



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

Violation Complaint Received 10/04/2019:

Complaint of Violation Statement of Facts (In summary)

SMC Section 01.07.040(A) provides: 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. Mr. Stuckart appears to have solicited and/or accepted contributions to his campaign (People to Elect Ben Stuckart) from four individuals or entities who earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City:

1. Contribution of \$500 from Spirit Pruners received on March 7, 2019. Spirit Pruners has earned or received \$92,039.02 from the City of Spokane.
2. Contribution of \$250 from CenturyLink received on March 29, 2019. CenturyLink has earned or received \$307,929.03 from the City of Spokane.
3. Contribution of \$500 by North Gorge Residential Partners received on May 24, 2019. North Gorge Residential Partners has earned or received \$302,714.57 from the City of Spokane.

Two contributions of \$1,000 each by Avista Corporation received on June 11, 2019. Avista Corporation has earned or received \$741,724.28 from the City of Spokane.

Candidate Response (In summary)

I did accept these contributions. That is not in dispute. There are no violations

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 all 4 of these are violations. It 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" 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.

There is a sound reason for not using the definition of a "contract" in SMC to determine 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 can only 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, North Gorge Properties, Spirit Pruners and Century Link do not engage in the contract award process under SMC 07.06.100, SMC 07.06.150 or SMC 07.06.160.

1. Avista -Provides power and there is no bidding process
2. North Gorge Partners -This is for Tax Increment Finance Reimbursement and Multi Family Family Tax Exemption. Neither of these are part of a competitive bid process
3. Centurylink -Contract for reimbursement at Martin Luther King/East Central Community Center. This was work provided on a city

building and not competitively bid.

4. Spirit Pruners - All contracts for Spirit Pruners are minor contracts through Parks and Recreation with the exception of one contract for Engineering Services. The definition of contractor and the intent of the ordinance was to prohibit contributions from contracts awarded through SMC 07.06.150 (which states in Section A. "Following evaluation the requesting department submits its recommendation for award to the City Council.") Even if the contracts were publicly-bid (they're not because they are minor contracts), all but the Engineering Services contract would be submitted to the Park Board - not the Council and thus the conflict of interest sought by the ordinance to remove would still not exist. The Engineering Services contract was a minor contract for under \$9,000 that did not require approval of Council.

City Response:

A Complaint of Violation was received on 10/04/2019. Based on this complaint, a Notice of Violation was issued to the candidate on 10/07/2019. This Notice requested a response that either there was no violation or that the violation had been cured.

On 10/11/2019, a response was received from the candidate stating no violation had occurred.

A review of contracts between The City of Spokane and the four (4) noted parties was done, and the following was determined:

1. Avista –This contract was not subject to the public bidding requirements of SMC 07.06.150 or 07.06.160
2. North Gorge Partners - This contract was not subject to the public bidding requirements of SMC 07.06.150 or 07.06.160
3. Centurylink –This contract was not subject to the public bidding requirements of SMC 07.06.150 or 07.06.160
4. Spirit Pruners – For the purposes of compliance with SMC Section 01.07.040(A), this entity does not meet the definition of "contractor" under SMC 01.07.003(J) as no contract under which payment was received was subject to City Council approval.

Based on these determinations, 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 - 10/4/2019

Complainant

Dan Brady on behalf of the Spokane Good Government Alliance

Date

October 4, 2019

Street Address

1009 Kenoyer Drive

Email Address

dan@danbradylaw.com

Phone

(206) 228-1213

Subject(s)

Ben Stuckert, Candidate for Mayor and his campaign committee People to Elect Ben Stuckert

Statement of Facts

SMC Section 01.07.040(A) provides: 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. Mr. Stuckert appears to have solicited and/or accepted contributions to his campaign (People to Elect Ben Stuckert) from four individuals or entities who earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City: 1. Contribution of \$500 from Spirit Pruners received on March 7, 2019.

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<https://my.spokanecity.org/elections/information/ethics/> Page 49 2. Contribution of \$250 from CenturyLink received on March 29, 2019.

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<http://web.pdc.wa.gov/rptimg/default.aspx?repno=100905109>. North Gorge Residential Partners has earned or received \$302,714.57 from the City of Spokane. <https://my.spokanecity.org/elections/information/ethics/> Page 23 4.

Two contributions of \$1,000 each by Avista Corporation received on June 11, 2019. <http://web.pdc.wa.gov/rptimg/default.aspx?repno=100910795>. Avista Corporation has earned or received \$741,724.28 from the City of Spokane.

<https://my.spokanecity.org/elections/information/ethics/> Page 12 SMC Section 01.07.100(B) provides: the Agency shall, within five (5) days, send a written Notice of Violation ("NOV") to the person accused of the violation....



October 17, 2019

CANDIDATE BEN STUCKART
PO BOX 40041
SPOKANE, WA, 99220

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 on October 4, 2019 regarding your campaign:

SMC Section 01.07.040(A) provides: 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. Mr. Stuckart appears to have solicited and/or accepted contributions to his campaign (People to Elect Ben Stuckart) from four individuals or entities who earned or received more than fifty thousand dollars (\$50,000) under a contractual relationship with the City:

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A copy of the October 4, 2019 complaint and Attachment Nos. 1-8 are included with this letter.

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.

October 11, 2019

City of Spokane
Office of Contract and Business Standards
808 W Spokane Falls Blvd
Spokane WA 99201

RE: Notice of Violation, Spokane Fair Elections Code

Staff

I am in receipt of your letter dated October 7, 2019 discussing potential violations of SMC 01.07.040 by my campaign. Specifically, the complaint alleges that I improperly accepted donations for Spirit Pruners, CenturyLink, North Gorge Residential Partners and Avista Corporation. All complaints arise from the definition of "contractor" within the meaning of the code and are thus barred from financially supporting a candidate.

I did accept these contributions. That is not in dispute.

There are no violations.

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."

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the ordinance to remove would still not exist. The Engineering Services contract was a minor contract for under \$9,000 that did not require approval of Council.

I hope by the next election cycle we can figure out how to list on the website only those contracts that the city's ordinance applies to.

Sincerely

A handwritten signature in black ink that reads "Ben Stuckart". The signature is written in a cursive style with a long horizontal stroke at the end.

Ben Stuckart