

November 29, 2023

City of Spokane Ethics Commission
Attention: Mike Piccolo
Office of the City Attorney
5th Floor Municipal Building
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

RE: Ethics Complaint by Neil Muller v. Betsy Wilkerson

Dear Mr. Piccolo,

This letter is my formal response to the complaint with the Ethics Commission filed by Neil Muller, and is submitted as my reply brief pursuant to the Second Amended Consolidated Pre-Hearing Order.

PRELIMINARY ISSUES

A. Legislative Privilege. Three issues need to be addressed by the Commission at the outset. First, it is unclear from the complaint exactly what demonstrable conduct on my part Mr. Muller believes violated the City Ethics Code. However, to the extent he is alleging that my conduct on the council dais violated the Ethics Code, particularly the legislative acts of making a motion and joining a council vote, these actions are absolutely protected by "legislative privilege." As said in the seminal case of Coffin v. Coffin, 4 Mass. 1, 3 Am. Dec. 189 (1808):

These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. *I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution, of the office...*(emphasis added)

This general principle as to the scope of the legislative privilege is not only recognized in Washington State but applicable at the municipal level. See, AGO 61-62 No. 134 (1962); In re Call, 109 Wn.2d. 954 (1988). Therefore, the legislative privilege applies to any attempt by the Ethics Commission to penalize me for actions on the dais.

B. Objection to Consolidation of the Cases. Second, as expressed in my electronic mail to you on August 28th, 2023, I strongly object to the consolidation of the complaint against me with the other three complaints brought by Mr. Muller. These cases were consolidated without my consent. More important, I object to the pre-hearing order as unworkable, in that it fails to

provide an orderly mechanism for managing witnesses among five different parties (the complainant and the four respondents). I request the complaint against me be continued to another date, and heard entirely on its own.

C. Objection to City Refusal to Provide Legal Counsel. Third, I am continuing to participate in this proceeding without the benefit of legal counsel, which, as I have explained to you, I am entitled to be provided under the SMC 04.010.090. In short, the City has refused to provide legal counsel despite a clear obligation to do so. I request that my case be continued until the issue of representation by the City is settled.

FACTUAL BACKGROUND

This complaint arises from the City Council's deliberations and ultimate adoption of Ordinance C36298, adopting a new council district map. As provided in Council Rules of Procedure, the ordinance was first reviewed in the Finance and Administration Committee on October 17, 2022, and sponsored by Council President Breean Beggs and Council Member Zack Zappone. (Wilkerson Ex. 1). The measure moved to the Council agenda on October 24, 2022, for first reading, and after two substitutions, and was then adopted by the council on November 7, 2022 (Wilkerson Ex. 2, Official Gazette, November 16, 2022, Vol. 112, Issue 46; pp. 1205-1208, 1216). The Gazette reflects that I acted as follows with respect to Ordinance C36298:

- On October 24, I made a motion to substitute the pending first reading version of the ordinance with a different version, which motion carried by a 4-2 vote. (Ex. 2, Gazette, pp. 1205-1206)
- On November 7, at the briefing session, I made a motion to substitute the previously amended version with an updated version, which motion carried by a 6-1 vote (Ex. 2 Gazette, p. 1208)
- On November 7, at the legislative session, I voted with the majority to adopt Ordinance C36298, which carried on a 4-2 vote (with one abstention).

Beyond this legislative record, the complaint itself is wholly dependent on an October 23, 2022 group email initiated (evidently) by Mary Winkes and addressed to Brian Parker (hereafter, the "Winkes Email"). The Winkes Email is not addressed to me, but I was included as a "cc" using my private email address. There is no evidence *whatsoever* that I initiated this email, responded to this email, or otherwise encouraged this email in any way.

ARGUMENT

Against this scant evidentiary backdrop Mr. Muller alleges violations of multiple sections of the City Ethics Code by me. Two particular phrases in the complaint reveals just how scant is his evidence.

“The content and context of the above emails begs the following questions:...”

(Muller Complaint, p. 5).

“I am asking the Commission to inquire...”

(Muller Complaint, p.7) These questions nothing more than bold insinuation masked as some kind of legitimate claim. From this bare email trail, Mr. Muller is inferring, and asking the Commission to infer, that there was some improper purpose, communications, or undisclosed conflicts of interest on my part evident from the Winkes Email. Mr. Muller cannot meet his burden before the Commission based on inferences. He must produce something that demonstrates a violation of actual code provisions.

