

**CITY OF SPOKANE ETHICS COMMISSION
MEETING MINUTES
January 17, 2018 @ 4:00 P.M.**

Present today are: Dennis Cronin, Commission Chair; Michelle Bleek, Commission Member; Ken Hall, Commission Member; Clayton McFarland, Commission Member; Brian Steverson, Commission Member; Sarah O'Hare, Commission Member; and, Amina Fields, Commission Member. Also present are Michael Piccolo, Counsel to the Commission; Mark Louvier, (Present for James King, Attorney for Mayor Condon); and, Milt Rowland, outside counsel for the Commission. Also present are Joe Shogan, Complainant, and Karen Stratton, City Council Member /Affiant-Witness.

Dennis Cronin, Chair, commences the meeting at 4:10 p.m., and asks members to introduce themselves.

The meeting's agenda is reviewed for approval. Ken moves we approve the agenda and Brian Seconds. The vote is unanimous for approval of the agenda.

Dennis states the next thing to approve are the Minutes from the meeting from the prior meeting of December 20, 2017. Everyone has a copy, it is reviewed, and then, on motion by Clayton with a second by Sarah, the Minutes are approved unanimously and signed.

Chair Dennis Cronin advises/reminds the Commission that he has recused himself from this particular complaint because he is friends with Karen Stratton, and, as such, he will hand the meeting over to Brian Steverson in order to avoid any conflict.

Brian states that we should note/remember this complaint is specifically Mr. Shogan's Second Clarified Complaint (Clarified II Complaint) and is the sole matter / issue which the Commission is addressing wherein Mr. Shogan lays out which ethics codes he believes have been violated.

Brian states, he thinks they should start, just by having Joe step us through his complaint.

Mr. Shogan comes forward to the podium. He states he wants to find out / figure out what the Commission needs from him to overcome his burden of proof to have this complaint reviewed.

Mr. Shogan refers to the bottom of Page 2 the "Seabold Report" and reads from his Complaint.

The First Draft had had a third page involving the Mayor, but someone had deleted his name from the paperwork. Mr. Shogan then notes he had stipulated to the dismissal of Theresa Sanders from his complaint. He then states, "I have presented you with facts" and he believes he has overcome his burden of proof in order to have a review hearing.

Milt Rowland asks Mr. Shogan to explain the changes to the amended complaint. Brian reviews the allegation he has set forth at the bottom of Page 2 of the "Seabold Report". Mr. Shogan states the Mayor lied and was dishonest to Karen Stratton. (Exhibit A).

Amina asks, regarding Exhibit A, could he clarify her understanding – that Mr. Shogan is alleging the Mayor was dishonest to Karen Stratton and that the Mayor intentionally excluded information from the public. Joe states that Karen is here and she is a witness that is what happened.

Brian then asks Mr. Shogan, “Could you direct us to where in your complaint, it lists or includes intentionally withheld information as a part of it”? Joe states, “In being dishonest, you can include Karen Stratton - she is a member of the public too.” Brian asks, “But, where in your complaint does it set that forth”? Mr. Shogan starts to step away from the podium and states, “do you want me to come back”? “We will be back again with a Third Complaint”. But then returns.

Amina states she completely thought that was part of Mr. Shogan’s complaint. And, in addition to that, the counsel for the Mayor had responded to that as well. He (Shogan) had three contentions: 1) That the Mayor lied to City Council Member Karen Stratton 2) that the Mayor had lied to Council President Stuckart; and, 3) the Mayor created a delay in those responses. So, if the issue is whether the Mayor doesn’t have enough time to respond to that, he already has responded to that.

Mr. Steverson opens it to the Commission for questions.

