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February 20, 2018

Sent by email to pdc@pdc.wa.gov and U.S. Mail

Fox Blackhorn
Compliance Coordinator
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

Re: Kelso School District; PDC Request for Response to Complaint No. 30674

Dear Mr. Blackhorn:

Mr. Blackhorn, this firm represents Kelso School District regarding the above referenced complaint file. Superintendent Gelbrich requested I reply to the allegations made by Charles Wallace in complaints forwarded from your office to the Superintendent on February 5 and February 7, 2018, alleging violations of RCW 42.17A.555. The District has investigated Mr. Wallace's allegations and appreciates the opportunity to provide this response.

Summary of Allegations and District Responses.

Mr. Wallace alleges District personnel violated RCW 42.17A.555 by: (1) posting a "Vote Yes Kelso Schools" message on the Huntington Middle School reader board; (2) authorizing proponents of the District's bond and levy propositions to post signs on District property; and (3) authorizing campaign materials to be stored on District property.

With respect to the first allegation, the District has determined that students in an ASB leadership class posted "Vote Yes Kelso Schools" for a total of seven days on one side of the Huntington Middle School ("HMS") reader board. The content was suggested to the students by school office secretaries that were unfamiliar with RCW 42.17A.555 and PDC Interpretation 01-03 ("PDC guidelines"). The message was immediately removed (within 40 minutes) at the Superintendent's direction in response to a citizen inquiry (not from Mr. Wallace) and prior to the District's receipt of your February 5 email forwarding Mr. Wallace's complaint. As more fully discussed below, the District has taken immediate and extensive remedial action to remind District employees of the prohibition under RCW 42.17A.555(1) against using public resources

to assist campaigns or to promote or oppose ballot propositions. Based on these measures and the totality of the circumstances (innocent error by HMS office secretaries and students), the District believes that either no further investigation is needed, or at most an alternative response under WAC 390-37-061 would be appropriate to resolve this allegation.

The second allegation, that the District permitted campaign signs from a political committee supporting the February 13 bond and levy propositions to be posted on District property, is not factually correct. The District purchased these signs to provide the public information regarding the February 13 bond and levy propositions. The signs included the election date and a link to the District web site, "wearekelso.org", which provides neutral, factual information about the bond and levy propositions. These signs are part of the District's normal and regular conduct regarding District initiatives, and posting them does not support a finding of any violation of RCW 42.17A.555(1).

The third allegation, that the District authorized proponents to store campaign material on District property, lacks foundation in the PDC guidelines, which expressly permit teachers and other employees to make campaign materials available in staff lunchroom and break room areas during non-work hours. See PDC Interpretation 01-03, p.11. The use of these facilities and the remaining First Amendment activities detailed in this allegation (holding campaign signs on public sidewalks during non-work hours), do not support a finding that any District employees violated RCW 42.17A.555(1).

District Communications Regarding PDC Guidelines.

Initially, the District notes that it regularly reminds administrative staff of the PDC's guidelines related to school district conduct during an election. All principals and administrators, including the HMS principal, were briefed beginning in mid-October 2017 and again in January 2018 on the legal and District Policy requirements regarding the February 2018 bond and levy propositions. They were also instructed to share this information with their building staff. The communication emphasized two points related to the PDC guidelines: (1) District employees may not use or authorize the use of District resources or employee time to advocate for or against the ballot propositions, and (2) District employees have a duty to restrict election related District communications to factual information about what the measures would do.

HMS Reader Board.

Regarding the reader board, the message in question was put up by a group of middle school leadership students who are Associated Student Body (ASB) officers or representatives and who also attend a "leadership" elective class. Class members have a regular assignment to

develop and post a message once every week on the HMS reader board related to school activities, which is normally reviewed and approved by the principal or assistant principal.

