

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

In the Matter of

Mary Brown

Case No. 22-01-0528-1

DETERMINATION

NATURE AND BACKGROUND OF THE PROCEEDINGS

In October 2021, Respondent Mary Brown, a Seattle Department of Transportation (SDOT) supervisor, purchased an Xbox Series X video game console—then a coveted product in short supply—from Matthew Reese, one of her subordinates. The following month, Reese sent Brown an email requesting a particular shift assignment, to which Brown responded, “In the Market for another Xbox Series X.” To the Executive Director of the Seattle Ethics and Elections Commission (the Commission), Brown’s email appeared to condition Reese’s requested job assignment on his procurement of a second Xbox for her to buy.

The Executive Director charged Brown with improper use of her official position in violation of two provisions of the City of Seattle Code of Ethics, SMC ch. 4.16 (the Ethics Code). First, the Executive Director contended that Brown’s October 2021 Xbox purchase violated SMC

1 4.16.070.B.2,¹ which prohibits, in relevant part and with various exceptions, the “use of any City
2 funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be,
3 for other than a City purpose.” Second, the Executive Director charged that Brown’s November 2021
4 email to Reese—about being “in the market for another Xbox”—violated SMC 4.16.070.C.1, which
5 prohibits a City employee, in relevant part, from “solicit[ing] . . . a favor” or “other thing of monetary
6 value from any person or entity where” it “would appear to have been solicited . . . with intent to . . .
7 give . . . special consideration or influence as to any action by the [employee] in his or her official
8 capacity.”

9 On May 3, 2023, the Commission convened a public hearing to consider these charges, in
10 accordance with its administrative rules. Assistant City Attorney Dallas S. LePierre represented the
11 Executive Director. Brown represented herself. The Commission received documentary evidence and
12 heard live testimony from five witnesses: Brown, Greg Silcox, Jared Hickman, Suzanne Weida, and
13 Barbara Abelhauser. (Brown and Weida testified in person; the others by videoconference.) The
14 Commission then entered a closed session to deliberate.

15 Based on the Findings of Fact and Conclusions of Law set forth below, the Commission now
16 holds that the Executive Director has not established that Brown violated the Ethics Code.

17 **FINDINGS OF FACT**

18 **Brown’s Position With SDOT**

- 19 1. Mary Brown is currently a Bridge Operations Supervisor with SDOT. She was
20

21 ¹ The Executive Director’s Charging Document charges Brown with “violat[ing] SMC 4.16.070.B.2,” but then
22 reproduces subsection B.1 (and not B.2) in its Appendix. The Appendix’s reference to subsection B.1 appears
23 to be a typo. The Executive Director’s Proposed Determination filed May 2, 2023, references subsection B.2
only, and his counsel’s presentation at the May 3 hearing referenced subsection B.2 but not B.1. The Commission
therefore confines its analysis and adjudication to subsections C.2 and B.2 of SMC 4.16.070, and does not
address subsection B.1, a violation of which has not been properly charged.

1 employed in that position in October and November of 2021, and at all times relevant to this case.
2 Brown supervises a team of Bridge Operators who operate the City's various drawbridges, including
3 the Montlake, Fremont, and South Park bridges.

4 2. As part of her job duties, Brown has the responsibility and authority to assign shifts to
5 Bridge Operators when one becomes available, such as when the normally assigned Operator is on
6 leave.

7 3. In October and November of 2021, Matthew Reese was a temporary SDOT Bridge
8 Operator. In that position, he was one of the employees Brown supervised.

9 4. At some point in 2021, Reese communicated to Brown his desire to obtain a permanent
10 Bridge Operator position. Brown does not have hiring authority for such positions, although she
11 testified that she has input into hiring decisions.

12 **Brown's October 2021 Xbox purchase**

13 5. In fall of 2021, the Xbox Series X videogame console (Xbox) was in high demand and
14 there was some scarcity in supply, at least in the Seattle market. Average consumers here had
15 difficulty finding available Xboxes for purchase at retail stores, which after receiving shipments
16 would quickly sell out.

