BEFORE THE CITY OF SEATTLE 
ETHICS AND ELECTIONS COMMISSION

IN THE MATTER OF ) APPEAL OF DISMISSAL OF ALLEGATION
COMPLIANCE WITH ) #1, THAT LIBRARY’S USE OF THE
SMC 2.04.300 ) PHRASE, “LIBRARY LEVY,” VIOLATES
CITY OF SEATTLE ) SMC 2.04.300’S REQUIREMENT THAT
) REFERENCES TO A BALLOT MEASURE BE
) AN “OBJECTIVE AND FAIR PRESENTATION
) OF THE FACTS”

I. INTRODUCTION

This appeal submits that, contrary to dismissal by the Commission executive director (henceforth “the director”) of my July 3 complaint, the Library violated SMC 2.04.300 through use of public facilities in calling Proposition 1 the “Library Levy.”

The entirety of the director’s dismissal is as follows:

I am dismissing this allegation. The use of the phrase “library levy” does not promote a vote for the levy. The ballot title of the 2011 Families and Education Levy was “Regular Tax Levy including Families and Education.” The ballot title for the 2008 Parks and Green Spaces Levy said that it “increased property taxes for six years for parks purposes.” Calling the levy the “Library Levy” does not constitute a use of City facilities to promote the levy.

This appeal maintains that the director did not have a rational basis for dismissing this allegation in the complaint.

Key parts of the July 3 complaint include the following:

Seattle’s 2012 levy ordinance (exhibit #11, sec. 7) names the ballot title not the Library Levy, but the “Regular Tax Levy including Seattle Public Libraries.” This difference is important because section 4 of the ordinance states: “Unless otherwise directed by ordinance, Proceeds shall be deposited in the Library Levy fund.” That is, the levy ordinance gives the Mayor and City Council the discretion to pass a new
ordinance to spend the “library” levy funds entirely on non-library purposes. The voters could not sue because the levy ordinance specifically allows the change to be made. In contrast, Ord. 119019 (exhibit #3), which placed the 1998 Libraries for All bond issue before the voters, did not mention the possibility of an ordinance diverting the proceeds away from Library purposes, and built in some additional hurdles to hamper such a redirection of funds.

Another levy (exhibit #28) which has firmer requirements than Seattle’s Proposition 1 to prevent the spending of its proceeds on non-library purposes is Proposition 1 in Ocean Shores, Washington (also on the August 7, 2012 ballot). Ocean Shores’ Resolution 672 states (sec. 2) that the levy is “For the purpose of providing funds to pay for operating the City’s public library,” and that “the City shall deposit the proceeds of such levy in the City’s Library Special revenue fund 115 to be used to pay costs of operating the City’s public library.” Unlike the Seattle levy ordinance, no mention is made of the option of depositing the proceeds in a fund for any other purpose.

Based on the analysis in this section, one can conclude that, while the City of Seattle was fully within its rights to call the 1998 Proposition 1 a library bond issue, and while Ocean Shores is fully within its rights to call its Proposition 1 a library levy, the Library is not being entirely accurate in calling the current Proposition 1 a “library levy.”

Ord. 119019 (exhibit #3), which placed the 1998 bond issue before the voters, was accurately described by the Library as being a Library bond issue. Although it set forth a method for making changes by ordinance, these changes were allowed to be only in allocation of purposes within the library, and not to non-library purposes as the later ordinance that Ord. 123851 permits to be passed regarding levy proceeds.

The director’s reference to two other levies only backs up the present complaint. The Parks Department was entirely correct during the 2008 campaign to describe its levy as the “Parks and Green Spaces Levy,” or “Parks Levy,” for the following reasons.
Ord. 122749 (available in the Nov. 2008 voters’ pamphlet on the SEEC web site) repeatedly names that levy the “Parks and Green Spaces Levy,” and Ord. 122749 directs unequivocally that the levy proceeds “shall be deposited into the 2008 Parks Levy Fund.”

In contrast, Ord. 123851 specifically provides that the funds may be spent elsewhere, if an ordinance directs: “Unless otherwise directed by ordinance, Proceeds shall be deposited in the Library Levy fund.” Also, this line in the ordinance (exactly where the uncertainty about the levy spending originates) is the only place in Ord. 123851 where the words “Library Levy” appear. To call the levy the “Library Levy” is speculation that conceals from voters the actual uncertainty of how the levy proceeds will actually be spent.

The director’s reference to the Nov. 2011 “Families and Education Levy” is also inapposite. Unlike Ord. 123851, Ord. 123567 for the Nov. 2011 levy requires (sec. 8) that “Proceeds may be spent only in accordance with the Implementation and Evaluation plan (the Plan) approved by ordinance.”

It is true that otherwise, Ord. 123567 had some of the same vagueness as in the library case, and which meant (I would argue) that City agencies in the Nov. 2011 campaign were violating SMC 2.04.300 in describing it as the “Families and Education Levy.” In
words that have only in recent years been added to levy ordinances (and which retired deputy city attorneys are shocked to hear about, as nothing similar used to be included in levy ordinances), that ordinance also stated that “Unless otherwise directed by ordinance, Proceeds shall be deposited in the Education-Support Services fund.” Also, the ballot title used the same vague words as in Ord. 123851 in describing it as a “Regular tax levy including families and education.” That no complaint was lodged, and that the SEEC staff did not notice and correct the City’s mis-characterization of the levy during the campaign, did not make this practice legal in 2011, and it does not mean that a similar mis-characterization of the 2012 levy is OK. In both cases, it is contrary to SMC 2.04.300.

For the above reasons, the director did not have a rational basis for dismissing allegation #1. During the Proposition 1 campaign, the Library’s widespread use of the term “Library Levy” contravened the prohibition in SMC 2.04.300 against use of public facilities to promote the ballot measure. Specifically, the City failed the test of WAC 390-05-271(2) that allows an agency to refer to a ballot measure during a campaign only if in doing so it is “making an objective and fair presentation of facts relevant to a ballot proposition....”
A very simple remedy is available to the Commission if it chooses to uphold this complaint. The Commission may require that in the materials on the Library’s web site and in what it gives to or shows to the public, the Library should describe the levy by its correct name from the levy ordinance: “Regular tax levy including Seattle Public Libraries.”

Not telling voters the truth about the levy is a disservice to them, and it invalidates the efforts of those like me who worked hard for a levy ordinance that could objectively and fairly be described as a “library levy.” That is why I have brought this complaint and why the director did not have a rational basis for dismissing it. I hope that the Commission finds urgent merit in the complaint. Thank you for your consideration.

I declare under penalty of perjury of the laws of the State of Washington that I am a registered voter of the City of Seattle, and that the information in the above statement, and the exhibits provided, are true and correct.

Dated this July 31, 2012

Chris Leman