

(GENERAL)

COMPTROLLER FILE NUMBER **268640**

POSITION PAPER
OF

CHECK ON ABUSES OF MUNICIPAL CAMPAIGN
FINANCE DISCLOSURE LAWS, WITH SUGGESTED
REVISIONS OF SAID LAWS. - et al

1-12-71 Refer to Ethics Comm.
8-23-71 - file

FILED JANUARY 5, 1971

C. G. ERLANDSON
COMPTROLLER AND CITY CLERK

BY *D. F. Fenton* DEPUTY

ACTION OF THE COUNCIL

REFERRED	TO
JANUARY 11, 1971	JUD. & PERS.
REFERRED	TO
FEB 8 1971	COMMITTEE OF WHOLE
REFERRED	TO
REPORTED	DISPOSITION
AUG 23 1971	On File
RE-REFERRED	TO
REPORTED	DISPOSITION

REPORT OF COMMITTEE

COMMITTEE OF THE WHOLE

Mr. President:

Your

to which was referred the within

communication

would respectfully report that we have considered the same and respectfully recommend that

the same be placed on file.

(GENERAL)

COMPTROLLER FILE NUMBER 288640

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REPORT OF COMMITTEE

Mr. President:

Your COMMITTEE OF THE WHOLE Committee

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would respectfully report that we have considered the same and respectfully recommend that

the same be placed on file.

CHAIRMAN

CHAIRMAN

MUNICIPAL LEAGUE

of seattle and king county

725 CENTRAL BUILDING, SEATTLE, WASHINGTON 98104, MAin 2-8333

July 22, 1971

Seattle City Council
Municipal Building
Seattle, Wa. 98104

Honorable Members:

The Municipal League has encouraged the City Council to pass a strong, comprehensive, and workable ordinance that would fully disclose campaign contributions and expenditures. City government, and Seattle citizens badly need examples of positive commitments to reforming campaign practices.

There are two key parts in the Council's proposed Campaign Disclosure Ordinance that are certain to generate sharp criticism and affect the credibility of the entire ordinance.

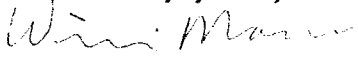
1. The \$25.00 exemption retains the principal loophole that caused the furor to begin with. Full disclosure is not an unrealistic objective. It is accomplished all the time.

2. It is stretching the credulity of the public to expect them to believe that unbiased decisions will come from a Fair Campaign Practices Commission that is selected by the very people it is to judge. Whether the Commission would in fact be fair is not the point. The proposed selection process forces people to assume the Commission could not be impartial. This, coupled with the fact the Council has, to date, rejected any alternate methods of selection, reinforces the impression the Council is passing a disclosure ordinance for the benefit of the Council rather than the benefit of the public. Whether this is true is again not the point. The appearance of impartiality and fairness by this regulatory body is just as important as its performance as an impartial and fair body.

The language could easily be changed in the proposed ordinance to accomplish this by requiring full disclosure and calling for the appointment of commission members to be chosen by the Mayor and Council from a variety of community-oriented organizations such as: the Seattle Council of Churches, the League of Women Voters, the Urban League, the Chamber of Commerce, the Labor Council, SKEOB, the Municipal League, CHECC, the Bar Association, and if needed, a representative sample from community councils. Perhaps one from the northend, one from the central part of the city and one from the south.

Please seriously consider these proposals.

Sincerely yours,



William Massey,
Asst. Executive Secretary

CHECC
(Choose An Effective City Council)
Post Office Box 12646
Seattle, Washington 98101

December 29, 1970

Position Paper
on
ABUSES OF MUNICIPAL CAMPAIGN
FINANCE DISCLOSURE LAWS
AND
SUGGESTED REVISIONS IN THE LAWS

By
John W. Hempelmann
Chairman, CHECC

Introduction

The Seattle City Charter provision regulating campaign finances is being treated contemptuously by many of the city's elected officials. Recent testimony before the Citizen's Ethics Committee has highlighted blatant and subtle evasions of the law.

Seattle City Charter Article XVIII, Section 4, requires every candidate for municipal office to file a sworn, itemized statement of all campaign expenditures and all contributions amounting to \$25.00 or more

"received by him . . . from any one source . . . together with the name and address of the person, partnership, committee, association, corporation or any other organization or group of persons who has made such contributions."

