



June 20, 2018

Re: Case No. 18-1-0500 (consolidated)

Dear *****:

We received several complaints, including yours, against Councilmember Kshama Sawant in early May, alleging that she misused City property in violation of the Ethics Code when she used City time and equipment to both organize and print posters and other materials for a rally in support of the Employee Hours Tax (EHT). For the following reasons, I am dismissing the complaints.

Facts

On Saturday, May 12, Councilmember Sawant held a rally outside Amazon's headquarters. The Facebook page promoting the rally read: "March on Amazon! Tax Big Biz to Build Affordable Housing!" The detailed description of the event reads:

Amazon, one of the most powerful corporations in the world, threatened to halt construction of a skyscraper if our movement succeeds in forcing the Mayor and City Council to tax big business to build affordable housing. This is extortion, and we must stand up to Bezos' bullying. Having made a profit of \$1.6B in the first 3 months of this year, the tax will be pocket change for Amazon.

The big business Employee Hours Tax (EHT) that Amazon is so desperate to avoid would raise up to \$150 million annually to fund the construction of 750 units of permanently affordable housing per year and expand homeless shelters and services in Seattle. It would affect only the top 3% of corporations in Seattle—those who can most easily afford to pay.

For the rally, the Sawant office produced and printed thousands of posters and other materials. The posters included language stating "Tax Amazon," "Stand Up to Bezos' Bullying," "Build Affordable Housing," and similar messages. The posters were created on City equipment and the Sawant office used City time to plan and promote the rally.

Relevant Law and Opinions

SMC 4.16.070(2)(b) provides in relevant part that no current officer or employee shall “[u]se or attempt to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose....”

In Advisory Opinion 2006-01, the Commission articulated its standard for determining whether a use of City resources serves a City purpose. First, the Commission looks for explicit authorization of the use in an official City action; for example, an ordinance, resolution, executive order, or duly promulgated department rule. If the use is expressly authorized by an official City action, and that action is not contrary to state or federal law, then the use serves a City purpose. Similarly, if a use is expressly barred by an official City action, then it cannot serve a City purpose.

If the use is not expressly authorized by some official City action, the use may still be for a City purpose if the person who authorizes the use acts within the scope of his or her authority, and the use is not inconsistent with an official City action. If, on the other hand, the person exceeds his or her authority in using City funds, or the use is inconsistent with an official City action, then the use will not serve a City purpose.

Discussion

I find no express authorization in any City action for the use of City resources to organize the May 12 rally in support of the EHT. Councilmember Sawant was, however, acting within the scope of her authority when she determined that the rally was a tool she could use to advance her position in support of the EHT. I will reiterate what I wrote back in 2007, when dismissing a complaint against a councilmember for spending City money to pay dues to a membership organization: “Elected officials have no supervisor beyond, of course, the residents of Seattle. Unlike a department employee, there is no process for a Councilmember to submit a planned expense to a supervisor for review and approval. The scope of a Councilmember’s authority is broad, limited only by the City Charter and City, State and Federal law, and there is no evidence that Councilmember [Sawant, in this case] exceeded that authority.”

Conclusion

For the reasons discussed above, I do not believe that Councilmember Sawant’s use of City resources to support the rally violated the Ethics Code. Accordingly, by this letter I am dismissing your complaint. You are entitled to appeal this decision to the Commission under

Seattle Ethics and Elections Commission Administrative Rule 4.¹

In dismissing your complaint, I conclude only that Councilmember Sawant's use of City time and equipment did not violate the Ethics Code. I make no judgment as to whether the use was prudent.

Thank you for bringing this matter to our attention.

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Councilmember Kshama Sawant

¹ 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.