City of Seattle
Ethics and Elections Commission

May 17, 2017

BY E-MAIL

Re: Case No. 17-2-0328-1

Dear *********:

On March 28, 2017, you filed a complaint with the Public Disclosure Commission (PDC) and the Seattle Ethics and Elections Commission (SEEC) alleging violations of State and City laws barring the use of public resources for the purpose of promoting or opposing a candidate or ballot measure. For the following reasons, I am dismissing your complaint.

FACTS

On Sunday, February 19, 2017, I received an e-mail from Ian Warner, counsel to Mayor Murray, asking whether City law would permit City officials and employees to be involved in the development of an initiative to raise money to fund efforts to deal with Seattle's homeless crisis. I replied: "[U]nless and until this measure gets filed and goes out for signatures, the elections code doesn't bar the involvement of city employees in its development. That is the rule for city-sponsored measures and I see no reason under the law to apply a different standard to this prospective measure. As with city sponsored measures, city employees involved in the development of this measure must not be involved in developing campaign strategy on city time or using city resources. The city's ethics code requires that city resources be used to serve a city purpose, and a successful election campaign is not a city purpose."

My advice flowed from a 1994 advisory opinion issued by the Commission that remains good law. In Advisory Opinion 94-1E, the Commission wrote:

> An issue of interest does not become a ballot issue, under the law, until some paperwork is in progress to perfect certification. An issue of interest becomes a ballot issue when the first step is taken for certification: for a state ballot issue, when a proposed ballot title is submitted to the Secretary of State; for a County-wide ballot issue, when a ballot title is submitted to the County Auditor. See RCW 29.27.060 and RCW 29.79.010. The first step for certifying a City ballot issue, however, is either: (1) the collection of signatures for citizen initiated initiative, referendum or Charter amendment; or (2) passage of a Council resolution for a levy election or Council initiated Charter amendment. See Seattle City Charter Article IV and Article XX (1992).
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> RCW 42.17.130 and SMC 2.04.300 only prohibit use of facilities to promote or oppose a ballot issue, not an issue of interest that has not yet become a ballot issue. Since no ballot title had been submitted to the Secretary of State for a state initiative and no signature gathering had begun to certify a City initiative…the issue of interest was not a ballot issue.

See also, Advisory Opinion 93-2E (Arts Commission can support concert hall before it goes on the ballot).

Initiative 126 was submitted to the City Clerk on March 8, kicking off the signature gathering effort. The effort was abandoned on April 3, 2017.

The evidence you cite on pages 8-10 of your complaint details significant City involvement in the development of the ballot measure. But significant City involvement is the norm in the development of most ballot measures. The Housing Levy, the Families and Education Levy, the Parks District measure – all of these (and others) were the product of countless hours of City time and attendant City resources. While reasonable people can (and did) question whether this involvement in a *citizen* initiative was consistent with the spirit of the initiative process, those concerns do not implicate the City's Elections Code, as it has been interpreted for the last 25 years. I-126 was not a ballot measure until March 8.

CONCLUSION

Because under Advisory Opinion 94-1E, it is not inappropriate to use City resources in the development of a ballot measure, I am dismissing your complaint. If you would like to appeal this dismissal, you may do so under the Ethics and Elections Commission's Administrative Rule 4.[1]

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Peter Lavallee, Executive Director, PDC
Ian Warner, Counsel to Mayor Edward B. Murray

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[1] Rule 4 APPEALS

A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.

B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.

C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.

D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.

E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.

F. The Commission shall act on the request at the next meeting at which it may be practicable by:

1. deciding whether to review the Executive Director's decision; and

2. if it decides to do so, either affirming, reversing, or amending the decision.

G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.