17 6. At the time, the Xbox's prevailing retail price was approximately \$500 before tax.
18 With a sales tax rate of approximately 10% in Seattle, the retail after-tax price for an Xbox was
19 approximately \$550. Given the product's scarcity, however, its secondary-market price was
20 considerably higher—perhaps by several hundreds of dollars.

21 7. Reese appears to have been able to locate available Xboxes for purchase, as he
22 approached multiple coworkers within the SDOT Bridge Operations team offering to procure them
23 an Xbox for purchase. None of his Bridge Operator coworkers who testified took him up on his offer.

1 The evidence was in conflict as to whether Reese appeared to intend his offers as a sort of side-hustle
2 to earn a profit or simply as a favor to his coworkers. And there was no evidence as to how much
3 above retail price (if any) Reese typically charged for Xboxes he procured.

4 8. On October 1, 2021, Brown purchased an Xbox from Reese that he had acquired from
5 a retail outlet near his home. Brown purchased the Xbox as a Christmas present for her grandson. The
6 Xbox had a before-tax retail price of approximately \$499, and an after-tax retail price of approximately
7 \$550. Brown paid Reese \$600 for the Xbox. Brown testified that she paid Reese the additional \$50
8 above the purchase price as consideration for Reese's time and trouble in acquiring the Xbox. No
9 evidence was presented as to where or at what time the October 1, 2021 Xbox sale took place.

10 **November 10, 2021 communications between Reese and Brown**

11 9. Within SDOT Bridge Operations, "S9" refers to a shift operating the City's South Park
12 Bridge.

13 10. S9 is a "swing shift" for Bridge Operators. There was no evidence presented to suggest
14 that the S9 shift was particularly coveted by or a beneficial assignment for Bridge Operators.

15 11. In late 2021, due to various reasons, including COVID-19-related absences, Brown
16 experienced challenges filling Bridge Operator shifts.

17 12. On November 10, 2021, at 2:15 p.m., Reese emailed Brown: "Is S9 Open for this
18 coming Saturday the 13th?"

19 13. Approximately 19 minutes later, at 2:34 p.m., Brown called Reese about the
20 November 13, 2021 S9 shift and assigned it to him. The two did not discuss any other subjects.

21 14. Approximately 21 minutes after Brown called Reese, at 2:45 p.m. Brown sent the
22 following email in response to Reese's 2:15 p.m. email: "In the Market for another Xbox Series X."
23 Brown testified that her intent with this email was not to purchase another Xbox from Reese, but

1 instead to inquire as to where an Xbox might be available. Brown further testified that, in her mind,
2 there was no relationship between her inquiry regarding the Xbox and Reese’s inquiry regarding the
3 S9 shift. Brown appears to have used the same email thread for convenience and without giving it
4 any thought. Brown’s testimony in this regard is unrebutted and the Commission finds it credible.

5 15. On November 10, 2021, at 6:15 p.m., Reese sent a text message to Brown with a link
6 to a Best Buy store that apparently had Xbox units in stock.

7 16. Brown never proceeded with a purchase from the Best Buy identified in Reese’s text
8 message, but instead acquired an Xbox from a Microsoft store where she was on a waitlist. Brown
9 gave this second Xbox as a gift to her son-in-law.

10 **CONCLUSIONS OF LAW**

11 1. A violation of the Ethics Code “may be proven by a preponderance of evidence, and
12 need not be proven beyond a reasonable doubt.” SMC 4.16.100.

13 2. Mary Brown is a City employee and thus is a “covered individual” who is subject to
14 the Ethics Code.

15 3. SMC 4.16.070.B.2 provides that it is a violation of the Ethics Code to “[u]se or attempt
16 to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a
17 reasonable person would appear to be, for other than a City purpose.”

