

Memo

To: Commissioners

From: Wayne Barnett

Date: October 13, 2017

Re: Case No. 17-2-1002-1 – Request for Administrative Dismissal

Recommendation

The Commission should direct the Executive Director to administratively dismiss an October 2, 2017 complaint filed against Jenny Durkan for Seattle (the “Committee”), the campaign committee organized to advocate for Ms. Durkan’s mayoral candidacy.

Discussion

The complaint alleges that the Committee accepted two \$500 contributions from entities that had earned or received more than \$250,000 under contractual relationships with the City, and three \$500 contributions from entities or persons who during the past 12-month period paid \$5,000 or more to lobbyists, in violation of SMC 2.04.601 and .602, respectively.

Two of the allegations are unfounded. While Ash Grove Cement Corporation has received more than \$250,000 in payments from the City in the last 24 months, those payments were conservation rebate incentives paid to the company for energy efficiency improvements made at its facility. Ash Grove Cement is not a City contractor. And the allegation that a contribution from Alfred Clise is tantamount to a contribution from Clise Properties fails because Clise Properties is owned by several members of the Clise family, with none of them owning 50% or more of the entity.

One allegation is founded. Microsoft Corporation has received more than \$250,000 in contract payments in the last 24 months. The Committee refunded the September 7 contribution on October 2.

There is no clear cut answer on two of the allegations. It is true that City Investors LLC is barred from contributing to City candidates because it has paid lobbyists more than \$5,000 in the last 12 months, and it is true that Paul Allen owns a majority stake in City Investors. Under Elections Code Rule 6.A.11, City Investors and Mr. Allen share a contribution limit.

But City Investors maintains that Rule 6.A does not bar Mr. Allen from making political contributions. They point to the introductory clause in Rule 6.A, which states, “For the purposes of *the contribution limitations contained in SMC 2.04.370, and for reporting purposes*, contributions from two or more persons will be aggregated....” The Director concedes that this language makes applying Rule 6.A to these facts less than clear cut. The same infirmity also attaches to the \$500

contribution from Seattle Hospitality for Progress. That political action committee is affiliated with the Washington Hospitality Association, which is barred from contributing to City candidates because it paid lobbyists more than \$5,000 in the last 12 months. Under Rule 6.A.6, the two entities share a contribution limit for the purposes of SMC 2.04.370, but the Committee contests whether Rule 6.A.6 limits Seattle Hospitality for Progress's ability to contribute under SMC 2.04.602.

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Administrative Rule 2.G provides as follows:

1. If the Executive Director has evidence indicating that there are reasonable grounds to believe a violation of SMC 4.16 or SMC 2.04 has occurred, and either (i) the violation was inadvertent or minor, but not both, or (ii) appropriate actions have already been taken to address the allegedly unlawful conduct, the Executive Director may ask the Commission to direct him or her to administratively dismiss the case. This request shall be made at a Commission meeting. The request shall describe the basis for the Executive Director's reason to believe that a violation occurred, the Code provision the Executive Director has reasonable grounds to believe was violated, and the reason the Executive Director believes the public interest is not served by pursuing the matter, which may include a description of the action taken to address the alleged violation.
2. The Commission shall direct the Executive Director either to administratively dismiss the case or deny the request. If the Commission directs the Executive Director to administratively dismiss the case, the Executive Director shall send a letter to the complainant describing the Commission's action and the basis on which the action was taken and send a copy of the letter to the respondent, without the complainant's name or address.

There is one clear violation of the new limits on contributions present in this case out of the 3,241 contributors to the Committee. At issue is .0003 of their contributors and .0007 of the amount they've raised to date. (Even if the other two contributions at issue are included, the universe of improper contributions would total .0009 of their contributors and .002 of the amount raised by the Committee to date.) The Committee also took appropriate actions by promptly returning the contribution from Microsoft once it was brought to their attention.

The public interest is not served by holding campaigns to a standard of perfection. This is not a case where the Committee was not exercising care in carrying out its responsibilities under the new law. For that reason, the Director requests that the Commission administratively dismiss this complaint.