

Seattle Ethics and Elections Commission Regular Meeting August 6, 2008

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on August 6, 2008 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue, Seattle, Wa. Commission Vice-Chair Robert Mahon called the meeting to order at 4:05 p.m. Commissioners Tarik Burney, Ed Carr, Mel Kang and Nancy Miller were present. Commission Chair Michele Radosevich and Commissioner Lynne Iglitzin were absent. Executive Director Wayne Barnett and Commission staff members Gwen Ford, Polly Grow and Kate Flack were present, as was Assistant City Attorney Jeff Slayton.

1) Public Comment

There was no public comment.

2) Approval of July 2, 2008 Minutes

Commissioner Kang suggested adding the following sentence in Item #4 (Public Financing Advisory Report): “Commissioners Kang and Mahon suggested that to identify on the ballot candidates who use public funds in their view is not appropriate because it implies approval of the candidate.” Commissioner Carr noted a typographical error on page 4 under the Executive Director’s Report. Commissioner Kang made a motion to accept the amended minutes, which Commissioner Carr seconded. The motion carried unanimously.

3) Public hearing on rules implementing SMC Chapter 2.06, Lobbying Regulations

The Executive Director began the hearing by noting that written comments from the Executive Director of the Minority Executive Director’s Coalition were distributed to the Commissioners prior to the start of the meeting.

Julia Sterkovsky, a resident of Seattle and the director of the Seattle Human Services Coalition, spoke first. After briefly explaining the work of the Coalition, she said that they have

particular concerns because the folks who are part of the coalition are not paid to lobby, although it appears that they are covered by the draft rules. These are people who do intake at the homeless shelters each night or help coordinate a meal program or help run a childcare facility or work at a community health clinic. Those are the kind of folks who participate and who communicate with elected officials.

The Coalition is concerned that these rules will chill civic engagement, particularly when e-mails and phone calls to elected officials are counted towards the threshold for lobbying activities. Seattle residents whose job descriptions do not include lobbying are likely to refrain from communicating with their elected officials out of fear that they will be considered lobbyists and required to register. They do not consider themselves as lobbyists, but as residents who have an educated opinion they would like to share. These rules will discourage that information sharing, because they characterize the communication of these individuals as lobbying on behalf of their employer.

Most of the Seattle Human Service Coalition members who communicate with officials about City policies don't speak on behalf of their employer. Most of the organizations have one or two individuals authorized to do that. The effect of having Seattle residents considered to be speaking for an organization when in fact they are speaking on their own experience and convictions will cause confusion and increase the risk of speaking out. If they are considered to speaking in behalf of their employer, they won't want to overstep their bounds.

Another point of ambiguity in the rule is determining when someone is being paid to lobby when this is not a part of their job description. For instance, if someone who works on salary is treated as if they are on the clock all the time, is there no allowance for personal speech or civic activity? We make distinction for salaried people who are doing electoral political work,

for instance. They are able to say when they are on the clock and when they are not on the clock, so it is okay to do political work. They are wondering why there can't be similar kinds of distinctions when people are speaking with elected officials.

The bottom line is they are encouraging the Commission to review the rules and to see if there is a way to allow for folks in this kind of position to speak out without chilling their inclination to engage in the civic processes. One such solution would be to clarify that emails, phone calls, postcards and petitions do not play a role in reaching the reporting threshold, however, they must be reported once the five day threshold is reached through direct contact. Under that kind of situation there would still be folks with the Coalition who would need to register and she would be one of those. A number of the larger organizations would also need to register. It is not like all of them would no longer have to register a report, but it would allow some of the folks who are line workers to express their own personal opinions with elected officials.

Ms. Sterkovsky stated that the Coalition strongly recommend that the rules allow the reporting organization or individual to elect either cash or accrual expense reporting, based on what their own organization uses. Everyone has a system set up to do their organization's expenses and accounting, and it would be very difficult and time consuming to do this report in a different way.

In response to a question from Commissioner Kang, Ms. Sterkovsky stated that the critical issue is the treatment of salaried employees. It would be helpful if the rules could clarify that these people are not being compensated for lobbying when they are doing this at home in the evening. Then it should count as their own personal conversation. But if it is being done during their regular work hours, then they are being paid. Commissioner Mahon said that it is easy

when you are communicating with elected officials on something that is outside your normal scope of work. He thanked Ms. Sterkovsky for her testimony.

