



State of Washington PUBLIC DISCLOSURE COMMISSION

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June 21, 2023

Sent electronically to Jeffrey Myers, an attorney with Law, Lyman, Daniel, Kamerrer, & Bogdanovich, P. S, and legal counsel for the cities of Olympia and Tumwater

Subject: Complaints filed against officials of the cities of Olympia and Tumwater by Arthur West, Robert Shirley, and Walt Jorgensen, PDC Case 124932

Mr. Myers:

Enclosed is a copy of an electronic letter addressed to you on behalf of your clients, the cities of Olympia and Tumwater, concerning the complaints filed by Arthur West, Robert Shirley, and Walt Jorgensen. Specifically, the three complaints alleged that officials of the cities of Olympia and Tumwater violated RCW 42.17A.555 by using the facilities of the respective cities to produce and distribute a “factsheet” or “informational flyer” that supported Proposition No. 1 on the April 25, 2023 special election ballot. Proposition No. 1, if approved, would have created the Olympia-Tumwater Regional Fire Authority District.

PDC staff found no evidence of further violations that would require conducting a more formal investigation into the complaint or pursuing any enforcement action in this instance. However, pursuant to WAC 390-37-060(1)(d), this letter constitutes a formal written warning to the cities of Olympia and Tumwater and their officials concerning the prohibition against the use of city facilities and resources to support or oppose candidates and ballot propositions. The Commission will consider the formal written warning in deciding on further Commission action if there are future violations of PDC laws/rules.

As noted in the attached letter, PDC staff found there were several phrases or sentences included in the “factsheet/mailed” produced and distributed by the two cities that PDC staff wanted to highlight. Staff would recommend for future fire and public safety election related information, that you ensure the content is neutral or benign. In addition, the inclusion of photographs — especially for ballot propositions concerning fire, police, other first responders, and emergency services — for election-related information such as for the RFA proposed merger, should be done judiciously and not as an emotional appeal for support.

Finally, while the four funding sources for the proposed costs of the RFA were explained in the “factsheet” and the public was provided with a link to determine the costs, it seemed difficult for the average citizen to determine what the estimated costs would have been for their specific parcel if the ballot proposition had been approved. Staff recommends that in the future, the cities should consider including an example of how those costs would have been broken out in the “factsheet”, which likely would have been helpful to recipients.

The PDC has dismissed this matter in accordance with RCW 42.17A.755(1). Thank you for your cooperation and assistance in resolving this matter.

If you have questions, please contact PDC Compliance Officer Kurt Young by e-mail.

Sincerely,

Endorsed by,

/s _____
Electronically Signed Kurt Young
Compliance Officer

/s _____
Electronically Signed Peter Lavalley
PDC Executive Director

PDC





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June 21, 2023

Sent electronically to Arthur West, Robert Shirley, and Walt Jorgensen

Subject: Complaints filed against officials of the cities of Olympia and Tumwater, PDC Case 124392

Arthur West, Robert Shirley, and Walt Jorgensen:

Public Disclosure Commission (PDC) staff has completed its review and investigation of the complaints filed by the three of you on April 12, and April 28, 2023, against officials of the cities of Olympia and Tumwater alleging use or authorization of their respective city's resources to support a local ballot proposition concerning the proposed creation of the Olympia-Tumwater Regional Fire Authority (RFA).

Specifically, the complaints filed by the three of you alleged that the "factsheet" or "informational flyer" that was produced and distributed by the cities of Olympia and Tumwater violated RCW 42.17A.555 by using the facilities of the two respective cities to support Proposition No. 1 on the April 25, 2023 special election ballot, which if approved would have created the Olympia-Tumwater RFA.

PDC staff reviewed the allegations and exhibits listed in the three complaints; the applicable statutes, rules, and PDC Interpretation #04-02; the websites for both the cities of Olympia and Tumwater concerning the RFA; the responses from Jeffrey Myers, an attorney with Law, Lyman, Daniel, Kamerrer, & Bogdanovich, P. S, and legal counsel for the cities of Olympia and Tumwater; and other relevant information, to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

- **RCW 42.17A.555** states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition."
- **WAC 390-05-271** states that RCW 42.17A.555 "does not prevent a public office or agency, including the City of Olympia, from making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

