



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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May 19, 2016

CARVEL ZWINGLE

by email only to: [carvz@yahoo.com](mailto:carvz@yahoo.com)

Subject: PDC Complaint 4873, Daniel Grausz

Dear Mr. Zwingle:

The Public Disclosure Commission (PDC) has completed its initial review of the complaint you filed on April 29, 2016, and amended on May 4, 2016, and May 16, 2016. Your complaint alleged that Daniel Grausz violated RCW 42.17A.555 by using or authorizing the use of City of Mercer Island facilities for the purpose of opposing a ballot proposition. Specifically, you alleged that Mr. Grausz used his city email account and other city facilities to send a March 1, 2016 email with the subject "*March 2016 City Update—Super Tuesday.*" You alleged that Mr. Grausz's email opposed a "Protect Our Parks" initiative currently in the signature-gathering stage in the City of Mercer Island.

PDC staff reviewed your original and amended complaints to determine whether a formal investigation or enforcement action is warranted. Staff's review included Mr. Grausz's March 1, 2016 "City Update" email, the "Protect Our Parks" initiative, and all other exhibits enclosed with your original and amended complaints. Staff reviewed the minutes and recordings of Mercer Island City Council meetings. Staff reviewed information found on *protectmiparks.org*, the Web site sponsored by Concerned Citizens for Mercer Island Parks political committee (CCMIP). Staff reviewed PDC filings by CCMIP. Finally, staff reviewed the preliminary response to your allegations provided by Mr. Grausz, and other information provided by City of Mercer Island staff. As a result of staff's initial review, we found the following:

- Mr. Grausz's March 1, 2016 "City Update" email consisted of five printed pages, with approximately one page devoted to discussion of the City of Mercer Island's Memorandum of Understanding (MOU) with the Mercer Island Center for the Arts (MICA), the "Protect Our Parks" initiative, and related issues. The remaining four pages of Mr. Grausz's email discussed topics unrelated to the parks preservation initiative or the construction of a performing arts center in Mercerdale Park.
- In his email, Mr. Grausz stated his support for the MOU concerning MICA. However, in making his statements regarding possible impacts of the "Protect Our Parks" initiative, it appears Mr. Grausz was careful not to promote or oppose the proposition in tenor or tone.
- One week before Mr. Grausz's email, at a February 22, 2016, Mercer Island City Council meeting, the council received public comment from Gary Robinson that "*The Concerned*

*Citizens for Mercer Island support a performing arts center on Mercer Island. And we support Youth Theater Northwest. What we don't support is putting them in Mercerdale Park.*” Mr. Robinson is listed as a registered officer of CCMIP in the committee's PDC filings. Beyond this, Mr. Grausz's statements regarding the “Protect Our Parks” initiative and its potential to complicate the MICA project appear to be supported by the initiative petition and by information about MICA that is posted to CCMIP's Web site.

- No evidence was presented that Mr. Grausz's use of city email to communicate his “City Update” fell outside his normal and regular conduct. In his preliminary response to the complaint, Mr. Grausz describes a practice of using city email for this purpose for several years.

Staff's review found no evidence that Daniel Grausz composed or transmitted his March 1, 2016 “City Update” email for the purpose of promoting or opposing a ballot proposition. Based on these initial findings, I have determined there is no reason to believe that Mr. Grausz committed a material violation of any law under the Commission's jurisdiction. For this reason, the PDC has closed the matter, and will not be conducting a more formal investigation into your complaint or pursuing enforcement action in this case.

Although not directly related to your allegations against Mr. Grausz, PDC staff would like to take this opportunity to provide information concerning the application of RCW 42.17A.555 to the use of local government facilities to promote a ballot proposition.

In processing your complaint, PDC staff reviewed evidence which include a statement by Elma Borbe describing her use of the public comment period at Mercer Island City Council meetings to support a ballot proposition. The statement described Ms. Borbe's understanding that a ballot proposition with signature qualification requirements does not become subject to the prohibition in RCW 42.17A.555<sup>1</sup> until after the required signatures have been gathered.

This understanding is incorrect. RCW 42.17A.555 prohibits the use of the public comment period of a local government meeting to gather signatures for a ballot proposition, or to otherwise promote or oppose a ballot proposition. With the single exception authorized under RCW 42.17A.555(1) for an official action to support or oppose a ballot proposition taken by an agency's governing board at an open public meeting, no public official or employee may use or authorize the use of any part of an open public meeting to promote or oppose a ballot proposition. PDC staff has contacted the City of Mercer Island to confirm the application of RCW 42.17A.555 to open public meetings.

