



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH  
RCW 42.17 and RCW 42.17A

Mark Faith

Respondent.

PDC Case No. 13-100

Report of Investigation

**I.**

**Background**

- 1.1 On April 6, 2012, Mark Faith filed a Candidate Registration (C-1 report) declaring his candidacy for Franklin County Commissioner, Position No. 1. Mr. Faith selected the Full Reporting option, and was a first-time candidate for public office in 2012. **Exhibit # 1.**
- 1.2 During the 2012 election, Mr. Faith disclosed receiving a total of \$4,580 in contributions and making expenditures totaling \$4,153. Mr. Faith was defeated in the 2012 general election.
- 1.3 Mr. Faith is employed as a Building Inspector for Franklin County.
- 1.4 On December 17, 2012, Roger Lenk filed a complaint with the PDC alleging that Mr. Faith: (1) used Franklin County resources and facilities for the purpose of assisting his 2012 campaign for Franklin County Commissioner; (2) accepted in-kind contributions that exceeded contribution limits; and (3) failed to disclose the receipt of in-kind contributions received by the campaign. **Exhibit # 2.**

**II.**

**Allegations & Investigative Findings**

- 2.1 Specifically, Mr. Lenk alleged that Mr. Faith violated the following:
  - A. RCW 42.17A.555 by using the facilities of Franklin County, including his work time, telephone, and computer for campaign work that involved making numerous calls and sending/receiving emails where he was employed as a Franklin County Building Inspector.

- B. RCW 42.17A.405 by accepting an over-limit in-kind contribution from Kyle Pfundheller of Trinity Homes, LLC for the use of a home for as his residence and campaign office; and
  - C. RCW 42.17A.235 and .240 by not reporting in-kind contributions from Kyle Pfundheller of Trinity Homes, LLC for the use of a home as his residence and a campaign headquarters.
- 2.2 On July 15, 2013, PDC began a formal investigation of Mr. Lenk's complaint against Mr. Faith. Staff's review of the investigative findings are detailed below.
- 2.3 Concerning the allegations that Mr. Faith used Franklin County facilities to support his campaign:
- On March 20, 2012, Mr. Faith sent an email using his Franklin County email address to his campaign website as a test to see if his campaign website was active.
  - Mr. Faith listed his Franklin County email address on the Personal Financial Affairs Statement (F-1 report) he filed as a candidate. No evidence was found that listing Mr. Faith's public agency email address on the F-1 filing resulted in campaign contacts to his agency, or other uses of public facilities to assist Mr. Faith's campaign. Mr. Faith stated he did not notice the asterisk and statement next to the work email address field: "CANDIDATES: Do not use public agency addresses or telephone numbers for contact information." He stated that he did not intend for the F-1 report to be used as a method for people to contact him about his County Commissioner campaign.
  - On October 5, 2011, Mr. Faith requested election-related information from the Franklin County Auditor's Office in-person, and later that afternoon he received an email at his Franklin County email address that included a Franklin County Candidate Guide. He forwarded the information to his personal email address later that same day, and again on Sunday, January 15, 2012, stating that he forwarded it a second time because he didn't have a printed copy, and he wanted to read about candidate related issues on his own time.
- 2.4 During a telephone conversation on November 21, 2014 with PDC staff, Mr. Faith stated that when he requested the Candidate Guide information from the Franklin County Auditor on October 5, 2011 and forwarded the information to his personal email address to review at a later time, he did not have plans to become a candidate. He also stated that when he forwarded the same information to his personal email address a second time on January 15, 2012, he had not yet decided whether to become a candidate.
- 2.5 Concerning the allegation that the Mark Faith campaign accepted over-limit in-kind contributions for the use of a personal residence as campaign headquarters, and failed to report the in-kind contributions, Mr. Faith stated that he held one small campaign event at Mr. Pfundheller's house at 3620 Road 92, Pasco. He stated that one event occurred on July 12, 2012, and was a public announcement of his candidacy. He stated that at

the time he was “...*sharing a residence with Mr. Pfundheller. I was also preparing my property in West Richland, to sell.*”

