

CITY OF SPOKANE ETHICS COMMISSION MEETING MINUTES

August 12, 2015

Present:

Troy Bruner, Chair
Stephen Sennett, Member
Brian Steverson, Member
Monica Holland, Member
Levi Liljenquist, Member
Alice Buckles, Member
Mike Piccolo, Commission Counsel
Pat Dalton, City Attorney's Office
Rebecca Riedinger, Staff Liaison

Nick Deshais, S-R
Terri Pfister, City Clerk / Subject of Complaint
Jon Snyder, City Council Member / Complainant
Blaine Stum, Asst. To Snyder
Cindy Zapotocky, Complainant
Nathanial Odle, Legal
Mike Fagan, City Council Member/Subject of Complaint
Mary Modenhaur, Citizen

Troy Bruner called the meeting to order at 4:05 p.m.

All members are present and there is an introduction of members and guests.

Troy states there are three items on the agenda:

- 1) Approval of the minutes from June 10th meeting. They were immediately reviewed and approved by all and will be posted.
- 2) The first Complaint is made by Cindy Zapotocky against Terri Pfister, the City's clerk.
- 3) The second Complaint is made by Jon Snyder against Councilman Fagan.

Troy Bruner explains that the Committee's first step in this process is to determine whether it has jurisdiction over the matters, so they will review them in order.

To summarize the first matter, Troy explained that the issue involved David Brookbank's testimony at the city council meeting in July which he provided in Spanish. Ms. Zapotocky was upset that his testimony was not translated for English speaking listeners in the audience. She then requested a translation of the testimony from City Clerk Terri Pfister. Ms. Pfister declined her request stating they clerk's office is not required to provide translation services and so they do not. Ms. Pfister further advised Ms. Zapotocky that she could always have the testimony transcribed at her own expense, which she did. Ms. Zapotocky is asking that an ordinance be passed providing that council testimony must be transcribed in to English, if not given in English. The Ethics Commission sent a letter to Ms. Zapotocky requesting clarification of her complaint by way of identifying each action by Ms. Pfister she believes illustrates how Ms. Pfister violated the Ethics Code and enclosed a copy of the Ethics Code for her reference. Mr. Bruner then asked Ms. Zapotocky if she would like to speak before the Commission and she did.

Cindy Zapotocky provided her personal background and history to the Commission. She stated that she always wanted to understand the public meetings process and was in the PTA. She stated the U.S. Constitution was a grand experiment – the idea of “we the people” was a new idea. The Washington State Constitution is also centered around the “we the people” philosophy. Zapotocky referenced RCW 45.30.010 and read the following portion:

42.30.010

Legislative declaration.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

She stated, she has requested that an Ordinance be passed that testimony be transcribed in English. She said she had to beg for explanation, beg for clarity and beg for information. She went to an attorney to see about going to court to settle this issue and was told it would be \$10,000 and she can't pay that. She states it is sad that citizens can't come before the City and be able to say, “I don't understand what was said and be informed as to what was said.”

Troy requested Ms. Zapotocky relate her issues to Ms. Pfister and any action she made.

Ms. Zapotocky states the Clerk of the City has an obligation to help people. There is a listing on the Public Meeting notice that indicates the huge lengths the City is willing to go to in order to accommodate disabled people. Why not help a person who cannot understand what was spoken? She adds 31 U.S. states say English is the official language. That's her language. She didn't understand something that happened – what was said - and she requested a transcript in English so she could understand what happened in the City Council meeting, her government.

Brian Stevenson interjects that nothing Ms. Zapotocky is relating to the Commission is related to any code violation by Ms. Pfister. Monica Bramble stated that she feels we are going into an area more into testimony, before the Commission has decided upon jurisdiction. She added that this type of testimony would be better suited at a following hearing and only if the Commission determines jurisdiction. Steve Sennett moved to dismiss the Complaint for lack of jurisdiction and Monica Bramble seconds. All in favor. Complaint dismissed.

The next matter on the Agenda is the complaint against Councilman Mike Fagan by Councilman Jon Snyder. Troy Bruner states the Complaint was provided with an attachment that had several pages redacted, ostensibly because they contain confidential information, making it difficult for the Commission to determine if the material therein is actually confidential. Troy adds that, in essence, the complaint is that Mr. Fagan had referenced the content of a confidential memo in a private e-mail, the topic of which was published in an article in The Inlander" on July 15th. That article referenced the Memorandum regarding a ballot measure summary and initiative, Councilman Snyder contends is /was confidential.

Troy asked Mr. Snyder if he would like to speak and he does. He stated that, regarding jurisdiction, Fagan is concurrently a citizen and council member, but he was clearly in his capacity as a councilman at the time he committed the act. Mr. Snyder stated the Memorandum was clearly identified as Confidential and, yet, Fagan was quoted in the Inlander article referring to that memorandum. Snyder quoted that article, "Fagan says Mike Piccolo, a city attorney, has already issued an opinion stating that because supporters didn't modify the ballot title, summary or format, it was acceptable for them to add the language."

Snyder stated that the harm committed is still undetermined. There is a possibility of litigation by the Center for Justice because of these issues.

