

# Memo

To: Commission

From: Wayne Barnett

Date: September 5, 2014

Re: Seattle Channel Programming

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As discussed in my letter disposing of Case No. 14-2-0527-1 (attached), the Seattle Channel fills a vital role as a producer of in-depth content devoted to the working of City government. At the same time, the station is a City agency, making it subject to the rules governing the use of City facilities to promote or oppose a candidate or ballot measure. In the past ten years, we have received three complaints alleging the use of the channel to promote or oppose candidates or ballot measures, so some members of the public are suspicious of political interference in the channel's operation.

In anticipation of drafting a formal opinion for the Commission's approval, I wanted to get the Commission's guidance on what an advisory opinion ought to look like. Here are my ideas for topics to cover and advice to give. We will also have a representative from the Seattle Channel at the meeting to participate in the discussion. Commissioners should also identify issues that they believe should be covered in an advisory opinion.

1. The Seattle Channel may produce election-related content so long as both proponents and opponents of ballot measures, and candidates opposing each other for election, are provided an equal opportunity to present their viewpoint..

The Seattle Channel traditionally produces a show devoted to each City ballot measure – and to County and State ballot measures of particular local interest as well – explaining the issue to voters and providing an opportunity for both proponents and opponents of the measure to explain their position. The Channel also traditionally hosts debates between candidates for City office. Absent evidence that the programming has been designed or edited to promote one

position or candidate over the other, both of these types of programming are permissible under the Elections Code. An “equal opportunity,” does not require that both sides receive the same exact amount of time. Small deviations from strict equality are not actionable.

2. Neither *Ask the Mayor*, *Council Conversations*, nor *City Inside/Out: Council Edition* are designed to promote the candidacies of the elected officials who are interviewed on those programs.

*Ask the Mayor* and *Council Conversations* are both formatted as one-on-one interviews with elected officials. *City Inside/Out: Council Edition* features three councilmembers fielding questions from the host. The simple fact that the guests are or will be on the ballot in the future does not make these shows by definition promotional. That being said, any: (1) express advocacy for a guest’s reelection, even in response to a question from a member of the public; (2) express criticism of a guest’s political opponent; or (3) change in the frequency or timing of a program’s recording or airing would be subject to review under the Elections Code.

3. Neither *Ask the Mayor* nor *Council Conversations* are appropriate forums for the host to ask questions about ballot measures.

The lack of an opportunity for viewers to hear both points of view on a ballot measure makes a one-on-one show ill-suited to a discussion of a ballot measure. The lone exception to this general prohibition is for shows that invite either members of a live audience or callers to ask questions of the elected official. (Currently, *Ask the Mayor* is formatted to permit members of the public to ask the mayor a question.) If a member of the public asks an elected official a question about a ballot measure, the elected official may reply under the exemption in the law permitting a “statement by an elected official in support of or in opposition to any ballot proposition...in response to a specific inquiry.” Seattle Channel personnel must not give any preferential treatment to a member of the public seeking to ask a question about a ballot measure. If a member of the public asks a question about a candidate campaign, either the host or the elected official should reply that the show is not an appropriate venue for such questions.

To be sure, the Elections Code only prohibits a use of facilities to promote or oppose a ballot measure. It is possible that the host could ask a question, and the elected official could reply, and that the exchange would provide objective information about a measure without promoting or opposing it. This is an inherently risky proposition, though, and exchanges about

ballot measures would be reviewed on a case-by-case basis to determine whether or not they promoted or opposed a measure.

4. Discussions of ballot measures on *City Inside/Out: Council Edition* are appropriate in limited circumstances.

*City Inside/Out: Council Edition* is recorded monthly, and covers issues pending or recently under consideration by the City Council. When City Councilmembers hold differing views on a ballot measure, it is permissible to discuss the ballot measure so long as officials holding opposing views are both provided an opportunity to share their views on the air. When the City Council has voted unanimously to place a measure before the voters, it is permissible for the host to ask a limited number of questions about the vote, provided that following that discussion the host directs viewers to how to find information about opposing viewpoints on the Channel's web site.

5. The Seattle Channel may have links on its web site to stories generated by other media outlets related to ballot measures, so long as it uniformly applies objective criteria to decide what stories will be linked.

The Seattle Channel may have content related to elections on its web site, so long as it establishes and follows standards related to what content its site will link. For example, if this summer the Channel had a page devoted to the Metropolitan Parks District, and linked to *all* stories generated by Seattle print and broadcast media outlets that were focused on the measure, that would not violate the Elections Code. If the Channel had linked to the *Stranger's* endorsement of the measure but failed to link to the *Seattle Times* editorial opposing the adoption of the measure, that would be evidence of a violation.