



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 13-097
WITH RCW 42.17)	
AND RCW 42.17A)	
)	
Pasco School District Officials &)	
Pasco Citizens for Better Schools)	REPORT OF INVESTIGATION
)	
Respondents.)	
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I.

BACKGROUND

- 1.1 Pasco School District No. 1 (PSD) is a public school district headquartered in Pasco, Washington. Saundra Hill is the current PSD Superintendent, and held that title at all times relevant to this investigation. PSD currently operates 20 school campuses, including elementary, middle and high schools, which collectively serve more than 17,000 students. The district employs approximately 2,000 staff members, including more than 1,000 certified teachers. The district's general fund budget for the 2014-15 school year is approximately \$178 million.
- 1.2 On November 27, 2012, the PSD Board of Directors acted to place a measure on the February 12, 2013 special election ballot, seeking approval for a \$46 million bond to fund the construction and improvement of school facilities. The bond measure was approved, with approximately 62% "yes" votes in the special election.
- 1.3 On June 9, 2013 Roger Lenk filed a complaint alleging violations of RCW 42.17.130 and RCW 42.17A.555 by Saundra Hill and officials of Pasco School District, for allegedly using and authorizing the use of public facilities to promote the February 12, 2013 bond measure. **(Exhibit 1.)** The complaint alleged additional violations by the Political Committee Pasco Citizens for Better Schools for the committee's alleged failure to accurately

disclose the source of contributions. Finally, the complaint alleged violations by Pasco Association of Educators and the Pacific Northwest Regional Council of Carpenters related to prohibitions on the source of contributions made to Pasco Citizens for Better Schools.

- 1.4 On June 24, 2013, Roger Lenk filed a first supplement to his complaint, providing additional information to support his allegations concerning violations of RCW 42.17.130 and RCW 42.17A.555 by Pasco School District officials. **(Exhibit 2.)** On December 17, 2013, Mr. Lenk filed a second supplement to his complaint. **(Exhibit 3.)**

II.

ALLEGATIONS IN COMPLAINT

- 2.1 In his June 9, 2013 complaint, his June 24, 2013 first supplement, and December 17, 2013 second supplement, Roger Lenk alleged that Pasco School District officials violated RCW 42.17.130 and RCW 42.17A.555 as described below.
- 2.2 **Alleged Use of PSD Facilities to Assist Pasco Citizens for Better Schools' Campaign in Support of 2013 Bond.** The complaint and supplements alleged that PSD officials violated RCW 42.17.130 and RCW 42.17A.555:
- By using district facilities to facilitate increased payroll deductions from school district employees for contributions to the Pasco Citizens for Better Schools political committee;
 - By providing a list of Pasco School District vendors and clientele to the Pasco Citizens for Better Schools without requiring a formal public records request;
 - By planning the appointment of a "pro"-bond measure committee for the Franklin County voters pamphlet, but failing to appoint a committee to write arguments against the bond, despite having knowledge of organized opposition to the measure;
 - By generally facilitating the inclusion of arguments supporting the bond in the voters' pamphlet, and withholding similar support from opponents of the bond;

- By authorizing the use of PSD facilities to work on a PowerPoint presentation for the citizen's bond committee; and
- By allegedly authorizing district staff to act in a supporting role to Pasco Citizens for Better Schools activists at open public meetings of the Franklin County Board of Commissioners and Pasco City Council, and meetings of the Franklin County Republican Central Committee; and
- By generally coordinating district activity with Pasco Citizens for Better Schools activists.

2.3 Other Alleged Use of PSD Facilities to Promote a Ballot Proposition.

The complaint and supplements further alleged that PSD officials violated RCW 42.17.130 and RCW 42.17A.555 through the official actions of district officials:

- To plan and coordinate a speakers' bureau for the purpose of supporting the 2013 bond measure;
- By sponsoring a survey in September 2012 asking, in light of the April 2011 bond election failure, whether district patrons would be willing to support a revised bond election that would cost substantially less;
- By targeting a specific subgroup for bond-related information, through a September 27, 2012 email press release publicizing an October 4, 2012 "VIP Day" at Pasco High School;
- By using district email facilities to encourage PSD staff attendance at a "Mid-Columbia Ag Hall of Fame" event on January 17, 2013, allegedly for the purpose of promoting the 2013 bond measure;
- By authorizing the use of PSD facilities to create a full-color graphic publicizing the bond measure, with the legend "More New Students Equals More Schools Needed";
- By authorizing the distribution of bond posters to every school, with instructions that the posters be displayed in prominent places in time for school conferences;
- By authorizing the distribution of bond information on tables at schools at concerts and winter sporting events, with a parent or employee joined by a school district administrative representative;
- By using PSD facilities to distribute voter registration packets;

- By sending an email inviting predictions from staff regarding the outcome of bond and levy elections in the February 7, 2006 special election;
- By using PSD facilities to promote a contest for district staff to win a mini-photography session by correctly identifying the 2013 bond slogan; and
- By repeatedly emphasizing potential negative outcomes to the failure of the February 12, 2013 bond in official PSD bond information, including double-shifting or a multi-track school year, with the understanding that this emphasis served to promote a “yes” vote on the bond.