Snyder said it was Jake Thomas (who is present) of The Inlander who wrote the article and spoke with Mr. Fagan. He stated Fagan affirmed to Jake that there was a memo, and acknowledged the content of that memo in an email. Snyder added, Fagan pushes the limits of free speech but he needs to know that in his official capacity, he is not relieved of his confidential responsibilities.

Troy asked Councilman Snyder if he would take questions and he answered, "absolutely."

Troy states that, if jurisdiction is found, the matter will be handled at the next meeting.

Troy asked why didn't the City Attorney file against Fagan? Mr. Snyder states, "they could have - they would be considered the harmed party, but he felt he was the most appropriate party to bring it out, particularly because he doesn't want the loss of trust as an elected official. He states again, I don't know why they didn't, but again, I thought I was the best one to do it."

Troy asked Councilman Snyder if he would be willing to disclose the contents of the memo and he said he would to the Commission, but not for public disclosure. Mr. Bruner indicates that these are public meetings and so the content would be made public. Mr. Snyder stated that he would have to consult with the City Attorney's Office about that. He is worried people will want to pursue matters they have and he doesn't feel he has the authority to approve that request without City Council input and approval.

Troy said the Committee would need access to that memo. Mr. Snyder stated that bullet point No. 3 should be the biggest focus. He added the biggest issue here is that Fagan characterized the Memorandum at all.

Monica stated, "let's establish jurisdiction first." Troy Bruner stated, we should let Councilman Fagan respond first, I believe, and asked Mr. Fagan if he would like to respond.

Mr. Fagan stated the Memo circulated at the Council meeting on Monday. There were question about sending things to the Auditor for verification of the signatures and other issues. But, there was this discussion at that council meeting that was aired about the contents of that memo. Mr. Fagan stated it was his understanding that once the contents of the memo was disclosed at an openly discussed council meeting, confidentiality is moot. So, the next day, when he was interviewed by Jake Thomas at the Inlander, he simply had repeated what City Attorney Piccolo and Councilman Snyder had discussed at the meeting from the podium. A couple of days later, Mr. Snyder informed him that he was going to file a Complaint against him to the Ethics Commission. Mr. Fagan stated that he had responded, "okay, but remember we discussed the Memo at the City Council Meeting, so the privilege is moot," but Snyder said he disagreed. Fagan stated that he questions the timing of this Complaint, given he is running for re-election. This happened the same day the ballots were mailed out. And then Jake Thomas had called him and said, "a little bird told me about an Ethics Complaint". So, again, he questions the timing of the complaint as well. He asks the Commission consider that, #1) the Council meeting discussion mooted the privilege and #2) the timing of the release of the Complaint.

Troy asks if Mr. Fagan would take questions. Mr. Fagan stated he would.

Monica Bramble asks Mr. Fagan, "to what extent would his fellow councilmen agree?" Mr. Fagan said he didn't know but that there was no more full discussion between he and the reporter than had been had between Snyder and Piccolo at the council meeting. That discussion alone could have been the basis for the "Inlander" article.

Councilman Snyder interjects, "let's look at the video of the meeting. We can view that meeting and what was discussed."

Troy Bruner asked Mr. Fagan if he was disputing the article and Fagan responded no. He said that if you look at the comments, he is simply referencing a legal opinion by Piccolo. That is what I was recalling.

Troy asked who can release privilege and Pat Dalton stated that the privilege belongs to the council. Adding, the City Attorney has no real interest if it is released and it is up to the council to waive it if they would like.

Troy asked why the City Attorney had filed a Complaint, then, in the Stuckart Complaint and Mr. Dalton stated that it was because it had been a violation noticed by City Attorney Nancy Isserlis. Once our own office noticed a violation, we made the Complaint.

Fagan stated that Stuckart's complaint was more serious and Mr. Fagan stated he disagrees, because there was no harm found in the Stuckart complaint. It was more of a disclosure violation.

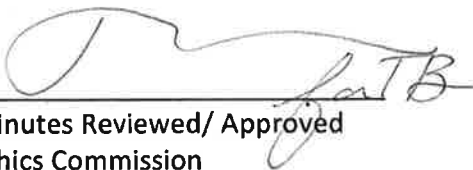
Fagan responded, "Mr. Piccolo disclosed the content from the podium with Mr. Snyder all that I discussed with the Inlander. Mr. Snyder again said, "view the footage."

Brian Severson stated that they need to settle the jurisdiction issue as they were expanding beyond it already. Troy Bruner agreed and stated they should proceed to jurisdiction. He stated he believes they have jurisdiction and all members agree.

Troy stated, the Commission has jurisdiction. Troy added that this is a prehearing conference. We will proceed to a full hearing. We may need more information, more testimony and we will schedule it for some time in September.

Troy asked if there are any questions. Mr. Fagan stated that since Piccolo and Snyder had discussed the contents of the Memorandum as well, if they would up on the podium on either side of him. Mr. Dalton stated that there are no complaints filed again them.

Troy Bruner Meeting adjourned 5:06 p.m


Minutes Reviewed/ Approved
Ethics Commission

11/5/15
Date