- 2.6 Mr. Faith noted Mr. Lenk was in attendance at the July 12<sup>th</sup> event, which he stated was his only campaign gathering, not “one of many” as Mr. Lenk alleged. Mr. Faith stated that he did not store any campaign signs at the house, but that there were some signs displayed in front of the house on the day of the announcement. He stated that he did not hold any campaign fundraisers at the house, and confirmed he had no campaign headquarters at the house or anywhere else.
- 2.7 Mr. Faith also acknowledged that he occupied one room of the house owned by Mr. Pfundheller from mid-May until mid-November, a period of approximately six months. Mr. Faith said it was a 3-bedroom house in which Mr. Pfundheller also resided. He said he offered to pay rent to Mr. Pfundheller, but Mr. Pfundheller refused. Mr. Faith said he did not know the fair rental value of the room, and could not remember proposing a specific amount in rent payments.
- 2.8 RCW 42.17A.405 limits contributions from individuals to a candidate for countywide office to \$900 per election. Mr. Pfundheller did not make any monetary contributions to Mr. Faith. The rental value of a room in Mr. Pfundheller’s 3-bedroom house would not exceed the applicable contribution limit for Mr. Faith’s primary election campaign unless the monthly rental value exceeded approximately \$350 per month, and it would not exceed the applicable contribution limit for his general election campaign unless the monthly rental value exceeded approximately \$300 per month.
- 2.9 Because Mr. Faith was not able to provide an estimate of the fair rental value for the room he occupied, the evidence is inconclusive whether contribution limits were exceeded. However, the in-kind contribution for use of Mr. Pfundheller’s home during the election campaign was not reported or described by Mr. Faith in reports filed with the PDC.

### **III.** **Findings**

- 3.1 On May 13, 2013, Mr. Faith sent an email to PDC staff and attached a letter responding to the allegations made by Mr. Lenk. **Exhibit # 3.** Mr. Faith stated he was responding to Mr. Lenk’s 16 “...unfounded and false accusations filed with the PDC...” and that he responded to each of the 16 allegations, emails or exhibits submitted by Mr. Lenk. Staff noted that 11 of the exhibits Mr. Lenk provided alleged the use of Franklin County facilities by Mr. Faith, failing to report in-kind contributions, or accepting in-kind contributions over contribution limits.
- 3.2 On February 6, 2014, Mr. Faith sent an email to PDC staff and attached a letter in response to staff’s request for additional information to several of the allegations in the complaint. **Exhibit # 4.** Mr. Faith’s May 13, 2013, and February 6, 2014, responses are incorporated below under the appropriate allegation.

**Lenk Allegation #1: Use of Franklin County facilities**

Lenk Exhibit #1: Alleged that Mark Faith requested a Candidate Guide from Auditor's Office.

3.3 October 5, 2011 email from Rosa Fernandez, Bilingual Elections Program Coordinator for the Franklin County Auditor's Office.

The email was sent to Mr. Faith at his Franklin County email address, and provided him with a copy of the 2011 Franklin County Election Guidebook for candidates that he had requested, along with information about 2012 key candidate reporting dates and redistricting results from the 2010 US Census. Mr. Faith stated:

- On October 5, 2011, during his lunch break and in-person, he requested information from the Franklin County Auditor's Office that included a Franklin County Candidate Guide.
- Later that same day, he received an email from Ms. Fernandez at his county email address and computer, which included the Candidate Guide, which he then forwarded to his personal email account. Concerning his request for information, he stated that there were no formalized procedures or process for requesting a candidate guide, and he did not ask that the information be sent to his work email address.
- On January 15, 2012, he forwarded the October 5, 2011 email a second time to his "...private email address because I didn't have a printed copy and I wanted to read about the candidates and issues on my personal time." He said when he forwarded the email a second time, it was on a Sunday.
- At the time he received the October 5, 2011 email, Mr. Faith had not publically declared his candidacy for Franklin County Commissioner, or filed candidate paperwork with the PDC.