2.4 Alleged Use of PSD Facilities to Assist a Candidate’s Campaign. The complaint and supplements alleged that PSD officials violated RCW 42.17.130 and RCW 42.17A.555:

- By allegedly using PSD facilities to assist incumbent school board members in filing for re-election; and
- By using district facilities to co-host an October 24, 2013 candidate forum for school board candidates with the Pasco Association of Educators.

2.5 The complaint and supplements also alleged violations of RCW 42.17A.555 by Sandra Hill and other PSD officials in connection with the officials’ private and personal conduct, including contributions to the bond committee from personal funds, or signing letters to the editor in support of the bond. Because these activities are not prohibited under RCW 42.17A.555, these allegations were not investigated.

2.6 Certain of the alleged violations of RCW 42.17.130 by PSD officials in connection with the alleged use of public facilities to assist a candidate’s campaign, or to promote or oppose a ballot proposition, fell outside the five-year limitation on actions under RCW 42.17A.770. The school district furnished a response in any case, and these responses are discussed below.

2.7 Alleged Disclosure Violations by Pasco Citizens for Better Schools.

The complaint alleged that Pasco Citizens for Better Schools failed to accurately identify the source of contributions of \$1,000 on September 26, 2012 and \$15,968.83 made on October 24, 2012. Both contributions were listed in the committee’s reports as being made by Pasco Citizens for Better Schools to Pasco Citizens for Better Schools.

2.8 Alleged Violations of Prohibition on Contributions from Agency Shop Fee Payer Funds. Finally, the complaint alleged that \$10,000 in contributions from the Pasco Association of Educators to Pasco Citizens for Better Schools, and \$500 in contributions to the committee from the Pacific Northwest Regional Council of Carpenters violated RCW 42.17A.500, because the contributions allegedly relied on agency shop fees paid by one or more individuals who were not members of the contributing organizations. However, the complaint provided no evidence to demonstrate a reason to believe that either organization had insufficient revenues from sources other than agency shop fees to fund its campaign contributions. Accordingly, these allegations were not investigated.

III.

SUMMARY OF FINDINGS

- 3.3 Allegations Concerning Officials of Pasco School District:** Staff's investigation found some evidence that Pasco School District officials used agency email in a manner that appeared to assist a candidate's campaign, or to promote a ballot proposition. However, the uses in question occurred outside of the five-year statute of limitations in RCW 42.17A.770.
- 3.4** Within the five-year statute of limitations, staff found that the Pasco School District officials, led by Superintendent Sandra Hill, conducted two community surveys in the fall of 2011 and 2012, including questions that appeared designed to support a ballot proposition. The surveys were as follows:
- A fall 2011 printed and online *Pasco School District Community Survey*, sponsored at an indeterminate cost, with 1,804 respondents participating in the survey. The survey (**Exhibit 5, p 19**) included the following question: "*When would you recommend the board run another bond to request voter approval (requires 60%) to build new schools? (a. As soon as possible / b. 2013 / c. 2014 / d. Not at all).*"
 - A September 12, 2012 printed *Patron Survey* (**Exhibit 1, p 30**) that included the following question: "*The April 2011 bond election failed. Would you be willing to support a revised bond election that would cost substantially less? (Yes / No – Why Not? / Undecided).*" In responding to the complaint, PSD legal counsel estimated that it cost the district

approximately \$320 to include this election-related question in the survey. In total, 3,910 respondents participated in the survey.

- 3.5 **Allegations Concerning Pasco Citizens for Better Schools:** Staff's investigation found evidence that Pasco Citizens for Better Schools substantially complied with the applicable requirement to disclose carry-forward balances in contributions from prior calendar years in lump sum, rather than attributing the carry-forward to individual contributors. The committee did not comply entirely with the requirement to disclose the source of these contributions when they were first received, and failed to file an indeterminate number of C-3 Monetary Contributions reports. However, all or nearly all of the reports in question were due in December 2010 or earlier, which is outside the five-year statute of limitations in RCW 42.17A.770.

