

## **Seattle Ethics and Elections Commission Regular Meeting**

**July 6, 2011**

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on July 6, 2011 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Robert Mahon called the meeting to order at 4:04 p.m. Vice-Chair Bill Sherman, Commissioners Tarik Burney, Rich Cohan, David Mendoza, and Amit Ranade were present. Commissioner Lynne Iglitzin joined the meeting by telephone. Executive Director Wayne Barnett and staff members Anthony Adams, Kate Flack, Polly Grow and Chris Thomas were present. Assistant City Attorneys Gary Keese and Sumeer Singla also attended.

### **1) Public Comment**

Seattle City Councilmember Bruce Harrell recommended that candidates submitting voters' pamphlet statements be prohibited from submitting statements that are false or materially misleading, and that candidates be required to attest to the accuracy of statements under penalty of perjury. He also suggested a two-week public review period for statements prior to publication, and that candidates be required to get endorsements in writing.

The Chair asked the Councilmember whether the Commission had the legislative authority to make these changes by rule, and the Councilmember said that the Council would likely need to legislate to make these changes a reality.

## **Discussion Item**

### **4) Potential work with the City of Kirkland**

The Executive Director asked the Commission for authorization to enter into discussions with the City of Kirkland about a contract under which the Commission would provide advice and conduct ethics investigations for the City of Kirkland. The contract would be similar to the agency's contract with the Seattle Public Schools.

Vice-Chair Sherman commended Kirkland's City Attorney, Robin Jenkinson, and the City of Kirkland for the work on developing an Ethics Code, and asked Ms. Jenkinson about the various options Kirkland was looking at for administering the code. Ms. Jenkinson said that the idea of contracting with the Commission or the King County Ombudsman had emerged as the leading options on the table.

The Commission expressed its support for continuing discussions between the two cities.

## **Action Item**

### **2) Approval of June 1, 2011 meeting minutes**

Vice-Chair Sherman moved to approve the minutes from the June 1, 2011 regular Commission meeting as drafted, and Commissioner Mendoza seconded. The minutes from the June 1, 2011 meeting were unanimously approved as drafted.

### **3) Public hearing and possible vote on Voters' Pamphlet Administrative Rules**

The Chair noted that the Commission had decided to hold over this topic from the June meeting, so that it could provide notice of the Commission's intent to review the rule barring

candidates from discussing their opponents. The Executive Director said that he had done extensive outreach on the topic, and distributed a letter from the lawyer who represented the ACLU in a challenge to the rule in 2003.

Prior to discussing this item, the Chair disclosed that the author of the letter is a partner of his at Perkins Coie, and Commissioner Ranade disclosed his membership on the ACLU's national and state boards.

Commissioner Sherman began the discussion with a review of the State and City rules, and the changes to the City code in 2004. Commissioners moved on to discuss examples of what could and could not be in a statement that would comply with the City rule, and contrasted that with what would comply with State law.

The Chair then closed the public hearing, noting the entry into the record of the letter from the ACLU and Councilmember Harrell's comments at the start of the meeting.

Commissioner Sherman moved the adoption of the revisions proposed by staff, with the exception of Rule 4.2. Commissioner Ranade seconded the motion.

Commissioner Cohan said that he would support deleting Rule 4.2 if the rules were amended to bar false and materially misleading statements. The Chair expressed concerns with policing false and misleading statements. Commissioner Burney said that he was not as concerned with policing false statements, but was concerned with policing misleading statements. Commissioner Iglitzin echoed the Chair's comments. Commissioner Mendoza said that he was concerned that removing Rule 4.2 would open up the door to many more challenges of statements under the law barring libelous, slanderous or defamatory statements.

Commissioner Sherman agreed that there could be more challenges, but noted that the current rule advantages incumbents. He also expressed serious concerns with the staff and the commission taking on the task of policing the truthfulness of statements. He said that he believed the benefits of free speech outweighed the risk of false statements.

Commissioner Ranade urged the Commission to avoid conflating two issues: speaking about one's opponent and false statements.

The Chair said that the Commission would need to get guidance from the City Council before tackling false statements. That goes beyond the Commission's authority. There was broad consensus on this point. There was also broad consensus that the Commission should not play a role in policing "misleading" statements.

The Commission voted unanimously to amend the rules as the staff suggested, and to delete Rule 4.2. They tasked the Executive Director to research what rules regarding truthfulness other jurisdictions with voters' pamphlets have adopted, and to schedule a discussion of false statements for a later date.

### **Discussion Items**

#### **5) Executive Director's Report**

The Executive Director updated the Commission on the status of the search for a new trainer. He told them he expected to have the confirmation of the hire on the agenda for the next Commission meeting.

The Executive Director also discussed two Supreme Court cases of interest to the Commission, one finding that legislators did not have any First Amendment defense to conflict-

of-interest allegations, and the other overturning Arizona's public financing program on First Amendment grounds.

**The July 6, 2011 Seattle Ethics and Elections Commission Regular Meeting was adjourned at 5:14 P.M.**

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