

**Seattle Ethics and Elections Commission Regular Meeting
May 6, 2009**

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on May 6, 2009 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Robert Mahon called the meeting to order at 4:00 p.m. with a welcome to new Commissioner Bill Sherman. Commissioners Tarik Burney, and Ed Carr were also present. Commissioners Lynne Iglitzin and Michele Radosevich arrived shortly after discussion of Item 1. Commissioner Nancy Miller arrived after the first public comment in Item 4. Director Wayne Barnett and staff members Bob DeWeese, Kate Flack, Gwen Ford, Polly Grow, and Mardie Holden were present, as was Assistant City Attorney Jeff Slayton.

1) Public Comment

Public comment regarded agenda Item 4, and persons present agreed to wait until that item came up.

Action Items

2) Approval of minutes for March 4, 2009 regular meeting

The minutes were approved unanimously without revision.

3) Adoption of resolution honoring Mel Kang's service

The Chair acknowledged the thoughtful and unique perspective that Commissioner Mel Kang brought to the Commission, and the Director read into the record a resolution recognizing his almost eight years (2½ terms) of service to the people of Seattle as a Commission member. The Resolution acknowledges his service as Vice Chair of the Commission from 2003 - 2007,

and his tireless advocacy of the interests of City workers and the principles of free speech. The Commission unanimously approved and signed the resolution.

Discussion Items

4) Credit Card Contribution Rule review

This issue was being revisited since approximately six campaigns are using PayPal to collect contributions, but not all of the campaigns are collecting all of the information required by the Commission's credit card rule, including the last four digits of the card number and the expiration date. In 2006 we heard that enforcement of this rule might be too onerous for campaigns. The question before the Commission is if the rule should be enforced during this election cycle or suspended pending development of alternatives.

Three people commented. Keith Ljunghammar asked for clarification of the references to debit and credit card receipts, vs. PayPal receipts. He also had questions about the rules regarding permanent residency status, since an ambassador might have permanent resident status but still shouldn't contribute. Also, Rule 6.c prohibits accepting contributions through another corporate entity, which it seems that PayPal is. He said that in any case he agrees with the objective of preventing fraud and plans to comply with the Commission's requirements.

Abbott Taylor, treasurer for David Bloom for City Council, said their campaign is using PayPal largely due to its very low fee. For a higher fee, PayPal could gather more required data for the campaign, but that could prove very expensive for a small campaign. Currently they collect all the required data except the last four numbers and the type of card. The campaign manager contacts donors for the balance of the required information. He emphasized that

enforcing the rule will have a costly impact on smaller campaigns, and payment methods in general are moving away from the use of checks.

Richard Vincent said that he has collected campaign contributions for a number of years—by check, credit card, and cash—and testified that it seemed that unnecessary new rules have been developed for credit card payments, particularly the donor’s foreign nationality status, which is not required for cash contributions. He sees no need to collect the new information for credit card contributions.

Commissioner Radosevich agreed that certifying residency in the case of credit cards may not be reasonable, but expressed concern about not collecting the last four digits of the credit card numbers, and wondered if there is another way to ensure that the card is not being used for multiple contributions. Mr. DeWeese responded that this is only an issue with PayPal—created in part to protect anonymity between buyers and sellers of merchandise—since merchant credit card information includes the last four digits. He added that since the Commission’s earlier discussion, PayPal has introduced a feature to verify the card holder’s address, which may meet our needs, although it might add extra costs to the campaign. He asked if the law already prohibits receipt from PayPal, since the campaign is not actually receiving a credit card payment from a contributor, but rather a transfer from the PayPal agent.

The Chair wondered if it makes a difference if PayPal is working for the donor as a payment vehicle or for the campaign as a processing agent. He pointed out that when a check clears a bank, the campaign is actually receiving money from the bank. Mr. DeWeese and Ms. Grow pointed out that our law permits any written instrument, including a cashier’s check.

In response to Commissioner Sherman’s question about our goals and experience with fraud, Mr. DeWeese reported that in his fourteen years on staff, we had three major cases of

concealment, none of them involving credit cards, but using checks, which provided an auditable paper trail. The last four digits of the card number provide some trackable information, in lieu of a contributor's signature and account number on a check. Ms. Grow said that previously company cards have been used to make a contribution from the company, but the individuals' names were recorded by the campaign.

Commissioner Sherman spoke in favor of finding ways to make the use of PayPal possible, with the controls we need, since it provides campaigns a very cost-effective vehicle for collections. In response to Commissioner Carr's request for clarification of the controls required for other methods of payment, staff emphasized that check payments provide information that can be audited. Mr. DeWeese pointed out that one campaign reported that they cannot get the expiration date from PayPal, which cannot archive them. Mr. Taylor indicated that there are some safeguards in the PayPal system, since PayPal once refused to let him create a new account after they matched his credit card account number with his previous account.

The Chair explained that this is an unusual situation since the Council did not set these standards, but rather said that credit card payments could not be accepted except by rule of the Commission. In response to the idea of amnesty for those who have already used PayPal, Ms. Grow said that campaigns have been told to collect the required information, possibly on their own web sites or by follow up contacts with donors, as Mr. Taylor's campaign has done. Consensus of the Commission is that we should find ways to make PayPal or other on-line contributions workable, and that since the rules should not be changed in the middle of the election cycle, we should enforce the current rule.

One concern is that if campaigns collect too much data into a database, that might jeopardize donor security. Most campaigns, however, have provided expiration dates. Mr.