DETAILED FINDINGS

- 3.6 On July 15, 2013, Stephen DiJulio, counsel for PSD, submitted a response to the initial complaint filed by Roger Lenk, and Mr. Lenk's first supplement to the complaint. **(Exhibit 4.)** On October 25, 2013, PDC staff conducted an interview under oath with Howard Roberts, PSD Director of Fiscal Services. On October 31, 2013, PDC staff conducted interviews under oath with PSD Superintendent Sandra Hill and PSD Director of Public Affairs Leslee Caul. On December 6, 2013, Mr. DiJulio submitted a response to staff's additional questions. **(Exhibit 5.)** On June 3, 2014, Mr. DiJulio submitted a response to Mr. Lenk's second supplemental complaint, and PDC staff's further questioning. **(Exhibit 6.)**
- 3.7 In responding to Mr. Lenk's allegations, Mr. DiJulio stated generally that PSD understands and complies with its obligations under RCW 42.17A, including by providing training to district staff on the importance of avoiding the use of public facilities in election campaigns. He provided examples of PDC training materials and written instructions to staff regarding the prohibition in RCW 42.17A.555, and signed declarations from PSD staff members confirming that they had received such training. **(Exhibit 4, pp 15 - 63.)**
- 3.8 **Campaign-Related Emails:** Mr. DiJulio stated that the campaign-related emails provided by Mr. Lenk were simply one-way communications from outside the PSD email network, and were consistently discouraged and

rejected by Superintendent Sandra Hill. He stated that when Ms. Hill received such emails, her practice was to telephone the sender and remind them not to contact her about any topic other than official PSD business. On at least one occasion, Ms. Hill responded in writing to the sender, Mike Miller, asking him to discontinue sending any campaign-related communications to her PSD address. **(Exhibit 5, pp 5 – 6.)** He stated that any substantive responses to Mr. Miller and other bond activists were required disclosures in response to Public Records Act requests.

- 3.9 Mr. DiJulio acknowledged that on one occasion, Superintendent Hill used her district address to forward a February 10, 2013 invitation for a Pasco Citizens for Better Schools election night celebration to certain PSD staff. **(Exhibit 1, pp 31 - 32.)** He stated that while forwarding this invitation could be viewed as contrary to PDC guidelines, the invitation concerned only post-election activity.
- 3.10 Mr. DiJulio stated that with the exception of this one email, in the context of the 2013 bond election Ms. Hill confined her activity regarding the bond to providing objective, fair, and factual information; he stated that this was true whether the activity was conducted during business hours and with the use of PSD facilities, or was conducted outside work hours on her own time. He stated that Ms. Hill routinely presents on district business to community and civic organizations.
- 3.11 **Informational Activity of PSD Officials:** Mr. DiJulio stated that as alleged in the complaint, PSD did place information tables at district schools during concerts and sporting events. He stated that PSD regularly uses these events to provide district information concerning district business. Contrary to Mr. Lenk's allegations, he stated that the materials provided at these tables were limited to objective information regarding the February 2013 bond measure. He provided examples which, on PDC staff's review, appeared to constitute an objective and fair presentation of the facts concerning the bond measure, including the projects it would fund. **(Exhibit 4, pp 64 - 100.)**
- 3.12 Responding to Mr. Lenk's allegations concerning a Charter Cable interview where Superintendent Hill discussed the bond measure, and connected real estate valuation to area schools, Mr. DiJulio acknowledged that in the interview, Ms. Hill did discuss in general terms that assessed home values are linked to the community as a whole, including support for education and school construction. He further acknowledged that Ms. Hill discussed the multi-track year round and double shifting alternatives to new school

construction, and the possible need for additional lunch periods during the school day. He stated that all of Ms. Hill's comments were based on valid policy alternatives and likely outcomes, and provided documentation of the district's consideration of those alternatives. **(Exhibit 4, pp 104 - 187.)**

- 3.13 Mr. DiJulio stated that PSD has experienced unprecedented population growth over the last 15 years, and district facilities are over capacity. He stated that each school is nearing capacity for portable classrooms, and that while additional portables may be physically located at certain schools, school infrastructure, including cafeterias and restroom facilities, cannot handle additional students. He stated that because school facilities cannot accommodate additional students at the same campus at the same time, the PSD School Board has considered multi-track year round and double shifting schedules as responsible policy options.
- 3.14 Mr. DiJulio stated that in November 2010, PSD held a community engagement summit, and there received community direction to address increasing enrollments with additional schools. He stated that the summit also provided feedback regarding multi-track year round and double-shift scheduling. He stated that in January 2011, as a result of additional feedback from the summit, the district formed the Multi-Track Year Round Task Force to consider year-round or double-shift scheduling as an additional strategy for managing increasing enrollments. He stated that later in the spring of 2011, the district's bond measure failed and the school board decided not to run another bond at that time. He stated that after the Multi-Track Year Round Task Force presented its recommendations to the school board in September 2011, the district conducted a community survey for additional input to guide its consideration of the task force recommendation to implement a multi-track year round schedule. (See paragraphs 3.33 – 3.37 below for additional discussion of this survey.) Mr. DiJulio stated that the school board ultimately formally approved the recommendation of the Multi-Track Year Round Task Force to adopt a multi-track year round school calendar in elementary schools when deemed necessary by the board.
- 3.15 Mr. DiJulio stated that multi-track year round and double-shift schedules were, and still are, considered alternatives to new school construction. He stated that multiple lunch periods push lunch hours both earlier and later into the school day, and that when combined with an early morning double-shift school day session, an 8:30 a.m. lunch period may be required. As documented in the above, he stated that these policy options were well considered by the school board, and presented to the public in an objective

and fair manner. He stated that PSD regularly conducts extensive community outreach when considering significant policy changes, and that community outreach regarding the 2013 bond measure and all related policy issues was consistent with regular district practices.

