

**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action  
Against:

Pete Holmes and Kim Garrett

Respondents.

Case No. 13-021

**STIPULATION AS TO FACTS,  
VIOLATION AND PENALTY**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondents Pete Holmes and Kim Garrett, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

**JURISDICTION**

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17/42.17A, the Public Disclosure Act; RCW 34.05, the Administrative Procedure Act; and WAC 390.

**FACTS**

1. Respondent Pete Holmes is the Seattle City Attorney. He was elected to office in the November 3, 2009 General Election.
2. Respondent Kim Garrett is a City of Seattle employee, and serves as Special Assistant to Mr. Holmes.
3. Initiative 502 (I-502) was an initiative to the Washington State Legislature, proposing the reform of state marijuana laws. I-502 was placed before voters in the November 6, 2012 General Election, where it was approved by approximately 56 percent of

votes cast. Mr. Holmes was a sponsor of I-502, and was active with New Approach Washington, the political committee formed to campaign for the initiative.

4. During the 2012 election, Mr. Holmes authorized a City of Seattle staff person to place appointments related to the I-502 campaign on his public calendar, in order to keep his public schedule free from conflicts, and to register his location at the times he would be engaged in campaign activity.
5. Mr. Holmes believed that such authorization complied with oral guidance he received from Wayne Barnett, Executive Director of the Seattle Ethics & Elections Commission, at the time Mr. Holmes became a sponsor of I-502. In an April 14, 2005 and June 11, 2008 letter from Mr. Barnett, expressing the same guidance, Mr. Barnett advised city officials, "*[W]hen your scheduler's actions are limited to those necessary to ensure that your public schedule is complete and accurate, and that your whereabouts are known at all times, the primary beneficiary of your scheduler's actions is the City[.]*" The April 14 letter further advised, "*Campaign scheduling must be performed by campaign personnel, who can and should coordinate scheduling with your City staff to ensure that you are not double-booked and can be reached on important City matters. Your staff can and should communicate with the campaign regarding open time slots on your public schedule (to be sure you aren't double-booked), and to place campaign events on your public schedule (to ensure you can be reached). Scheduling campaign events, however, cannot be done on City time or using City resources.*" The June 11 letter clarifies that, "*You may include the name of the event, the address of the event, and duration of the event, and a contact telephone number.*" It also states that "*[d]etails such as how you will be transported to the event, the format of the event, and other event attendees may not appear on your public calendar.*"
6. Mr. Holmes believed it was consistent with Mr. Barnett's guidance to use city facilities to contact persons outside city government to schedule certain of his I-502 campaign-related appointments to avoid his being double-booked with city duties.

During the 2012 election, Mr. Holmes authorized Kim Garrett, his Special Assistant, to use city facilities for this purpose.

7. The Public Disclosure Commission has previously found that *“it is legitimate for an elected official’s scheduler to place campaign related events on their calendars. For business and security purposes, it is important to know that [the official’s] staff know where [the official] is at all times. However, to go beyond such ministerial acts and actually arrange and plan a campaign event is a violation of state law.”* PDC Case No. 95-126 (re: Chris Gregoire).
  
8. The Commission Staff has investigated allegations that Mr. Holmes’ and Ms. Garrett’s I-502 campaign-related activities constitute violations, and has received full and open cooperation from Mr. Holmes and Ms. Garrett with that investigation. The investigation yields the following relevant incidents, where Ms. Garrett, at Mr. Holmes’ direction, used paid city time, and Ms. Garrett’s city telephone, computer, and email account to work on the following campaign-related appointments for Mr. Holmes:
  - a. On February 1, 2012, Ms. Garrett sent an email from her city email address to two documentary filmmakers, following a request by New Approach Washington for Mr. Holmes’ participation in a video interview about I-502. Mr. Holmes understood that the interview would not be released until after the election and therefore would not be used to support or oppose the ballot measure or to influence the election in any way. In her email to the filmmakers, Ms. Garrett states, *“Riley & Nils—Feel free to call me directly at your convenience to set up time to meet with Pete—I’d be happy to assist with this!”* Ms. Garrett then received a call from one of the filmmakers, on her city phone during city business hours, and scheduled their interview with Mr. Holmes. Under these circumstances, Ms. Garrett did not commit a violation by scheduling the interview.
  
  - b. On February 21, 2012, Ms. Garrett exchanged emails with Mr. Holmes at his city email address, and discussed a request to Mr. Holmes for an I-502 interview with the magazine *City Living Seattle*. Although Mr. Holmes states he merely wanted Ms. Garrett to accept the appointment if he was available in his work schedule during the requested times, Ms. Garrett construed Mr. Holmes’ request to “pls

check this out” as a request to visit the magazine’s website to verify its existence. Ms. Garrett interpreted this as a valid request to ensure that Mr. Holmes’ schedule would not include a false appointment. This research, while undertaken based on a misunderstanding, went beyond mere calendaring and thus was an inappropriate use of public facilities.

