

**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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MINUTES – Regular Meeting

9:30 a.m. | March 23, 2017

Evergreen Plaza Building, Room 206

711 Capitol Way

Olympia, Washington

Commission Members Present

Anne Levinson, Chair; John Bridges, Vice Chair; Katrina Asay, Member; Jack Johnson, Member; David Ammons, Member

Staff Present

Evelyn Fielding Lopez, Executive Director; BG Sandahl, Deputy Director; Penny Allen, Assistant Attorney General; Chad Standifer, Assistant Attorney General; Kurt Young, Compliance Officer; Phil Stutzman, Compliance Officer; James Gutholm, Chief Technology Officer; Jana Greer, Executive Assistant

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 9:30 a.m.

Public Comment | [PDC Meeting Video](#)

No public comment was made.

Meeting Minutes | [PDC Meeting Video](#)

Meeting minutes from January 26, 2017 regular meeting, February 8, 2017 special meeting, and the February 23rd, 2017 regular meeting.

Motion 17-09 Moved by Commissioner Asay, seconded by Commissioner Johnson that:
**The Commission approve the January 26, 2017; February 8, 2017;
and February 23, 2017 meeting minutes.**

The motion passed

Introduction of New PDC Deputy Director | [PDC Meeting Video](#)

Chair Levinson welcomed and introduced new Deputy Director Barbara (BG) Sandahl.

Report to Commission | [PDC Meeting Video](#)

(PDC Review of 45-Day Citizen Action Complaint) PDC Case 11701; 11702; and 11703.

Executive Director Lopez stated for the record that she is, and has been, recused from this matter and noted that she has not reviewed any of the materials, discussed the matter with Mr. Stutzman or Mr. Standifer and has not participated in any manner.

Phil Stutzman reported to the Commission on the *Port of Tacoma Officials (Port) (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich): PDC Case 11701; Economic Development Board for Tacoma-Pierce County (EDB): PDC Case 11702; and Tacoma-Pierce County Chamber (Chamber), PDC Case 11703:*

The issues in the case involve:

- (A) Alleged violations of RCW 42.17A.555 (Port) by using the Port's facilities to oppose Tacoma Initiatives 5 and 6 by engaging in a previously unknown media communications and public relations campaign; and
- (B) Alleged violations of RCW 42.17A.255 and RCW 42.17A.205, .235, and .240 (Port, EDB & Chamber) by failing to report costs associated with a previously unknown media communications and public relations campaign as independent expenditures, and as expenditures of a registered political committee.

Mr. Stutzman stated that this 45-day citizen action letter filed by Arthur West concerned the Port of Tacoma, Tacoma-Pierce County Economic Development Board, and the Tacoma Pierce County Chamber of Commerce.

He noted that there was a previous case against these same three respondents that was heard on August 8, 2016 by the Commission. As reflected in an August 9th letter to the Attorney General, the Commission recommended that the Attorney General take no legal action concerning the allegations that were in the complaint and the two allegations raised by PDC staff that the EDB and Chamber had made independent expenditures by paying for legal fees to ask that the initiatives be kept off the ballot.

The Attorney General filed a lawsuit in Pierce County Superior Court against the Port, the EDB, and the Chamber alleging that the EDB and the Port violated RCW 42.17A.255 by failing to report their legal fees as independent expenditures opposing ballot proposition and that the Port officials had violated RCW 42.17A.555 by expending public funds to oppose the initiatives.

On December 23, 2016, a Pierce County Superior Court judge issued a ruling granting a motion by the Port, the EDB, and the Chamber to dismiss the Attorney General's complaint. On January 26, 2017, the Attorney General appealed that decision.

Mr. Stutzman noted that Arthur West, after a public records request, ascertained that there was a communication plan surrounding the lawsuit and he is alleging that what is in that communication plan is a new violation of RCW 42.17A.555.

PDC staff concluded that the communication plan was directly related to the lawsuit and recommended that the Commission recommend the Attorney General take no further action in regard to the Port in this matter since it is on appeal.