- 3.16 Addressing the basis for Ms. Hill's statements concerning the connection between property values and year-round instruction, Mr. DiJulio provided a copy of an article Ms. Hill relied on in making the statements, titled "Year-Round School Schedules and Residential Property Values," by Terrence M. Claretie and Helen R. Neill. The article (**Exhibit 5, pp 7 – 18**) appeared originally in the *Journal of Real Estate Finance and Economics*.
- 3.17 Addressing a video presentation made by Assistant PSD Superintendent John Morgan, Mr. DiJulio acknowledged that, as alleged in the complaint, Mr. Morgan used the phrase "very attractive" in discussing the 2013 bond measure. However, he stated that this turn of phrase was used in relation to state matching funds and district cost saving measures. He stated that multi-track year round and double-shift schedules were also discussed as necessary policy alternatives when school facilities can no longer handle additional portable construction. Mr. DiJulio stated that the district officials believe that discussing district cost saving measures and policy options is permitted in an objective and fair presentation of the facts concerning a ballot proposition.
- 3.18 Mr. DiJulio stated that as alleged in the complaint, Superintendent Morgan did attend the Franklin County Commissioners' meeting on January 23, 2013. He stated that this is a regular practice when another public entity discusses business that will potentially impact PSD. He stated that Mr. Morgan supervises the district's facility operations and attends most commissioner and city council meetings that concern district facilities or business. He stated that that Mr. Morgan was there in his official capacity as a school official, and did not speak for or against the county commissioners' resolution in support of the 2013 bond measure.
- 3.19 Addressing the January 22, 2013 Pasco City Council meeting at which the council passed a resolution in support of the bond measure, Mr. DiJulio stated that the attendance of PSD staff at that meeting was irrelevant, since they did not present to the council at all. He noted that in his complaint, Mr. Lenk provided no support for his speculation that school district officials directed comments to the Pasco City Council from citizens' committee volunteers.

- 3.20 Finally, addressing the December 20, 2011 Franklin County Republican Central Committee Meeting cited in Mr. Lenk's complaint, Mr. DiJulio acknowledged that Sandra Hill attended the meeting. He noted that the meeting minutes provided by Mr. Lenk indicate that Ms. Hill restricted her comments to objective information about the 2013 levy. Although Ms. Hill engaged in no campaign activity at the meeting, he stated that it would have been acceptable for her to do so, because the meeting was held after hours and Ms. Hill attended on her own time.
- 3.21 **Power Point Presentation, other Informational Publications:** Contrary to the allegations in the complaint, Mr. DiJulio stated that all PSD materials related to the 2013 bond were produced consistent with Public Disclosure Commission guidelines for regular district publications and those specific to elections. He stated that all publications were limited to information about the bond measure, and were not authored for persuasive purposes.
- 3.22 Addressing Mr. Lenk's allegation that PSD used public facilities to create a PowerPoint presentation to campaign for the February 2013 bond measure, Mr. DiJulio stated that the PowerPoint presentation was limited to objective information regarding district enrollment and policy options to meet projected increases in enrollment. PDC staff reviewed the presentation (**Exhibit 1, pp 33 - 53**) and found that with some exceptions, the content appeared to constitute an objective and fair presentation of the facts concerning the 2013 bond measure and related policy issues. The exceptions appeared in repeated statements touting PSD's efforts to minimize the impact to taxpayers, and the district's frugality in designing, building and operating its facilities. These statements, though outweighed by the neutral, factual information in the presentation, did appear to contribute a promotional tone to the presentation.
- 3.23 Addressing Mr. Lenk's allegations that Sandra Hill and other PSD officials designed district PowerPoint presentation to suit the needs of Pasco Citizens for Better Schools activists, Mr. DiJulio stated that the district's only goal was to ensure that the information it presented or made available to the public was accurate. He provided examples of various bond or levy-related PowerPoint presentations and internal district emails (**Exhibit 5, pp 21 – 114**), indicating that district staff were frequently engaged with updating and fine-tuning the presentations, independent of any requestor.
- 3.24 Addressing Mr. Lenk's allegation that PSD displayed promotional messages derived from school projects at school events to promote the February 2013

bond measure, Mr. DiJulio stated that the posters in question functioned only to provide notice of the upcoming bond election. He characterized this as an acceptable part of the district's informational outreach surrounding the bond.

