

September 19, 2008

Re: Case No. 08-WBI-0611-2

Dear \*\*\*\*\*:

The Commission staff received your Whistleblower complaint on June 11, 2008, in which you allege that Mary Pat Byington, a Parks Department employee, received shipments of wine at the International District Community Center. Commission staff has reviewed your complaint, the facts and available evidence. Based on this review, I find no reasonable cause to believe that Ms. Byington violated the Ethics Code. Therefore, I am dismissing your complaint.

### **Facts**

Shortly after receipt of your complaint, we found that a contemporaneous investigation of your allegations was underway at the Parks Department. To avoid duplication of effort and resources we chose to await a determination from the Parks Department.

The Parks Department determined that Ms. Byington had on one or two occasions received shipments of wine at the community center, which she took, unopened, to her car upon receipt. The Parks Department told Ms. Byington that she was to stop having wine delivered to the community center.

### **Analysis**

SMC 4.16.070.2.b bars the use of City facilities for non-City purposes. In Advisory Opinion 1999-06, however, the Commission said that occasional uses of City resources for personal purposes which do not cost the City money or interfere with City work do not violate the Ethics Code. (This is usually referred to as the “*de minimis*” exemption.) I find Ms. Byington’s shipments of wine to fit squarely within the *de minimis* exemption. I do not believe that the fact that the shipment involved alcoholic beverages takes it outside of this exemption, which looks to the *extent* of City resources employed for personal use, not the nature of the personal use. Under the Ethics Code, there is no reason to treat an occasional shipment of wine any differently than an occasional shipment of books.

I am unaware of any other laws or rules that are implicated by an employee’s receipt of wine. Personnel Rule 1.3.4.A.3, which bars the “[p]ossession or sale of alcohol **for use in the workplace or during working hours**,” is inapplicable. Accordingly, I make no finding that

Ms. Byington has committed an “improper governmental action” under the Whistleblower Protection Code.

### Conclusion

I am dismissing your complaint that Ms. Byington violated the Ethics Code when she received occasional shipments of wine at the community center. As we have discussed, your other complaints about Ms. Byington’s workplace conduct do not raise issues under the Ethics Code.

You are entitled to appeal my dismissal under Seattle Ethics and Elections Commission Administrative Rule 4.<sup>1</sup> Please be advised that if you elect to file an appeal under Administrative Rule 4, we will no longer be able to preserve your anonymity.

Very truly yours,

/s/

Wayne Barnett  
Executive Director

cc: Seattle Ethics and Elections Commission (*complainant’s name and address withheld*)  
Darwyn Anderson, Parks Dept. HR Dir. (*complainant’s name and address withheld*)

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<sup>1</sup> 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.