



808 W. Spokane Falls Blvd.
Spokane, Washington 99201-3313
(509) 625-6032

Violation Complaint Received 06/21/2019:

Complaint of Violation Statement of Facts (In summary)

The receipt of \$1,000 from Avista Corporation on 6/11/2019 violates Spokane Municipal Code (SMC) 01.07.040 A, which states "No City of Spokane elected official or candidate shall knowingly solicit or accept any contribution directly or indirectly from any contractor who, in the last two years prior to the election cycle has earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City..."

Candidate Response (In summary)

In fact there has been no violation. To understand this requires a careful reading of Chapter SMC 01.07 and SMC 07.06 together. The starting point is SMC 01.07.040, which specifies that a "Contractor" is any business that "has received the award of a contract under SMC 07.06.150 or SMC 07.06.160, [or] submitted a bid or proposal in any form for the award of a contract under SMC 07.06.100."

SMC 07.06 is the chapter of the municipal code regulating the award of city contracts and the bidding process. This Chapter defines a "contract" broadly and encompasses virtually any party entering an agreement with the City. SMC 07.06.040. If one stopped reading at that point, one might conclude that Avista is indeed a contractor within the meaning of the Fair Elections Code. However, the Fair Elections Code does NOT actually incorporate *the definition* of a "contract" in SMC 07.06.040. Rather, the Fair Elections Code incorporates *only the bidding procedures* set forth in SMC 07.06.100, SMC 07.06.150 and SMC 07.06.160. Thus, for purposes of the Fair Elections Code, only those parties who seek or secure City contracts via *the procedures* outlined in those ordinances are restricted from making contributions to municipal candidates.

City Response:

A Complaint of Violation was received on 06/21/2019. Based on this complaint, a Notice of Violation was issued to the candidate on 06/24/2019. This Notice requested a response that either there was no violation or that the violation had been cured.

On 06/29/2019, a response was received from the candidate stating no violation had occurred.

SMC 1.07.003 J provides a definition of "Contractor," which references the award of a contract under SMC 7.06.150 or 7.06.160. A review of contracts between the City of Spokane and Avista (both Avista Utilities and Avista Corporation) was done, and it was determined that these contracts were not subject to the public bidding requirements of SMC 07.06.150 or 07.06.160.

Based on this determination, the City agrees with the candidate that no violation has occurred and the complaint is considered closed.

All correspondence related to this Complaint of Violation is attached.

Fair Elections Complaint of Non-Compliance - 6/21/2019

Complainant

Andy Rathbun

Date

June 21, 2019

Street Address

1305 N. Hollis St.

Email Address

andy@andy4spokane.com

Phone

(509) 279-3470

Subject(s)

Karen Stratton, People for Stratton City Council Candidate

Statement of Facts

In order to better understand the Spokane Fair Election Code, specifically SMC 01.07.040 A, which includes, "No City of Spokane elected official or any candidate for city office, or any political committee acting on behalf of such elected official or candidate, shall knowingly solicit or accept any contribution directly or indirectly from any contractor who, in the two years prior to the election cycle has earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City ..." I am inquiring as to whether the donation to candidate Karen Stratton, People for Stratton, from Avista Corporation as reported to the WA Public Disclosure Commission (PDC report # 100910774) on 6/14/19 in the amount of \$1,000 for the 2019 primary election is in compliance with Spokane's Fair Election Code. I want to thank the City of Spokane for providing the following resource to candidates and our community:

<https://my.spokanecity.org/elections/information/ethics/> This service is invaluable to a first-time candidate like me, who would not otherwise have ready access to such information. When "Avista Corporation" is typed into the very helpful search function on the website, that entity is listed as having an amount of \$735,447.51. Of course, this amount far exceeds the \$50,000 limit set forth in the ordinance, and would not appear to be a permissible receipt of campaign funding. I thank you very much for your efforts to help me and all candidates conduct our campaigns in compliance with the relatively new law that governs our campaign activities. If the donation to Karen Stratton referenced above is within the code's guidelines, would you please help me, my fellow candidates, donors, prospective donors and the general public to understand any nuance that I may have missed. Thank you.



808 W. Spokane Falls Blvd.
Spokane, Washington 99201-3313
(509) 625-6032

June 24, 2019

CANDIDATE KAREN STRATTON
PO BOX 10636
SPOKANE, WA, 99209

RE: NOTICE OF VIOLATION- SPOKANE FAIR ELECTIONS CODE 01.07.040

Dear Candidate:

The following complaint of violation of the Spokane Fair Elections Code has been received regarding your campaign:

The receipt of \$1,000 from Avista Corporation on 6/11/2019 violates Spokane Municipal Code (SMC) 01.07.040 A, which states “No City of Spokane elected official or candidate shall knowingly solicit or accept any contribution directly or indirectly from any contractor who, in the last two years prior to the election cycle has earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City...”