In addition, in reviewing your complaint, PDC staff noted a description of activity by CCMIP members to gather signatures for a ballot proposition inside a local elementary school facility, or to distribute what may have been political advertising. City of Mercer Island staff have confirmed that the activity in question occurred at West Mercer Elementary School on March 9, 2016, the date of a public hearing of the City of Mercer Island Planning and Design Commission. City staff provided information indicating that Mercer Island School District officials authorized

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<sup>1</sup> We note that in her statement, Ms. Borbe cites an incorrect statute, RCW 42.52.180. That section of law does not apply to the facilities of local government agency. As indicated above, the correct citation is RCW 42.17A.555.

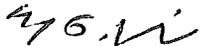
CCMIP members' access to school property during community events, including sporting events, for campaign purposes.

For your information, RCW 42.17A.555 prohibits school district officials from authorizing access to school facilities and school events for campaign activity, including signature gathering for a ballot proposition. The single exception to this prohibition is contained in WAC 390-05-271(2), which provides that a local agency may make agency facilities available on a nondiscriminatory, equal-access basis for political purposes, consistent with the agency's normal and regular conduct, as that phrase is defined by WAC 390-05-273. In order to qualify for this exemption, the facility must be of the sort that is customarily made available to the public for private use according to documented, pre-established terms—e.g. terms for reserving a meeting room in a library, or renting a school gymnasium on a weekend for a political rally or party caucus. Access to school grounds, hallways, or common areas for campaign activity may only be granted according to similar policies. Key to the above is that the campaign activity must be conducted as a *private* event. Official school events such as sporting events may not be given over to mixed public/private use that includes campaign activity prohibited by RCW 42.17A.555. PDC staff have contacted Mercer Island School District officials to explain the application of the law and relevant Commission rules.

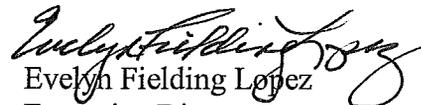
Copies of the laws and rules cited in this letter are enclosed. If you have questions, you may contact me at (360) 586-1042, toll-free at 1-877-601-2828, or by replying to the attached email.

Sincerely,

Endorsed by:



Tony Perkins  
PDC Compliance Officer



Evelyn Fielding Lopez  
Executive Director

cc: Daniel Grausz, Mercer Island City Council  
Christina Schuck, Assistant City Attorney, City of Mercer Island  
Gary Plano, Superintendent, Mercer Island Schools

**RCW 42.17A.555****Use of public office or agency facilities in campaigns—Prohibition—Exceptions.**

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.
- (4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

[ 2010 c 204 § 701; 2006 c 215 § 2; 1979 ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.130.]

**NOTES:**

**Finding—Intent—2006 c 215:** "(1) The legislature finds that the public benefits from an open and inclusive discussion of proposed ballot measures by local elected leaders, and that for twenty-five years these discussions have included the opportunity for elected boards, councils, and commissions of special purpose districts to vote in open public meetings in order to express their support of, or opposition to, ballot propositions affecting their jurisdictions.

(2) The legislature intends to affirm and clarify the state's long-standing policy of promoting informed public discussion and understanding of ballot propositions by allowing elected boards, councils, and commissions of special purpose districts to adopt resolutions supporting or opposing ballot propositions." [ 2006 c 215 § 1.]

**Disposition of violations before January 1, 1995:** "Any violations occurring prior to January 1, 1995, of any of the following laws shall be disposed of as if chapter 154, Laws of 1994 were not enacted and such laws continued in full force and effect: \*RCW 42.17.130, chapter 42.18 RCW, chapter 42.21 RCW, and chapter 42.22 RCW." [ 1994 c 154 § 226.]

**\*Reviser's note:** RCW 42.17.130 was recodified as RCW 42.17A.555 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

## **WAC 390-05-271**

### **General applications of RCW 42.17A.555.**

(1) RCW **42.17A.555** does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW **42.17A.555** does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making 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.

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-05-271, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW **42.17.370(1)**. WSR 80-02-055 (Order 80-01), § 390-05-271, filed 1/17/80; WSR 79-02-056 (Order 79-01), § 390-05-271, filed 1/31/79.]

## **WAC 390-05-273**

### **Definition of normal and regular conduct.**

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW **42.17A.555**, 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.

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-05-273, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW **42.17.370(1)**. WSR 79-02-056 (Order 79-01), § 390-05-273, filed 1/31/79.]