Michelle says, what she would like to state, that what she is seeing in front of her is a complaint that appears to strictly reference an executive meeting wherein the Mayor was asked a question and answered it -along with Findings in a (Seabold) report and affidavits to back those up. “Unfortunately, what I am also finding, is that, when I read through the allegations, of to how Mayor Condon was supposed to have lied to Ms. Stratton, who as at the center of this now, was that a comment was made regarding does this have anything to do with Monique Cotton, to which he replied, “No””. As I am reading the Seabold Report, on Page 2, as submitted by Mr. Shogan, right above his paragraph is one that states, “those letters prompted Mayor Condon to ask for Chief Straub’s resignation...Monique Cotton’s sexual harassment allegations played no part in the Mayor’s decision. Further, this investigation revealed no evidence in support of her claims and no evidence that Chief Straub sexually harassed any other female employed within the City. “So I am confused as to why we are spending so much time on it, when it would appear that the Seabold Report itself states that it found that Mayor Condon asked for the resignation based upon the letters regarding his abusive form of management”.

Joe Shogan, says, if it would please the Commission, this is a preliminary hearing, you have an Affidavit of Karen Stratton stating that she was lied to. How can you can decide, at a preliminary hearing, which just sets forth the threshold, that if true, is a violation of the report. Joe states, “It seems to me that you are making a final decision and a final hearing and what you are doing is contradicting, or going after, the Affidavit of Karen Stratton and I don’t think that’s the role of this Commission right now”.

Michelle responds I think I am looking at the allegation made and your own Exhibits.

Amina says, “let me clarify as far as this proceeding, we are supposed to decide on the Mayor’s Motion to Dismiss and the standard of review on a Motion to Dismiss is that you are supposed to look at the facts in a light most favorable to the Plaintiff, and if it were true, we could move on to

a hearing to determine if there is merit to those allegation. So we are not here today deciding now if it is true, we are assuming that it's true at the moment, to see if there are sufficient facts and evidence to move forward." So, right now the facts that Councilwoman Stratton asked Mayor Condon whether the issues with the Chief of Police had anything to do with Monique and, in her affidavit, Ms. Stratton stated that the Mayor had said, "No". The Motion to Dismiss was very specific in addressing whether the resignation or firing of the chief had anything to do with it. And those are two different issues. Stratton's statements in her affidavit were very broad. "The issues and addressing the firing and because there is some contradiction to it, but, maybe they are meaning the same thing, that is to be determined at a hearing."

Brian states that before they go too far into their deliberations tonight, regarding the Motion to Dismiss, they will hear from Mr.(King) Louvier regarding the Motion to Dismiss.

Mr. Louvier states first he thinks we are casting aside the allegations concerning any statements that were made to Mr. Stuckart, so he won't address those. But there was a reference made in the Sebold Report, but, again, the document that is being referenced primarily, is a Draft of the Sebold Report. Once it became clear that the Sebold report authors did not have factual evidence in which they could actually state that Mayor Condon deliberately withheld documents from the public, that item was removed from the report. Mr. Louvier continues, "so there are no facts" and, as we sit here today, there is no one that can say that actually occurred. He doesn't think that is sufficient to rely upon. With regard to Karen Stratton, the Commission discussed there is a very broad affidavit. Ms. Stratton was also asked direct questions about what she was told and what was asked of Mayor Condon and Mr. Stuckart at the same time at the time of the investigation, and those are very specifically itemized in the record. Mr. Louvier continues, "I don't want to go in to the explanation of how many times this issue has been before the Commission, but "he thinks it's the fifth iteration of the Complaint, but the majority, if not all, of the issues have been addressed in this Complaint and we rest on the materials that we have filed before you".

Brian asks if there are any questions or comments. Joe Shogan asks for and is granted a rebuttal. Joe states, the fact remains the Sebold Report, Page 2, is an exhibit of Mr. King's. He does have a draft that mentions the Mayor. That is not the point here, Mr. King's own exhibit says on Page 2, of his Exhibit 13, "this investigation confirmed what has been reported many times over, that Mayor Condon, and certain members of his executive, staff deliberately concealed Ms. Cotton's sexual harassment allegations against the Chief and misrepresented the circumstances of her transfer." The initial confirmation, and initial conclusion, involving the Mayor was deleted. He is waiting for Mr. King's own exhibit.

Brian states the draft of that Exhibit was part of Mr. King's exhibits as well. Joe states he is saying that the draft was not part of his claim. He is just pointing out (to you), you can review whatever you want, the draft did mention the conclusion of both my statement A, and Mr. King's Exhibit 13.

