

Seattle Ethics and Elections Commission Special Meeting January 14, 2009

A special meeting of the Seattle Ethics and Elections Commission convened on January 14, 2009 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Robert Mahon called the meeting to order at 4:01 p.m. Commissioners Tarik Burney, Ed Carr, Lynne Iglitzin, Nancy Miller and Michele Radosevich were present. Commissioner Mel Kang was absent. Executive Director Wayne Barnett and staff members Bob DeWeese, Kate Flack, Gwen Ford, Polly Grow and Mardie Holden were present, as was Assistant City Attorney Jeff Slayton.

1) Public Comment

There was no public comment.

2) Approval of minutes of the October 3, 2008 meeting

Commissioner Miller suggested correcting a typographical error on page 4, and the Chair noted a few other typographical errors. The Chair also suggested removing the modifier “vastly” from the sentence describing the broadening of the Ethics Code’s definition of Immediate Family. Commissioner Miller made a motion to accept the amended minutes, which was seconded by Commissioner Radosevich. The minutes were approved unanimously.

3) Discussion and possible vote on recommendation to bring Commission appointments in line with SMC 3.70.030 (requiring staggered terms)

The Executive Director stated that under the Commission’s enabling ordinance, the term of one Mayoral and one Council appointee should expire every year. Due to a problem dating to the creation of the Commission, two Mayoral terms expired in 2008, and two Council terms will expire in 2010. The Executive Director recommended that the Commission ask the Council and the Mayor to work together to bring the process into compliance with the law. Commissioner

Miller made a motion to recommend that the Mayor and the City Council resolve this issue, which was seconded by Commissioner Radosevich. The motion passed unanimously.

4) Discussion and possible vote on recommendation to include in all City collective bargaining agreements language affirming the Commission's authority to issue fines for Ethics Code violations.

Thirteen years ago the PERC issued a decision that said fines issued by the Commission are discipline, and that since they had not been collectively bargained for the Commission's imposition of fines constituted an unfair labor practice. The City appealed but ultimately entered into a settlement with Local 17. Now there is a clause in Local 17's collective bargaining agreement a clause which says that fines issued by the Commission are not discipline.

According to Councilmember Burgess, who was then the Commission's chair, there was an understanding that the City would bargain for such a clause in its negotiations with other unions as their contracts came up for renewal. The reality is that there are several contracts which do not recognize the Commission's authority to issue fines. The Executive Director said he understands that Local 27, Local 77, the Seattle Police Officers' Guild and several other unions do not have this clause. Obviously, there is nothing that the Commission can do itself to insert this issue into labor negotiations, but he recommends that the Commission raise this issue and try to get it back on the front burner with the Mayor's office and encourage them to seek to add the clause as labor contracts come up for renewal.

Commissioner Radosevich made a motion to recommend that the authority of the Commission to levy fines for Ethics Code violations should be a subject of future labor agreement negotiations, which was seconded by Commissioner Iglitizin.

The Executive Director said that Commissioner Kang sent an e-mail on this issue. The Executive Director said that Commissioner Kang worked at the National Relations Labor Board, which has a policy of deferring to collective bargaining agreements when an allegation raises

issues under the law and the collective bargaining agreement. Commissioner Kang thought this would be a wise policy for the Commission as well.

Commissioner Radosevich's motion passed unanimously.

5) **Ethics Code Review**

After a brief discussion about how best to get public input, the Chair asked for questions or comments on the draft changes to the Ethics Code.

In section A under **Purpose**, the Chair had some reservations regarding adding the requirement that City employees be "truthful" to the current version which requires that they be "independent, impartial, and responsible to the people." The Chair did not like the idea of adding something to the purpose section with nothing in the code that would add teeth to the requirement, and he didn't see how the Commission could adjudicate "truthfulness." The majority of the Commissioners shared the Chair's concerns, and the Executive Director said he would remove the word.

In Section B, the Chair recommended replacing the first-person voice with a third-person voice – "they," not "we" – and further changing the wording to read that City employees **should** recognize that public service is a sacred trust, and **should** strive to uphold high standards. There was no consensus on changing "we" to "they," but Commissioners did agree that inserting the word "should" was appropriate.

Commissioners agreed that the use of the latin term "De minimis non curat lex" in Section D should be stricken. The sentence works fine without the latin.

