

Memo

To: Seattle Ethics and Elections Commission

From: Abbot Taylor

Date: August 4, 2019

Re: Commission Consideration of the Director's Reduction of Voucher Payouts

On August 2, 2019, Director Wayne Barnett sent an email with the subject "Guidance for candidates released from the Primary spending limit," which said that "Under Rules adopted by the Commission in 2017, that \$150,000 [Maximum Campaign Valuation] will include money that you *raised* after the cap was lifted but did not *spend* on the Primary." This interpretation of Rule 16.H.1 and the Maximum Campaign Valuation (MCV) is not supported by the Seattle Municipal Code (SMC) or the Seattle Ethics & Elections Commission's (SEEC) Rules. Further, this departure from the precedent set in 2017 was not publicly announced until four days before the Primary election and directly contradicts advice from the SEEC made as recently as June 2019.

Commission Intent and Rule 16.H.1

During the August 14, 2017 Special Meeting of the Commission, comments from campaigns and consultants were solicited on how to reimpose the campaign spending limits for a campaign that had previously been released and then moved on to the General election. After receiving feedback from several 2017 election participants, the Commission instructed the Director to:

"...draft a rule that would suspend the spending limit [MCV] between the time that the lift is granted and the time the spending limits are reinstated, so anything that happens during that period of time won't count against the spending limit. The goal is to place the person back in the same position they were at when the lift was granted with respect to the spending limit."

The resulting rule, approved in September 2017, states that if a campaign has been released from either the spending or contribution limits, "money raised and spent [during the release] shall not count toward the total spending limit." This rule is in line with the Commission's intent to avoid penalizing campaigns who have been through the release process as a result of independent expenditures against them or opponents who have raised above the MCV.

SMCs and 2018 Legislative Changes

At the request of the SEEC, the City Council enacted a series of changes to the SMCs in June 2018 to help clarify a number of issues that came up during the 2017 campaign. The following changes are relevant to the issue at hand.

- Per SMC 2.04.634A, the campaign spending limit was replaced with the campaign valuation (CV), which is defined as "The greater of total contributions received; and money spent to date (equal to prior expenditures, plus debts and obligations)."
- Per SMC 2.04.632A and 2.04.634B, candidates who have been released from the MCV can redeem vouchers up to the MCV and "the candidate may engage in campaign fundraising without regard to anything in the subsection 2.04.634.B from which the candidate has been released."

Consequently, a campaign's CV is calculated by looking at either the total contributions or the total expenses plus debt, and that any fundraising once a candidate is released will be ignored when calculating the CV. The new SMCs also make it clear that a campaign can accept up to the MCV in voucher funds if they are available.

The Director's interpretation of Rule 16.H.1 is that the release only applies to funds that are raised and spent within the release period, and any funds remaining after the Primary expenses have been paid should reduce a campaign's General MCV. That reading ignores that the CV is not calculated by adding in excess funds; per the SMCs, the CV is calculated solely from total contributions or total expenses plus debt, excluding those raised or spent during release, and per Rule 16.H.1, the General MCV is calculated by subtracting the CV one day before a campaign is released the Primary MCV from the General MCV of \$150,000. There is no provision in the current SMCs or Rules that support the Director's reduction of available General voucher funds.

Precedent and Public Notice

Until the Director's email on August 2, 2019, all prior communications with the Director and SEEC staff have indicated that the MCV for the General would be calculated as directed in Rule 16.H.1 – the CV would be taken on the day prior to release from the spending limits and that total would be subtracted from the General MCV if a candidate moved on from the Primary.

This was the case during the 2017 election, when campaigns and the Commission relied on the Director to inform them of their spending limits. The Director calculated those totals and distributed them via spreadsheet and email using the Rule 16.H.1 formula. More recently, an email from the Democracy Voucher Program on June 20, 2019 informed campaigns that "If you go on to the general election, your MCV will be \$150,000, minus up to \$75,000 from the primary." This interpretation is entirely in line with the SMCs and Rule 16.H.1. outlined above, and it shows the SEEC was operating under this reading of the law through at least June 20, 2019.

Conversely, there is no mention of the Director's current interpretation in any of the available materials – not on the Democracy Voucher or Elections tabs of the SEEC website, the 2019 Candidate & Political Committee Guide, the 21-Day Notice, or any other public communications from the SEEC until August 2. The only notice came out by email an hour after I spoke with the Director to confirm this interpretation. Since the SEEC is required by SMC 2.04.690 to issue guidance for campaigns before distributing democracy vouchers and this was not mentioned in any of those materials, this last-minute change lacks the transparency this program requires while placing unfair restrictions on campaigns that followed the rules of the release process.

Conclusion

The SMCs and Rules as currently enacted clearly state how to calculate a campaign's CV and General MCV, that fundraising activities and money raised and spent while a campaign is released from the MCV/spending limit do not affect the MCV calculations for the General election, and that voucher funds should be distributed up to the MCV as long as the funds are available. These have been in place and publicly available for the entirety of the 2019 campaign, and campaigns have based their budgets and voter outreach plans on these existing laws.

While I understand that the Commission wishes to avoid a situation similar to the "voucher banking" by Pete Holmes' campaign in 2017, the current SMCs and Rules, along with precedent and recent SEEC advice, do not support the Director's recent interpretation of Rule 16.H.1. Like the solution to "voucher banking," a change of this magnitude requires a legislative solution, not an hastily announced executive decision 96 hours before the election.

I urge the Commission to rescind the Director's interpretation and enforce the SMCs and Rules as written.

Sincerely,

Abbot Taylor

Attachments (3)