Before going to the school office on January 23 to discuss their weekly message, the students did not yet have a plan for what they wanted to post on the reader board. When they arrived, the Assistant Principal who normally interacts with the leadership group was absent on medical leave and the principal was not present at school. The student asked the two secretaries in the office for ideas on what to post. The secretaries conferred and one suggested and wrote out the "Vote Yes Kelso Schools" message. The students accepted that suggestion and then changed the reader board on the north side to state the message.

The leadership teacher had not encouraged the students to post an election related message on the sign previously, much less one advocating a "yes" or "no" vote. Further, both secretaries stated that, at the time of their suggestion, they were not familiar with the PDC guidelines and that they did not understand their suggestion was improper. The students were also unaware of the legal issues posed by the message.

The principal had not seen the message until the Superintendent called him on January 30, as noted below. The message was on the north side of the sign, and his normal route to and from the school was from the south, so he would not have seen the message on a typical workday, and no one mentioned it to him.

The message was removed on Tuesday, January 30 after Superintendent Gelbrich received a call from an individual, not the complainant, asking if the school had such a message on the reader board. He was driving within the District when he received the call and diverted to HMS to check. When he saw the sign, he parked at the school and called the principal on his cell phone directing him to immediately have it taken down. The principal understood the impropriety of the message, had the message removed and called the Superintendent back to confirm. This removal process took approximately 40 minutes after the Superintendent received the initial call. Later that afternoon, the Superintendent sent messages to all administrators and principals explaining what occurred and reminding them to ensure they and their respective staff were complying with PDC guidelines and District Policy requirements as previously instructed.

The District believes the posting of the message on the reader board was an innocent error by the HMS office secretaries and leadership students, not a knowing effort to use school resources to promote or oppose the ballot propositions. The posting thus resulted from good-faith errors, omissions or misunderstandings. The District does not believe the two secretaries knew their suggested message was improper when they made it or that the students placed it on the reader board in knowing violation of PDC guidelines. Corrective action to prevent such

situations in the future for all the staff members and students involved has occurred, including discussions with the ASB leadership students regarding their obligations not to use or authorize the use of District property, time or student class activities for the purpose of promoting or opposing a ballot proposition or election.

The Board of Directors was advised of this situation and the District's corrective action to date in a special meeting on Monday, February 12. The Superintendent has committed to developing specific training for all staff consistent with statutory requirements and the PDC guidelines and presenting that training in advance of future bond and levy elections.

Based on this the District believes the circumstances involving the HMS reader board message do not involve knowing or intentional efforts to violate PDC guidelines. The conduct was also unique to HMS, not widespread or systemic across the District, and is unlikely to have had more than a minimal impact on the public. Prior to receiving the PDC complaint, the District acted on its own to investigate the situation, took immediate corrective action and sent reminders to principals and administrators to take steps to prevent a similar occurrence. Accordingly, the District believes that either no response, or at most an alternative response under WAC 390-37-061, is appropriate to resolve this allegation. The District will fully cooperate with PDC staff to address any questions and provide further information regarding this matter.

District Signs.

The second allegation in the complaint received February 5 is that the District permitted signs from the pro bond and levy committee to be posted on its property at various schools. This is factually incorrect. The photographs in the complaint depict District-purchased signs posted by District staff to provide the public information regarding the February 13 bond and levy propositions. As explained below, these signs were both part of the District's statutorily authorized public information program and a normal and regular practice of the District.

Under RCW 28A.320.090, Washington school districts may prepare and distribute information regarding the instructional program, operation and maintenance of District schools. Here, the signs did not contain any advocacy for or against the pending ballot measures; instead they provided a link to the District's website, "wearekelso.org", where the public could access neutral, factual information about the bond and levy propositions' impact on the instructional programs, operation and maintenance of District schools.

Posting signage regarding various District initiatives is also a "normal and regular" District practice for purposes of RCW 42.17A.555(3) and WAC 390-05-272. The District's signs fall within the definition of "normal" WAC 390-05-272 because they are legally

authorized conduct of the District under RCW 28A.320.090, as discussed above. Similarly, the PDC guidelines expressly authorize District personnel and facilities “to encourage staff and members of the public to vote, as long as such encouragement routinely occurs for other elections.” See PDC Interpretation 01-03, pp. 7, 10, 12, 14, 17. Consistent with the PDC’s recognition that school districts are charged with “instilling civic virtue,” the District promotes civic education and responsibility by regularly providing information to the public about all general and special election dates, regardless of whether District propositions or director positions are on the ballot.