3.25 "Mid-Columbia Ag Hall of Fame" Event: Mr. DiJulio stated that Ms. Hill's email concerning PSD staff attendance at the "Mid-Columbia Ag Hall of Fame" event on January 13, 2013 was not campaign related, although the event promoter indicated that it was "an opportunity to work the room for passage of the bond." He noted that in Ms. Hill's response to this email, she gave no indication that she would send any district employees to the event for a campaign purpose. Rather, he said that Ms. Hill directed to the email to Chris Martinson, Director of Career and Technical Education for PSD, because Mr. Martinson is the administrator who oversees the District's agriculture vocational program for students. He stated that Ms. Hill's email response is consistent with her practice of connecting relevant community members with PSD instructional programs.

3.26 Voters Pamphlet Argument Committees: Contrary to Mr. Lenk's allegations, Mr. DiJulio stated that PSD officials did not discriminate against bond opponents in appointing the members of voters pamphlet ballot proposition argument committees. He stated that PSD appointed Mr. Lenk to the voters' pamphlet con statement drafting committee as he requested.

3.27 Mr. DiJulio said that although Mr. Lenk alleged that PSD never responded to his August 23, 2012 email concerning formation of a "bond opposition committee," at the time of that email, PSD officials had no knowledge that they were responsible for appointing pro and con voters' pamphlet drafting committees. He stated that the Franklin County Auditor's Office only notified the district about the district's responsibility on December 18, 2012, and that three days later, the district posted public notice on its website seeking applications. He stated that the district then notified Mr. Lenk of the opportunity on January 4, 2013, the same day that the district notified Pasco Citizens for Better Schools. He stated that on January 8, 2013, at the same meeting and with the same vote, the school board formally appointed Mr. Lenk to the con-statement drafting committee, and appointed the members of the pro-statement drafting committees.

3.28 Mr. DiJulio responded to an email from Howard Roberts, PSD Director of Fiscal Services, included in Mr. Lenk's complaint, describing the requirement to appoint ballot proposition argument committees as an "advantage" to bond supporters. (**Exhibit 1, p 29.**) Although this email suggested Mr. Roberts'

personal support for the February 2013 bond measure, Mr. DiJulio pointed out that neither this email nor any other use of district facilities actually provided content for the pro-bond statement in the voters' pamphlet, but only discussed the requirement to provide for arguments.

- 3.29 Alleged Use of PSD Facilities to Encourage Payroll Deductions:** In responding to the allegations, Mr. DiJulio noted that RCW 28A.405.400 broadly authorizes payroll deductions for school employees, and *requires* school districts to make deductions under certain circumstances. He stated that PSD-employee authorized payroll deductions were entirely proper, and that no extraordinary coordination took place between Pasco Citizens and the District with respect to District employee payroll deductions. He provided examples of 36 separate groups for which PSD facilitated payroll deductions, as part of the agency's normal and regular conduct. He stated that the Pasco Citizens for Better Schools committee has received contributions through payroll deductions since at least 1982.
- 3.30 Voter Registration Activity:** Addressing Mr. Lenk's allegation that PSD distributed voter registration packets outside of its normal and regular practices, Mr. DiJulio noted the guidance in PDC *Guidelines* that "Public facilities may be used to register people to vote and to do periodic poll checking." He stated that the school district has always supported citizen engagement with government by making voter registration materials available at all schools and administrative offices, often prominently displayed in lobbies and during school events. He provided a copy of an email from Director of Public Affairs Leslee Caul, detailing voter registration efforts for the separate 2012 general election (**Exhibit 4, p 101**) and the declaration of Former Assistant Superintendent Calaine Bacon, outlining some of the district's history of voter registration efforts (**Exhibit 4, pp 102 - 103**).
- 3.31 Bond Slogan Contest for Staff:** Addressing Mr. Lenk's allegation regarding a PSD contest about the 2013 bond slogan, Mr. DiJulio stated that the contest was taken out of context, and did not represent a use of public facilities to promote a ballot proposition. He stated that the contest was part of a regular and ongoing effort to encourage readership of the "411" staff newsletter that is published after every PSD School Board meeting. He stated that the format of the contest is such that staff members who can identify certain content in the newsletter are entered into a drawing. He stated that the newsletter at issue happened to note the 2013 bond slogan, and this particular question asked readers to identify that slogan. He stated that as

before, the point of the contest was staff newsletter readership, and not the bond measure.

3.32 Pasco High School “VIP Days” Event: Similarly, Mr. DiJulio stated that Mr. Lenk’s concern about the district’s VIP Days were taken out of context. He stated that these are long-standing community engagement events where parents and members of the community shadow district students. He stated that they were not organized as campaign events, but were held to increase community engagement with the district. He stated that while Superintendent Hill did provide information related to the bond measure to participants, the VIP Days were not organized around the bond measure. He stated that the district has held shadow days regularly, beginning long before the February 2013 bond measure, and will continue to hold them into the future. He provided examples of publicity issued in connection with 2011 and 2012 VIP events. **(Exhibit 4, pp 188 – 193.)**

3.33 Pasco School District Community Surveys: PDC staff’s review of Mr. Lenk’s complaint and responses furnished by PSD found that the district sponsored three surveys related to a levy or bond measure. The surveys were as follows:

