



**State of Washington**

**PUBLIC DISCLOSURE COMMISSION**

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**Memorandum**

To: Public Disclosure Commission

From: Philip E. Stutzman, Compliance Officer

Date: June 15, 2023

Subject: Presentation on RCW 42.17A.555, Concerning the Prohibition of the Use of Public Facilities in Election Campaigns

**Overview**

State law ([RCW 42.17A.555](#)) prohibits the use of facilities of a public office to support or oppose a ballot measure or an election campaign for public office. This prohibition was part of Initiative 276 adopted by the voters in 1972. The law applies to all units of local government and their officials and employees, including counties, cities, towns, transit districts, port districts, and other special districts.

The law means that local government elective or appointed personnel or other employees may not work to support or oppose a candidate or ballot proposition during work time or allow public facilities to be used for that purpose. "Public facilities" is defined to include use of stationery, postage, equipment, use of employees during working hours, vehicles, office space, publications of the office, or clientele lists of persons served by the local government.

There are specific exceptions to the broad prohibition on using public facilities to support or oppose a ballot proposition. Among them is an allowance for activities that are part of the "normal and regular conduct" of local government. Under this exception, a local government can prepare a neutral presentation of facts concerning a ballot measure. For communications by agencies that have placed tax measures on the ballot, care must be taken to include information about both the purpose of the measure (i.e., what it would buy) and the costs to taxpayers.

**Guidance Available for School Districts**

In response to requests from school districts for guidance, PDC staff engaged in extensive stakeholder work in 2001, leading to approval of [Interpretation 01-03](#), also known as Guidelines for School Districts in Election Campaigns. The Guidelines were last updated on September 28, 2006. They include relevant statutes and rules, basic principles, and several categories of election-related activities with columns for what is allowed, what is not allowed, and general considerations.

Also available to districts is a [PDC staff memo](#) dated January 12, 2015, titled, Election-Related Communications by Local Government Agencies. The memo provides further guidance for preparing compliant agency fact sheets. It describes prohibited activities and explains that while PDC staff will no

longer be able to provide detailed, pre-dissemination reviews of agency materials, the memo is intended to answer common questions about agency publications and provide representative examples of draft agency publications previously reviewed by PDC staff along with the guidance provided.

## Normal & Regular Conduct

The Commission has adopted rules ([WAC 390-05-271](#)) that permit local governments to make 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.” Normal and Regular conduct is defined in [WAC 390-05-273](#) as being both lawful and usual or customary. Basic Principles, No. 7 in the Guidelines states, in part, “The combination of a number of activities into a coordinated campaign involving close coordination between district activities and citizens’ committee activities which closely resembles traditional election campaign activities and which is targeted at and/or occurs close in time to a school district ballot measure election is likely to draw close scrutiny and careful consideration by the PDC as to whether a violation has occurred.”

Under Basic Principles, No. 8a., the Guidelines state, in part, “Historically, the PDC has routinely advised and held that with respect to election-related publications, one district-wide objective and fair presentation of the facts per ballot measure is appropriate.” However, the Basic Principles state that if a district has also customarily distributed this same information through means other than a districtwide mailing (e.g., “kid mail,” regularly scheduled district or school newsletters, websites, bilingual documents, or other formats), that conduct will generally be permitted under RCW42.17A.555 so long as the activity has been normal and regular for the district. Basic Principles, No. 8a. goes on to state, in part, “The PDC will presume that every school district may distribute district wide an objective and fair presentation of the facts for each ballot measure. If the district distributes more than one district wide single publication, the district must be able to demonstrate that for other major policy issues facing the district, the district has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure. Districts are encouraged to read the definitions of “normal and regular” at WAC 390-05-271 and WAC 390-05-273. Districts need to be aware, however, that in no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct.” (emphasis added)

The allowable activities described in the Guidelines are supported by RCW 28A.320.090 because it provides the lawful authority for school districts to communicate with the general public about the needs of the district. It states, “The board of directors of any school district shall have authority to authorize the expenditure of funds for the purpose of preparing and distributing information to the general public to explain the instructional program, operation and maintenance of the schools of the district: **PROVIDED, That nothing contained herein shall be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a school district election.**” (emphasis added)

## Current Issues

The ways that school districts, and indeed all local governments, communicate with their communities has changed over time. In particular, the Internet and social media have provided opportunities to distribute information on a myriad of topics more often and at less expense. This appears to have influenced the methods employed by many districts to share information about bonds and levies they have placed on the ballot.

