



June 7, 2017

**BY E-MAIL**

Paul J. Lawrence, Esq.  
Taki V. Flevaris, Esq.  
Pacifica Law Group  
1191 2<sup>nd</sup> Avenue, Suite 2000  
Seattle, WA 98101-3404

*Re: Advisory Opinion 2017-02*

Dear Messrs. Lawrence and Flevaris:

On May 1, 2017, you asked the Seattle Ethics and Elections Commission (“Commission”) for advice on whether an Ed Murray Legal Defense Fund (the “Fund”) could collect unlimited, anonymous contributions to defray legal expenses incurred by the Mayor to defend himself in an ongoing civil lawsuit. The Commission held a special meeting on May 16 to consider your request. This letter was approved by the Commission at its June 7 meeting.

At the close of the May 16 special meeting the Chair made a motion that the Fund described in your May 1 letter did not comply with the Ethics Code, that there is no legal basis for the Commission to create a regulatory structure, and that in the absence of such a regulatory structure the Commission’s Gift Rule stands as guidance on what gifts officials can accept. (The Gift Rule is appended to this letter.) Commissioner Carter seconded the motion, and it subsequently carried by a vote of 6-0.

In advising that the Fund would not comply with the Ethics Code, the Commission was principally concerned with SMC 4.16.070.C.1, which provides that an individual subject to the City’s Ethics Code may not “[s]olicit or receive any retainer, gift, loan, entertainment, favor, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, or other thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the covered individual in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are

solicited or received and reported in accordance with applicable law.” The Commission was not persuaded by the argument that unenforceable non-disclosure agreements would forestall a violation of SMC 4.16.070.C.1. The Commission concluded that a reasonable person would still conclude that a contribution from an individual or entity interested in City matters was intended to influence those City matters.

In advising that the Commission lacked the authority to create a regulatory structure, the Commission was mindful of its limited powers as an administrative agency. Creating a regulatory framework mirroring the Elections Code for limiting contributions and providing for timely disclosure of such contributions is a legislative act, not an administrative one. The Ethics Code specifically exempts campaign contributions from the reach of SMC 4.16.070.C.1, and the Commission infers from this clause that it lacks the authority to exempt contributions to a legal defense fund from SMC 4.16.070.C.1.

Very truly yours,

Wayne Barnett  
Executive Director