3.4 Five months later, on March 19, 2012, Mr. Faith created a campaign website. He filed a C-1 Report with the PDC on April 6, 2012, registering his candidacy for Franklin County Commissioner.

Lenk Exhibit #4 & #5: Mr. Faith sent test campaign emails using county email address.

3.5 March 20, 2012 emails sent by Mr. Faith at 8:57 am and 9:02 am from his county email address at mfaith@co.franklin.wa.us.

Exhibit #4 is an email sent by Mr. Faith with the Subject line "test" to his campaign email address, and Exhibit #5 is an email sent by Mr. Faith with the Subject line "mail access" sent to his personal email address.

3.6 Mr. Faith confirmed he sent the first email using his Franklin County email address to his campaign website on March 20, 2012, but stated he only sent it as a test to see if his campaign website was active.

- 3.7 Mr. Faith said the other email was sent to his personal email address. Staff noted that the email included a URL link for his campaign website and domain name.

Lenk Exhibit #7: Mr. Faith listed his Franklin County email address on F-1 report

- 3.8 Personal Financial Affairs Statement (F-1 report) filed by Mark Faith on April 26, 2012. The F-1 report Mr. Faith filed as a candidate for Franklin County Commissioner listed his Franklin County email address under the signature block on page 2 when it asks the filer, in this case a candidate, to provide a work email address.

- 3.9 Mr. Faith stated that he did not notice the asterisk next to the work email address field on the F-1 form stating: "CANDIDATES: Do not use public agency addresses or telephone numbers for contact information." In listing his Franklin County email address on the F-1 report, Mr. Faith stated he did not intend the address to be used to contact him about his County Commissioner campaign.

Lenk Exhibit #8: Mr. Faith received a campaign-related email at Franklin County email address that included a candidate letter of recommendation.

- 3.10 July 11, 2012, email Mr. Faith received at his Franklin County work email address from Erica Penley, Office Manager for Lexar Homes in Kennewick, Washington with an attached letter. In her email, Ms. Penley states: "Here is your letter of recommendation from us. Bryan asked me to email it to you. I am also putting in the mail today." The letter of recommendation was from Bryan Keehr, Regional Manager of Sales and Construction for Lexar Homes. In the letter, Mr. Keehr:

- Stated the recommendation letter was being written "...on behalf of Mark Faith and his bid to become the County Commissioner of Franklin County." He went on to discuss that Lexar Homes has "worked with Mr. Faith for five years."
- Described Mark Faith as "fair, honest and professional," and "knowledgeable and [experienced] in the construction field." The letter stated that Mr. Faith "consistently [makes] sound decisions under pressure."
- Stated that Mr. Faith's "continued involvement in the day to day will be invaluable to the home builders of Franklin County."

- 3.11 PDC staff spoke with Mr. Keehr by telephone on February 20, 2014. Mr. Keehr stated that he emailed the letter of recommendation from his iPhone to Ms. Penley to send on to Mr. Faith. He confirmed that Mr. Faith had instructed him to not send the letter to his Franklin County email address, but because he was not in the office when Ms. Penley sent the email, she directed it to the only email address she had, which was Mr. Faith's county email address. Mr. Keehr stated that while the email from Ms. Penley stated that she was mailing the original letter, instead, he personally hand-delivered the letter to Mr. Faith on his personal time.

- 3.12 Mr. Faith stated that he discussed having Mr. Keehr write a candidate recommendation letter on his behalf in support of his candidacy. He stated that he did this on his own personal time and added that:

*“At no time did I request or authorize campaign-related correspondence to be emailed to me at my County email address.”* Mr. Faith stated that he uploaded the letter from his personal computer to his campaign website on his own time.