Mr. Stutzman stated that regarding the other two entities, they did not participate in the communication plan and they did not expend any resources.

Director Lopez stated that this issue had come up in a case that the State had against the Freedom Foundation where the Freedom Foundation had been involved in efforts to put local right to work measures on city ballots. That case then was appealed by the Attorney General's Office to the Supreme Court and it's pending at the Supreme Court for a decision as to whether the Supreme Court will keep it or have Division Two of the Court of Appeals hear the case.

Commissioner Johnson noted that the issue about when does something become a ballot measure such that the rules apply about campaigning for it or supporting it is one question. Also, there's a different question when a public entity is filing a lawsuit to challenge the legality of a potential ballot measure. He believes those can be answered differently; it may be a

legitimate public action of an agency to go to court to test the legality of a ballot proposition that affects its governmental operations. And so, in that sense the Freedom Foundation case doesn't speak to that issue.

Chad Standifer stated that the timing of when something is a ballot proposition is a legal issue, but there are several legal issues at play in that case and they do differ. There are two different statutory provisions depending on whether it involves the Port or the other non-government entities.

Public comment was made by Carolyn Lake, Goodstein Law Group, representing the Port of Tacoma. Ms. Lake objected to the participation of Director Lopez in this agenda item.

Chair Levinson noted for the record that she authorized Executive Director Lopez to participate in this proceeding; that her recusal was regarding the investigation and the recommendations of staff, and she did recuse herself from that. But her insights and analysis regarding legal matters are appropriate for her to discuss.

Public comment was made by Arthur West.

Motion 17-010 Moved by Commissioner Johnson, Seconded by Commissioner Ammons that:

The Commission send the matter back to the Attorney General's Office with the recommendation of no action.

Motion approved

Report to Commission | [PDC Meeting Video](#)

(PDC Review of 45-Day Citizen Action Complaint) PDC Case 14266.

Washington Federation of State Employees and American Federation of State County and Municipal Employees (AFSCME) Council 28: PDC Case 14266: Involving alleged violations of RCW 42.17A.205, .235 and .240 for failing to register and report the activities of a segregated fund account as a political committee.

Dimitri Iglitzin, representing WFSEA, participated via telephone.

Kurt Young reported on the alleged violations identified in PDC case 14266 involving the Washington Federation of State Employees, American Federation of State County and Municipal Employees Council 28 (Federation). The Federation is a statewide labor organization that's affiliated with the national AFSCME. The Federation has a separate segregated fund (SSF) that is registered under Section 527 of the Internal Revenue Code. Mr. Young noted that the Federation is also a lobbyist employer that has been registered and has been reporting with the PDC since the 1970's.

On January 17th, 2017, a 45-day Citizen Action Letter, was filed by the Freedom Foundation pursuant to RCW 42.17A.765 with the Attorney General's Office and the prosecuting attorneys' offices in King, Spokane, and Thurston County.

The complaint alleged that the Federation's SSF may have violated provisions of RCW 42.17A by failing to register and report as a political committee in support of ballot propositions and candidates in Washington State during calendar years 2011 through 2016. The complaint was referred to the PDC by the Attorney General's Office for investigation on February 8th, and PDC staff reviewed whether the Federation's SSF is a political committee. The complaint also

included copies of IRS Form 8872, which was filed by the Federation as a 527 organization disclosing contributions they made to candidates, political party organizations, political committees and ballot propositions from the SSF for calendar years 2011 through 2016.

Staff recommended that the Commission find no apparent violations of RCW 42.17A.205 by failing to register as a political committee, or RCW 42.17A.235 or 240 by failing to report as a political committee concerning its expenditures, and recommend that the Attorney General's Office take no further action regarding the allegations in the complaint.

Public comment was made by Arthur West.

Public comment was made by Max Nelsen, Director of labor policy at the Freedom Foundation.

Motion 17-011 Moved by Commissioner Johnson, Seconded by Commissioner Bridges that:

The Commission send the matter back to the Attorney General's Office with the recommendation of no action.

