



March 26, 2019

BY E-MAIL

Re: Case Nos. 19-1-0108-1 and 19-1-0305-1

Dear *****:

We received two complaints alleging violations of the Ethics Code by Councilmember Kshama Sawant – the first on January 8, and the second on March 5 – arising out of her interactions with Socialist Alternative, the political organization to which she belongs. For the following reasons, I am dismissing the complaints.

DISCUSSION

Alleged misuse of position

Under SMC 4.16.070, a City official may not “[u]se or attempt to use his or her official position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of the covered individual or any other person, rather than primarily for the benefit of the City.”

It is alleged that Councilmember Sawant misused her official position by (1) being accountable to Socialist Alternative’s Seattle Executive Committee (SEC), instead of to her constituents; (2) dismissing two staff members that Socialist Alternative’s SEC decided should no longer work in her office; and (3) allowing Socialist Alternative’s SEC to decide that she would vote to confirm Police Chief Carmen Best. I consider each of these three alleged instances of misuse of position in order.

We interviewed Councilmember Sawant, and she told us that the SEC does not take votes on matters coming before the City Council. She told us she consults with the SEC, and said that she could not recall a single instance where she had taken an official action as a City Councilmember with which she disagreed because the SEC had directed her to do so. She noted that with the decision to dismiss the staff members, and the decision to confirm Chief Best, she had informed the SEC that she thought those were the proper decisions, and ultimately persuaded the SEC to side with her opinion. (The documents that accompany Kevin Schofield’s *SCC Insight* reporting support the Councilmember’s claim that she was the driver behind the decision to release the staff members.)

Fundamentally, I believe that elected officials are free to structure their decision-making processes as they wish, subject to the will of the voters every four years. Campaigns are won and lost based on voters’ estimations of whose interests elected officials are serving and whose

interests they are not. I do not find the way Councilmember Sawant makes her decisions to be a misuse of her position.

Alleged acceptance of things of value in violation of SMC 4.16.070.C

Under SMC 4.16.070.C, a City official 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....” (Emphasis added)

Councilmember Sawant’s financial disclosure filings show that Socialist Alternative paid \$4,459.29 for the Councilmember and her husband to attend various Socialist Alternative events around the U.S. and one in Brazil in 2015, and another \$7,180.98 for attendance at various Socialist Alternative events around the U.S. and one in Belgium in 2017. The 2015 travel has been part of the public record for almost three years, and the 2017 travel has been part of the public record for almost a year.

In response to our questions about this travel, Councilmember Sawant told us that Socialist Alternative was paying for her to travel before she joined the City Council. She provided evidence of the organization covering her travel expenses as far back as 2010. She also provided us with a document showing that Socialist Alternative covered \$163,174.09 worth of travel expenses for a variety of Socialist Alternative members over the past three years.

I do not believe it is more likely than not that a reasonable person would believe that Socialist Alternative paid the Councilmember’s travel expenses *with the intent* to influence her official actions. I do not find a persuasive case that there is any nexus between the travel expenses and the organization’s desire to influence Councilmember Sawant’s official actions. The history of payments for the Councilmember and others to travel lends additional support to my conclusion that these are customary expenses for Socialist Alternative to cover for its members, and not an effort to influence Councilmember Sawant’s official actions.

Alleged violations of Public Records Act, and disclosure of confidential information

The Commission does not administer the Public Records Act. Allegations of violations of the Public Records Act need to be addressed through the courts, not the Commission.

To comply with SMC 4.16.070.D, Councilmember Sawant may not share “confidential information gained by reason of...her official position for other than a City purpose.” Confidential information is information that need not be disclosed in response to a public records request.

You claim that Councilmember Sawant shared confidential personnel records with Socialist Alternative. In support of this allegation, you cite to a media report that says “it *may* be

that some of them are confidential personnel documents also held by the City of Seattle's HR department (and exempt from public disclosure requests); but *if* that is the case then Sawant and her office have violated the city's ethics code by disclosing confidential information to an outside party." This is conjecture, not evidence, and does not provide an adequate basis for me to even demand records from Councilmember Sawant that would show she did not share confidential information. (I would compare this with someone claiming that elected officials are accepting money from a local business leader. Absent some support for the claim, we would not ask officials for evidence that they were not accepting money.) In short, there is no evidence that any confidential personnel documents were required for Councilmember Sawant to consult with the SEC on the staffing decisions she discussed with them or that they were in fact shared.

CONCLUSION

I am dismissing your complaint. If you would like to appeal this dismissal, you may do so under the Ethics and Elections Commission's Administrative Rule 4.¹

Very truly yours,



Wayne Barnett
Executive Director

¹ Rule 4 APPEALS

- A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.
- B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.
- C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.
- D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.
- E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.
- F. The Commission shall act on the request at the next meeting at which it may be practicable by:
 - 1. deciding whether to review the Executive Director's decision; and
 - 2. if it decides to do so, either affirming, reversing, or amending the decision.
- G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.