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BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

In the Matter of) Case No. 10-1-0126-1
)
Christopher Bushnell) DECISION AND ORDER
) OF THE COMMISSION
Respondent,)
)

I. INTRODUCTION

The Executive Director filed charges in this matter on April 29, 2010. The Seattle Ethics and Elections Commission (the "Commission") held a hearing on the charges at its regular meeting on May 5, 2010. The Executive Director and Mr. Bushnell agreed to Stipulations of Fact and Law on April 29, 2010, which were entered into the Commission record at the hearing. No other evidence was presented.

II. STIPULATED FACTS

The parties stipulated to the following facts:

1. Bushnell was a volunteer on Mayor McGinn's transition team. He was first given a City of Seattle e-mail address on November 13, 2009. His first day on the City's payroll was January 22, 2010. He resigned on February 4, 2010.

2. During the transition, Bushnell served as liaison for the Mayor-elect on several issues, including transportation. Bushnell accompanied the Mayor-elect to meetings with Seattle

1 Department of Transportation ("SDOT") Director Grace Crunican and other SDOT personnel on
2 November 17 and December 23, 2009. Bushnell met separately with Crunican and other SDOT
3 personnel on November 25, December 7, December 10, December 17, and December 28, 2009,
4 to discuss transportation issues, including replacement of the central waterfront seawall.
5
6 Discussions related to the seawall dealt primarily with the replacement timetable and how best to
7 accomplish the Mayor-elect's objective of accelerating the replacement project.

8
9 3. On December 9, 2009, Bushnell attended his wife's office holiday dinner.
10 Bushnell's wife is a marine biologist and she works part-time in the Tacoma office of an
11 environmental consulting firm.

12
13 4. At the dinner, Bushnell learned that his wife's employer was one of 16 sub-
14 consultants under a prime contractor preparing a response to a Request for Qualifications
15 ("RFQ") issued by SDOT. SDOT was seeking a consultant team to assist the department with the
16 seawall replacement project. The total value of the design contract is between \$15 and \$18
17 million.

18
19 5. SDOT issued the RFQ on November 18, 2009, with final selection originally
20 scheduled for January 23, 2010. On December 4, 2009, SDOT issued an addendum clarifying
21 the RFQ and delaying final selection to February 12, 2010.

22
23 6. Bushnell's wife was not involved in the preparation of the bid materials, nor
24 would she have worked on the contract if the team's bid was successful. Bushnell's wife owns no
25 part of the business.

26
27 7. In response to the RFQ, SDOT received four submissions on January 8, 2010,
28 including one from a team that included Bushnell's wife's employer as a sub-consultant.

29
30 8. SDOT assembled a panel of five City employees to evaluate the four bid teams.

1 Mayor McGinn, with the advice and counsel of staff, including Bushnell and Ethan Raup, the
2 Mayor's Director of Policy and External Affairs, instructed SDOT to include stakeholders and
3 outside experts on the panel.

4
5 9. Mayor McGinn tasked Bushnell with contacting a landscape architect to
6 determine whether that person would be interested in serving on the panel, and with identifying a
7 biologist to serve on the interview panel after two University of Washington biologists that
8 SDOT had identified proved unable to serve because they were part of a consulting team bidding
9 on the project. The Mayor tasked Deputy Mayor Phil Fujii with identifying a tribal
10 representative for the panel. Ethan Raup was directed to identify a waterfront business owner to
11 serve on the panel.
12

13
14 10. Bushnell contacted the landscape architect, who was unable to serve on the panel
15 because she was involved with one of the bid teams.

16
17 11. Bushnell contacted personnel at the King County Natural Resources Department
18 and Seattle Public Utilities, and conducted an Internet search to identify a biologist.

19
20 12. One of the two biologists Bushnell identified worked for the Washington State
21 Fish and Wildlife Department, and the other worked for the U.S. Army Corps of Engineers.
22 Neither Bushnell nor his wife have ever met either individual.

23
24 13. On January 20, 2010, following a discussion of the names in a conference call
25 with the Mayor, Raup shared the names of the two biologists that Bushnell identified with SDOT
26 employees Bob Chandler and Stephanie Brown.