18 4. Brown’s October 1, 2021 purchase of an Xbox from her subordinate, without more,
19 does not constitute a violation of SMC 4.16.070.B.2, nor any other provision of the Ethics Code.
20 There was no evidence that the transaction involved the “use” of “or attempt to use” any “City funds,
21 property, or personnel.” While Brown and Reese are both City “personnel,” no evidence suggests
22 that either employee took any step in furtherance of the transaction during their regular work hours.
23 In any event, even if the undoubtedly brief exchange—Xbox for money—had taken place during

1 business hours, such a de minimis use of City resources would not constitute a violation of SMC
2 4.16.070.B.2. City employees do not run afoul of the Ethics Code when they engage in otherwise
3 lawful and ethical personal transactions in the workplace, such as paying coworkers for lunch, Girl
4 Scout cookies, or hockey tickets.

5 5. The Executive Director contends that the Xbox sale violated SMC 4.16.070.B.2
6 because “Brown engaged in a financial transaction with an employee under her supervision.”² The
7 plain text of subsection B.2 does not support the Executive Director’s broad reading. Instead, this
8 provision narrowly proscribes the actual or attempted “use of any City funds, property, or personnel”
9 for non-City purposes. SMC 4.16.070.B.2. A de minimis use of City personnel time to facilitate or
10 sale of personal property between coworkers is not somehow transformed into a violation of the
11 Ethics Code simply because the transaction occurs between a supervisor and her subordinate.
12 Certainly, the Ethics Code would prohibit a City employee from improperly using her supervisory
13 authority to obtain more favorable terms in such a transaction with a subordinate. But that particular
14 fact pattern—which, as we will explain below, has *not* been established here—is properly analyzed
15 through the lens of other provisions of the Ethics Code, including SMC 4.16.070.C.1.

16 6. Accordingly, we reject the Executive Director’s charge that Brown violated SMC
17 4.16.070.B.2 by purchasing an Xbox from Reese on October 1, 2021.

18 7. SMC 4.16.070.C.1 provides that, with an exception not relevant here, it is a violation
19 of the Ethics Code for a covered individual to:

20 [s]olicit or receive any retainer, gift, loan, entertainment, favor, or other thing of
21 monetary value from any person or entity where the retainer, gift, loan, entertainment,
22 favor, or other thing of monetary value has been solicited, or received or given or, to a
23 reasonable person, would appear to have been solicited, received or given with intent
to give or obtain special consideration or influence as to any action by the covered
individual in his or her official capacity

² Exec. Dir.’s Proposed Determ. at 3, ¶ 8.

1 8. As the above provision pertains to this case, Brown’s November 10, 2021
2 communications with Reese would violate the Ethics Code only if both of the following elements are
3 met: (1) she “solicit[ed] a favor, or other thing of monetary value” from Reese; *and* (2) either (a)
4 Brown had the “intent to give . . . special consideration or influence” to Reese, or (b) “to a reasonable
5 person, [it] would appear” Brown had such intent. SMC 4.16.070.C.1. The Executive Director has
6 not carried his burden to establish either element.

7 9. First, the evidence does not support the conclusion that Brown’s November 10, 2021
8 email constitutes a “solicit[ation]” of a “favor” or “other thing of monetary value” from Reese. As an
9 initial matter, we recognize that the terms “favor” and “other thing of monetary value” are broad
10 enough to encompass the purchase of an item for below market value. Here, the evidence established
11 that in October and November 2021, the Xbox was in very high demand, commanding prices on the
12 secondary market in excess of the \$600 Brown paid Reese on October 1. Thus, Brown does appear
13 to have received a “favor” or “other thing of monetary value” in that October 1 purchase, and under
14 these circumstances the fact that the prevailing retail price was *less* than what Brown paid is not
15 controlling.³ Imagine, for example, if the face value of a Seattle Kraken playoff ticket were \$250, but
16 the only available tickets were on the secondary market, commanding prices orders of magnitude
17 higher. In that situation, selling a coworker a ticket at face value would quite obviously convey a
18 “favor” or “other thing of monetary value.” Thus, had Brown in her November 10 email directly
19 asked Reese to purchase an Xbox on the same terms as in October, it may well have qualified as a
20 “solicit[ation]” of a “favor” or “other thing of monetary value.” SMC 4.16.070.C.1.