PDC staff have become increasingly concerned about the frequency and content of those communications. What once was a single fact sheet mailed to all district residents, and maybe supplemented by a few excerpts in newsletters and in recent years social media, has become almost daily dispatches containing what are arguably implicit appeals for support. In PDC staff’s view, some of the messaging may go beyond a fair and objective presentation of the facts, and the communication strategies may cross into marketing

efforts that are more appropriately done by citizen committees formed to back the ballot propositions. Some district communication plans even state that the goal is to drive support for the measures. Districts, on the other hand, often maintain that the methods employed are “normal and regular” for districts using modern communication strategies to inform the public, and that if these “normal and regular” practices cannot be fully applied to communications about ballot measures, they need brighter lines to follow.

### **Recent Cases Involving Alleged Violations of RCW 42.17A.555**

Two recent cases illustrate the staff’s concerns in this area. The first involved Highline School District, [PDC Case 113641](#). After receiving a complaint, PDC staff worked with the district to review many of the materials it had used to communicate about a 2022 bond measure, including a districtwide mailer, a website, social media posts, videos and digital ad content. Our assessment was that, while the mailer that was the subject of the complaint was largely compliant, much of the district’s other communications included promotional content, including quotes and video appearances by Highline SD students, faculty and staff containing statements that expressed support for the proposed new construction, improvements, and repairs. (Some examples: [Link 1](#), [Link 2](#), [Link 3](#).)

This content was distributed frequently over multiple communication channels. In addition to information about the bond, the district communicated detailed and frequent information about how to vote, including the locations of ballot drop-boxes, ballot instructions, voting tips and links, that appeared to exceed similar efforts conducted for other elections in which the school district did not have a measure on the ballot. On social media alone, information about the bond and voting comprised more than 40 percent of the posts in the weeks leading up to the election.

This assessment led staff to offer the district a Statement of Understanding in lieu of a hearing before the Commission. The SOU was completed by the district’s Chief Communications Officer. The Communications Officer<sup>1</sup> paid a \$600 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging violating RCW 42.17A.555 by using, or authorizing the use of, the public agency facilities of the Highline School District to promote a ballot proposition in the 2022 General Election.

The other recent case involved Kennewick School District, [PDC Case 121794](#). Again, following the filing of a complaint, PDC staff worked with the district to review materials used to communicate about a 2023 levy, including mailers, videos, social media posts, TV and radio spots, banners, and school readerboards. Kennewick made less frequent use of social media than Highline, but the district also ran 500 radio spots and 1,300 TV spots. In some cases, the communications contained few facts about the services funded by the levy or the levy’s costs and were largely persuasive appeals such as:

- [“These students are the future of Kennewick. Shouldn’t we provide them with the safest, most secure schools we possibly can?”](#)
- [“These are Kennewick kids -- our kids -- living some of life’s most amazing years. And they deserve the best school experience we can offer.”](#)

PDC staff also found that the frequency and extent with which Kennewick SD communicated about the levy was greater than it normally communicated with the public about other official business.

The Superintendent of Kennewick SD completed a Statement of Understanding (SOU) and paid a \$600 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging a

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<sup>1</sup> Note that only individuals, not agencies themselves, can violate 42.17A.555.

violation of RCW 42.17A.555 by using, or authorizing the use of, the public agency facilities of the Kennewick SD to promote a ballot proposition.