Discussion and possible vote on amendments to Elections Code Rules

The Chair said he wanted to take up the Elections Code Rules out of order. He said that based on Gwen’s excellent notes he was able to compile a list of issues that the Commission has already discussed, and that he’d like to have the other Commissioners add to the list other sections that they want to discuss. The Chair identified the following topics: the clerical and computer services rule; the ordinary home hospitality rule; the rule governing when a report is not considered filed; the Attribution Rule; Public Office Funds; and the rule articulating the standard for granting disclosure exemptions. Commissioner Mahon stated that he has some questions and concerns about payments to vendors and subcontractors, and questions and concerns about the Independent Expenditure Rule, and some minor issues in Rules 10 and 11. Commissioner Miller had an issue with the addition of yard signs to the list of items on which no sponsor identification is required.

The Commission began with a discussion of Rule 1. The Executive Director agreed to go through his list of proposed changes from the August 1, 2007 meeting, starting with:

- Rule 1 (E) – the new draft deleted the phrase “independent expenditures” as requested at the last meeting.
- Rule 1(E)(4) – the new draft eliminates the proviso that if a volunteer uses a home office it is a contribution.
- Rule 1(F) – the Executive Director researched this provision after the August meeting. He said that when the state exempted legal and accounting services from the definition of contribution, the Commission did the same, but decided that the state exemption had not gone far enough. Therefore, the contribution limit section was amended to add “clerical and computer services for the purposes of complying with the Campaign Finance Laws” as an exemption from the contribution limit, on the theory that these were contributions under State law. The Executive Director stated that he has amended the draft to define as contributions only paid work for a committee. The Executive Director said the whole problem flows from the Commission’s prior cramped reading of the state’s exclusion for legal and accounting services.

Commissioner Mahon asked how the rule would apply if a law firm was volunteering serving as a treasurer for a candidate, and a clerical person did fifty hours worth of data entry. If the law firm is not getting paid but is paying a clerical person a salary, it seems like no one is being paid to do the clerical work, and therefore it would not be reportable. Commissioner Mahon stated that the current definition of legal and accounting services encompasses all clerical services that we have discussed, which is why this rule is so confusing. The Executive Director said that this isn’t the kind of activity that the SEEC pursues.

After much discussion Commissioner Mahon made a motion that the Commission adopt Rule 1 as amended by the Executive Director in his latest draft, subject to the deletion of the last two sentences of Rule 1(F), which is the definition of “clerical services” and the parallel sentences in Rule 1(G), which defines “computer services.” The motion was seconded by Commissioner Miller, and passed unanimously.

Before moving on to Rule 2, the Commission discussed “ordinary home hospitality,” and a proposed redraft of the City’s exemption. The Executive Director explained that he had imported the language from the state that talks about “a gathering where the purpose is to meet the candidate or organize a campaign and where no admission fee is charged or contributions suggested to, or expected from those attending.” And instead of a \$100 cap, he replaced it with a cap set at half the campaign contribution limit. The changes bring the rule into alignment with New York City, Los Angeles and San Francisco, and index the cap to inflation if the Council decides to continue indexing the contribution limit. Commissioner Miller made a clarifying motion to make it clear that when the Commission adopted Rule 1 it intended to include the redraft of the Ordinary Home Hospitality definition, which was seconded by Commissioner Radosevich. The motion passed unanimously.

Commissioner Miller made a motion to adopt Rule 2, which was seconded by Commissioner Mahon. The changes to Rule 2 were adopted unanimously.

Commissioner Miller made a motion to adopt Rule 3, which was seconded by Commissioner Radosevich. The motion passed unanimously.

Commissioner Miller stated that Rule 4 has a proposed amendment. Executive Director Barnett stated that in the amendment, Rule 4 first sentence should read “reports that do not contain substantially all...” Commissioner Mahon asked a question regarding the new version,

and it was decided that the sentence should read “contain knowing errors or a substantial number of omissions.” Commissioner Radosevich made a motion to adopt Rule 4, which was seconded by Commissioner Miller. The changes to Rule 4 were adopted unanimously.

