

**Question Presented**

How does the Elections Code apply to programming produced and aired by the Seattle Channel?

**Short Answer**

The Seattle Channel is a City agency, and therefore its programming may not assist a candidate’s campaign or promote or oppose ballot measures. Deciding whether a program complies with the law requires an examination of the facts in each case. As a rule, however, programming that provides competing candidates (or proponents and opponents of a ballot measure) with an equal opportunity to share their views will not violate the Elections Code.

In addition, the Seattle Channel has an important role to play in informing and educating the public about the workings of City government. To further that end, the Seattle Channel may interview elected officials – even those that are on the ballot – provided that the programming does not assist a candidate’s campaign or promote or oppose a ballot measure.

**Facts**

The Seattle Channel is the City’s municipal television station. It is a division of the Department of Information Technology, an executive branch department. Its studio and offices are in the City Hall basement.

The Seattle Channel broadcasts City Council meetings, City Council committee meetings, and mayoral press conferences. The station produces and broadcasts a variety of arts programming and several interview shows as well. Three are focused exclusively on elected officials: *Ask the Mayor*, *Council Conversations*, and *City Inside/Out: Council Edition*.<sup>1</sup> Others – for example *Seattle Voices*, *An Evening With...*, and *Book Lust with Nancy Pearl* – are not.

**Law**

SMC 2.04.300 reads in its entirety as follows:

No elected official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and

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<sup>1</sup> Another program, *Civic Cocktail*, does not focus exclusively on elected officials, but does sometimes feature interviews or discussion with elected officials.

equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the officer or agency; provided, that the foregoing provisions of this section shall not apply to the following activities:

- A. Action taken at an open public meeting by the City Council to express a collective decision or to actually vote upon a motion, proposal, resolution, order or ordinance, or to support or oppose a ballot proposition so long as (1) any required notice of the meeting includes the title and number of the ballot proposition, and (2) members of the City Council or members of the public are afforded an approximate equal opportunity for the expression of an opposing view;
- B. A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry; and
- C. Activities that are part of the normal and regular conduct of the office or agency.

The three provisos are narrowly construed, “with any doubt to be resolved in favor of the general provisions, rather than the exceptions.” *Washington State Legislature v. Lowry*, 131 Wn.2d 309, 327 (1997). In Case No. 05-2-0413-1, the Commission followed the Public Disclosure Commission in adopting a narrow construction of the “normal and regular” exception, writing that “to be considered ‘regular,’ a city agency or official’s conduct must be specifically authorized by an express law, or necessarily implied from a power expressly given by law.” Supplementary Opinion, p. 6. The Commission discusses the exception for “statements by an elected official...in response to a specific inquiry” below.

In Case No. 05-2-0413-1, the Commission was called on to apply this section to a Mayor’s Accomplishments Document distributed in an election year. The Commission rejected a “magic words” approach that would only be triggered by the use of phrases such as “vote for,” “vote against,” “elect,” or “defeat.” Instead, the Commission examined the totality of the circumstances, including “the tone (style), the tenor (content), the timing (in relation to the events occurring during an election cycle), and the audience to which a message is distributed. All factors are examined under a ‘reasonable person’ standard. All of the factors are relevant in evaluating the primary purpose of the message, and no factor is determinative.” Supplementary Opinion, p. 4.<sup>2</sup> (Internal citations omitted.)

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<sup>2</sup> While applying a “totality of the circumstances” test can be frustrating for those subject to the law, the Commission is unaware of an alternative test that would better serve the public interest.

## Analysis

### A. *Seattle Channel programming*

So long as the Seattle Channel remains a City agency its personnel, as well as the City officers and employees who appear as guests, are subject to the Elections Code. The Commission renews a recommendation it has made in the past: that the City explore an alternative governance structure for the Seattle Channel. (TVW, for example, is a nonprofit.) If the station were not a City agency, and its employees not all executive branch employees, many of the issues under the Elections Code would be resolved.

Barring such a step, the Channel should ensure that opposing candidates, or both proponents and opponents of ballot measures, are invited to participate in election-related programming. The Video Voters' Guide is a perfect example of lawful election-related programming. Every candidate on the ballot is provided an opportunity to record a two-minute statement. When all candidates, or representatives in favor of and opposed to a ballot measure, are provided an equal opportunity to make their case, then the programming does not promote or oppose any particular candidate or ballot measure and therefore does not violate the Elections Code.

Although programs such as *Ask the Mayor*, *Council Conversations*, or *City Inside/Out: Council Edition* feature interviews of elected officials, the mere fact that elected officials appear on those programs does not mean the Seattle Channel is assisting those officials' campaigns. Guests, hosts and the Channel's management alike, however, must be attuned to the need to avoid the use of City facilities to assist a candidate's campaign or to promote or oppose a ballot measure. Hosts should avoid *asking* questions that invite guests to assist a candidate's campaign or to promote or oppose a ballot measure. City officers and employees should avoid *replying* to questions in a way that assists a candidate's campaign or promotes or opposes a ballot measure. And those responsible for *broadcasting* the programming or *posting* it to the Seattle Channel's web site should ensure that the programming does not assist a candidate's campaign or promote or oppose a ballot measure before further distributing the programming to the public.

The Commission appreciates that many important issues are the subject of ballot measures. Gun control, transportation and parks funding, preschool education – all of these were on the ballot for several months in 2014. And there is news value to exploring and understanding the views of elected officials on these measures. But as a City agency, the law prevents the Seattle Channel from inviting, or even permitting, elected officials to promote or oppose these ballot measures on programs produced or aired by the Seattle Channel unless one of the three narrowly construed exceptions to the law applies.

## 1. Questions from the public about ballot measures

Sometimes Seattle Channel programs allow for questions from live audience members. In those cases, so long as the Channel does not give preference to any questioners, or engineer the composition of the audience, the exception for elected officials to reply to specific inquiries about ballot measures comes into play. This exception allows an elected official to respond to a specific audience question about a ballot measure in a way that would otherwise be promoting or opposing the ballot measure. . This is an exception to the law’s prohibition, and is therefore narrowly construed.

The exception, however, is (1) only available to elected officials, (2) limited to ballot measures and (3) does not apply to candidacies. It would not permit an elected official to promote or oppose their own election efforts, or those of another candidate for office.

### *B. Seattle Channel website*

City websites are “facilities” for the purposes of the Elections Code, and links from those websites must comply with the Elections Code.<sup>3</sup>

The Seattle Channel’s website may include links to election-related news stories and content produced by other media outlets without violating the Elections Code. To comply with the Elections Code, the Channel would need to establish and apply neutral criteria to decide the content to which it would link. If, for example, competing guest editorials on a State ballot measure appeared in a local newspaper, and the Channel linked to one but not the other, the Commission might be inclined to believe that City facilities had been misused to promote or oppose a ballot measure. So long as similar outlets are treated similarly, however, the Seattle Channel – as well as other City agencies – can provide links to election-related news content without violating the Elections Code. This analysis is akin to the analysis of a candidate forum, to which all candidates are invited.

### **Conclusion**

The Commission is mindful of the important role the Seattle Channel plays in educating the public about the workings of City government. As a City agency, however, programming produced or aired by the Seattle Channel must not assist a candidate’s campaign or promote or oppose a ballot measure. In addition, the Seattle Channel and other City agencies may post or distribute links to stories produced by other media outlets so long as they do so in conformance with adopted, neutral criteria for posting and distributing links to news stories.

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<sup>3</sup> See Advisory Opinion 11-02E, Washington State Executive Ethics Board Advisory Opinion 04-02.