Motion approved

Request for Reconsideration | [PDC Meeting Video](#)

Peter Swant: PDC Case #10086.

Peter Swant participated by telephone.

Kurt Young presented Peter Swant's request for reconsideration to the Commission.

Mr. Young stated that Mr. Swant is an incumbent Port Commissioner for the Port of Walla Walla who was required to file an annual Personal Financial Affairs Statement (F-1 report) for calendar year 2015 no later than April 15, 2016. Mr. Swant failed to file his annual F-1 report, was found in violation of RCW 42.17A.700 at a January 20, 2017 brief enforcement hearing and was assessed a \$1,000 penalty.

Mr. Young stated that Mr. Swant is seeking reconsideration. On July 6, 2016, PDC staff sent out warning letters to F1 filers who hadn't timely filed their reports. One of those letters was sent to Mr. Swant at 218 West Main Street, Walla Walla 99362. Subsequently staff became aware that is Mr. Swant's employer's address. This is the address that the Port of Walla Walla provided to the PDC as Mr. Swant's mailing address.

On December 1, 2016, PDC staff sent a brief enforcement hearing notice to Mr. Swant via US Mail at that same address. Staff noted that the letter bounced back and the letter was re-sent then to Mr. Swant's home address as a secondary contact.

Mr. Swant was found in violation of RCW 42.17A.700 for failing to file an F1 report for calendar year 2015 and assessed a \$1,000 penalty. That initial order was entered and mailed on February 3, 2017.

After receiving the order on February 14, Mr. Swant sent an email to the PDC requesting that the Commission review the \$1,000 penalty that was assessed against him. He included within his email a completed F1 report for calendar 2015, a marked up and signed statement of understanding acknowledging that the report was late, and a marked copy of a December 1, 2016, hearing notice that indicated that it had been forwarded to him.

Mr. Young stated that he has also become aware that the penalty schedule that the PDC staff used, WAC 390.37.143, which changed the penalty for a third violation from \$500 to \$1,000,

did not take effect until February 4, 2017, and thus, at least in Mr. Swant's case, the maximum penalty should have been \$500.

Motion 17-012 Moved by Commissioner Asay, Seconded by Commissioner Bridges that:
The Commission reconsider penalty assessed in PDC case 10086.
Motion approved

Motion 17-013 Moved by Commissioner Asay, Seconded by Commissioner Bridges that:
The Commission impose a penalty of \$500, the highest penalty based on the penalty schedule in effect at the time of the violation.
Motion approved

Next Steps/Follow-up: Staff will review PDC reporting forms to ensure that there are clear instructions for the regulated community they are required to notify the PDC if they change their mail or email address.

Commissioner Asay stated that as an elected official, it is paramount that you stay on top on requirements for that position. She noted that Mr. Swant seems to think that the Public Disclosure Commission is an irritant and not an obligation, and it is everyone's fault except his, even though he has already been penalized twice. Small jurisdictions do not have a lot of staff. They do not have a lot of time to help their people. She understands this since she was from a small jurisdiction. But you must still stay on top of obligations. If you can't change an email so your constituents can keep in touch with you, how do you expect other government organizations to keep in touch with you?

Mr. Young stated that there are possibly other PDC cases that may have been assessed the \$1,000 penalty when the violation occurred before the new penalty schedule took effect.

Chair Levinson asked staff to identify those cases and bring them to the Commission to review.

Next Steps/Follow-up: Staff will identify potential cases that were assessed a \$1,000 penalty outside the schedule in effect and take steps to correct the penalties.