Executive Director Barnett announced that Rule 5 could not be adopted at this time because the City Attorney’s office was still in discussions with the attorney for the Freedom Socialist Party on possible language for this rule. We have assured Mr. Hyde that the SEEC will not move forward on this Rule until those discussions have concluded.

The Commission then took up the Attribution Rule. The Chair asked the Executive Director to bring the Commission up to speed as to his thinking on this Rule. The Executive Director stated that since the last meeting he had followed up on Commissioner Radosevich’s suggestion to look at some other cities to see how they handle attribution. What he found is that New York City, Los Angeles and San Francisco have all very different ways to go about this. San Francisco is a model of brevity, New York is very difficult to administer, but Los Angeles’s rule struck him as a good template for revising the Commission’s rule. It has several bright-line tests, looking for example at majority voting rights, majority ownership of entities, etc. If the Commission is inclined to revise the Attribution Rule, he would suggest that we start with Los Angeles.

Commissioner Mahon did not like L.A.’s undefined reference to “control,” which he said could override all the bright-line tests in the rule. Commissioner Mahon expressed interest in emulating the San Francisco code.

The Executive Director said that he had spoken with the Director of the San Francisco’s Ethics Commission. Their Rule is very brief and very new and they haven’t much practice with it yet. This is not a rule but a part of their statute.

The Chair asked the Executive Director to develop some language based on the L.A. model. The Executive Director stated that the rule should provide some clarity, which our current rule does not. He said that he would follow up with Los Angeles on the concerns raised by Commissioner Mahon.

The Commission then discussed Rule 7. Commissioner Mahon pointed to the rule regarding payments to subvendors and subcontractors. He would strike this rule because he doesn't believe that it serves a public purpose and it is burdensome for campaigns. He said that you pay a consultant and there is no need to know who he buys his paper from, etc. The public doesn't care, it is the other campaign that cares but that is not a legitimate public purpose. You are basically helping other campaigns with their campaign research and there is no reason for it. Bob DeWeese stated that he believes that there is a public purpose. For example, if a campaign used a non-union printer, that would be a significant interest to some people.

This discussion was tabled to the next meeting, to allow the Executive Director to talk with the PDC on this matter.

The Commission then took up Rule 8. Commissioner Mahon asked a question relating to the inclusion of unpaid volunteers in a category of people that cannot make independent expenditures. He said that it doesn't make sense to bar someone who waves a sign for a campaign from making an independent expenditure. Commissioner Radosevich said that she thinks the federal rules on this topic could be instructive.

Commissioner Mahon made a motion to amend section D to read "unpaid volunteers with material inside knowledge." The Executive Director suggested to the Commissioners that instead of amending this now and since the Feds have a rule on this, he would look at this and bring back information to the Commission.

Commissioner Miller stated that she would prefer that yard signs not be included in items that don't need sponsor identification under Rule 9. She made a motion to accept the approval of this rule with the deletion of yard signs exception. The Executive Director stated that yard signs were added because they are exempt under state law, and he questions the value of including sponsor identification on a yard sign. After further discussion, the Chair stated he would be inclined to keep yard signs in as part of the exception. The Executive Director stated that this is a rule, and if the Commission adopts it and finds out that all of sudden we see yard signs on which we think it would be important to have sponsor identification, the Commission can always revisit this issue.

Commissioner Mahon made a motion to adopt Rule 9 without any further amendments, which was seconded by Commissioner Radosevich. The motion passed 6 to 1, with Commissioner Miller casting the dissenting vote.

The Chair stated that the remainder of the Election Rules and Administrative Rules will be taken up at the next meeting.

13) Executive Director's Report

The Executive Director shared with the Commission that the Seattle Channel is not inclined to televise the SEEC meetings. The other options are podcasting or posting recordings on the Commission's web site. Staff noted that we tape the meeting and have in the past made copies of the meeting available on a CD.

Meeting adjourned at 6:05 p.m.

Minutes respectfully submitted by Gwendolyn Ford, Administrative Staff Analyst.