- A September 2009 printed and online *Maintenance & Operations Levy Survey*, sponsored at a cost of \$17.50. The survey **(Exhibit 6, pp 6 - 7)** consisted of a single substantive question: “*Q: What would you be willing to consider in the upcoming levy election? (A: I would be willing to consider raising the levy rate to maintain most of the district’s current programs and commitments. / I would hold the levy rate as previously approved by voters since 2004, knowing it would mean reduction or elimination of programs.)*”
- A fall 2011 printed and online *Pasco School District Community Survey*, sponsored at an indeterminate cost, with 1,804 respondents participating in the survey. The survey **(Exhibit 5, p 19)** consisted of seven questions, including one election-related question: “*When would you recommend the board run another bond to request voter approval (requires 60%) to build new schools? (a. As soon as possible / b. 2013 / c. 2014 / d. Not at all).*”
- A September 12, 2012 printed *Patron Survey*, sponsored at a total cost of \$2,244, with 3,910 respondents participating in the survey. The survey **(Exhibit 1, p 30)** consisted of eight questions; including one

election-related question: *"The April 2011 bond election failed. Would you be willing to support a revised bond election that would cost substantially less? (Yes / No – Why Not? / Undecided)."* In responding to the complaint, Mr. DiJulio estimated that it cost PSD approximately \$320 to include this election-related question in the survey.

- 3.34 Staff's review indicates that, as of the date of this report, the September 2009 survey sponsored at a cost of \$17.50 falls outside of the five-year statute of limitations in RCW 42.17A.770. In responding to allegations that these three surveys represented a use of public facilities to promote a ballot proposition, Mr. DiJulio stated that PSD believed that the surveys followed PDC guidance as expressed in the *Guidelines*, because the election-related questions were worded broadly, and did not seek to determine the specific taxation level the public would support. He provided an example of a survey that PSD sponsored in 2005 to seek input on configuration and location options for district high schools. **(Exhibit 5, p 20.)** PDC staff reviewed that survey, and noted that it sought respondents' opinions and priorities for school facilities; however, it included no question concerning the preferred timing of a bond election, or questions concerning the respondent's support for any bond amount, specific or indeterminate.
- 3.35 In her October 31, 2013 interview under oath, PSD Director of Public Affairs Leslee Caul stated that she did not directly authorize the 2011 and 2012 surveys. Rather, she stated that the surveys were the result of a group effort of senior school officials convened by Superintendent Sandra Hill.
- 3.36 In her October 31, 2013 interview under oath, Sandra Hill explained that although the fall 2011 survey asked respondents when the district should run a new bond election to fund school construction, the main purpose of that survey was to gauge community opinions on other policy options, such as multi-track year-round schools and double shifting. Addressing the September 2012 survey, she stated that the purpose of the survey was to determine what bond proposal to place on the ballot. She stated that the school board wanted to know how the public wanted them to address student overcrowding, i.e., whether to construct middle schools, elementary schools, and how many of each. She stated that in response to the survey results, the board decided not to propose bonds to construct a middle school, but rather to construct elementary schools.
- 3.37 In concluding her interview, Ms. Hill stated, *"In hindsight, I would probably change some of my actions, but we did this in good faith, believing it was OK."*

When asked to specify the actions she would now reconsider, she stated, *"I understand better about surveys. I thought I understood, and I thought I took action by reviewing with legal counsel, but I would be a little more astute and fine-tuned on what community surveys we would do. The board has found them a useful tool."*

- 3.38 Use of District Facilities to Assist a Candidate's Campaign:** In Mr. Lenk's second supplement to his complaint, he alleged that PSD officials used agency email in 2006, 2007, and 2009 for the purpose of assisting a candidate's campaign, or for the promotion of a ballot proposition. The majority of the emails consisted of reminders from Superintendent Hill to incumbent school board members of filing deadlines for re-election, and status updates on candidate filings for school board. **(Exhibit 3, pp 8 - 22.)** Staff's review of these communications indicates that half were outside the five-year statute of limitations before the date of Mr. Lenk's December 17, 2013 second supplement, and the remainder fell outside the five-year period in the months immediately following the PDC's receipt of the second supplement.
- 3.39 In responding to Mr. Lenk's allegations, Mr. DiJulio explained that in the 2009 election, there was a real possibility that no candidate would file to run for one of the school board positions. He stated that in conveying general information about filing deadlines to incumbent school board members, Superintendent Hill's primary concern was to ensure that no school board position went unfilled. Beyond this purpose, Mr. DiJulio characterized these reminders and communications not as a use of public facilities to assist a candidate's campaign, but rather as part of Ms. Hill's normal and regular conduct in fostering a productive working relationship with the PSD school board members.
- 3.40 Regarding Mr. Lenk's allegations concerning the October 24, 2013 candidate forum, Mr. DiJulio stated that all of the 2013 candidates received letter invitations to participate from the Pasco Association of Educators, all candidates were listed on the flyer, and all candidates participated. Accordingly, he stated that the event constituted an equal access-nondiscriminatory use of public facilities for political purposes, allowed under WAC 390-05-271 and RCW 42.17A.555.
- 3.41 Records Provided to Citizens Bond Committee:** In Mr. Lenk's complaint, he cited an October 25, 2012 email from Howard Roberts, PSD Director of Fiscal Services, to Mike Miller of the Pasco Citizens for Better Schools