Violation of this provision works a forfeiture of office.

This Charter provision has never been enforced. Since its adoption in 1946, the provision has been evaded directly and indirectly by candidates and contributors who abhor full disclosure. In some cases, usually those involving unsuccessful candidates or nominees, the required affidavits are never filed. When affidavits are filed they are often incomplete and are frequently written in a manner to conceal the sources of hundreds and thousands of dollars of contributions. Full disclosure has been avoided because candidates, nominees and elected officials have sought and found loopholes in the law.

On August 27, 1970, CHECC called on Mayor Wes Uhlman to enforce the disclosure provisions. Under Charter Article V, the Mayor is Seattle's chief law enforcement official. An ad hoc Citizen's Ethics Committee appointed by the City Council is now investigating CHECC's suggestion that City Council members Charles M. Carroll and Ted Best have violated Charter Article XVIII, Section 4. While the Citizen's Ethics Committee may find that Councilmen Carroll and Best stretched the loopholes too far, its investigation must not stop there. Others may be equally culpable.

This position paper will document abuses of the disclosure laws and suggest methods of closing loopholes in the present Charter provisions. This position paper is based on information found in disclosure affidavits on file with the City Comptroller, published reports of the news media and recorded statements of witnesses who have testified before the Citizen's Ethics Committee.

Abuses and Remedies

At the outset, it should be observed that the present Charter provisions would assure adequate disclosure if they were observed and enforced consistent with the spirit and intent of the law. In practice, however, the disclosure provisions have been given the narrowest possible readings and their clear intent has been frustrated. CHECC believes that the courts would rule against the narrow interpretations of the law now being relied on by some officials. But CHECC also recognizes that it is unlikely that violators of the Charter, particularly those who hold elective positions, will ever be fully prosecuted by fellow elected officials. CHECC therefore proposes that the Charter be amended to eliminate the possibility of reading the disclosure provisions so narrowly as to render them meaningless.

The most serious abuses of the campaign finance reporting laws involved 1) "anonymous" contributions, 2) miscellaneous

contributions under \$25.00, 3) contributions funneled through candidate election committees, and 4) contributions received before and after the reporting periods.

Abuse - "Anonymous" Contributions. While the Charter does not expressly prohibit "anonymous" contributions, it does so by implication since all contributors must be listed by name and address. Despite the Charter requirement, candidates and nominees in 1969 reported almost \$9,000.00 in "anonymous" contributions. For example, Mayor Wes Uhlman listed \$4,875.00 as having come from unknown sources. Four of these "anonymous" sources gave Wes Uhlman \$500.00 each and seventeen gave \$100.00 or more. Mort Frayn, an unsuccessful mayoralty candidate, listed \$3,275.00 in "anonymous" contributions. Four unknown contributors gave Mort Frayn \$500.00 and twelve gave \$100.00 or more. City Councilman Wayne Larkin reported three "anonymous" contributions of \$250.00 each.

"Anonymous" contributions are a particularly insidious abuse since it is well known that not all "anonymous" contributions are truly anonymous. On December 28, 1970, Mort Frayn told Seattle Times reporters that anonymous contribution listings are sometimes a guise for concealing substantial contributions from large corporations. Mr. Frayn stated he knew of one \$1,000.00 contribution made to his 1969 campaign by a corporation that insisted it not be identified. Mr. Frayn admitted that the corporation contribution was listed as "anonymous." Since no \$1,000.00 contribution appears on Mr. Frayn's affidavit it must be assumed that the \$1,000.00 was broken into smaller amounts.

The public should know the identity of all contributors. The Charter provisions are aimed directly at those contributors who wish to conceal their identities. A candidate who intends to comply fully with the Charter provisions would either refuse to accept donations from known persons or corporations making "anonymous" contributions, or, if the source were truly

contributions under \$25.00, 3) contributions funneled through candidate election committees, and 4) contributions received before and after the reporting periods.

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anonymous, forward it to a civic organization or charity. While some candidates have adopted such a procedure others have exploited the ambiguity in the law. Therefore, the law must be clarified.

