

CITY OF SPOKANE ETHICS COMMITTEE

Ethics Committee's Advisory Opinion Requested by Al French

On August 13, 2009, Al French requested an advisory opinion from the City of Spokane's Ethics Committee pursuant to SMC 1.04.120, which states that any person subject to the Code of Ethics may request an advisory opinion from the Ethics Committee in order to avoid a future conflict or violation of the Code of Ethics. On January 6, 2010, the Ethics Committee met to discuss and respond to Mr. French's request for an advisory opinion, a copy of which is included as Attachment No. 1.

Mr. French's request for an advisory opinion is based upon his participation in an amendment to and subsequent adoption of the City's Sign Code by the City Council, which permitted bus bench signage as a method of permitted off-premise signs. In the process of amending the proposed Sign Code to allow for bus bench signage, Mr. French was accused of having a conflict of interest and should have recused himself from voting. The details of this alleged conflict are set forth in greater detail in Mr. French's August 13, 2009 letter and the subsequent complaints submitted to the Ethics Committee by Suzanne Markham and Dan Simonson on November 29, 2009.

The nature of Mr. French's request for an advisory opinion comes from SMC 1.04.030 G, entitled "Personal Interest in Legislation Prohibited," which 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 except for the lawful compensation or salary of the officer or employee unless such interest is a remote interest where the facts and extent of such interest is disclosed. 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. (Emphasis Added)

Mr. French requests the Ethics Committee to consider examining the circumstances surrounding the adoption of the sign code and

developing a clear policy around what constitutes a conflict of interest when a council member is dealing with “general” legislation applicable to the general public and not to specific situations or individual.

It is important to note that the Code of Ethics does not specifically refer to legislative actions of the City Council as either “general” or “specific” legislation. The Committee, as a later date, may consider recommending to the City Council that such definitions should be adopted. However, as adopted, SMC 1.04.030 (G) provides that no city offer may benefit directly or indirectly from any legislation unless such interest is a remote interest. Based upon the facts presented in this matter, the Committee has determined that if Mr. French has any interest in this legislation, it was only a remote interest, and therefore not a violation of the Code of Ethics. It is the opinion of the Committee that a remote interest may include interest other than financial.


SMC 1.04.030 (G) further provides that 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. Mr. French was obviously an elected member of a legislative body that is expected to conduct their public duty of deliberating and adopting legislation. The adoption of the Sign Code was clearly a legislative action and applicable to the general public. It has already been previously noted that if Mr. French had any interest, it was only a remote interest. While SMC 1.04.030 (G) does not reference the term “specific” legislation, it does state that the prohibition does not apply when the legislation is not unique to the council member. The distinction Mr. French references between “general” and “specific” legislation is, as currently drafted, actually a two prong analysis such that the legislation must be applicable to the general public and not unique to the council member.

In summary, the Ethics Committee concludes that:

1. Pursuant to SMC 1.04.120, the Ethics Committee has jurisdiction to issue this advisory opinion, but only as to the Code of Ethics as adopted and not to any future policy decisions.
2. The adoption of the sign code was a legislative action applicable to the general public, was not unique to Mr. French, conferred similar benefits to all other persons and/or property similarly situated and did not create a special benefit or interest to Mr. French. The only interest Mr. French may have had, if any, would have been a remote interest.

3. SMC 1.04.030 (G) does address the issue of not prohibiting a council member from participating in the adoption of legislation when the council member has only a remote interest in the legislation. For purposes of this advisory opinion, the Ethics Committee emphasizes that the legislation must be applicable to the general public and not unique to the council member. The remote interest may include interest other than financial.


In regards to Mr. French's request that the Committee review the statute of limitation, SMC 1.04.100 provides that any action taken pursuant to the Code of Ethics must be commenced within five years from the date of the violation. The Committee will, therefore, not comment on the issue regarding the statute of limitation.

