

Memo

To: Commission

From: Wayne Barnett

Date: November 18, 2014

Re: Office Funds Rule

When the Commission last undertook a comprehensive review of the Elections Code Rules in 2007, it left untouched the wording of Rule 14, which governs public office funds. (A copy of Rule 14 is attached.) At the time, I believed Rule 14 to be on weak legal footing because the Ethics Code expressly provided that “contributions...received and reported in accordance with applicable law” could not be unlawful gifts, making Rule 14’s restrictions on office fund contributors difficult to justify. In 2009, the City Council amended the Ethics Code so that it now exempts only *campaign* contributions from scrutiny under the Ethics Code, firming up the ground under Rule 14.

I believe the time is ripe for the Commission to analyze the rules governing public office funds. In the wake of the adoption of changes to the Elections Code barring campaigns from rolling over funds from one election cycle to the next, several councilmembers established office funds and deposited unspent campaign funds in those office funds. Although historically primarily mayors have had active office funds, today six of the nine City Councilmembers have office funds, as does the Mayor. With the proliferation of office funds, the most pressing questions that the staff has no longer revolve around who can contribute to an office fund. Today’s inquiries far more often revolve around what types of expenditures can be made from office funds.

1. Restrictions on office fund expenditures.

SMC 2.04.480 provides that office funds may be used “for the purpose of defraying non-reimbursed public office related expenses.” Rule 14 enumerates 13 examples of the kinds of expenditures that can be made with public office funds, and six types of expenditures for which public office funds may *not* be used. The difficulty comes in deciding what to do with the myriad expenses that do not fit neatly into either the 13 expressly authorized expenditures or the six clearly verboten categories. What measuring stick should staff employ when deciding whether an expense is a “non-reimbursed public office related expense” that can be paid for with office funds, or “not directly related to the elected official’s duties as an elected official” and therefore not payable with office funds? Here is a range of options for the Commission to consider, ranging from the most restrictive to the least:

- a. *Only permit the use of office funds for expenses that could be paid for with public dollars?*

Such an interpretation would provide clear guidance to officials with office funds and to staff. The problem with this interpretation, however, is that fully a quarter of the permissible expenses under Rule 14 are suspect under such an interpretation, because all raise issues under the State Constitution. (4. “Meals and entertainment” enjoyed in conjunction with governmental activity; 5. “Gifts for...officials from other nations or states”; 10. “Non-tax deductible portion of the cost of tickets to charitable or civic events”; 11. “Non-cash expressions of congratulations, appreciation or condolences.”) The legislative department considers each of these permissible office fund expenses to be an inappropriate use of public dollars. And historically, gifts for visiting foreign dignitaries have accounted for a significant amount of office fund spending.

- b. *Amend the rule so that it provides an exclusive list of permissible office fund expenditures.*

Clearly delineating permissible office fund expenses would make the rule easier for staff to administer and easier for officeholders to follow. All permissible expenditures would be the result of careful consideration. If a lawmaker believed the rule to be too limiting, they could petition the Commission to expand the list.

- c. *Amend the rule so that it provides an exclusive list of impermissible office fund expenditures.*

Clearly delineating impermissible office fund expenses would make the rule easier for staff to administer and easier for officeholders to follow. It could, though, open the door to funds being used in ways that would diminish public confidence in office funds.

2. Restrictions on office fund contributors.

Under the current rule, “[p]ersons who are parties to a current contract or other transaction with the City of Seattle, or who have taken affirmative action to be considered for a contract or transaction with the City” may not contribute to an office fund. The rule provides further that a “person who is paid by a client to represent the client to the City, such as an attorney or an accountant representing a City vendor, does not thereby become a ‘party’ to a transaction with the City.” Finally, the rule also provides that “[t]ransaction, as used in this section, does not include those transactions that do not involve the exercise of discretion by any elected official, such as application for a business license, and does not include the City’s provision of water, electricity, waste disposal or other utility services.”

The Commission may want to consider whether these restrictions go too far or not far enough. For example, under the existing rule, officers, directors, and employees of entities ineligible to contribute to an office fund may contribute, as may the entities’ lobbyists and legal counsel. On the other hand, as with campaign contributions, all contributions to office funds are disclosed and available on the Internet.

3. Miscellaneous office fund issues.

- a. *Management.* Currently, office funds can be managed by an elected official’s staff from City Hall, and fundraising for the office fund can be performed on City time and property. Since office funds must be used for public office related expenses, this is an intellectually coherent regime. But practically speaking, conducting fundraising on City time and property raises some thorny issues, potentially damaging public confidence in .

- b. *Contribution limit.* SMC 2.04.480 limits office fund contributions to \$250 annually. While on its face this is significantly lower than the campaign contribution limit, over

a four-year term in office, a person can contribute \$1,000 to an office fund as opposed to – or in addition to – a \$700 campaign contribution over an election cycle. The Commission may want to consider whether elected officials should be able to fundraise for an office fund at all, or whether surplus campaign funds should be the only permissible source of office funds.