Within five (5) days of the date of this notice, please respond with either documentation that there was no violation or that the violation has been cured. Response may be by email to elections@spokanecity.org or by mail to City of Spokane Office of Contract and Business Standards 808 W. Spokane Falls Blvd. Spokane, WA 99201.

Any questions regarding this notice may be sent to elections@spokanecity.org.

Sincerely,

The City of Spokane Office of Contract and Business Standards

PEOPLE for STRATTON
PO Box 10636
Spokane WA 99209

June 27, 2019

Office of Contract and Business Standards
808 W. Spokane Falls Boulevard, 5th Floor
Spokane, WA 99201

Via Email:
elections@spokanecity.org

RE: Notice of Violation, Spokane Fair Elections Code

Dear Staff:

I am in receipt of your letter dated June 24, 2019 alleging a violation of SMC 01.07.040 of the Spokane Fair Elections Code by my campaign. Specifically, the complaint alleges that I improperly accepted a donation in the amount of \$1,000 from Avista Corporation. In essence, the complaint is asserting that Avista Corporation is a "contractor" within the meaning of the Code and thus barred from supporting candidates for municipal office.

First, let me state outright that in fact I accepted a campaign contribution in the amount of \$1,000 from Avista Corporation. This is not in question. Neither Avista nor I would have finalized the contribution if we had any inkling whatsoever it was barred by the new Fair Elections Code.

In fact there has been no violation. To understand this requires a careful reading of Chapter SMC 01.07 and SMC 07.06 together. The starting point is SMC 01.07.040, which specifies that a "Contractor" is any business that "has received the award of a contract under SMC 07.06.150 or SMC 07.06.160, [or] submitted a bid or proposal in any form for the award of a contract under SMC 07.06.100."

SMC 07.06 is the chapter of the municipal code regulating the award of city contracts and the bidding process. This Chapter defines a "contract" broadly and encompasses virtually any party entering an agreement with the City. SMC 07.06.040. If one stopped reading at that point, one might conclude that Avista is indeed a contractor within the meaning of the Fair Elections Code. However, the Fair Elections Code does NOT actually incorporate *the definition* of a "contract" in SMC 07.06.040. Rather, the Fair

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Karen@ElectKarenStratton.com

www.ElectKarenStratton.com

Paid for by People for Stratton

Elections Code incorporates *only the bidding procedures* set forth in SMC 07.06.100, SMC 07.06.150 and SMC 07.06.160. Thus, for purposes of the Fair Elections Code, only those parties who seek or secure City contracts via *the procedures* outlined in those ordinances are restricted from making contributions to municipal candidates.

There is a sound reason for not including the contract definition in SMC 07.06.040 when determining who is a contractor under the Fair Elections Code. The purpose of Title 07.06 is to ensure a fair and competitive process for the award of city contracts. It is not intended to impose a competitive bid process for every agreement between the City and an outside party. Many legitimate city contracts arise outside of the competitive environment. For example, if the City desires to buy a specific parcel of real estate, it can only contract with the owner of the property to accomplish that purpose. If the City is approving a development project, it can only enter a development agreement with the developer. And, to the point here, if the City must arrange for relocation of public utility infrastructure to support a public project (as in the case of Riverfront Park) it must contract with the utility that owns that infrastructure or transmission rights. In all of these examples, the resulting agreement would fall into the definition of a "contract" under SMC 07.06.040. The Fair Elections Code is not intended to apply to contracts of necessity such as these. SMC 01.07.040 is intended to apply to those contracts for which there is an actual opportunity for a competitive bid process, and where there is the greatest opportunity for an undesirable connection between city contract awards and the electoral process.

For the foregoing reasons, the allegation of a violation of SMC 01.07.040 by my campaign is without basis. Avista does not engage in the contract award process under SMC 07.06.100, SMC 07.06.150 or SMC 07.06.160. While I believe this to be true based on my own review of Avista contracts that are part of the public record, I nonetheless confirmed this with Avista as well. You can be assured that Avista reviewed this letter after I prepared it and before it was submitted.

This brings me to why anyone would believe Avista is a "contractor" under the Fair Elections Code without specific examples to prove the assertion. The simple fact is that the City's website¹ lists Avista as a contractor. It also lists a variety of other entities that assuredly did not bid for the contracts they have with the City, such as the Spokane Parks Foundation, the Spokane Regional Clean Air Agency, the Spokane County Treasurer, and the Washington Department of Revenue, to name just a few. It is

¹ <https://my.spokanecity.org/elections/information/ethics/>

Office of Contract and Business Standards

June 29, 2019

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evident the City's website is vastly over-inclusive and includes a variety of parties that clearly are not "contractors" within the meaning of the Fair Elections Code.

Given the Fair Elections Code is relatively new, and given the 2019 campaign season will be the first time the ordinance will be tested during an election cycle involving candidates for local office, the potential for misguided or misinformed complaints are rampant. Therefore, I urge you to correct the information on the City website so that only those parties clearly within the scope of SMC 01.07.040 are listed.

Very truly yours,



Karen J. Stratton

Cc: Avista Corporation (via email)