21
22 _____
23 ³ The Executive Director does not contend that Brown violated this provision by actually purchasing an Xbox from Reese in October 2021, presumably because this transaction lacked even a hint of any quid pro quo. *See* Exec. Dir.’s Proposed Determ. at 1; *id.* ¶ 8.

1 10. But that is not what Brown’s November 10 email stated. Instead, she wrote that she
2 was “in the market for another Xbox,” which does not expressly solicit anything. Perhaps in the
3 absence of any other evidence, Brown’s email could imply that she wished to purchase another Xbox
4 from him on similar terms as their October 1 transaction. But Brown testified credibly that she was
5 not seeking to purchase another Xbox from Reese but was simply asking if he knew where she might
6 be able to find one to purchase herself. Reese’s response later the same day (by text message), which
7 alerted Brown to an Xbox deal at Best Buy, suggests that he understood her email exactly as she
8 intended it. And the fact that Brown was on a waitlist for an Xbox at the Microsoft Store, where she
9 ultimately did purchase the console, lends additional credence to her testimony, which is un rebutted.

10 11. On this record, then, we cannot conclude that Brown’s November 10, 2021 email
11 “solicit[ed]” a “favor” or “other thing of monetary value” from Reese.

12 12. Even were we to conclude otherwise, the evidence clearly does not support the
13 Executive Director’s charge as to the second prong of SMC 4.16.070.C1. That is, even if Brown had
14 solicited a “favor” or “other thing of monetary value” from Reese (and she did not), there is no
15 evidence that (a) Brown had the “intent to give . . . special consideration or influence” to Reese, or
16 (b) “to a reasonable person, [it] would appear” that Brown had such intent. The Executive Director’s
17 theory was that Brown’s November 10 email sought to condition her assignment of the S9 shift to
18 Reese on his sale of an Xbox to her on favorable terms. But this theory overlooks the fact that Brown
19 had already assigned Reese the S9 shift in their 2:34 p.m. phone call (during which neither mentioned
20 the Xbox) when she sent the email 20 minutes later. These facts were supported by both documentary
21 and testimonial evidence and were un rebutted in the hearing.

22 13. Not only was there no evidence of Brown’s subjective “intent to give . . . special
23 consideration or influence” to Reese, but no reasonable person, apprised of all the relevant facts,

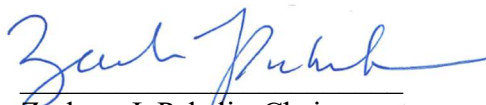
1 would perceive Brown to have had such a purpose. In addition to what we noted above regarding the
2 context of Brown’s email, the evidence indicated that staffing shortages made filling Bridge Operator
3 shifts a significant challenge for Brown in that time period—making it highly unlikely that Brown
4 would have thought to leverage her shift assignment authority to gain any sort of personal benefit
5 from one of her subordinates. Moreover, the S9 shift was not particularly coveted by Brown’s Bridge
6 Operators—an implausible “quid,” in other words, for a nonexistent “quo.”

7 14. In sum, the evidence lends no support to the charge that Brown sought to condition
8 the S9 shift assignment on Reese’s sale to her of a second Xbox, in violation of SMC 4.16.070.C1.

9 **CONCLUSION AND ORDER**

10 For the above reasons, the Commission concludes that the Executive Director did not establish
11 by a preponderance of the evidence that Brown violated either SMC 4.16.070.B.2 or SMC
12 4.16.070.C.1. Accordingly, it is hereby ORDERED that Case No. 22-01-0528-1 is DISMISSED with
13 prejudice.

14 DATED this 10th day of May, 2023.

15
16 

17 Zachary J. Pekelis, Chair
18 Seattle Ethics and Elections Commission
19
20
21
22
23