Milt states he has two goals here. One is to make sure he can answer any questions they may have and, second, he is sure that everyone here shares the same goal that the they don't want the Commission's work to be in vain and so as to have a party to be unhappy and run to Superior Court

to get an order for review. On the other hand, procedural rules encourage non-lawyers to be heard, even if they aren't perfect. The Commission has the authority to have a hearing on this matter of the Mayor's comment(s) regarding Straub's firing. Milt said he would encourage them to have a full hearing if they think they would gain any information from one. Or perhaps they think they have all the information they need. Brian asks, 'would you agree that today's meeting is to either grant or deny the Mayor's motion to dismiss or decide to have a hearing'? Milt agrees.

Milt states he thinks the NOW complaint was filed in February or March of 2016 when he was appointed as special counsel, and he went through that reasoning then, and he is happy to go through it now if anyone has any questions. But, there really is no specific provision in the Ethics Code for this body to dismiss a complaint over which it has jurisdiction. At least it's not an expressed authority. But there is an authority to decide whether or not it would be benefitted by a full hearing. And so, we have an allegation Karen Stratton says the mayor answered her question, that no, Monique Cotton had nothing to do with my decision to terminate Chief Straub. And, if that was lie or dishonest, and Karen Stratton certainly does believe it was dishonest, misleading, if you believe you would be benefitted in deciding whether or not that was dishonesty under the Ethics Code, then he would encourage them to have a full hearing. Then we would issue a pretrial order, and that sort of thing.

Brian asks if there any other comments. Sarah states being able to go through the complaint, and pull the Seabold Report - she wasn't sure what she could or could not pick out of the information provided. Amina says because of what was stated today, she thinks they can adjust things if both parties, agree to take out that part of the complaint.

Milt notes that it would be helpful to understand what that allegation is. He thinks what is stated in the Seabold Report concludes in some measure that the statement of the Mayor alleged to be dishonest led to delays in producing public records and he doesn't think there has been any allegation that delaying records would be dishonest - or in violation of the ethics code.

Mike Piccolo notes that Mr. Shogan's reference, that section of the code he references, was not in place at the time of the incident or when the original complaint was filed. Milt points out that you can't apply new laws or codes to old acts.

At 4:55 p.m. EXECUTIVE SESSION - The Commission members meet in Chambers for an Executive Session until 5:10 p.m.

The Commission Returns and reconvenes the regular meeting. The Chair invites any motion regarding the Motion to Dismiss. Ken makes a motion to dismiss the Complaint. Michelle Bleek Seconds that Motion. Brian asks if there is any discussion about the Motion. Amina states she is inclined to vote "No" on the Motion to Dismiss. She is applying the standard of review and thinks it would be beneficial to have a hearing on both motions. Because, if the allegations are proven to be true, she would consider that an ethics violation under the code. She notes the standard of evidence is a lot lower than what the Courts of Washington consider to be hearsay.

Brian asks, "Mr. Hall, what is the basis of your motion to dismiss"? Mr. Hall says he is not sure. Milt states the Commission has every right to enter an Order Denying the Motion to Dismiss and

hold a full hearing. Amina states we do have the jurisdiction to do that and, also, a decision has not been rendered about this anywhere else- there is no other venue for a review. Brian asks Mr. Hall what he thinks and he agrees that a hearing to review the issues would be a good idea and questions if he may withdraw his Motion to Dismiss. With approval, he then does so. Ken then moves they reject the Motion for Dismissal, Sarah Seconds that Motion and all approve- except Dennis who is recused. Therefore, this matter will be set for a full hearing.

Ken asks if the Commission can get a definition of dishonesty and Dennis notes the Ethics Code doesn't not provide one so they should.

Brian asks if the next meeting will be the actual hearing. Milt informs that they will have to have a meeting prior to the hearing to address certain issues and matters prior to the hearing.

Brian moves to adjourn. Sara Seconds that Motion. All approve. Meeting is adjourned at 5:21 p.m.

Reviewed and Approved this 21 day of 3, 2018.



Ethics Commission, Chair