

From: Bill Elfo, Whatcom County Sheriff

To: PDC Staff (attention Fox Blackhorn)

RE: Case #28874

Dear PDC staff,

I have reviewed your communication of January 3rd, 2018, in which you notified me that on December 17, 2017 Sandy Robson filed a complaint with the Public Disclosure Commission alleging that I “violated RCW 42.17A.555 for misuse of public facilities in support of Whatcom County Proposition 2017-6.” You notified me that because this was filed as a “citizen advisory action notice under RCW 41.17A.765(4), the PDC will not initiate a preliminary review of the complaint until the Attorney General’s Office has taken action or indicated to the PDC that they will not be taking action.” You informed me you would be posting the complaint on your web-site and invited me to provide a response “so that interested Washingtonians can assess both sides of this matter prior to it being adjudicated.”

Please consider this as a preliminary response to the complaint for interested Washingtonians and for purposes of answering initial questions you may have on the matter. Please be assured that I intend to fully cooperate with further PDC inquiries into this matter, if any. I reserve the right to provide additional information.

Ms. Robson alleges that she has “reason to believe” that I violated RCW 42.17.555 (use of public office or agency facilities in campaigns) to support Whatcom County ballot measure 2017-6. This ballot measure would have funded the replacement of Whatcom County’s Jail and provided significant funding for mental health and substance abuse treatment. I absolutely did not use any “facilities of a public office” as defined in the statute (including but not limited to 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) or other public resources to promote any ballot measure. I also was not a member of any “political committee” in support of or in opposition to the 2017 ballot measure.

I did not authorize any employee of the Sheriff’s Office to use public facilities or other county resources to promote any ballot measure. Further, I have no knowledge of any employee(s) of the Sheriff’s Office having performed such acts. I am also aware that public employees have a right to engage in political activities outside their duty hours so long as public resources or facilities are not used.

Aside from state law, county policy also prohibits county employees from using public resources to support any campaign. Whatcom County was proactive in preventing violations. In advance of the November 2017 election, the County Executive forwarded an email to all county employees on September 22nd reminding them of existing prohibitions:

All Staff:

As we are entering election season, I would like to remind you of our policy regarding conduct on county time:

Per our employee handbook:

“Whatcom County recognizes the right of every employee to express his or her views as a citizen, to pursue legitimate involvement in the political system, and to vote as he or she pleases, provided that no county employee shall expend public funds, or supplies, or work towards the campaign of any candidate or issue while on county time unless the activity is permitted by law.”

This includes using computers, copiers and all electronic equipment and/or the production of flyers or any related materials or communications. No on premise campaigning for candidates or ballot measures is allowed.

I appreciate your diligence in adhering to our policy.”

Over the past 15 years, I have publicly spoken many times about unsafe and deteriorating conditions within the Whatcom County Jail. Over the years, I have written multiple editorials on the topic of the jail and the behavioral health system. These were published in local newspapers that can be located through an internet search. I authorized persons associated with the political committee that was later formed to support the ballot measure, to use any statements and photographs contained within the public domain. I reminded these persons that Whatcom County resources could not be used for this purpose.

The statement contained within the flyer distributed by the political action committee appears to be an edited version of an editorial I published in the Bellingham Herald on June 14th, 2015 (written at the behest of the editor of the Bellingham Herald). It was also published in the Lynden Tribune and the Ferndale Record Journal shortly after it appeared in the Herald. Excerpts from this communication were included in the County flyer that was the subject of a 2015 PDC complaint. The Commission issued a finding that this statement was a “fair and objective presentation of facts” and ruled on this and other issues, concluding that “Sheriff Elfo did not violate RCW 41.17A.555.”

To the best of my knowledge, no county facilities or resources were used in the development or distribution of the flyer contained in Ms. Robson’s complaint. I did not participate in the design of the flyer, nor was I involved in managing any Facebook page associated with the campaign.

The photograph that was included in the flyer is my Facebook profile photograph. It can also be found in the public domain through an internet search.

Thank you for the opportunity to respond to Ms. Robson’s allegations, which I feel were made with knowing falsity or reckless disregard for the truth.

Bill Elfo, Whatcom County Sheriff

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

In the Matter of Enforcement Action
Against:

Bill Elfo, Whatcom County Sheriff

Respondent.

PDC Case 1122-2

STIPULATION AS TO FACTS AND
NO VIOLATIONS OR PENALTY

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Bill Elfo, Whatcom County Sheriff, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts and No Violations or 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.

II. JURISDICTION

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

III. FACTS

1. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 “No” votes and 28,230 “Yes” votes.
2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered

voter. The mailer was sent out in two batches to 62,172 households at a cost of \$27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled \$18,055.00.

3. The jail mailer was not authorized by Sheriff Elfo. It was authorized by Whatcom County Executive Jack Louws.
4. Sheriff Elfo was a candidate for re-election in 2015. Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him in the jail mailer. No evidence was found that Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him for the purpose of assisting Sheriff Elfo's re-election campaign, or that including the picture identifying Sheriff Elfo had the effect of assisting Sheriff Elfo's campaign. In addition, Sheriff Elfo was running unopposed. Sheriff Elfo did not otherwise contribute to the flyer or approved its design, content, or distribution. The statement attributed to Sheriff Elfo was a fair and objective presentation of facts. Also, a public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.
5. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Sheriff Elfo, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Sheriff Elfo, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

IV. LEGAL AUTHORITY

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. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency.”

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.”

V. NO VIOLATIONS OR PENALTY

Based on the facts set forth above, Respondent Bill Elfo and PDC staff stipulate that Sheriff Elfo did not violate RCW 42.17A.555, as noted above, and stipulate that all allegations should be dismissed and no penalty assessed.

Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

Date Signed



Royce Buckingham, Whatcom County Civil
Deputy Prosecuting Attorney on behalf of
Bill Elfo, Whatcom County Sheriff

11-8-16

Date Signed