



June 18, 2018

BY E-MAIL

Mr. Maxford Nelsen
Director of Labor Policy
Freedom Foundation
PO Box 552
Olympia, WA 98507

Re: Case No. 18-2-0605-1

Dear Mr. Nelsen:

I received your complaint on June 5, 2018, alleging that City candidates in the 2017 election cycle violated SMC 2.04.601 when they accepted contributions from unions that are party to collective bargaining agreements (CBAs) with the City of Seattle. To quote your report: "At least eight unions received more than \$250,000 in dues and fees during this period under a CBA with Seattle and nonetheless contributed to candidates for city office in the 2017 election." I am dismissing your complaint.

SMC 2.04.601 provides as follows:

2.04.601 - No Campaign Contributions from City Contractors or their PACs.

No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who in the prior two years has earned or received more than \$250,000, under a contractual relationship with the City.

In interpreting this provision, Commission staff has looked to the plain meaning of the term "contractor." Merriam-Webster's Collegiate Dictionary (Tenth edition) defines contractor as "one that contracts or is party to a contract: as (a) one that contracts to perform work or provide supplies..." The list of entities receiving payments on the Commission's website includes this introductory language, to signal that not every entity on the list is barred from contributing under SMC 2.04.601: "This list includes entities and individuals who received payments of \$100,000 or more from the City of Seattle in the two-year period between [date] and [date]. Amounts represented below do not necessarily represent the amounts for contracted services with the City of Seattle. Payments by the City to organizations shown in this list may have occurred in the normal course of City business, such as financial transactions that take place between the City and one or more organizations providing treasury services."

In other words, where payments to an entity are not for goods or services provided by that entity to the City, staff does not interpret those payments as triggering SMC 2.04.601. For

example, Wells Fargo received more than \$2 *billion* from the City over the last two years. But that is because Wells Fargo is the City's payment processor. Every City employee paycheck passes through Wells Fargo.¹

While this staff interpretation that not every entity that receives money from the City is a contractor has not been put four-square before the Commission, the Commission did administratively dismiss a complaint against then candidate Jenny Durkan for accepting contributions in violation of SMC 2.04.601 from a variety of entities, including Ash Grove Cement. My memorandum to the Commission included this passage: "While Ash Grove Cement Corporation has received more than \$250,000 in payments from the City in the last 24 months, those payments were conservation rebate incentives paid to the company for energy efficiency improvements made at its facility. **Ash Grove Cement is not a City contractor.**" The Commission adopted the recommendation to administratively dismiss the complaint without any comment on Ash Grove Cement.

I believe that, as with Ash Grove Cement, the unions you list in your letter, while party to contracts with the City, are not City *contractors* as that term is commonly understood. Section 5.1 of the CBA between the City's largest union (Local 17) and the City is the basis for the money that Local 17 receives from the City:

The City agrees to deduct from the paycheck of each employee, who has so authorized it, the regular intake fee and regular monthly dues uniformly required of members of the Union. The amounts deducted shall be transmitted monthly to the Union on behalf of the employees involved. Authorization by the employee shall be on a form approved by the parties hereto and may be revoked by the employee upon request. The performance of this function is recognized as a service to the Union by the City. Those individuals paying Agency fees will be afforded payroll deduction the same as Union members.

The City transmits deductions from City employees' paychecks to the unions, a process that I do not believe triggers the application of SMC 2.04.601. It is the employees who receive services from the unions, not the City.

¹ I am not suggesting that Wells Fargo does not provide services to the City under a City contract, only that they have not received \$2 *billion* in compensation under that contractual relationship with the City.

If you would like to appeal this dismissal to the full Commission, you may do so under Administrative Rule 4.²

Very truly yours,



Wayne Barnett
Executive Director

² 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.