Lenk Exhibits #10 and #15: Mr. Faith Received campaign-related emails at Franklin County email address for a campaign interview with the media.

- 3.13 Lenk Exhibit #10 is a July 24, 2012, email that Mr. Faith received at his Franklin County work email address from Melanie Tubbs, a news reporter with KEPR Action News, stating she was interested in asking Mr. Faith a few questions about his candidacy and the upcoming 2012 primary election. Lenk Exhibit #15 is a July 29, 2012 online article by Ms. Tubbs on the KEPRTV website discussing Mr. Faith’s candidacy and residency issue.
- 3.14 Mr. Faith stated he did not request a candidate interview from Ms. Tubbs, and that after he received the initial email at his Franklin County email address, Ms. Tubbs contacted and communicated with him at his private cellular telephone number. He stated that the interview was not conducted in his Franklin County workplace, and “...the media requires no invitation to solicit information. Email addresses of County employees are public records.”
- 3.15 Staff attempted to contact Ms. Tubbs by telephone on February 19, 2014, but was informed that she left employment at KEPR-TV more than one year ago.

**Lenk Allegation #2: Acceptance over-limit in-kind contributions**

- 3.16 Mr. Lenk alleged that the Mark Faith Campaign accepted in-kind contributions from Kyle Pfundheller of Trinity Homes, LLC, for the use of a home as his residence as a candidate for Franklin County Commission and as a campaign office, in excess of the \$900 primary and \$900 general elections contribution limits in 2012. (Because the next allegation is similar, Mr. Faith’s responses are listed below).
- 3.17 Lenk Exhibit #6 is an August 3, 2012, article published in the Tri-Cities Herald by John Trumbo concerning Franklin County Commissioner candidate Mark Faith and his residency. Lenk Exhibit #16 is an October 15, 2012, article published in the Tri-Cities Herald by John Trumbo titled “Franklin County Commission candidates argue about residency, travel payments.” The article featured both Mr. Faith and Mr. Peck, and discussed Mr. Faith’s residency issue.

**Lenk Allegation #3: Failure to report in-kind contributions**

- 3.18 Mr. Lenk alleged that the Mark Faith Campaign failed to report in-kind contributions from Kyle Pfundheller, of Trinity Homes, LLC, for the use of a home that served as his campaign office during the 2012 election campaign. Lenk Exhibit #12 is a printout from the Franklin County Assessor’s Office website for Kyle Pfundheller, 3620 Road 92, Pasco, Washington. Lenk Exhibit #13 is a printout from the Trinity Homes website listing the same address, which is the address for Mr. Pfundheller.

- 3.19 The article in Exhibit #16 stated that Mr. Faith met the residency requirements by renting a room at Kyle Pfundhellers home "...in early March, registering to vote about a week later, and then filing for office May 14."
- 3.20 Mr. Faith stated that on March 20, 2012, he submitted "...an application for voter registration" listing the 3620 Road 92, Pasco address to the Franklin County Auditor's, and that he listed that same address on his Declaration of Candidacy filed on May 14, 2012. Staff reviewed the C-1 and F-1 reports which listed 3620 Road 92, Pasco, Washington as the mailing address on both forms. He stated in his initial response that he was "*...in fact, sharing a residence with Mr. Pfundheller. I was, at the time, also preparing my property in West Richland, to sell.*"
- 3.21 On November 17, 2014, staff sent Mr. Faith an email describing information about the house located at 3620 Road 92, Pasco, Washington that was made available to him from early March 2012 to sometime around July 2012 by Kyle Pfundheller. PDC staff gave Mr. Faith an opportunity to explain how he used the house during the campaign, and any financial arrangement he had with Mr. Pfundheller for use of the house. The email to Mr. Faith included the following information:
- In an October 15, 2012 article that appeared in the Tri-City Herald, Mr. Faith was quoted as saying he was renting a room at 3620 Road 92, Pasco, Washington, from Kyle Pfundheller, and that Mr. Pfundheller "*...refused to accept rent payment while he was living in the house and running for office.*"
  - In a response to the complaint, Mr. Faith referred to the house at 3620 Road 92, Pasco, Washington, on multiple occasions as "*his residence during the 2012 campaign cycle.*"
  - Based on the October 15, 2012 article and statements made by Mr. Faith in his responses to the complaint, PDC staff suggested to Mr. Faith:
    - (1) that he disclose an estimated value for the use of the house at 3620 Road 92, Pasco, Washington as an in-kind contribution to his campaign;
    - (2) that he describe the agreement he had with Mr. Pfundheller for use of the house during the 2012 campaign, and whether the agreement included paying a fair rental value for use of the house;
    - (3) if he did not pay a fair rental value and cannot determine a fair rental value, that he describe his use of the house during the campaign; and that
    - (4) factors to consider when attempting to determine a fair rental value should include: (1) the amount of time he spent in the house; (2) whether his family also resided in the house; (3) whether he shared the house with others; and (4) the amount of space he used the house during the campaign.

