



September 21, 2011

Re: Case No. 11-2-0628-1

Dear ****:

On June 28, 2011, you lodged a complaint with our office alleging that Councilmember Bruce Harrell's City web site violated the prohibition on using City resources for campaign purposes. You cited three factors in your complaint: (i) the "striking" similarity between content on the Councilmember's official site and his campaign site, (ii) the complementary "style, format and coloring" of the Councilmember's official and campaign sites, and (iii) the fact that both the official and campaign sites contained headings labeled "Accountable," "Forward Thinking" and "Inclusive(ness)". For the reasons I articulate below, I am dismissing your complaint.

Relevant Law and Interpretation

SMC 2.04.300 provides that:

"No elected official nor any employee of his or her office... may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office.... Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency...."

The Commission last ruled on a complaint alleging that an elected official's official publication violated this provision in 2005, when it held by a 4-3 vote that an Accomplishments Document produced by Mayor Greg Nickels ten months before the 2005 mayoral election violated this provision. The majority articulated the following standard for reviewing official publications: "The key question is whether, to a reasonable person, the activity or document appears PRIMARILY designed to influence the outcome of an election, or PRIMARILY designed to be informational with only an incidental effect of assisting a candidate's campaign for reelection." The majority also ruled that "[w]hether a use of facilities is 'for the purpose of assisting a campaign' is determined objectively, and there is no need to prove or determine the subjective mental state (actual intent) of any person."



Analysis

1. Similarity of content

I reviewed the two articles you cited that appear on both Councilmember Harrell's official and campaign sites, and I do not believe that either appear primarily designed to influence the Councilmember's reelection effort. The two articles that you cite – "Bruce Lee Action Museum May Call Seattle Home" and "Councilmember Bruce Harrell to launch Great Student Initiative" – are both, in my opinion, primarily informational. They are consistent with content routinely posted to City web sites.

The fact that the content also appears on the Councilmember's campaign site does not, standing alone, establish that the production of the article on City time using City resources, and the posting of the article to a City web site, violates the Elections Code. In the case involving Mayor Nickels's accomplishments document, the majority cited the cross-posting of content to the Mayor's campaign page as one of several factors that contributed to its conclusion that the content produced and distributed at City expense was more promotional than informational. If there was additional evidence that led to a conclusion that Councilmember Harrell's postings were primarily promotional, the posting on the campaign site would buttress that evidence. But there is not.

I also should point out that this office has never interpreted either the Ethics Code or the Elections Code to bar City candidates from linking from their campaign web sites to official web sites. (Links going in the other direction are not allowed.) Since Councilmember Harrell could have provided a link from his campaign web site to the content in question, I cannot find that the cross-posting violates the law.

2. Complementary style, format and coloring, and use of the same terms

Here again, the evidence is insufficient to show that the Councilmember's City web page is primarily promotional. The fact that Councilmember Harrell uses words like "inclusive" and "accountable" to organize content on both web sites, and uses the same color scheme as the one employed by his campaign, is too slender a reed to make out a violation of the City's Elections or Ethics Codes. Harkening back to Mayor Nickels, it bears noting that his four priorities – "Get Seattle moving, keep our neighborhoods safe, create jobs and opportunity for all, and build strong families and healthy communities" – were all prominently featured on his campaign site as well as official City communications throughout his time in office and his two reelection campaigns. This office never took exception with that practice.

Conclusion

For the foregoing reasons, I am dismissing your complaint. If you wish to appeal this dismissal, you have 21 days in which to do so. Commission Administrative Rule 4, available at www.seattle.gov/ethics/etpub/AdminRules.pdf, spells out the appeal process.

Thank you very much for contacting us with your concerns.

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission (*name and address of complainant redacted*)
Councilmember Bruce Harrell (*name and address of complainant redacted*)