



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

September 5, 2018

Sent electronically to Lauren C. McElroy, an attorney with Porter, Foster, Rorick, LLP on behalf of the Tahoma School District at "lauren@pfrwa.com"

Subject: Complaint filed by Maxford Nelson, PDC Case 37408

Dear Ms. McElroy:

Enclosed is a copy of a letter sent to Maxford Nelson, with the Freedom Foundation, concerning a complaint filed with the Public Disclosure Commission (PDC) against the Tahoma School District. The complaint alleged that the Tahoma School District may have violated RCW 42.17A.555 by using school district facilities to process district employee voluntarily withheld contributions designated for the Washington Education Association/s Political Action Committee (WEA-PAC) and the National Education Association Fund for Children and Education (NEA-FCPE).

As noted in the letter to Mr. Nelson, the PDC will not be conducting a more formal investigation into these allegations or taking enforcement action in this matter. If you have questions, you may contact Jennifer Hansen at 1-360-586-4560 toll-free at 1-877-601-2828, or by e-mail at jennifer.hansen@pdc.wa.gov

Sincerely,

/s_____
Jennifer Hansen
Compliance Officer

Endorsed by,

/s_____
Barbara Sandahl, Deputy Director
For Peter Lavalley, Executive Director



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September 5, 2018

Delivered electronically to Maxford Nelson at "mnelsen@freedomfoundation.com"

Subject: Complaint regarding Tahoma School District, PDC Case 37408

Dear Maxford Nelson:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on June 20, 2018 and the additional information provided on September 3, 2018. Your complaint alleged that the Tahoma School District may have violated RCW 42.17A.555 by using school district facilities to process district employee voluntarily withheld contributions designated for the Washington Education Association's Political Action Committee (WEA-PAC), a political committee registered with the PDC, and the National Education Association Fund for Children and Education (NEA-FCPE).

PDC staff reviewed the allegations listed in your complaint, PDC statutes, rules, and Interpretation #01-03, and the August 28, 2018 response from Lauren C. McElroy, an attorney with Porter, Foster and Rorick, LLP on behalf of the client, Tahoma School District. As a result of staff's review, we found the following:

- RCW 42.17A.555 prohibits the use of public facilities to support or oppose candidates and ballot propositions, including the use of school district resources, equipment and employees.
- The Commission adopted PDC Interpretation 01-03, *Guidelines for School Districts in Election Campaigns*, which provides information concerning the use of public facilities including activities that are permitted or prohibited, activities which are part of the "normal and regular conduct" of the school district, and other general considerations.
- Ms. McElroy stated the Tahoma School District (TSD) processes employee contributions to WEA-PAC and NEA-PCPE upon written request of its employees as authorized by state statute, RCW 42.17A.495(3).
- Ms. McElroy stated that, in November 1992, Washington voters passed Initiative 134 ("I-134"), which in Section 8 (later codified as RCW 42.17.680(3) and recodified in 2012 as RCW 42.17A.495), addressed the circumstances under which an employer may deduct employee wages for purposes of certain political contributions. She noted that the relevant language of Subsection (3) has remained unchanged since the passage of I-134.
- Ms. McElroy stated that the Washington State Supreme Court decided this issue in a case involving the WEA vs. Evergreen Freedom Foundation. In that case, she stated that WAC 390-17-100 requires an employer, in

that case a school district, to obtain annual written authorization from school district employees for payroll deductions that are to be used for political contributions, only when payment from deductions is made to a political committee or a candidate for state or local office.

- Ms. McElroy stated TSD complied with RCW 42.17A.495(3), and the district is an "employer" for purposes of this statute. She stated that TSD's "nonsupervisory certificated employees are represented by the Tahoma Education Association ("TEA"), which is an exclusive bargaining representative under the Educational Employment Relations Act ("EERA" of RCW 41.59. She stated in order for TSD to process the withholdings for political contributions, TSD's "certificated employees complete a form provided by the WEA notifying them of the prohibition against employer and labor organization discrimination using the exact language prescribed by RCW 42.17A.495(2)." She added that TSD retains copies of the employee authorization forms as required.
- Finally, Ms. McElroy stated that RCW 42.17A.495(3) provides TSD with the specific statutory authority to "withhold or divert a portion of employees' wages or salaries for contributions to political committees, such as WEA-PAC and NEA-FCPE, upon written request of the employees. The written requests provided by District employees comply with the requirements of this statute. Therefore, the deductions are 'part of the normal and regular conduct' of the District and fall within the exception provided in RCW 42.17A.555(3)."

The Tahoma School District processes employee payroll deductions and other employee voluntary withholdings as part of the "normal and regular conduct" of the school district. No evidence was found that the district provided any preferential treatment concerning district employee's withholding of funds designated for the WEA-PAC and NEA-FCPE, and any other district employee withholdings for charitable contributions, deferred compensation, etc.

Staff has determined that in this instance, no evidence supports a finding of a material violation warranting further investigation. The PDC has closed the matter, and will not be conducting a more formal investigation into your complaint or pursuing further enforcement action in this case. If you have questions, you may contact Jennifer Hansen at 1-360-586-4560 toll-free at 1-877-601-2828, or by e-mail at jennifer.hansen@pdc.wa.gov.

Sincerely,

/s_____
Jennifer Hansen
Compliance Officer

Endorsed by,

/s_____
Barbara Sandahl
Deputy Director
For Peter Lavalley
Executive Director

cc: Lauren C. McElroy, Attorney for Tahoma School District