Report to the Commission | [PDC Meeting Video](#)

Grant County Concerned Voters (Ken Greene and Jerry Moberg): PDC Case 2138

Phil Stutzman reported on the alleged violations of:

- (A) RCW 42.17A.205, .235, and .240 by failing to register and report Grant County Concerned Voters (GCCV) as a political committee to report campaign activity totaling \$3,872.10 during the November 2014 Grant County Prosecutor general election campaign;
- (B) RCW 42.17A.320 by using the assumed name "Grant County Concerned Voters" as the sponsor of electioneering communication political advertising, failing to include the name of the actual sponsors (Ken Greene and Jerry Moberg) and failing to include other required sponsorship language;
- (C) RCW 42.17A.305 by failing to file a C-6 Report of electioneering communication political advertising totaling \$3,872.10 for direct mail political advertising supporting Angus Lee and opposing Garth Dano; and

(D) RCW 42.17A.435 by incurring expenditures in a manner to conceal the Respondents' identities (Ken Greene and Jerry Moberg) as the sponsors of electioneering communication political advertising totaling \$3,872.10 for direct mail political advertising supporting Angus Lee and opposing Garth Dano.

Staff recommended that the Commission find apparent violations, of the four sections or allegations and refer the matter to the Attorney General for the action they deem appropriate.

The Commission went into executive session to discuss this enforcement matter with legal counsel at 11:38 am and returned to public session at 11:50 am.

Commissioner Bridges stated that with respect to PDC case 2138, he disclosed that he has had a professional relationship with Mr. Greene, both as a judge and as an attorney. A couple of those contacts were within the last year when Commissioner Bridges was acting as a mediator in cases with which Mr. Greene was involved.

Commissioner Bridges noted that he also had professional contact when he was a judge with the current Grant County prosecutor, and with attorney Jerry Moberg. He also had professional contact when he was a judge with Mr. Lee, the former prosecutor, on a case involving Mr. Lee and Grant County as a defendant.

Commissioner Bridges stated that his prior contacts would not affect his ability to objectively decide in this case.

Motion 17-014 Moved by Commissioner Johnson, Seconded by Commissioner Asay that:
The Commission refer this matter to the Attorney General's Office for action in lieu of the Commission adjudicating this matter.

Motion approved

Executive Session

The Commission went into executive session at 12:00 p.m. to discuss matters allowed in executive session pursuant to RCW 42.30.110, including but not limited to discussion of enforcement matters, pending and potential litigation with legal counsel, and review of performance of public employees.

The Commission returned to the public session at 1:00 p.m.

Potential Reassessment of Penalties | [PDC Meeting Video](#)

Chair Levinson stated that during the discussion on the request for reconsideration earlier in the meeting, there was a question about whether the Commission had any other penalties that had been imposed with the incorrect penalty schedule. Mr. Young reviewed those cases and reported the PDC case numbers to the Commission for review.

Mr. Young stated that there were four cases that were assessed a \$1,000 penalty rather than the maximum \$500 that was in effect at the time. In addition and Mr. Swant, there was PDC Case 10069, PDC Case 10078, and PDC Case 10089.

Motion 17-015 Moved by Commissioner Asay, Seconded by Commissioner Johnson that:

The Commission reconsider the \$1,000 penalty assessed in PDC Case 10069, PDC Case 10078, and PDC Case 10089.

Motion approved

Motion 17-016 Moved by Commissioner Ammons, Seconded by Commissioner Bridges that:

The Commission assess a penalty of \$500 in PDC Case 10069, PDC Case 10078, and PDC Case 10089.

Motion approved

Petition to Amend Rule to Order Training | [PDC Meeting Video](#)

Director Lopez summarized the process of when a petition to amend a rule is received. There is a PDC rule, WAC 390-12-255, that indicates any person may submit a petition requesting the adoption, amendment, or repeal of any rule by the Commission pursuant to RCW 34.05.330, which is within the Administrative Procedures Act and the uniform rules adopted by the Office of Financial Management.

Under the Administrative Procedures Act, if a person submits a request to adopt, change, or repeal a rule, then within 60 days after the submission, the agency has the option of denying the petition in writing and stating its reasons for the denial; denying the petition but explaining alternate means by which it will address the concerns raised by the petitioner; or initiating rule-making proceedings in accordance with RCW 34.05.320.