- **PDC Interpretation No. 04-02** states that public agencies may expend public funds to produce information about the maintenance and operations of the agency and how a ballot proposition would affect those operations provided that the information is a fair and objective presentation of the facts. The interpretation states that “it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies.” The interpretation states local governments may expend public funds, including for the preparation and distribution of factual information about a ballot proposition, provided that the information is not distributed for the purpose of influencing the outcome of an election.
- Mr. Myers stated that during calendar year 2021, the cities of Olympia and Tumwater entered an interlocal agreement establishing a planning committee that would lay the groundwork for the formation of a RFA as provided in RCW 52.26. He referenced RCW 52.26.060 several times and added that the statute requires that an RFA plan “must be provided by the planning committee to the governing bodies of each fire protection jurisdiction to certify the plan to be submitted to the ballot.”
- On November 14, 2022, at the Olympia-Tumwater RFA Planning Committee meeting, representatives of both cities on the Committee moved and seconded the motion made by Olympia City Councilmember Jim Cooper “to recommend the formation of the Olympia Tumwater RFA” and to approve the plan for “its operation, governance, and financing including a reasonable fire benefit charge for consideration and legislative action by the Olympia and Tumwater City Councils on December 6, 2022.”
- The motion was approved unanimously by the RFA Planning Committee, whose members from the City of Olympia included Cheryl Selby, Mayor; City Councilmembers Jim Cooper and Lisa Parshley; Todd Carson, Fire Chief; and representing IAFF Local 486, Steven Busz, Olympia Firefighter. The RFA Planning Committee members for the City of Tumwater included City Councilmembers Eileen Swarthout, Leatta Dahlhoff, and Michael Althausen; Brian Hurley, Fire Chief; and representing IAFF 2409, Lt. James Osberg, Fire Union Representative and Paramedic.
- On December 6, 2022, the cities of Olympia and Tumwater, at open public meetings, both adopted resolutions to place an RFA ballot measure on the April 25, 2023 ballot, in which the City of Olympia adopted Resolution M-2400, and the City of Tumwater adopted Resolution R2022-014.
- PDC staff reviewed the joint RFA “factsheet” or mailer that was distributed by the cities of Olympia and Tumwater, and found that overall, the content was largely an objective and fair presentation of the facts. However, staff did note there were several phrases that were included in the “factsheet.” For future fire and public safety election related information, you should ensure the content is neutral or benign. Those phrases or sentences included: “Fire and emergency medical services are among the most critical services provided to the community”; “Demand for service is outstripping the resources of the cities' fire departments and is putting pressure on our ability to continue to provide quality fire and emergency medical services.”
- In addition, the information included stated the RFA “will preserve and enhance service levels” but did not provide additional information about how that would happen; and that “firefighters are affected by PTSD injuries” and added the RFA “would support expanded mental health resources for firefighters” but did not indicate how that would improve the current mental health services being provided to firefighters and EMT’s.

- Staff noted that the “factsheet” included several photographs of firefighters and EMT’s, and that a couple of the photographs were of firefighters in response mode. Mr. Myers stated the cities “used stock photographs and pictures of firefighters and fire apparatus” but did not identify any of the personnel as City of Olympia or Tumwater firefighters or EMT’s.
- Mr. Myers stated that, contrary to the allegations in the complaint, the photographs selected by the cities to be “included in the mailer accurately showed photos of firefighters” engaging in normal activities. He added that those “images are important to depict the activities of fire departments and convey to the public that Fire Departments do more than fight fires, and that an important, if not dominant part of their responsibilities is responding to health-related calls.”
- In addition, the “factsheet” listed what the costs of the proposed RFA might be, based on “four funding sources” that included: (1) a property tax levy of up to \$1.00/\$1,000 of assessed value; (2) an annual Fire Benefit Charge; (3) a share of the countywide EMS levy revenues; and (4) the funds received for contract revenue, fees for services, and grants.
- Mr. Myers stated that the decision to send the RFA informational mailer/factsheet was made by Jay Burney, Olympia City Manager in March of 2023, and that the mailer/factsheet was designed by City of Olympia staff. He stated that Mr. Burney as Olympia City Manager was “responsible for final approval of the content” of the mailer/factsheet, and that it was sent for review to several individuals. He stated that the mailer/factsheet content was provided from: (1) Q&A information on the RFA webpage; (2) materials taken from the cities of Olympia and Tumwater staff presentations concerning the RFA; and (3) other information compiled by the RFA Planning Committee during their meetings.
- Mr. Myers stated that the “factsheet/mailer was for “informational purposes only”; was not intended “to support or oppose Proposition 1”; contained “an express statement to that effect in the mailer”; and used stock photographs and pictures of firefighters and fire apparatus but did not identify the personnel as City of Olympia or City of Tumwater firefighters. He stated the same “factsheet/mailer was sent out by a vendor to all boxholders in the cities of Olympia and Tumwater”, that the total cost to print and mail the “factsheet/mailer” was \$23,102.85, that included postage and mailing costs (\$13,184.75), and the costs to print (\$9,918.10).
- Mr. Myers stated that the costs were evenly apportioned between Olympia and Tumwater based on populations, with two-thirds of the mailing costs paid by the City of Olympia, and one-third paid by the City of Tumwater, “based on the approximate number of boxholders in each jurisdiction.”

Based on these findings, PDC staff found no evidence of further violations that would require conducting a more formal investigation into the complaint or pursuing any enforcement action in this instance.

However, pursuant to WAC 390-37-060(1)(d), PDC staff is issuing a formal written warning to the cities of Olympia and Tumwater and their officials concerning the prohibition against the use of city facilities and resources to support or oppose candidates and ballot propositions. The Commission will consider the formal written warning in deciding on further Commission action if there are future violations of PDC laws/rules.

Concerning the remaining allegations listed in the complaint from Mr. Shirley, PDC staff found no evidence that either the officials from the cities of Olympia and Tumwater used city resources or facilities to support Proposition No. 1 on the April 25, 2023 special election ballot in violation of RCW 42.17A.555.

The PDC has dismissed this matter in accordance with RCW 42.17A.755(1). If you have questions, please contact PDC Compliance Officer Kurt Young by e-mail.

Sincerely,

Endorsed by,

/s

Electronically Signed Kurt Young
Compliance Officer

/s

Electronically Signed Peter Lavallee
PDC Executive Director



cc: Jeffrey Myers, Legal Counsel for the cities of Olympia and Tumwater