committee. In the email, Mr. Roberts responds to a written request from Mr. Miller sent three days earlier, on October 22, 2012, seeking a list of PSD vendors with contact information. Mr. Robert's email came with an attached Microsoft Excel file titled "Vendor List Oct 2012.xls", consisting of 50 printed pages of PSD vendor information. **(Exhibit 1, pp 27 – 28, including partial vendor list.)** Mr. Lenk alleged that providing this information to the citizens' bond committee without requiring a formal public records request constituted a prohibited use of public facilities to promote a ballot proposition, because the committee used the information to solicit contributions in support of the 2013 bond.

- 3.42 In responding to Mr. Lenk's allegations, Mr. DiJulio stated that in providing the list of PSD vendors to Mr. Miller, Mr. Roberts was in fact responding to a public records request, an action he stated the Commission's own *Guidelines* endorsed.
- 3.43 In PDC staff's October 25, 2013 interview with Howard Roberts, Mr. Roberts stated that he was the custodian in charge of records relating to PSD vendors and their contact information. He stated that he does not personally fulfill requests for public records on a regular basis, and that his staff fulfills such requests only one or twice each year. He stated that he provided the list of PSD vendors to Mr. Miller on October 25, 2012 only because he understood that Mr. Miller had attempted without success to obtain the list from PSD's Records Officer, Leslee Caul.
- 3.44 Mr. Roberts stated that in the days leading up to Mr. Miller's written request, he encountered Mr. Miller outside of work at a Rotary club meeting. On learning that Mr. Miller had received no response to his contacts to Ms. Caul, Mr. Roberts explained to Mr. Miller that Ms. Caul was on an extended absence from work. Mr. Roberts stated that he asked Mr. Miller to send a written request for the vendor list directly to him. Mr. Roberts told PDC staff that he offered to help process the request only because he understood that the PSD records officer was unavailable, and he wanted to be helpful. He stated that he would do the same for any customer. Although Mr. Roberts did not recall specifically, he believed it was likely that he sought the advice of PSD legal counsel Sarah Thornton before filling Mr. Miller's written request. Finally, Mr. Roberts stated that he believed that Mr. Miller or another representative of the citizens committee had received a PSD vendor list in the previous year; and that in that case, he personally produced the vendor list to Ms. Caul so that she could fill the request.

3.45 Staff reviewed the supplemental response to the complaint submitted by Mr. DiJulio on July 15, 2013, and noted the record of an email exchange between Leslee Caul and Valerie Moffitt on February 16 – 22, 2011, in which Ms. Caul produced the PSD vendor list to Ms. Moffitt in response to her written request. **(Exhibit 4, p 194.)** At that time, Ms. Moffitt was a co-chair of Pasco Citizens for Better Schools.

Allegations Concerning Pasco Citizens for Better Schools

3.46 As discussed above, Mr. Lenk's complaint alleged that Pasco Citizens for Better Schools failed to accurately identify the source of contributions of \$1,000 on September 26, 2012 and \$15,968.83 made on October 24, 2012. Both contributions were listed in the committee's reports as being made by Pasco Citizens for Better Schools to Pasco Citizens for Better Schools. **(Exhibit 7.)**

3.47 On July 24, 2013, the PDC received a response to Mr. Lenk's complaint from Patrick Galloway, legal counsel to Pasco Citizens for Better Schools. **(Exhibit 8.)** In his response, Mr. Galloway stated that the contributions reported in October of 2012 were simply a carry-forward of cash on hand from prior bond and levy campaigns received during the committee's 40-year existence.

3.48 As a committee in continual existence, Pasco Citizens for Better Schools follows a reporting schedule in which the committee reports in lump sum its carry-forward of cash on hand at the close of each calendar year, without attributing that carry-forward balance to the source of the original contributions. However, the committee is required to disclose the source of those contributions in the year in which they were first received.

3.49 PDC staff telephone records **(Exhibit 9)** indicate that staff had contact with Valerie Moffitt of Pasco Citizens for Better Schools on April 19, 2011, just prior to the committee's April 26, 2011 bond election. Ms. Moffitt indicated at that time that due to staffing and technical issues, the committee was behind on its reports. As staff's request, Ms. Moffitt stated that she would work on a summary of campaign contribution and expenditure activity in lieu of actual reports, so that the public could be apprised of the reportable information before the special election.

