

CITY OF SPOKANE ETHICS COMMISSION

Ethics Commission's Findings, Conclusions and Decision Regarding Complaint Against Council Member Mike Fagan

FINDINGS

The Ethics Commission makes the following findings:

1. On or about October 6, 2015, Council Member Jon Snyder filed an Ethics Complaint against Council Member Fagan.
2. The general topic of the complaint is that CM Fagan had spoken to a newspaper reporter about the substance of a confidential attorney-client communication, in violation of SMC 1.04A.030(H).
3. On October 23, 2015, CM Fagan submitted a "Statement asserting lack of jurisdiction in the case of Ethics complaint against Councilmember Mike Fagan." Attached to the Statement was a partial transcript of the Spokane City Council Legislative Meeting of Monday, July 13, 2015. CM Fagan's Statement essentially claimed that any breach of a confidential communication occurred at the July 13, 2015, Council meeting, and not at the time he spoke with the newspaper reporter. CM Fagan's Statement asked the Commission to dismiss CM Snyder's Complaint.
4. CM Fagan's argument that the confidential communication had been discussed at the July 13, 2015, Council meeting – which occurred before the date of CM Fagan's alleged disclosure to a newspaper reporter – necessitated that the Ethics Commission review the confidential communication in order to render a decision. Consequently, the City Council voted to allow the Ethics Commission to review, *in camera*, the confidential attorney-client communication. This procedure was designed to assure that the communication itself would not be made public while allowing the Commission to have access to information necessary to render a decision.
5. On October 29, 2015, the Ethics Commission held a meeting to review the complaint to determine whether, pursuant to SMC Ch. 1.04A, the Committee had jurisdiction to conduct further proceedings and whether the complaint, at its face, alleges facts that, if true, would substantiate a violation.
6. At the October 29, 2015, Commission hearing, the Commission considered, *in camera*, a confidential attorney-client protected communication between Michael J. Piccolo, Assistant City Attorney, and Council President Ben Stuckart and Members of the City Council, dated

July 9, 2015. The Memorandum is identified with the following issue: "Does adding additional information to an initiative petition sheet beyond the mandatory requirements violate the Spokane Municipal Code and, if so, what options are available to the City Council."

CONCLUSION

The Ethics Commission makes the following conclusions:

1. CM Fagan's communication with the Inlander Magazine reporter ("Fagan says that Mike Piccolo, a city attorney, has already issued an opinion stating that because supporters did not modify the ballot title, summary or format, it was acceptable for them to add the language") is a violation of SMC 1.04A.030 I, Disclosure of Confidential Information.
2. A comparison of the transcript of the City Council meeting of July 13, 2015, with the attorney-client privileged Memorandum from Assistant City Attorney Mike Piccolo, disclosed that members of the City Council had asked Mr. Piccolo questions and made statements that acknowledged the existence of the Memorandum and disclosed the substance of the Memorandum at a meeting that pre-dated CM Fagan's communication with the reporter.

DECISION

Based upon the Findings and Conclusions set forth above and the deliberation of the Ethics Committee, the Ethics Committee concludes that the Complaint by CM Snyder sets forth facts sufficient to establish a violation of SMC 1.04A.030 I. However, because members of the City Council had previously disclosed portions of the same confidential Memorandum at a public meeting, the Commission hereby dismisses the Complaint of CM Snyder pursuant to SMC 1.04A.110 D. 1. c.: "The alleged violation is minor or de minimis."

This decision was approved unanimously by the five members of the Ethics Committee present for the hearing.


Troy Bruner - Chairperson Date 11/11/15