

**Seattle Ethics and Elections Commission Regular Meeting
September 5, 2012**

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on September 5, 2012 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bill Sherman called the meeting to order at 4:00 p.m. Vice-Chair Tarik Burney, and Commissioners Bruce Carter, Rich Cohan and David Mendoza were all present. Executive Director Wayne Barnett and staff members Anthony Adams, Kate Flack, Polly Grow, Gary Keese and Chris Thomas were present. Seattle City Attorney Jeff Slayton was also in attendance.

1) Public Comment

Chris Leman urged the Commission to produce a video voters' guide even when there are no candidates on the ballot. He said that it is wrong to only have a voters' pamphlet every other year.

He also encouraged the Commission to issue an advisory opinion on the use of City resources in connection with ballot measure campaigns.

Action Items

2) Approval of minutes of July 18, 2012 special meeting

Commissioner Cohan moved to approve the minutes of the July 18, 2012 special meeting. Commissioner Carter seconded. The minutes from the July 18, 2012 special meeting were unanimously adopted.

3) Approval of minutes of August 1, 2012 regular meeting

Vice-Chair Burney moved to approve the minutes of the August 1, 2012 Regular meeting. Commissioner Carter seconded. The minutes from the August 1, 2012 Regular meeting were unanimously adopted.

4) Settlement in Case No. 12-2-0206-1 (fictitious name on campaign contributor's check)

The Chair recused himself from the consideration of this settlement, and the Vice-Chair asked the Executive Director to summarize the settlement. The Executive Director explained that the Bobby Forch campaign filed a report showing a \$100 contribution from Thermos Nobull at 1600 Pennsylvania Avenue, North Central, Washington. Polly Grow contacted the treasurer, who later amended the report to list Thomas Goldstein as the contributor. Mr. Goldstein agrees with the Director that there needs to be "zero tolerance" for fictitious names in the Commission's contributor rolls. Mr. Goldstein agreed to pay a \$100 penalty, which the Director urged the Commission to adopt, saying that he was satisfied that Mr. Goldstein had not intended to evade disclosure.

Commissioner Carter was dismayed by this conduct. He noted that Mr. Goldstein is a former candidate for office, and said that he should know the rules. Commissioner Carter said that he wanted Mr. Goldstein to come to the Commission with his bank records and explain what happened. He did not think the nominal penalty was appropriate.

The Vice-Chair asked whether or not Mr. Goldstein intended for his contribution to be reported under the name "Thermos Nobull" and the Director said that Mr. Goldstein had told the staff that was not his intention.

Commissioner Cohan said that he was inclined to adopt the settlement, but said he would support the Commission making a statement that this kind of practical joke was not at all appropriate.

Commissioner Carter said it was not at all clear to him how this was a practical joke. The Vice Chair also could not understand how this was a practical joke.

The Director said that his main reason for recommending the settlement was that it let the public know that the Commission would catch even a \$100 contribution in a false name, and that there would be penalties regardless of the person's motivation.

In response to a question from Commissioner Carter, the Director said that this was the first case of a contribution in a fictitious name in anyone's memory.

Commissioner Cohan motioned to approve the settlement. Commissioner Mendoza seconded. Vice-Chair Burney, Commissioners Cohan and Mendoza vote to approve the settlement agreement. Commissioner Carter voted against the settlement, saying that he expected more from Mr. Goldstein, and that he wanted more information before he would approve a settlement. The motion passed on a 3-1 vote.

5) Continuation of appeal of Case No. 12-2-0703-1 (Part II) (6th allegation)

The Chair noted that this appeal revolved around the relationship between the Library and the Library Foundation.

Mr. Leman began his remarks by focusing the Commission's attention on the fact that the law bars direct or indirect efforts by the City to promote or oppose a ballot measure. Mr. Leman said that the Library is providing the Foundation with facilities to raise money, which the Foundation is using to contribute to the levy campaign.

Mr. Leman then directed the Commission's attention to a City resolution relating to the Foundation, which he said directs that Foundation proceeds go to the Library.

Commissioner Carter asked Mr. Leman whether or not the Library Foundation has articles of incorporation on file with the Secretary of State, that would establish the Foundation's powers. Mr. Leman said that his complaint was not against the Foundation, but about the Library's support for the Foundation.

Mr. Leman said that even though the City can accept contributions, in many different ways the Library steers potential contributors to the Foundation. Mr. Leman said that the Foundation does not pay the Library for steering contributors to the Foundation. Mr. Leman also said that the Foundation uses the Library's offices and furniture for free.

