

## Seattle Ethics and Elections Commission Regular Meeting

June 3, 2015

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on June 3, 2015 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bruce Carter called the meeting to order at 4:00 p.m. Commissioners Brad Axel, Rich Cohan, Brendan Donckers, Eileen Norton and Bill Sherman were in attendance. Executive Director Wayne Barnett and staff members Polly Grow and Gary Keese were present. Assistant City Attorneys Jeff Slayton and Gary Smith were also in attendance.

### 1) Public Comment

Queen Pearl spoke to the Commission the way constituents are treated while attempting to bring their complaints to City Hall.

Alex Tsimerman spoke to the Commission about the City's decision to bar him from City Hall and the Municipal Tower.

David Mendoza, a policy advisor with Mayor Murray, spoke to the Commission in support of Council Bill #118397. He told the Commission that the goal of the bill is to ensure that elected officials cannot organize events for City purposes and then take advantage of the crowd in attendance by engaging in campaign activities.

Commissioner Norton asked how the Mayor's Office would define the term "campaign staff." Mendoza said that they were working on a definition of that term.

Commissioner Sherman said that campaign activity at City Hall does not in and of itself violate any laws or rules. He questioned whether the law should treat incumbents and challengers differently.

Commissioner Donckers asked whether campaign activity had to be within 300 feet and one hour of an event or within 300 feet or one hour of an event to violate the proposed rule.

Mendoza said that both prongs had to be met for there to be a violation.

Commissioner Donckers also asked when the Mayor's office would like advice from the Commission. Mendoza said that he hoped the Commission would act as soon as it felt comfortable acting. He acknowledged the fact that there was an ongoing investigation that might prevent the Commission from acting quickly.

### **Action Item**

#### **2) Appeal of Executive Director's decision to exclude language from Alex Tsimerman's voters' pamphlet statement.**

Mr. Tsimerman appeared before the Commission in support of his appeal of the Executive Director's exclusion of language from his voters' pamphlet statement. Mr. Tsimerman said that the word in question is a frequently uttered expression, and was not used to attack or demean any person in particular. He also said that forbidding its usage infringed upon his rights to free speech. Mr. Tsimerman said that denying him the right to say what he wanted to say in his statement damaged his chances to win his City Council race.

The chair asked Mr. Tsimerman if he felt that under the Constitution there are any limitations on the words that can be used in the voters' pamphlet on behalf of an earnest candidate. Chair Carter also reminded Mr. Tsimerman that the voters' pamphlet rules state expressly that the statement cannot use language that is obscene, profane, libelous or defamatory.

Commissioner Donckers asked Mr. Tsimerman to explain why he wanted to use the language. Mr. Tsimerman said that the word is not obscene. He said it is used everywhere on a daily basis.

The Executive Director told the Commission that the voters' pamphlet is a limited public forum created by the City of Seattle as a way to educate voters. The law and the rules both bar the use of profanity, and both are presumed to be Constitutional. He reminded the Commission that the 9<sup>th</sup> Circuit had upheld the rule barring candidates from discussing their opponents. For those reasons, the Executive Director said that Commission should uphold his decision to exclude the language from Mr. Tsimerman's voters' pamphlet statement.

Commissioner Sherman agreed with the Executive Director. He said that the question whether the rule is a good one is different from the question of whether Mr. Tsimerman's statement violated the rule as it exists.

Commissioner Norton wanted to get advice from the City Attorney's office before taking a vote.

The Chair announced an executive session for the Commission to receive legal advice.

Upon returning from executive session, Commissioner Cohan moved to uphold the Executive Director's decision to exclude the language from Mr. Tsimerman's voters' pamphlet statement. Commissioner Sherman seconded. The Executive Director's decision was upheld by a 4-2 Commission vote.

**3) Request for F-1 modification from Jon Lisbin, City Council Candidate.**

Mr. Lisbin told the Commission that he was requesting an F-1 modification because the small business that he owns is in a very competitive business, and naming its customers would place his business at a competitive disadvantage. He also said that several of the contracts between his business and its customers provide that they shall be kept confidential.

The Executive Director asked Mr. Lisbin if the Public Disclosure Commission had ruled on his request. Mr. Lisbin replied that it had not.

Commissioner Donckers asked whether Mr. Lisbin was seeking to keep his revenues confidential in addition to his client list. Mr. Lisbin replied that he wanted to keep both out of the public record.

Commissioner Sherman asked the Executive Director if it was possible for Mr. Lisbin to provide the list to the Commission without it becoming a public record. The Executive Director replied that he was unaware of any exception to the Public Records Act that would permit the staff to keep that confidential.

The Chair called for an executive session so that the Commission could receive legal advice.

After returning from Executive Session, the Chair told Mr. Lisbin that the Commission wanted to defer this matter until after the Public Disclosure Commission had ruled on his request. Commissioner Sherman wanted to put on record that the Commission's decision was motivated by the fact that the PDC receives many modification requests each year and has experience dealing with these requests that the Commission does not have.

**4) Request for review of Council Bill #118397, amending the City's Elections Code.**

The Commission invited Mr. Mendoza back to the table for its discussion of the bill, together with Council central staffmember Lish Whitson.

Commissioner Norton asked if the proposed changes would prohibit a local party organization from showing up to an event and handing out similar campaign literature to what the Elected Official's campaign would distribute. Mr. Mendoza replied that a local party organization would not be barred from handing out literature under the proposal.

Commissioner Norton asked whether the proposal would bar campaign activities on private property within 300 feet of a City event. Mr. Mendoza replied that it would.

Commissioner Sherman said that he shared Commissioner Norton's concerns regarding the difficulties in crafting an ordinance that would eliminate the kind of activities that the proposal was aimed at preventing without also eliminating a range of activities that were entirely legitimate.

Commissioner Norton asked if Mr. Mendoza had a date by which he wanted the Commission's advice. Mr. Whitson replied that the Council had penciled the legislation in for consideration on June 17, but would await input from the Commission before moving forward.

Commissioner Sherman made a motion that the Commission decline to endorse Council Bill #118397 in its current form. Commissioner Norton seconded. The motion carried unanimously.

### **Discussion Items**

#### **5) District elections and the exception to the Ethics Code for widely shared financial interests.**

Due to the crowded agenda, the Executive Director asked the Commission if they wanted to hold this agenda item until the July 1, 2015 Commission meeting. The Chair said he wanted to take the discussion up at a later date.

#### **6) Election of a new Seattle Ethics and Elections Commission Vice-Chair**

With the resignation of former Vice-Chair Kendee Yamaguchi, the Chair nominated Commissioner Brad Axel as the new Vice-Chair. Commissioner Sherman seconded the motion. Commissioner Axel was unanimously chosen as the new Vice-Chair.

#### **7) Executive Director's report**

##### **a) Staffing for the 2015 elections**

The Executive Director informed the Commission that he'd gotten the approval to hire a temporary staff member through the 2015 elections. The Director and Ms. Grow have conducted

interviews and expect to ask the Commission to confirm a new hire at the July 1, 2015 Commission meeting.

**Dismissals Still Subject to Appeal**

- 7) **Case No. 15-1-0406-1 (alleged appearance of conflict for Citizen Advisory Committee member)**

This item was placed on the agenda for informational purposes only. If there is an appeal filed, it will be heard at the July 1, 2015 Commission meeting.

**The Regular Commission meeting for June 3, 2015 was adjourned at 5:45 p.m.**