Remedy. The Charter should be amended to prohibit "anonymous" contributions. The amendment should provide that if candidates cannot return "anonymous" contributions such contributions would be paid to the City's general fund.

Abuse - Miscellaneous Contributions Under \$25.00. The Charter does not require identification of contributors giving less than \$25.00. Apparently, those who drafted the Charter wanted to avoid excessive paperwork or to encourage small contributions. Maybe they felt that \$24.99 could not corrupt. Experience has shown, however, that this provision invites mischief and, in some cases, deceit. The Citizen's Ethics Committee has been told that "regular" contributors are well aware of the \$25.00 exception and often make contributions of \$24.50 or \$24.95. In some cases where a candidate or his representative is given \$25.00 they will return a penny so that the contribution need not be listed. Councilman Charles M. Carroll testified that it was common practice in his campaigns to receive large sums from one person and, upon the unverified representation of the donor, list the contribution as "miscellaneous contributions under \$25.00."

Since not all candidates list the total of miscellaneous contributions under \$25.00 we are unaware of the full scope of the problem. Two examples are, however, illustrative. In 1967, Councilman Charles M. Carroll listed \$3,402.00 in "miscellaneous contributions under \$25.00." Councilman Carroll testified that \$2,000.00 of the \$3,402.00 was given by one person and that large portions (e.g. \$400.00) of the remaining \$1,402.00 were presented by other single individuals. Councilman Carroll stated that, in all instances, he was asked to list

the donations as "miscellaneous contributions of less than \$25.00." He did not check the authenticity of these representations at the time and they cannot be verified now since the \$2,000.00 contributor is dead and Councilman Carroll does not recall, or feels it is inappropriate to reveal, the identity of the other contributors.

Councilman Carroll's miscellaneous contributions are small when compared to those received by Mayor Wes Uhlman. In 1969, Mayor Uhlman listed \$13,700.63 as contributions of less than \$25.00. His affidavit for the primary election listed 492 contributions totaling \$9,924.40 or an average exempt contribution in excess of \$20.00.

Remedy. Experience with the disclosure provisions of the King County Charter demonstrates that identifying all contributors is neither excessively burdensome nor detrimental to the collection of small donations. The City Charter should be amended to require the disclosure of all contributors.

Abuse - Contributions by Campaign Committees and Other Organizations. Charter Article XVIII, Section 4, provides that candidates and nominees must report contributions from partnerships, committees, associations, corporations and other organizations or groups of persons. Relying on this language, candidates almost ritually set up committees or other entities to funnel contributions into their campaigns. Since the Charter does not expressly require such committees to disclose the identity of their contributors, a gaping loophole exists. This loophole is exploited even though the Charter may be read to require the candidate to list the names and addresses of known parties making contributions to persons or organizations supporting his candidacy. During every election tens of thousands of dollars are effectively channeled to candidates with complete anonymity. Those contributors who desire to conceal their identities may do so and the purpose of the disclosure provisions is thwarted.

Examples of this technique are limited only by the imagination of the candidates and their contributors. In 1969,

for instance, Councilman George Cooley received \$5,241.50 from "Citizens for George Cooley" and \$375.00 from "Committee of Men Who Make the Difference." Councilman Wayne Larkin received \$4,420.99 from the "Committee for Wayne D. Larkin" and \$14,235.00 from two sources identified only as the "\$10 Dinner (John Mairs, Chairman)" and the \$50 Dinner (Karl Herrman, Chairman)." Councilman Liem Tuai received \$7,078.25 from the "Liem Tuai Campaign Dinner Committee," the "Liem Tuai Karate Exhibition Comm." and the "Liem Tuai Movie Comm." Councilwoman Jeanette Williams received \$4,025.00 from the "Reception at Sherwood Motel," another \$3,840.00 from the "Sherwood Inn Reception" and \$1,098.00 from the "Champagne Reception at Apricot-Orange." Mayor Wes Uhlman received \$500.00 from "Concerned Citizens for Good Government" and unsuccessful candidates Mort Frayn and Lud Kramer received \$1,000.00 and \$6,119.26 respectively from the "Friends of Good Government" and the "Kramer Theater Party Committee."