Mr. Leman also took issue with the Foundation's insistence that only investment proceeds were used to contribute to the levy campaign. He said that this was not a sound distinction, and that the investment income came on contributions that the City helped the Foundation raise.

Mr. Leman closed his remarks by noting that several City departments are now establishing foundations, and that the Commission should put a halt to the use of those foundations to make campaign contributions.

The Director told the Commission that .3 percent of the Library Foundation's total assets as of the end of 2011 had been spent on the levy campaign. He said the argument that the Library supports the Foundation's fundraising efforts so that every 14 years the Foundation can spring to life and spend on a political campaign is fallacious. He said that it is clear that the Library supports the Foundation because of the \$22 million that the Foundation has granted to the Library in the last five years alone. He noted that Mr. Leman asks the Commission to order the Foundation to stop making campaign contributions – which the Commission is powerless to do – or to order the Library to end its relationship with the Foundation, which the Director claimed would be a mistake.

The Director said that he had advised the Foundation, the Library Board, Library staff, and the Friends of the Library that they were not to conduct campaign activity from the Library's

offices. He said that there was not a shred of evidence that the Library had failed to follow his clear advice.

The Chair asked the Director what the staff looks for in evaluating a complaint that the City is supporting a non-profit in a manner that violates the Elections Code. The Director said that staff was looking for some indication that the City's support for the non-profit was a cloaked effort to assist a campaign, or some indication that the City's relationship with the non-profit changed around the election. The Director noted that the Library and the Foundation have been working together since 1980, and that there was no evidence that the Library was steering people to the Foundation around the election in a way that they had not done for 32 years.

The Chair asked the Director how the staff would view the City's support for an organization which had electioneering as a primary purpose. The Director said that he could not imagine that would not be a factor, but said that he had not ever considered the question.

Commissioner Carter asked if the Foundation engaged in any fundraising for the levy, and the Director replied that he had strongly advised them not to do that. Once an organization is raising and spending money on a candidate or a ballot measure, they are a political committee subject to reporting requirements.

Mr. Leman said that the staff had not done an adequate investigation. He said he had done a public records request, and the only responsive documents that he had received were records of a staff interview with the Foundation's Executive Director.

He also said that this case was very different from the Cascade Bicycle Club case, because every dollar that the Foundation raises is done with the support of the Library. He said that the Commission has to call a halt to this.

Commissioner Cohan asked whether the City Auditor had ever reviewed the relationship between the Foundation and the City. The Director said that he would not want to venture a guess.

The Chair said that the question for him was whether the relationship between the Library and the Foundation was so entangled that the City could not help but be supporting the Foundation's spending on the Library levy. The Chair thanked Mr. Leman for bringing this issue to the Commission, but said he did not think the facts of this case warranted reversing the Director's dismissal. He said that if the Commission did so, the same reasoning would be applicable to every school PTA that ever met in a school lunch room and voted to support a levy.

Commissioner Mendoza said that he had not seen such a close relationship between a non-profit and the City in the past, but that he was not satisfied that the Director's decision should be overturned.

Commissioner Cohan asked whether the Commission could amend the Director's dismissal to append a request for an audit of the relationship between the Library and the Foundation. The Chair said he was unsure whether tacking a request for an audit on to a dismissal was appropriate. He recommended that the staff report back to the Commission in the coming months on whether or not the concerns raised by Mr. Leman were common to other City foundations.

Vice-Chair Burney moved to affirm the Executive Director's dismissal, and Commissioner Carter seconded. The motion to affirm the Executive Director's dismissal was unanimously approved.

Discussion Items

6) Dismissal of Case No. 12-2-0727-1 (alleged promotion of library levy in Library's annual closure notice)

The complaint alleged that the Library's annual closure notice was worded in such a manner, and strategically placed near Library levy informational materials, to persuade voters to support the levy. The Director encouraged the Commissioners to review the closure notice, which he said was strikingly similar to the notices published in past years. The Director also noted that there are only so many places in the libraries where staff can place materials that they want patrons to see. For those reasons, he dismissed the complaint.

The Chair asked whether the dismissal was still subject to appeal, and the Director said that it was not.

7) Executive Director's Report

The Chair told the Commission about the September 5, 2012 Finance Committee's consideration of Councilmember O'Brien's proposed changes to the Elections Code, at which the Chair and the Director had appeared.

The Director told the Commission that he had received word from both former Commissioners Iglitzin and Ranade that they would be able to attend a brief reception after the October meeting recognizing their service to the Commission.

The Regular Commission meeting for September 5, 2012 was adjourned at 5:06 p.m.