

CITY OF SPOKANE ETHICS COMMISSION

Neil Muller,

Complainant,

vs.

RESPONDENT'S REPLY BRIEF

Karen Stratton,

Respondent

This matter is before the Commission on the complaint of petitioner Neil Muller ("Complainant"). Previously I submitted a request for dismissal on October 7, 2019. I ask that the Commission reconsider those statements in full, and I am incorporating them into this reply brief by reference.

For the reasons set forth in my request for dismissal, and for the reasons further set forth below, I respectfully request the Commission dismiss most of the allegations and find in my favor with respect to the remaining allegations concerning SMC 1.04A.030.K.

I. FACTUAL BACKGROUND

The core facts in this matter are not in dispute. As the commission is aware, this complaint arises from June 20, 2018 letter I sent on my city council letterhead and addressed to the Pasco City Council. I again reiterate that the letter speaks for itself, and any characterization of the letter by the complainant must be weighed against the actual statements in the letter, and not based on speculation about the motivations behind it. I also concede, just to simplify matters, that the June 20 letter constituted a use of my city position and city resources (letterhead).

The commission is already aware that the letter was sent at the request of David and Shiloh Morgan, the owners of Lucky Leaf. Complainant alleges that I sent the letter hoping to benefit the cannabis farm owned by my family. The evidence at the hearing will show that

1 there was no “quid pro quo.”¹ There were and are no business relations of any kind between
2 our family farm and Lucky Leaf, and, as explained previously, any direct business dealings
3 would have been illegal. The evidence will show also that the Morgans were not even aware
4 of the name of our business before this complaint. Further, complainant will not be able to
5 establish, as he must, any benefit to our farm (if any) that is not shared by every other
6 licensed farm in Washington.

7 II. COMPLAINANT’S ABANDONED CLAIMS

8 The Complaint as submitted alleges violations of multiple sections of SMC 1.04A.030,
9 including specifically violations of the following subsections:

10 A (General prohibition against conflicts of interest)

11 B, C (Remote Interest in City Contracts)

12 E (Representation of Private Person at City Proceeding)

13 F (Certain Private Employment Prohibited)

14 G (Personal Interest in Legislation Prohibited)

15 H (Continuing Financial Interest in City Contract).

16 J (Acceptance of Compensation, Gifts, Favors, Rewards or Gratuity)

17 None of these provisions are addressed in the Complainant’s opening brief. These
18 claims should be deemed abandoned, and amount to a request to address a claim based on
19 subsection K alone. If the failure to mention any other subsection in the brief is intentional, it
20 is appropriate. The Complainant cannot establish (and has not to this date) that the core
21 elements necessary to violate these specific provisions are satisfied in this case. Simply
22 stated, subsections B through J all require the element of a Spokane city contract, proceeding
23 or legislation. Because the June 20 letter was submitted in connection with legislation in
24 Pasco, it is by definition outside the preview of those subsections.

25 For the foregoing reasons, and for the reasons further set forth in my October 7
26 request for dismissal, all claims relating to subsections B through J should be dismissed.

27 III. CLAIMS RELATED TO SMC 1.04A.030.A

28 Complainant has not addressed the relevancy of subsection A in his brief. For the
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30 ¹ A term currently in vogue.

1 sake of this proceeding, I will concede that this subsection is so broadly written that it cannot
2 be considered without reference to some evidence presented to the Commission. That said,
3 the Complainant has not – and cannot – offer any meaningful evidence to show a violation of
4 subsection A, the general prohibition against conflicts of interest.

5 I feel strongly that one allegation in particular in the initial complaint must be
6 addressed at hearing. Contrary to Complainant's allegation, I did not show little regard for
7 the Code of Ethics. The Commission will hear (and see) evidence that I routinely recuse
8 myself from legislative votes that might appear to benefit our family farm, even though, from
9 a technical standpoint, I have no legal obligation to do anything more than mention the fact
10 of my remote private interest in cannabis legislation. There are two reasons for this. First, our
11 farm is not located in the city limits, and so it cannot be affected directly by city legislation.
12 Second, any legislation, and my opinions regarding it and my votes on them, affect the public
13 generally and others similarly situated as myself, and confer no unique benefit to our farm.

14 Given that the Council is made up of part-time members with outside occupations
15 and private businesses, there are occasions when city legislation will benefit those members
16 remotely. As the Ethics Code makes clear, this does not create a conflict of interest. A few
17 examples illustrate this point. Does a council member's involvement in real estate, the
18 construction industry, the arts, or the entertainment industry preclude his or her
19 consideration of general legislation relating to local property taxes, city public works, the
20 promotion of arts through city grants, or the city admissions and sales taxes? The answer is
21 no. It is only when the official act specifically benefits his or her business (like the award of a
22 city contract) that the Ethics Code comes into play.

23 The same is true here, even more so. The June 20 letter is not legislation and had no
24 legal effect on anyone. It is an opinion on a matter of general interest expressed to a public
25 body considering that issue. The thrust of the letter is not the promotion of Lucky Leaf but
26 the promotion of the cannabis industry at large, and its main purpose is to establish that
27 cannabis retailers in Spokane are not a detriment to our city. The fact that our family farm
28 may benefit remotely from a "broader market" does not create a conflict of interest.

29 The Commission will also hear that my concerns relating to cannabis retailers were a
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1 matter of Council interest long before my June 20 letter, and that, because of my familiarity
2 with the industry, I often weighed in on those matters along with other Council members.
3 The June 20 letter was clearly an effort on my part to dispel misconceptions about cannabis
4 retailers in general and to dispel any misconceptions about the presence of Lucky Leaf effect
5 on the Spokane downtown business district. In the context of my general interest in cannabis
6 industry, the June 20 letter is appropriate.

7 IV. COMPLAINANTS' REMAINING CLAIMS ARE WITHOUT FACTUAL
8 SUPPORT

9 Complainant's remaining claims focus on SMC 1.04A.030.K, and particularly
10 subsections K.4 and K.5. In reply I simply restate my October 7 arguments and the
11 statements herein as rebuttal to those claims. I add here that the evidence at the hearing will
12 show that whatever benefit Lucky Leaf received by my letter was remote, and even more
13 remotely connected to our family farm.

14 Yes, the Morgans reached out to me because of my known support of the cannabis
15 industry and yes, they did so believing that a letter from me to Pasco officials would carry
16 more weight than from someone else. I submit there is nothing out of the ordinary in this.
17 How many times have local officials recruited major employers to the city, using city
18 resources, and promising tax relief, infrastructure, or other business-friendly incentives to
19 those employers? Those "official acts" are targeted benefit to a specific private business and
20 typically confer a far greater benefit not generally available to the public at large. Yet no one
21 questions these efforts. By comparison, it is hard to understand how my one-page letter
22 constitutes a meaningful misuse of public resources or position for a special benefit.

23 V. CONCLUSION

24 For the foregoing reasons, I respectfully ask that the Commission dismiss the bulk of
25 the complaint and rule that no violation of the Ethics Code occurred.

26 DATED this 4th day of December, 2019.

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29 Karen Stratton
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