3.50 On April 21, 2011, Ms. Moffitt submitted the requested summary. **(Exhibit 10.)** In it, she stated that the committee had approximately \$30,000 in cash

on hand prior to its April 2011 bond campaign, and made approximately \$18,362 in new campaign expenditures in March and April of 2011. This indicates that a balance of \$11,638 in contributions received in December 2010 or earlier remained in the committee's account after the April 2011 special election.

- 3.51 In her email, Ms. Moffitt further detailed the sources of \$6,410 in new contributions received in 2011. These contributions, together with the prior remaining balance of \$11,638, appeared to make up a balance of at least \$18,048 in the committee's account going into calendar year 2012. As described by Mr. Galloway, the committee carried these funds forward in its filings for the February 12, 2013 bond election.
- 3.52 Prior to Ms. Moffitt's April 21, 2011 email, Pasco Citizens for Better Schools had no PDC reports on file going back as far as January 20, 2004. In her email, Ms. Moffitt stated that the committee treasurer would supply a list of PSD employees that had made contributions through payroll deductions, but this list was never received. Accordingly, the sources of \$11,638 in contributions received in December 2010 or earlier have not been disclosed as required. However, because all or nearly all reports of these contributions were owed more than five years ago, action on the missing filings is barred by the statute of limitations in RCW 42.17A.770.

IV.

SCOPE

4.1 Staff reviewed the following documents:

1. A complaint against Pasco School District Officials and Pasco Citizens for Better Schools, received on June 9, 2013 from Roger Lenk, with attachments;
2. Supplements to Mr. Lenk's complaints, received on June 24, 2013 and December 17, 2013, with attachments;
3. A response to Mr. Lenk's complaint and first supplement, received on July 15, 2013 from Stephen DiJulio, counsel for Pasco School District, with attachments;

4. Additional responses on behalf of Pasco School District officials, received from Mr. DiJulio on December 6, 2013 and June 3, 2014, with attachments;
5. A response to Mr. Lenk's complaint, received on July 24, 2013 from Patrick Galloway, legal counsel to Pasco Citizens for Better Schools;
6. PDC contribution reports and data filed by Pasco Citizens for Better Schools, and correspondence received from the committee; and
7. PDC staff telephone records for calendar year 2011.

4.2 The following individuals were interviewed under oath:

1. Howard Roberts, Pasco School District Director of Fiscal Services, was interviewed on October 25, 2013;
2. Pasco School District Superintendent Sandra Hill was interviewed on October 31, 2013; and
3. Pasco School District Director of Public Affairs Leslee Caul was interviewed on October 31, 2013.

V.

LAW

RCW 42.17A.555¹ states, in part:

"No elective official nor any employee of his 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.

...[T]he foregoing provisions of this section shall not apply to the following activities:

¹ Prior to January 1, 2012, RCW 42.17A.555 was codified as RCW 42.17.130.

...(3) Activities which are part of the normal and regular conduct of the office or agency.”

WAC 390-05-271 states that “(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.”

RCW 42.17A.235 and **RCW 42.17A.240**¹ require political committees to file timely, complete, and accurate reports of contributions and expenditures, including the name and address of every person making a contribution of more than \$25 in the aggregate.

RCW 42.17A.500 states the following:

“(1) A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

(2) A labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures.”

Respectfully submitted this 4th day of December, 2015.



Tony Perkins
Political Finance Investigator

¹ Prior to January 1, 2012, RCW 42.17A.235 and .240 were codified as RCW 42.17.080 and .090, respectively.

EXHIBIT LIST

- Exhibit 1** A complaint against Pasco School District Officials and Pasco Citizens for Better Schools, received on June 9, 2013 from Roger Lenk, with selected attachments.
- Exhibit 2** A first supplement to Mr. Lenk's complaint, received on June 24, 2013, with attachments.
- Exhibit 3** A second supplement to Mr. Lenk's complaint, received on December 17, 2013, with selected attachments.
- Exhibit 4** A response to Mr. Lenk's complaint and first supplement, received on July 15, 2013 from Stephen DiJulio, counsel for Pasco School District, with selected attachments.
- Exhibit 5** An additional responses on behalf of Pasco School District officials, received from Mr. DiJulio on December 6, 2013, with selected attachments.
- Exhibit 6** An additional response on behalf of Pasco School District officials, received from Mr. DiJulio on June 3, 2014, with selected attachments.
- Exhibit 7** C-3 Monetary Contributions reports filed on October 1, 2012 and October 29, 2012 by Pasco Citizens for Better Schools.
- Exhibit 8** A response to Mr. Lenk's complaint, received on July 24, 2013 from Patrick Galloway, legal counsel to Pasco Citizens for Better Schools.
- Exhibit 9** PDC staff's record of telephone contact with Valerie Moffitt of Pasco Citizens for Better Schools on April 19, 2011.
- Exhibit 10** An email summary of contribution and expenditure activity by Pasco Citizens for Better Schools in the April 2011 special election, received from Valerie Moffitt on April 21, 2011.