 1-13-10

George Iranon Date
Chairperson

 1-13-10

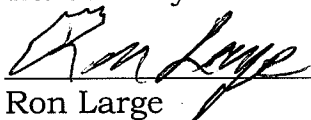
John P. Robideaux Date
Vice-Chair

 1/22/10

Kareena Byrd Date

 1-14-10

Donna Kuhn Date

 1-22-10

Ron Large Date

CITY OF SPOKANE ETHICS COMMITTEE

Ethics Committee's Findings, Conclusions and Decision Regarding Complaints Filed by Suzanne Markham and Dan Simonson Against Al French

FINDINGS

The Ethics Committee makes the following findings:

1. On or about November 29, 2009, the Ethics Committee received two written complaints filed by Suzanne Markham and Dan Simonson against Al French for violations of the City of Spokane's Code of Ethics, Chapter 1.04 SMC. Copies of the complaints are attached as Exhibits No. 1 and 2.
2. The complaints allege similar violations of the City's Code of Ethics stemming from the same factual events. The Ethics Committee's Findings, Conclusions and Decisions regarding the two complaints will, therefore, be consolidated in a single response.
3. The complaints allege that Mr. French violated the Code of Ethics due to his involvement in a City Council action in adopting the City's Sign Code, which included an amendment to allow for signage on bus benches as a means of off-premise signage. The complaint filed by Ms. Markham alleges that Mr. French violated SMC 1.04.030 (A) and (I), regarding conflicts of interest and improper use of position respectively, due to Mr. French's relationship with Thomas Hamilton. Mr. Hamilton has or had an ownership interest in the advertising company that previously had a contract with the City of Spokane for placement of bus bench advertising. Ms. Markham's complaint alleges that Mr. French's actions as a council member in approving the Sign Code benefited by Mr. Hamilton and himself.

The complaint filed by Mr. Simonson alleges that Mr. French violated SMC 1.04.030 (A), (G), (I) and (L). In addition to the code violations alleged previously in Ms. Markham's complaint, Mr. Simonson's complaint also involves allegations involving personal interest in legislation and acceptance of prohibited compensation, gifts, favors, rewards or gratuity. Mr. Simonson's complaint alleges that Mr. French engages in efforts as a council member in adopting legislation that benefited Mr. Hamilton, which resulted in specific financial benefit in return for a legislative benefit.

4. On January 4, 2010, the Ethics Committee received a response from Mr. French setting forth his response to the complaints. Mr. French's response states, in part, that 1) his support of bus bench signage dates back to his participation on the City's Plan Commission, 2) amending the Sign Code to include bus bench signage is consistent with the City's Comprehensive Plan, 3) the bus bench signage amendment was consistent with discussions with City staff regarding related court decisions, 4) his actions were part of legislative action by the City Council, 5) the adoption of the Sign Code was general in nature, applied city-wide and did not involve a financial relationship between the City and any specific individual, and 6) there was no financial benefit to himself or any other party

5. The Ethics Committee held a hearing on January 6, 2010 to deliberate and make a decision regarding the complaints. In making its decision, the Ethics Committee considered the arguments set forth by both Ms. Markham and Mr. Simonson in their respective complaints and all of the exhibits attached or referenced in their complaints, including the attached computer disks that contained all of their written material as well as video attachments. The Committee also considered Mr. French's response.

CONCLUSION

The Ethics Committee makes the following conclusions:

1. The Ethics Committee has jurisdiction to hear the complaints.
2. The actions taken by Mr. French involved legislative action as an elected official that was applicable to the general public and not unique to Mr. French. The legislative action taken by the City Council to adopt the sign code was applicable to the general public and did not create any benefit to any individual person or entity.
3. The legislative action taken by Mr. French did not result in a direct or indirect benefit, either financial or otherwise, to either himself or Mr. Hamilton.
4. Mr. French did not have a personal interest as a result of the adopted legislation. His only interest, if any, would have been a remote interest.
5. There is no evidence of a conflict of interest or of a benefit to either Mr. French or Mr. Hamilton based upon the actions taken by Mr. French in the adoption of the Sign Code.

6. There is no evidence of a violation of the Code of Ethics.

DECISION

Based upon the Findings and Conclusions set forth above, the record before the Ethics Committee and the deliberation of the Committee, the Ethics Committee concludes that Al French did not violate the City of Spokane's Ethics Code, Chapter SMC 1.04 as alleged in above-cited complaints. Mr. French did not have a conflict of interest or a personal interest arising from his participation as an elected member of the City Council in the amendment to and subsequent adoption of the City's Sign Code.

George Iranon 1-13-10
Chairperson Date

John P. Robideaux 1-15-10
Vice-Chair Date

Kareena Byrd 1-22-10
Date

Donna Kuhn 1-14-10
Date

Ron Large 1-28-10
Date