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VIA E-MAIL TO WAYNE.BARNETT@SEATTLE.GOV

Wayne Barnett
Seattle Ethics and Elections Commission
Executive Director
PO Box 94729
Seattle, Washington 98124-4729

Re: Rule 16H

Dear Mr. Barnett:

Thank you for making the time to speak with me yesterday. As you know, I represent Abbot Taylor. On behalf of my client, I would like to request a special meeting of the Seattle Ethics and Elections Commission (SEEC or Commission) to adjudicate a challenge to your recent reinterpretation of Rule 16H.

On September 10, 2019, the director of the SEEC reinterpreted Rule 16H so that "a release from the Maximum Campaign Valuation (MCV) becomes effective when the candidate crosses the MCV threshold." *See* Ex. A 9/10/2019 LeBeau e-mail to Taylor.

But the actual text of Rule 16H does not support that new interpretation. The Rule states that "[m]oney raised and spent between the day prior to the Commission's decision to release a candidate from the spending cap through the first day that a candidate become eligible to redeem vouchers shall not count toward the total spending limit." Rule 16.H.1. The new interpretation contradicts this language by rewriting the timing altogether; there may be policy reasons for why the timing in your latest interpretation would be better than the timing set forth in the actual rule, but those policy considerations cannot operate to rewrite the rule itself.

And, in fact, in the September 10 e-mail, the Commission acknowledges that this interpretation is inconsistent with the actual language of the Rule, and that the Commission has followed the *text* in the past, not this new deviation. Specifically, the e-mail acknowledges that the Rule "does reference the date the Commission ***decides*** to grant the release," and goes on to explain that "in 2017 that date was used by the Commission in calculating the General election spending limit for the two campaigns who requested and receive a release." Ex. A (emphasis in original).

The only explanation you gave to me when we spoke is that the Rule was "poor written" and that it was "a work in progress." But those aren't legal arguments that would support an *ultra vires* re-writing of the bill. Those are policy arguments that would support an amendment to the Rule.

The Seattle Municipal Code sets forth the procedure to rewrite a rule, making clear that the SEEC must provide 14 days' notice "prior to the proposed action and at least ten (10) days prior to a public hearing." SMC 3.02.030(A). That same provision even sets forth the requirements for what the notice must contain:

> (a) a reference to the authority under which such rule is proposed; (b) an accurate description of the substance of the proposed rule or of the subjects and issues involved; and (c) a statement of the time and place of any public hearing, and manner in which interested persons may present data, views or argument thereon to the agency

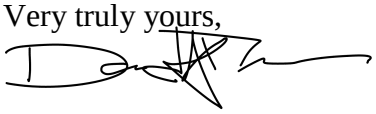
Id. And prior to implementing any such change, the Commission must "[a]fford all interested persons an opportunity to present data, views, or arguments in regard to the proposed action." *Id*. at (B). No such notice was given, and no such opportunity was afforded. In other words, the new interpretation is *ultra vires*.

We respectfully ask that the Commission enforce the Rule as written, as it has been enforced in the past. That ensures continuity and predictability. And if the Commissions intends to move forward with this new interpretation, we respectfully request a Special Hearing to discuss our opposition.

For practical purposes—given how close we are to the November elections—we urge the Commission to enforce the rule as it has been enforced in the past, and consider whether to reopen rulemaking in a manner consistent with City law.

Please let me know at your earliest convenience whether the Commission plans to move forward with the new interpretation, and if so, whether our request for a Special Hearing can be granted.

Very truly yours,



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