- c. On July 31, 2012, at Mr. Holmes’ direction to schedule a campaign appointment with a campaign photographer, Ms. Garrett sent an email to an independent photographer retained by the New Approach Washington campaign offering to schedule a photographic portrait sitting for Mr. Holmes for use on the I-502 campaign website. In the email to the campaign photographer, Ms. Garrett states, *“Mychal—Please contact me at the number below and I’d be happy to schedule time for you to meet with Pete Holmes.”* Ms. Garrett then received a call from the campaign photographer on her city phone during city business hours, and scheduled the photo shoot for Mr. Holmes. Because Ms. Garrett acted proactively to schedule a campaign-related appointment, rather than recording the date and time of a previously arranged event, there was a violation.
  - d. Prior to August 6, New Approach Washington asked Mr. Holmes to participate in a panel discussion on marijuana legalization with *High Times* magazine. The goal of the event was “to have a fact-based, respectful, informative discussion of I-502 and other issues related to marijuana and the law,” and Mr. Holmes directed Kim Garrett to schedule the appointment. On August 6, 7, and 8, 2012, Ms. Garrett exchanged emails with David Bienenstock, an editor of *High Times* magazine. In an August 6, 2012 email to Mr. Bienenstock, Ms. Garrett relayed Mr. Holmes’ availability but also went into logistics: *“Pete Holmes is interested and available to take part as a panelist in High Times’ Medical Cannabis Cut [sic] on September 15 – 16 at Fremont Studios. Please include me in any logistical and follow up information concerning this event.”* Following this, Ms. Garrett and Mr. Bienenstock exchanged one email discussing access to the event, arrival times, and the number of tickets Mr. Holmes would need. Ms. Garrett confirmed that this exchange took place during city business hours, through her city email address. She stated that her intent was to gain information to ensure that Mr. Holmes’ calendar included relevant information as to time, place and access. Because Ms. Garrett’s involvement in scheduling went beyond the ministerial act of placing the event on Mr. Holmes’ calendar, and also included logistics and access to the event, there was a violation.
9. In every case, Ms. Garrett acted under the direction and with the authorization of Mr. Holmes, for what they believed to be a legitimate city purpose: ensuring that Mr.

Holmes was available, that his public schedule was complete and accurate, and that his whereabouts were known at all times. In the three instances where Ms. Garrett's scheduling activities went beyond the passive, ministerial placement of campaign-related events on Mr. Holmes' official calendar, the violations were inadvertent and unintentional, and resulted in little or no cost to the public.

10. Although Mr. Holmes authorized Ms. Garrett to perform the scheduling work described above, he did so because he believed such activity was part of the normal and regular conduct of his office. He instructed Ms. Garrett that her scheduling work was city business, and separate from the I-502 campaign.
  
11. Mr. Holmes' and Ms. Garrett's efforts to keep the I-502 campaign separate from city work were complicated by the fact that marijuana policy is and has been a constant focus of the City of Seattle and Mr. Holmes' office. Seattle voters approved a local initiative making marijuana enforcement the lowest priority for the Seattle Police Department and City Attorney's Office. Then, in 2009 when Mr. Holmes ran for election to the City Attorney's office, he made a campaign promise to comply with the initiative and to stop prosecuting misdemeanor possession of marijuana. After taking office he took steps to keep that promise. Mr. Holmes has testified before the state legislature regarding both medical and recreational marijuana laws. He stated that while acting in his official capacity, he has taken part in media interviews and speaking engagements related to marijuana possession and marijuana policy generally. He stated that all of these activities are clearly official city business, and have required the support of his staff, including Ms. Garrett. He said that I-502 concerned the same issue that has occupied the City Attorney's Office since before his election, and found that I-502 was novel only in that it also involved a ballot proposition. He said that Ms. Garrett's calendaring activity during the I-502 campaign was consistent with her normal and regular workplace conduct outside of any election campaign.

12. Pete Holmes and Kim Garrett have both stated that they take seriously the obligation not to use public resources in any election campaign, and that they did not intentionally violate any such restriction.
13. Neither Pete Holmes nor Kim Garrett has previously been found to have violated any provision of RCW 42.17 or 42.17A.

### STATUTORY AND RULE AUTHORITY

14. **RCW 42.17A.555** states: 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. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:
  - (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
  - (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
  - (3) Activities which are part of the normal and regular conduct of the office or agency.
15. **WAC 390-03-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some

extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

16. RCW 42.17A.755(5) provides that the commission has the authority to waive a fine for a first-time violation.

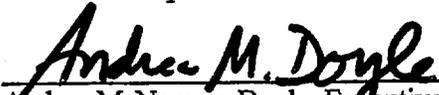
#### VIOLATION

Based on the Stipulation of Facts set forth above, Respondent Pete Holmes stipulates that he violated RCW 42.17A.555 by authorizing use of City of Seattle facilities in a manner that assisted the campaign in support of I-502. Respondent Kim Garrett stipulates that she violated RCW 42.17A.555 by using City of Seattle facilities in a manner that assisted Mr. Holmes' work supporting I-502.

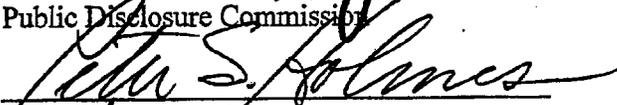
#### PENALTY

Based upon the above Stipulated Facts and Violations, the parties agree that no monetary penalty should be imposed for either Respondent and that the Commission should waive any monetary penalty as allowed by RCW 42.17A.755(5).

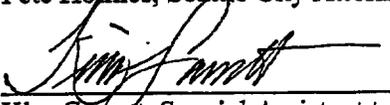
Respondent Holmes and Respondent Garrett re-affirm their intention to comply in good faith with the provisions of RCW 42.17A in the future.

  
Andrea McNamara Doyle, Executive Director  
Public Disclosure Commission

1-16-2013  
Date Signed

  
Pete Holmes, Seattle City Attorney

1-15-2013  
Date Signed

  
Kim Garrett, Special Assistant to Seattle City  
Attorney Pete Holmes

1-15-2013  
Date Signed