DeWeese also mentioned that currently “virtual credit cards” are now available, that will not have a paper trail at all. They show as a Visa or MasterCard payment, and the campaign would have no record of the original donor. Ms. Radosevich suggested that it might be simple to delete the requirement for an expiration date and add the requirement for address verification, and would be willing to suspend enforcement of the old rule whenever a proposal is before the Commission. Also, she questioned whether the SEEC should enforce the residency requirement, which is a federal law, not local.

Rather than revisit this rule in the middle of a campaign cycle, staff will learn more about the capacity of PayPal, and will be in contact with the New York City’s campaign finance board, which has an in-house expert on on-line billing systems. Commissioner Sherman also suggested we find out what information might Pay Pal have that could be available by subpoena, should and enforcement action be necessary.

5) 08-WBI-1017-1 (Improper governmental actions at Seattle Fire Department)

In response to concerns raised by a whistleblower, staff uncovered some serious problems at the Fire Department, including their failure to bill First & Goal for almost \$200,000 worth of services, and an employee’s demand for Hannah Montana concert tickets. In follow-up, however, the Mayor’s private investigator found that the whistleblower had not been retaliated against even though he had reported the department’s action in October and was demoted in December. The Director expressed his concern that this finding will have a chilling effect on future whistleblowers.

The Director clarified that staff could not bring information about this investigation to the Commissioners before completing the investigation, lest the Commissioners be accused of prejudging the matter by early exposure to facts without hearing from the other party. Although

in the end staff determined that the Firefighters' contract did not permit us to fine the Lieutenant, there are other officials involved who are not party to that contract and could be part of an enforcement action. Moreover, the simple fact of allegations, which can be unfounded, could be damaging to an individual. Staff never discloses that there is an investigation before it is complete. To mitigate potential repercussions, the investigator always calls persons who have been interviewed to let them know if a complaint is unsubstantiated.

The Chair asked about the possibility of revisiting the ethics enforcement provision in the union contracts that prohibit it. The Director confirmed that he frequently discusses this issue with the City's chief Labor Negotiator and City Councilmembers. Three of the largest City unions, representing about 40% of the city's workforce, have not bargained to permit the Commission to levy fines for Ethics Code violations.

The Director reported he has been told by the Department of Executive Administration that the City has now collected \$122,000 from First & Goal since the issuance of this report.

6) Dismissal of Case No. 08-1104-1 (Allegations of wrongdoing arising out of SDOT's handling of appeal)

The Director reported that most of the issues raised in the Department of Transportation's handling of this citizen's appeal were outside of the Commission's jurisdiction, including alleged violations of due process rights and the Public Records Act. Staff found no evidence that SDOT used City facilities for other than a City purpose.

7) Director's Report

a) Update on Proposed Ethics Code revisions sent to City Council

The packet includes the proposed changes in the Ethics Code, sent to the City Council April 14. The latest updates include clarified language, including the new phrase "Covered

Individual,” to describe the persons in addition to employees who will come under the Code. The Director, the Chair, and Past Chair Radosevich attended a brown bag discussion on the changes in Council Chambers today. Councilmember Clark said that the target for completing work on these changes is the end of June, along with the indemnification issues previously presented. Councilmembers also discussed in detail how to arrive at determining which contractors should be included under the Code.

b) Budget update

The agency has been asked to cut \$40,000 from the 2010 budget, or approximately 6 %. The Director anticipates meeting that target by reassessing the Voters’ Pamphlet expenses for 2010, eliminating travel, and relinquishing the \$2,500 raise previously proposed for the Director.

8) Added item: Proposed ordinance making it unlawful for a City elected official to solicit contributions from any City employee.

The Director reported that City Councilmember Tim Burgess has requested new legislation to prohibit all City elected officials from soliciting contributions from City employees, in keeping with similar State law. This local legislation would highlight the issue, clarify how the law is applied, and give the Commission authority. The State law prohibits a local official from soliciting from employees in their own agency, but would not, for example, prohibit an incumbent City Councilmember from soliciting from the nearly 12,000 employees who are under the Mayor’s chain of command, even though the incumbent Mayor would be barred from those solicitations.

The State law also prohibits an employee from being favored or disfavored in an employment setting for making or refusing to make a contribution. The Director expressed concern about our having to adjudicate claims that an individual was unfairly denied a job or

promotion should this regulation pass. The City's Whistleblower Code, for instance, bars the SEEC from treating personnel actions as improper governmental actions.

There was considerable discussion with the Councilmembers about potential inadvertent inclusion of an employee on a solicitation list, and the employee who is included on a solicitation list after willingly contributing to a campaign or attending a neighborhood event. This legislation would also bar elected officials from soliciting for any campaign, not only their own.

Mr. Slayton pointed out several other issues that were discussed, including broadening the coverage to include not only elected City officials but also other candidates for City office, unlike State law. And in State law, the reference to "State official" means elected State officials, while in City parlance "official" includes appointed, as well as elected officials. Commissioner Radosevich suggested that elected officials should be permitted to solicit contributions from members of boards and commissions, rather than barred, while Commissioner Miller suggested there could still be a quid pro quo in solicitations of volunteer committee members.

The Commission generally endorses this legislation, but encouraged the Council to clarify that general solicitations not targeted to City employees, are permitted.

The Director clarified that managers soliciting employees for charitable contributions would not be included in this legislation but the practice is strongly discouraged in training and in response to questions.

The Chair adjourned the meeting at 5:30 p.m.

Minutes respectfully submitted by Mardie Holden.