In 1967, Councilman Ted Best received \$4,771.00 from the "Class of 1934 Reception," \$8,606.48 from an "Appreciation Banquet Committee" and \$1,077.00 from a "Cocktail Party." Councilman Tim Hill received \$2,590.00 from the "Tim Hill Reception" and \$1,975.00 from "CHECC (Choose An Effective City Council)." Councilwoman Phyllis Lamphere received \$1,769.82 from the "Committee for 'An Evening With Phyllis Lamphere'," \$1,702.47 from the "Phyllis Lamphere Breakfast Club" and \$1,150.00 from "CHECC." Councilman Sam Smith received \$4,913.21 from the "Volunteers for Sam Smith" and \$11,305.94 from the "Sam Smith for Council Committee." However, unlike other candidates, Councilman Smith listed the names of those making nonexempt contributions to some of his fund raising committees. Councilman Smith is to be commended for reading the Charter in a manner consistent with its intent.

Committees and fund raising groups for individual candidates must be distinguished from corporations, unions and organizations that have a continuing existence and purpose beyond the election of a specific official. The Metropolitan Democratic

Club, the Seattle Police Officers Guild, the Washington Jockey Club, CHECC and the Washington Natural Gas Officer's Fund are all examples of the latter. These groups differ from candidates' committees in that they have objectives other than raising campaign funds for a specific candidate. For this reason they are less likely to provide sanctuary for contributors seeking anonymity. Still, since contributors may find ways of channeling donations through established organizations, such organizations must be the subject of regulation.

The manner in which campaign committees may be used to evade the disclosure laws is well illustrated by the recent Citizen's Ethics Committee hearings. In his September 27, 1967 disclosure affidavit, Councilman Ted Best listed \$4,771.00 as receipts from the "Class of 1934 Reception." Testifying before the Citizen's Ethics Committee, Councilman Best admitted that more than one-half of the \$4,771.00 reported had come from a source or sources other than the class reception. Best and Frank Countner, a Seattle jukebox distributor, testified that \$2,400.00 of the \$4,771.00 had come from members of the Washington State Amusement Association. While both Best and Countner claimed that the \$2,400.00 consisted of approximately 100 exempt contributions, neither would identify the contributors and their statements remain unverified.

Remedy. The Charter should be amended to require identification of all contributors to committees or other entities that provide campaign funds for specific candidates. Candidates and committee organizers should be equally responsible for disclosure affidavits. Penalties for violations should include forfeiture of office for elected officials and fines for committee organizers and primary election winners who lose in the general elections.

The Charter should be amended to require disclosure affidavits from established organizations making campaign contributions. These affidavits should disclose whether contributions

his primary election campaign and his personal contributions are part of the deficit figure.) Councilwoman Jeanette Williams' deficit was more than \$13,000.00. Ironically, it was post-election fund raising for Council members Cooley, Larkin and Williams that prompted this most recent investigation into campaign finance reporting. Unfortunately, the public still does not know how these deficits were retired.

Remedy. The Charter should be amended to require disclosure of all campaign contributions regardless of the dates when they are received. The reporting requirement should encompass contributions received prior to declarations of candidacy. Supplemental affidavits should be required at specified intervals until all deficits are retired.

The Absence of Enforcement

Charter Article XVIII was adopted in March, 1946. Despite years of abuse no action has been taken to enforce the law. The Mayor, Corporation Counsel, Comptroller, City Council and County Prosecutor have each looked to the others for leadership. None was forthcoming. Finally, after pressure from CHECC and the news media, Mayor Wes Uhlman asked the Council to commence a Charter Article XIX proceeding. The Council has referred the matter to the Citizen's Ethics Committee, a committee unsure of its jurisdiction, burdened with questionable rules of procedure and without enforcement powers. More than four months have elapsed since CHECC first called for enforcement of the law. The two Councilmen implicated by their own admissions remain voting members of the City Council. Obviously, the enforcement procedure must be clarified.