Careful examination of the Winkes Email is useful here. As indicated above, the Winkes Email is not addressed to me, but I was included as a “cc” using my private email address, and there is no evidence *whatsoever* that I initiated this email, responded to this email, or otherwise encouraged this email in any way. I am not even mentioned in the body of this email. As my testimony will make clear, I have no recollection of this email and it certainly had no bearing on my actions on the dais.

Because the email says nothing about me personally, it cannot stand as evidence of any prohibited conduct on my part. It reveals no conflict of interest pertaining to me, no personal interest in the redistricting question, no personal benefit accruing to me from the redistricting issue, no City contracts at issue, and nothing relevant with respect to “fair and equitable treatment.”

I recognize the Commission may appreciate a rebuttal to Mr. Muller’s complaint that addresses the specific Ethic Code provisions that he alleges I violated. With that in mind, I will address the provisions cited by Mr. Muller in turn.

A. There is no Violation of the General Prohibition Against Conflicts of Interest.

There is no factual basis to find I violated any provision of the Spokane Municipal Code prohibiting conflicts of interest. SMC 1.04A.030(G) states:

No City officer or employee may benefit either directly or indirectly from any legislation or contract to which the City shall be a party... City council members’ participation in the enactment of legislation shall be governed by chapter 42.23 RCW – The Code of Ethics for Municipal Officers and chapter 42.36 RCW – The Appearance of Fairness Doctrine. City council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation, which has been disclosed, and the legislation is applicable to the general public and not unique to the council member.

The City Council is obligated to review and modify voting districts during the year of state and federal redistricting pursuant to Spokane City Charter Section 60. Where the Council determines that a modified districting plan is warranted, a districting board is to be established pursuant to Charter Section 59. The board for redistricting is to be staffed by Council President and one other Council representative along with other community members.

I was not appointed nor was I assigned to the districting board. I had no involvement in the redistricting process until the maps were discussed at a City Council meeting on October 31, 2022. As discussed above, the proposed map was voted on and approved by the entire Council on November 7, 2022. I did not benefit in any way or form from this vote, and there is utterly no evidence that remotely suggests I did. Thus no conflict of interest was present. I participated in the redistricting process as required by the Spokane Charter and no information is present that shows any personal benefit received by participating in the process.

B. There Is No Evidence I used City Resources for Political Purposes.

SMC 01.04A.030(K) states:

Fair and Equitable Treatment.

3. No City officer or employee shall use City-owned vehicles, equipment, materials, money or property for personal or private convenience or profit.

5. City Officers and employees are encouraged to participate in the political process on their own time...but shall not use or authorize the use of City facilities or resources for such purposes except as authorized by the provisions of RCW 42.17A.555.

Mr. Muller's complaint is misplaced in the argument that I used City computers or resources to conduct political business. As discussed above, the only information submitted to support this claim is the "Winkes Email," an email that I received by a constituent. I did not respond or forward the email. This Commission cannot infer a violation of this provision for simply receiving an email and not taking action after its receipt. There is absolutely no evidence that I unlawfully engaged in any political activities using City resources.

An important distinction is needed on the issue of use of City resources. As explained above, as a Council Member I am under the Charter part of the process for approving a new district map. I have an obligation to vote on the final map. Because it is part of my duties, it would be perfectly appropriate for me to use City resources to assist my lawful participation in the redistricting process. The irony of Mr. Muller's argument is that he attempts to find fault in an unintentional use of my private email to support my lawful City business.

C. There Was No Unlawful Violation of SMC 01.04A.030.

Again, Mr. Muller advances a misplaced argument that I “assisted” or “enabled” another to violate the City’s prohibition against self-dealing. SMC 01.04A.030(M) states:

No City officer or employee may knowingly aid or assist any City officer or employee in the violation of any provision of this Code of Ethics.

There is utterly supporting information or evidence that purports that I encouraged, allowed or directed another person to violate this Code of Ethics. Absent a scintilla of evidence, no violation can be found.

CONCLUSION

For the foregoing reasons, I request the Ethics Commission dismiss Mr. Muller’s complaint against me. I also request that the Commission make a specific finding that the complaint against me is frivolous under SMC 01.04A.110.D.1.d.

Sincerely,

A handwritten signature in blue ink that reads "Betsy Wilkerson". The signature is fluid and cursive, with the first name "Betsy" written in a larger, more prominent script than the last name "Wilkerson".

Betsy Wilkerson