The Commission then moved on to the definitions. The Executive Director directed the Commissioners' attention to an addendum recommending that some City contractors be subject to the Ethics Code. The Executive Director said that as he'd drafted the language, an individual

working more than 500 hours in any twelve-month period providing services to a City agency would be subject to the Ethics Code.

Assistant City Attorney Slayton said that many services are provided under contract. You would be expanding the coverage of the Ethics Code to a very wide and dispersed community, and he thinks that maybe not each and every provision of the code makes sense to apply to contractors. The Chair raised the question of whether this could be addressed in the contract, and not through the law. Assistant City Attorney Slayton stated that could possibly happen now, which would add a little more flexibility. You can within the contract decide on what types of behavior would give rise to certain remedy for the City. Assistant City Attorney Slayton also said one suggestion that his colleague suggested that he thinks that this change would produce even greater anxiety than the change to the section dealing with advisory committees that was made three years ago. He believes that we should be careful and think through what the scope and coverage is.

Assistant City Attorney Slayton said that the second part of the scope issue is how much of the Code of Ethics are you going to apply to this new group of people. Is it going to be the entire Code or certain parts of it and maybe the Commission want the broad scope on applying but may not want the entire code apply to that new group of people.

The Executive Director suggested that the Commission could recommend to the City Council extending the Commission's jurisdiction to include contractors without suggesting any specific language. Assistant City Attorney Slayton stated that one thing the Executive Director's suggestion allows for is for the Council to determine the scope of the problem.

Commissioner Radosevich suggested that the Commission submit a recommendation to the Council capturing those individuals for whom this could be a big problem for, which would also raise the question of hours and post-employment. The Commissioners decided to raise the

threshold from 500 hours to 1000 hours per year in their recommendation to the Council, as a way to limit the impact of the change to contractors who provide significant services to the City. After experience applying the law to a small set of contractors, the Commission or the City Council could revisit the issue.

The Chair made several suggestions for changes to the definition of “Immediate family” to simplify the section without changing the scope of the new definition.

The Chair suggested that we change the language that introduces the prohibitions of the code from “No current City employee shall” to “A City employee shall not” which should apply to everything in the subsection. Assistant City Attorney Slayton said that the Municipal Code is very inconsistent in style usage.

Several Commissioners voiced objections to the wording of the section dealing with appearances of conflicts. The consensus was that the section was difficult to understand. The Executive Director was tasked to work with the Law Department to come up with a revision before the February meeting.

The Executive Director said he took out “Gifts or Loans” from the header for section 3 because the words were misleading. If you read the full section, gifts and loans are subsets of “things of value”. He said we never deal with loans and we need more of an umbrella term.

The Executive Director then moved on to discuss the post-employment restrictions. In the fall the Commission discussed creating a standard under which former employees of the Mayor’s office and the City Council would be held to a higher standard than other City employees. The Executive Director could not craft language that dealt with this problem in a principled way, without creating a harsh result for low-level mayoral or council employees. So the section as drafted still says that you cannot deal with your former department.

The Chair questioned whether the bar on communicating with your former department was too harsh. The Executive Director clarified that the intent was to bar former employees from communicating with their former departments on another's behalf.

The Commission then took up the section dealing with investigations. The Executive Director said that it is not an investigation if you are looking at the face of the complaint in determining the facts, so he recommends calling that a review. He stated that section E creates a mechanism for administrative dismissals in the Code. They're currently covered in the rules, but it is preferable to have them covered in the law as well. Finally, the Executive Director recommends simplifying the section dealing with scheduling a hearing.

6) Executive Director's Report

The Executive Director introduced Jean Rakotondramihamina to the Commissioners. Jean is the Director of Evaluation and Ethics in the Ministry of Civil Services in Madagascar, and he's currently a Hubert Humphrey Fellow at the University of Washington. Former Commissioner Pat Dobel is his advisor and for the next six weeks Jean is going to be working with our office looking at and comparing our Code to Madagascar's and some other codes. Jean will also be taking a look at our cases. He is learning from us and we are learning from him.

The Executive Director stated that he has been invited to go to Madison, Wisconsin in April to speak to their Mayoral Commission investigating public financing. He will make sure that we will stay within the guidelines that everyone else is obligated to stay within.

He also announced that there has been no news about new Mayoral appointees.

Meeting adjourned at 5:50 p.m.

Minutes respectfully submitted by Gwendolyn Ford, Administrative Staff Analyst.