

Seattle Ethics and Elections Commission Regular Meeting February 4, 2009

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on February 4, 2009 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Robert Mahon called the meeting to order at 4:05 p.m. Commissioners Tarik Burney, Ed Carr, Lynne Iglitzin, Nancy Miller and Michele Radosevich were present. Commissioner Mel Kang arrived at 4: 20 p.m. Executive Director Wayne Barnett and staff members Kate Flack, Gwen Ford, Polly Grow and Mardie Holden were present, as was Assistant City Attorney Gary Keese.

1) Public Comment

There was no public comment.

2) Approval of minutes of the February 4, 2009 meeting

Minutes were not available for approval.

The Chair suggested taking up Agenda Item #6, since Commissioner Kang had a question regarding Agenda Item #5 but had yet to arrive.

6) Discussion and vote on acceptance of Madison, Wisconsin's invitation to the Executive Director to travel to Madison to discuss public financing.

The Executive Director has been invited by Dr. Kenneth Mayer, a professor at the University of Wisconsin, to discuss public financing at a forum sponsored by the City of Madison. The Executive Director is seeking the Commission's approval of this travel. He would use City funds to pay for the trip and would then receive reimbursement from Madison for the travel. Commissioner Radosevich made a motion to authorize the Executive Director to travel to Madison, Wisconsin, which was seconded by Commissioner Miller. The motion passed unanimously.

5) Discussion and possible vote on City Council candidate Sally Bagshaw's request to file a modified financial interest statement.

The Executive Director reported that the Public Disclosure Commission at its January meeting had approved Ms. Bagshaw's request for an exemption to file a modified financial interest statement. Under the Commission's rule the Commission has two choices: (1) approve the exemption as granted by the Public Disclosure Commission or (2) put this over and schedule a public hearing to take up the request. The Executive Director recommended that the Commission adopt the exemption on the same basis as the Public Disclosure Commission. He does not see any public interest in seeing the customers who are purchasing pins and pointed wire products from the Bagshaw Company of Nashua, New Hampshire.

Commissioner Miller made a motion to grant the exemption in accordance with the Public Disclosure Commission's approval, which was seconded by Commissioner Radosevich. The motion passed unanimously.

3) Discussion and possible vote on recommendation to City Council for Ethics Code amendments.

The final version for review differs from what was in the packets by making disclosure of an appearance problem an affirmative defense. It also provides for a one week waiting period, which gives your supervisor a week to say "No, we don't want you involved in this." If they don't do that, then you can proceed with your waiver. The Chair wanted the disclosure section to read that the employee can act after waiting for a week or receiving departmental approval.

Commissioner Radosevich made a motion that the Commission affirmatively recommend these changes to the City Council as amendments to the Ethics Code, which was seconded by Commissioner Miller.

The Chair asked about the provision exempting contractors from the post-employment restrictions. The Executive Director said that what he heard from the Commission the last time was that those people who have done work for the City under contract not be subject to the post-employment restrictions.

Commissioner Kang asked about the exemption for employees participating in matters in which a substantial segment of the City has an interest. The Executive Director said this section is needed to address decisions like property tax levies in which decision-makers will necessarily have a financial interest. The Commission will be able to determine what constitutes a “substantial segment” through the advisory opinion or enforcement process. Commissioner Kang thought that this amendment would open the door to decisions being made by interested parties.

Commissioner Kang said he opposed these amendments. Commissioner Radosevich said that the goal of the Commission isn't to find violations but to encourage ethical behavior among City employees. All Commissioners were in favor except for Commissioner Kang who opposed the disclosure provision and the provision exempting for shared financial interests. The motion passed 6-1 in favor of recommending the amendments to the City Council.

4) Public hearing, discussion and possible vote on changes to the Voters' Pamphlet and Video Voters' Guide Rules.

The Chair opened the floor for a public hearing to discuss changes to the Voters' Pamphlet and Video Voters' Guide Rules. The Executive Director said that in addition to publishing the hearing notice, he had put in a call to the attorney for the ACLU who has testified on this issue in the past.

The Executive Director directed the Commission's attention to one housekeeping change. Since the state has gone to the August primary, our deadlines have not matched up with King

County's very well. They have been trying to leave themselves enough time to mail these overseas. At some point the Commission may have to come back and move all of the deadlines, but right now what he is proposing is adding a paragraph providing that if the deadlines set in this rule would leave us no choice but to violate our Interlocal Agreement with the County, then the Executive Director has the discretion to make a change and inform all the committees that these deadlines have been adjusted. That is what has been done in the last two elections. This gives the Commission the authority to make this change.