Tim Hatley, a private citizen and a lobbyist for the past seven or eight years, spoke next. He stated that he had no problems with the lobby registration concept at all. He cautioned, though, that not all of the time that he spends at City Hall should be interpreted as lobbying. He spends significant time monitoring goings on at City Hall, and that is not lobbying. He said he believes that non-profits are the ones that are going to be surprised by this rule, and in terms of compliance this may be the biggest issue.

In terms of the actual registration form, Mr. Hatley feels that it is pretty straightforward, even though he has not actually logged onto it. Mr. Hatley asked for clarification of whether the casual lobbying threshold applies to contacts *per client*, or whether four contacts on behalf of four clients would trigger registration. The Executive Director said that he would consult with the PDC and report back to the Commission in September.

With no other public comment, Commissioner Mahon closed the Public Hearing on the Lobbying Rules. Commissioner Mahon asked the Executive Director to explain the changes since the last draft. The Executive Director said that the changes were minor and as follows:

Rule 1 – Filing Reports. Section C was added. It clarifies that reports due on Saturday, Sunday or a postal holiday must be filed by midnight the following business day.

Rule 4 – Compensation for lobbying. This rule now clarifies that if you are salaried and lobbying on behalf of your employer, that is a lobbying contact and does require registration if you exceed the threshold. It also clarifies that an hourly employee who is not paid for lobbying does not fall within the threshold.

Rule 5 – Enforcement Discretion. This rule was changed to now say the Executive Director shall not commence enforcement proceedings if the subject earns less than \$100 and registers promptly upon request. It is not the Commission acting but the Executive Director.

Commissioner Mahon asked the Executive Director the results of his research into reporting expenses. The Executive Director said that he'd received one response advocating reporting on a cash basis, one advocating reporting on an accrual basis, and one advocating giving lobbyists a choice. The Commission directed the Executive Director to change the forms to give lobbyists a choice

Commissioner Mahon then asked the Executive Director to respond to Ms. Sterkovsky's testimony. The Executive Director said that the ordinance defines communication broadly as an attempt to influence, so he doesn't see how the Commission can eliminate emails. He also expressed doubt about creating a safe harbor for salaried employees working from home or in the evenings, but said that he would give the issue more thought and be prepared for a discussion with the Commission in September.

4) Recommendations to City Council on changes to the Elections Code

The Executive Director stated that Councilmember Clark had solicited the Commission's ideas for any technical housekeeping changes to the Elections Code, since the Code needed to be amended to increase the threshold for mini reporting. The package that the Executive Director put together is intended to be non-substantive. There are a couple substantive changes, however. The first would change the treatment of domestic partners, in accordance with recent changes to state law. The second would sync up the City's Financial Interest Statements thresholds with the state's.

After some discussion of word choices, the Commission directed the Executive to share the package of changes with Councilmember Clark.

5) Recommendations to City Council on contracting procedures

The Executive Director said that City Council President had solicited the Commission's advice on improving the Council's consultant selection process. The Executive Director directed the Commissioners to his memo, which laid out three options. He said it was his recommendation to require parties participating in the contracting to certify that they (a) have no financial interest in the contract and either (b) haven't engaged in any private transactions or activities with the consultant or (c) have engaged in private transactions or activities with the consultant, but obtained a written determination from the Commission or himself that those do not rise to the level that they would require recusal. He believes that is the best way to make people stop and think before going through with a contract. Also, it provides a paper trail for the Council to look at to determine that in fact the conflict issues have been considered by the contracting party.

Commissioner Kang asked whether the certification would be a safe harbor, and the Executive Director indicated that it would not. The only safe harbor is written advice from the Commission or the Executive Director based on a written request from the person seeking advice.

The Commission directed the Executive Director to recommend certification to the Council President.

6) Voters' pamphlet rule barring candidates from discussing their opponent(s)

Commissioner Mahon said they would pass on this issue until the September meeting.

7) Executive Director's Report

The Executive Director asked the Commission to share their thoughts on the following hypothetical:

A City employee's personal lawyer is being considered for an appointment to a City board. The City employee has paid the attorney approximately \$5,000 over the last two years, although in prior years may have paid the attorney much more. The two are also friends. They are guests in each other's home approximately three to five times a year, and frequently lunch together. When they do, they pay their own way. Can the City employee be officially involved in the selection of his friend to serve on a City board?

Each of the Commissioners indicated that they believed that the involvement of the City employee would violate the Ethics Code.

Meeting adjourned at 6:00 p.m.

Minutes respectfully submitted by Gwendolyn Ford, Administrative Staff Analyst.