27
28 14. On January 23, 2010, at a meeting with SDOT employees Chandler and Brown,
29 Raup, with Bushnell present, asked Brown for an update on the evaluation panel. She told him
30 that she had not been able to reach either of the suggested biologists. Bushnell suggested that the

1 Mayor could call to ask them to serve on the panel if she was unable to reach them.

2 15. Following the January 23 meeting, and following up on a comment Bushnell
3 made about a potential appearance of a conflict of interest and discussions about his wife's work
4 as a marine biologist, SDOT personnel researched Bushnell's wife and learned that her employer
5 was a member of one of the bid teams. SDOT personnel brought the issue to the Director on
6 January 26.
7

8 16. After a series of meetings involving personnel from SDOT, the Mayor's office,
9 the Law Department and the Director, the Mayor announced on January 29 that SDOT would
10 restart the RFQ process.
11

12 17. At no time was Bushnell or anyone else in the Mayor's office provided by SDOT
13 staff with the proposals or the criteria for evaluating them.
14

15 III. STIPULATED CONCLUSIONS OF LAW

16 The parties stipulated to the following conclusions of law, which the Commission adopt:

17 1. The Seattle Ethics Code, SMC 4.16.070.1.c, states that a Covered Individual may
18 not "[p]erform any official duties when it could appear to a reasonable person, having knowledge
19 of the relevant circumstances, that the Covered Individual's judgment is impaired because of
20 either (1) a personal or business relationship not covered under subsection a or b above, or (2) a
21 transaction or activity engaged in by the Covered Individual. It is an affirmative defense to a
22 violation of this subsection c if the Covered Individual, prior to performing the official act,
23 discloses the relationship, transaction or activity in writing to the Executive Director and the
24 Covered Individual's appointing authority, and the appointing authority or the authority's
25 designee either approves or does not within one week of the disclosure disqualify the Covered
26 Individual from acting."
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1 2. As a City volunteer between November 2009 and January 21, 2010, and as a City
2 employee between January 22 and February 4, Bushnell was a Covered Individual, subject to the
3 Ethics Code.

4 3. Bushnell was performing official duties when he participated in decisions about
5 the composition of the interview panel, and when he assisted the Mayor in identifying
6 individuals to serve on the interview panel.

7 4. Bushnell's marriage to a woman employed by a company bidding on the SDOT
8 contract is a relationship that would to a reasonable person appear to impair Bushnell's judgment
9 in the performance of official duties related to the composition of the panel that would interview
10 the bid teams.

11 5. Bushnell did not disclose the relationship in writing to the Mayor or the Director.

12 6. By performing official duties when it would appear to a reasonable person that his
13 judgment was impaired, in the absence of a written disclosure of the relevant facts to the Mayor
14 and the Director, Bushnell violated SMC 4.15.070.1.c.

15 7. Bushnell's wife did not have a financial interest in the contracting decision, and
16 there is no evidence in the record that Bushnell violated either (a) SMC 4.16.070.1.a, which bars
17 Covered Individuals from participating in matters in which an immediate family member has a
18 financial interest, (b) SMC 4.16.070.2.d, which bars Covered Individuals from attempting to
19 influence a contracting decision in which an immediate family member has a financial interest,
20 or (c) SMC 4.16.070.4, which bars Covered Individuals from using confidential information for
21 other than a City purpose.
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IV. ADDITIONAL CONCLUSIONS OF LAW

The Commission makes the following additional conclusions of law:

1. The stipulated violation of SMC 4.16.070.1.c was not "minor" as that term is used in SMC 4.16.090 and SEEC Administrative Rules 3.D and 3.G.

2. The Commission concludes that the imposition of a monetary fine of \$500 is appropriate considering the nature of the stipulated violation, mitigating facts set forth in the stipulated facts, and penalties imposed in other cases.

V. ORDER

Having considered the record in this case, including the Stipulations of Fact and Law, the written submissions of the parties, and the argument presented at the hearing, and pursuant to SMC § 4.16.100.B, the Commission orders Respondent Christopher Bushnell to pay a fine of \$500.

**SEATTLE ETHICS AND ELECTIONS
COMMISSION**



Robert L. Mahon
Chair, Seattle Ethics and Elections Commission