Commissioner Radosevich made a motion to adopt the rules with the addition of Rule 1.7, which was seconded by Commissioner Miller. Commissioner Burney made an amendment to the motion to strike Rule 4.3, which was seconded by Commissioner Kang.

Commissioner Radosevich quoted the State law, which says that "any statements by a candidate shall be limited to those about the candidate himself or herself." Executive Director Barnett said that the State Law requires local officials to adopt Administrative Rules carrying out this mandate. Our rules say that written submission must not discuss the candidate's opponents. Discussing one's opponent is a clear line.

The Executive Director says that if the Commission simply repeals this rule without doing anything else, it will place itself outside of the State law. The Executive Director reiterated his recommendation to maintain the current rule, because adopting the state standard would be very difficult to administer. He said that if the Commission decides to eliminate the rule, then only statements that would be obscene would violate the rules. We would run everything else.

Assistant City Attorney Gary Keese, in response to a question raised by Commissioner Burney, said that the State Law says that the locality has to have a rule. It doesn't vest in the

local government the authority to enforce the state law. The State law says the rule has to include the language similar to the State law and his point is ours is similar but not identical.

Commissioner Kang said that if the Commission adopted the language of the State as the rule, then the Commission would be in compliance with State law. If it enforced the rule like the state has enforced the rule, then everybody would be happy except for those who like the present rule or those who do not want a rule at all. Assistant City Attorney Keese said that if the Commission chooses to adopt the State law then we would likely be back in court. The Chair stated that his recommendation would be to direct the Executive Director not to enforce the rule.

The Chair called for a vote on Commissioner Burney's motion to strike Rule 4.3. The vote was 4-3 against the amendment. Those in favor were the Chair and Commissioners Iglitzin and Kang. Opposed were Commissioners Burney, Carr, Miller and Radosevich.

Commissioner Iglitzin then made a motion to remove 4.3 and replace it with the language in the state law. Commissioner Kang seconded the motion. The vote was 4-3 against the amendment. Those in favor were the Chair and Commissioners Iglitzin and Kang. Opposed were Commissioners Burney, Carr, Miller and Radosevich.

The next vote was on the adoption of the Voters' Pamphlet Administrative Rules. Those in favor were Commissioners Burney, Carr, Iglitzin, Kang, Miller and Radosevich. The Chair voted no because of the restrictions on candidate speech in the rules. The Voters' Pamphlet Administrative Rules were adopted by a vote of 6-1.

7) Late-filing penalty for A Deal is a Deal (\$750)

The Executive Director discussed the late-filing penalty for A Deal is a Deal, which is the committee that was formed to hold the Sonics to their lease. The ballot issue never went anywhere, but the committee spent some money and subsequently told us that they didn't spend

any money. By the time they had filed, their report was very late. The appeal period has passed and they have paid the fine of \$750.

8) Letter to the Mayor and the City Council President regarding staggered Commission terms.

The Executive Director referred to a memo he sent to Mayor Nickels and Council President Conlin regarding staggered terms for Commissioners. He has heard from Regina LaBelle, Council to the Mayor, and Council President Richard Conlin, and both of them were very interested in this proposal. The Executive Director understands that talks are underway about how to bring the appointment process into compliance with the law.

9) Executive Director's Report

The Executive Director directed the Commissioners' attention to legislation that he'd distributed that would make it clear that indemnification does not apply to fines levied by the Commission. Councilmember Sally Clark is hearing this issue on February 25, 2009, and if any of the Commissioners have any concerns with any part of the bill, they should share them with the Executive Director or Mike Fong to make they get to the Councilmember before the hearing. Commissioners agreed that this bill was consistent with the Commission's recommendations.

We have settled up the year end budget, and for 2008 we returned almost \$37,000 to the General Fund. That was primarily the result of lower-than-usual Voters' Pamphlet costs. Our 2008 Voters' Pamphlet costs were only \$48,000, compared to \$133,000 in 2007.

The Executive Director reported that he had spoken with Regina LaBelle, and that she informed him that Bill Sherman is going to be appointed to the Commission by the Mayor. There is no news yet on the other appointment.

Minutes respectfully submitted by Gwendolyn Ford, Administrative Staff Analyst.

Meeting adjourned at 5:30 p.m.