- 3.22 During a telephone conversation on November 21, 2014 with PDC staff, Mr. Faith acknowledged that he occupied one room of the house owned by Mr. Pfundheller from mid-May until mid-November, a period of approximately six months. Mr. Faith said it was a 3-bedroom house in which Mr. Pfundheller also resided. He said he offered to pay rent, but that Mr. Pfundheller refused. Mr. Faith said he did not know the fair market rental value of a room in an occupied 3-bedroom home.
- 3.23 RCW 42.17A.405 limits contributions from individuals to a candidate for countywide office to \$900 per election. Mr. Pfundheller did not make any monetary contributions to Mr. Faith, or in-kind contributions other than the room in his home. The in-kind contribution of the room rental would not exceed the applicable contribution limit for Mr. Faith's primary election campaign unless the monthly rental value exceeded approximately \$350 per month, and would not exceed the applicable contribution limit for his general election campaign unless the monthly rental value exceeded approximately \$300 per month. Because Mr. Faith was not able to provide an estimate of the fair rental value for the room he occupied, the evidence is inconclusive whether contribution limits were exceeded. However, the in-kind contribution for use of the home during the election campaign was not reported or described by Mr. Faith.
- 3.24 Concerning the alleged in-kind contribution for a campaign headquarters, Mr. Faith:
- stated he held a public announcement of his candidacy on July 12, 2012, at Mr. Pfundheller's house at 3620 Road 92, Pasco;
  - noted ironically that Mr. Lenk was in attendance, and stated "*This was my ONE AND ONLY campaign gathering, not "one of many" as Mr. Lenk claims*";
  - stated that no campaign signs were stored at the house at 3620 Road 92, Pasco, but "*Signs were displayed at the home the day of the announcement*";
  - confirmed that he made a campaign "*...announcement at the house; no campaign fundraisers were ever conducted*";
  - stated that he had no campaign headquarters at the 3620 Road 92, Pasco or anywhere else; and
  - stated that other than the initial announcement on July 12, 2012, "*there were no campaign activities organized or undertaken*" at the 3620 Road 92, Pasco address.
- 3.25 Mr. Faith stated that he "*...drove to Olympia the day following this phone call from Mr. Lenk and met with Chip Beatty...of the PDC. I self-reported the possible violation (email) and informed Mr. Beatty of the phone call from Mr. Lenk.*" PDC staff member Kurt Young confirmed with PDC staff member Chip Beatty that sometime in 2013 Mr. Faith visited the PDC office and met with Mr. Beatty about the complaint.
- 3.26 For the 2012 campaign, Mr. Faith disclosed receiving a total of \$4,580 in contributions, and nine expenditures totaling \$4,153 that included: (1) five expenditures totaling \$1,680 for campaign signs; (2) \$897.80 for the County Commissioner filing fee; (3) \$260 for printing campaign t-shirts; and (4) \$225 for a campaign advertisement.