The signs are also “regular” conduct under RCW 42.17.555(3) because they were “usual, i.e., not effected or authorized in or by some extraordinary means or manner.” WAC 390-05-272. In addition to information regarding bond and levy propositions, the District and its schools pay for and post banners, yard signs, posters and fliers to communicate to the public regarding myriad school related matters, such as book fairs, special meetings, fundraisers, recognition ceremonies (e.g. graduations), competitive athletic and activity group contests and successes (e.g. playoffs) and openings for hard to recruit personnel, such as school bus drivers, etc. The District also uses signage and fliers to fulfill legal mandates, such as providing notice of enrollment dates for compulsory school age children, services available for eligible families/ students required under federal law to seek out children eligible for special education or homeless student services.

Based on these circumstances, the District does not believe the second allegation implicates a violation of RCW 42.17A.555, and no further investigation is required.

First Amendment Activities.

Regarding the third allegation (first provided in the February 7 complaint) that teachers carried pro-levy signs at Catlin Elementary School and possessed picket signs, no violation occurred. District employees did have signs provided by a private political committee; however, the employees involved were displaying the signs on a public sidewalk in front of the school (not on District property) and their activities were on private time (not District time). To the extent those employees had the signs on District property, they were stored within the school in a manner consistent with the PDC guidelines.

The PDC guidelines recognize that under the First Amendment, school personnel “do not forfeit their rights to engage in political activity because of their employment.” PDC Interpretation 01-03, p. 4 (Basic Principle #4). Board Policy 4000 further recognizes these rights, provided they do not use school resources to engage in such activity: “The board recognizes and encourages the right of its employees, as citizens, to engage in political activity.

School property and school time, supported by public funds, may not be used for political purposes.”

The fact that teachers or other staff chose to carry citizens’ committee signs on a public sidewalk on their own time is an activity protected by the First Amendment, and the District has no legal authority to prohibit such conduct. Teachers and other staff members in the District (and in many public and private workplaces) often bring their own personal property to store at school during work times for use after work. The PDC guidelines expressly recognize this practice and expressly state that the mere presence of political advocacy materials on school premises is not prohibited: “ Teachers: May, during non-work hours, make available campaign materials to employees in lunchrooms and break rooms, which are used only by staff or other authorized individuals.” PDC Interpretation 01-03, p. 11.

The District’s investigation determined that signs carried out of the school were stored in non-public areas, not displayed in the school and were not otherwise used for campaign purposes in the building. Even if a sign was incidentally visible, teachers and other school staff have the right under the PDC guidelines and Board Policy 4000 to display buttons and other messages expressing political views or advocacy on ballot measures at school and on school premises: “ Teachers: May wear campaign buttons or similar items while on the job if the district’s policy generally permits employees to wear political buttons. ... May place window signs or bumper stickers on their privately-owned cars, even if those cars are parked on school property during working hours.” PDC Interpretation 01-03, pp. 11-12.

The facts related to the complaint’s third allegation do not implicate a violation of RCW 42.17A.555(1), and no further investigation is required.

Conclusion.

Kelso School District appreciates the opportunity to investigate these allegations and to provide this response demonstrating its commitment to ensure compliance with RCW 42.17A.555 and the PDC guidelines. For the reasons discussed in this response, the PDC should close its investigation into this matter and close this complaint file.

Please contact me if you have any questions.

Blackhorn
February 20, 2018
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Sincerely,

PORTER FOSTER RORICK LLP

A handwritten signature in blue ink, appearing to read "Clifford D. Foster Jr.", with a stylized flourish at the end.

Clifford D. Foster Jr.

cc: Glenn Gelbrich