Remedy. The Charter should provide for a permanent, independent Citizen's Ethics Committee. The Committee's membership, jurisdiction and rules of procedure should be detailed by Charter provision or ordinance. The Committee should have the

right to initiate investigations on its own motion or in response to citizen complaints. The Committee should have the power to compel testimony under oath. A Committee finding of a Charter violation should, when confirmed by the Council, work an automatic forfeiture of office. Disclosure law violations by public officials, campaign contributors and unsuccessful candidates should be declared misdemeanors and appropriate penalties should be authorized.

Conclusion

CHECC believes that the case against Councilmen Best and Carroll is a strong one. Councilman Best reported \$2,400.00 in contributions as receipts from a "Class of 1934 Reception" that had no connection with the contributions. By Councilman Best's own admission he was receiving the \$2,400.00 many months before the reception tickets were printed. Neither Councilman Best nor Frank Countner, Best's "fund raiser," can say whether the "contributors" ever received reception tickets.

There is some question as to the "source" of the \$2,400.00. Councilman Best has testified that he knew the money was coming from the "music men" and that Frank Countner was their representative. Instead of reporting the true source as he knew it, Councilman Best concealed the \$2,400.00 with the reception receipts. In doing so he improperly reported a source of campaign contributions and violated the Charter. Moreover, Councilman Best perjured himself on his affidavit.

Councilman Carroll has admitted receiving large contributions that were characterized as "miscellaneous contributions under \$25.00." In each of these cases Councilman Carroll has testified that he knew of only one source for the contribution--the person handing him the money. The Charter does not authorize reporting a single \$2,000.00 contribution as "miscellaneous contributions under \$25.00" merely because the contributor has requested such an entry. Not knowing the identities of the purported

sources of the \$2,000.00 Councilman Carroll perjured himself on his affidavit by reporting the contributions as he did.

Councilmen Best and Carroll and unsuccessful mayoralty candidate Frayn have all said that the integrity of their contributors is beyond question. Councilman Carroll told the Citizen's Ethics Committee that accepting contributions from pinball interests was no more culpable than accepting contributions from a bank or large corporation. Such protestations of innocence miss the mark. CHECC is not, at this time, questioning the propriety of accepting contributions from gambling interests or any other specific source. Honest and full disclosure is the immediate issue.

The case against Councilmen Best and Carroll is made relatively easy because of their own admissions. The number of abuses documented in this position paper suggests that there have been other violations of the disclosure laws. Unfortunately, the Citizen's Ethics Committee has restricted its investigation to the cases against Councilmen Best and Carroll. Committee Chairman Dan Brink has said that the current investigation has been restricted because there have been no charges against other public officials. CHECC believes that the Citizen's Ethics Committee should embark on a renewed investigation to substantiate or disprove other Charter violations. The ordinance creating the Committee provides that the Committee should investigate and report to the Council on "such other matters as may come before the Committee. . . ." in connection with disclosure law violations. At the very least, Mayor Wes Uhlman, Councilman Wayne Larkin and former candidate Mort Frayn should be invited to testify regarding their "anonymous" contributions. The Citizen's Ethics Committee has the authority to subpoena campaign finance records and it should exercise that authority.

Contributors of \$25.00 or more who fail to file affidavits identifying themselves and their contributions may be guilty of a misdemeanor by virtue of Seattle Code. Section 1.20.020. This section was enacted pursuant to a Charter provision adopted

prior to 1946. The Citizen's Ethics Committee should request a formal opinion from the Corporation Counsel on the question of the current force of Section 1.20.020. While this section has never been enforced its use may be justified in connection with abuses such as "anonymous" contributions. In such cases, there may be blatant violations of the disclosure provisions.

CHECC also believes that action by the King County Prosecutor is appropriate. Prosecutions for perjury may be possible under Chapter 9.72 of the Revised Code of Washington. In addition, the King County Prosecutor should consider the availability of a quo warranto proceeding under Chapter 7.56 of the Revised Code of Washington. A quo warranto proceeding is a civil proceeding to be instituted in the Superior Court by the county prosecutor

"When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his office." RCW 7.56.010(2).

CHECC believes that the City Council should move immediately to revise the disclosure laws. The widespread abuses documented herein must be curtailed without delay lest public confidence in government erode still further. Charter amendments should be prepared. Since these amendments would not apply to the municipal campaigns in 1971, the Council should promulgate temporary ordinances to assure honest and full disclosures of campaign financing.