### **Additional Allegations**

- 3.27 The remaining allegations, emails or exhibits submitted by Mr. Lenk and reviewed by staff included Lenk Exhibit #2 which was a 453-page printout of metadata that he obtained as part of his public records request. Mr. Lenk did not identify a specific record that indicated a potential violation of RCW 42.17A.555, or allegation concerning what the metadata demonstrated.
- 3.28 Lenk Exhibit #3 is a three-page printout from GoDaddy.com concerning the Mark Faith for County Commissioner campaign website which included information about the campaign domain names and web hosting issues. The printout indicated that the website was registered through Cyrring Hot Productions, LLC, a professional web design and graphics business located in Pasco, Washington, and that the website was created on March 19, 2012, which was one day prior to Mr. Faith sending the test emails from his Franklin County computer and email address.
- 3.29 Lenk Exhibit #9 is a printout of the Mark Faith campaign website homepage listing a number of links, including one for "Campaign support letters" that included the candidate endorsement letter from Mr. Keehr that was part of Exhibit #8.
- 3.30 Lenk Exhibit #11 is a July 24, 2012, article published in the Tri-Cities Herald by John Trumbo entitled "Franklin County employees challenge Commissioner Brad Peck" and went on to discuss the candidacies of Mark Faith, and Rosie Rumsey.
- 3.31 Lenk Exhibit #14 is a copy of a July 30, 2012, Cash Receipts Monetary Contributions report (C-3 report) that was timely filed by Mr. Faith. The C-3 report disclosed a \$500 contribution was received from the candidate's spouse, Sandi Faith on July 27, 2012, from 5801 Kilauea Drive, W Richland, WA 99353.
- 3.32 Mr. Lenk made no specific allegation concerning exhibits 3, 9, 11, and 14.

### **IV. Scope**

- 4.1 PDC Staff reviewed the following documents:
- A December 17, 2012, complaint filed by Roger Lenk against Mark Faith with attachments.
  - Information on internet and various websites pertaining to Mark Faith, his 2012 candidacy, and campaign/residency issues that were reported in various articles and blog sites.
  - A May 13, 2013 email received from Mark Faith with an attached letter responding to the allegations in the complaint.
  - A February 6, 2014, email received from Mark Faith with an attached letter responding to the staff's request for additional information.

- 4.2 PDC staff spoke with Mr. Faith by telephone on November 21, 2014 concerning the allegations made against him by Mr. Lenk.

V.  
**Laws and Rules**

- 5.1 **RCW 42.17A.555** states, in part:

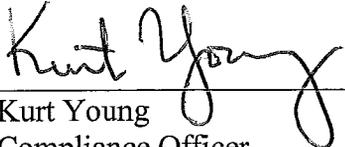
“No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. 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...”

- 5.2 **WAC 390-05-273** defines the “normal and regular conduct” of a public office or agency as *“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.”*

- 5.3 **RCW 42.17A.240** requires candidates and political committees that file detailed reports of contribution and expenditure activities to include the value of in-kind contributions on Schedule B to C-4.

- 5.4 **WAC 390-16-207** states that (1) An in-kind contribution occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17A.005 or WAC 390-17-405.

Respectfully submitted this 25<sup>th</sup> day of November, 2014.

  
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Kurt Young  
Compliance Officer

**List of Exhibits**

- Exhibit #1** April 6, 2012, Mark Faith filed a Candidate Registration declaring his candidacy for Franklin County Commissioner.
- Exhibit #2** December 17, 2012, complaint with exhibits filed by Roger Lenk against Mark Faith alleging violations of RCW 42.17A.555. (NOTE – the exhibit does not include almost 500 pages of metadata obtained from Franklin County as part of Mr. Lenk’s public records request)
- Exhibit #3** May 13, 2013, email received from Mark Faith with an attached letter responding to the allegations in the complaint.
- Exhibit #4** February 6, 2014, email received from Mark Faith with an attached letter responding to the staff’s request for additional information.