Director Lopez provided the Commission with additional proposed amendments she received earlier in the day from Conner Edwards.

She noted that the PDC does have a lot of people who want to come to training but who find it difficult to come to Olympia, or who find it difficult to do training during a weekday. Staff have been looking at ways to make more training available. By focusing on making more of the training available, it would be possible in appropriate cases to negotiate the requirement that the Respondent take training and then provide proof of successful completion.

Staff recommended that the Commission not start rule-making at this time, but add this to its next rule-making agenda in June.

Motion 17-017 Moved by Commissioner Johnson, Seconded by Commissioner Asay that:

The Commission deny the request for petition for rule-making at this time and consider it when next considering other rule-makings in June, 2017.

Motion approved

Next Steps/Follow-up: Add the rule-making proposal to the list of future potential rule-makings.

Request for Interpretation | [PDC Meeting Video](#)

Director Lopez discussed Conner Edwards' request which had previously been submitted as a request for a declaratory ruling, but then modified to a request for a Commission Interpretation. Mr. Edwards requested that the Commission clarify:

- (A) Information to be provided when reporting media buys (specifically whether the "run date" of the advertisement must be reported);

- (B) Details to be reported when reimbursing campaign volunteers or agents for out of pocket expenses;
- (C) Details to be reported when paying campaign-related travel expenses; and
- (D) Details to be reported when making payments to offset lost salaries or wages as a result of campaigning.

Director Lopez noted that Mr. Edwards was requesting something more definitive so that a) the campaign knows what is required; and b) if someone is reviewing the campaign reports, they know when there's been a violation. The PDC is receiving complaints on these issues.

She stated a second possibility of moving forward with the pending review and update of the publication on the PDC website that provides guidance to the regulated community, which includes this topic, now that the agency will have a new Communications Director coming in April.

A third option, the option staff recommend, is that the Commission issue an Interpretation.

Staff will begin a review in collaboration with the Attorney General's Office, and will bring this back to the Commission at the June meeting.

Motion 17-018 Moved by Commissioner Bridges, Seconded by Commissioner Ammons that:

The Commission ask PDC staff to work with the Assistant Attorney General to review the specific questions and any other issues that staff may find that seem to be re-occurring and return to the Commission for implementation of any proposed Interpretation.

Motion approved

Next Steps/Follow-up: Staff will review the issues outlined by Mr. Edwards and work with the AAG to determine if a Commission Interpretation or other guidance would be appropriate, and come back to the Commission in June to present any proposed Interpretation or guidance materials.

Staff Reports | Enforcement | [PDC Meeting Video](#)

Director Lopez reported on the status and progress of complaints and enforcement matters.

Director Lopez noted that with the Deputy Director now onboard, and her expertise in process management and process improvement, there will be opportunities to review case processing and triaging. .

Staff Reports | IT Staff Report | [PDC Meeting Video](#)

James Gutholm reported on the progress of the open data project and transitioning on to the specific search project.

He noted that there are now 11 stakeholders signed up to be external participants to be part of the project team.

Staff Reports | Budget and Legislative Report | [PDC Meeting Video](#)

Director Lopez and Deputy Director Sandahl provided an update on the 2017-19 biennial budget for the PDC.

Ms. Sandahl noted that the House budget comes out, possibly next week, and from that point staff will continue to keep track of all the different budgets and where they stand, and will work with the Governor's Office.

Director Lopez provided a status update on PDC legislation. HB1833 is still moving forward. This bill would provide for some changes to personal financial disclosure form reporting. It would allow people who receive a modification of their reporting requirement to have the modification remain in place for their term of office, rather than having to come back every year for the same modification. It would change the valuations of assets chart to go up to \$1,000,000 instead of just over \$100,000. It would allow sheriffs, prosecutors, and judges to list their city of residence rather than street address of their home, and it would allow the Commission to direct someone to take specific action, rather than just cease and desist from violating a law. It would also allow all modification requests to be heard by a single Commissioner in a brief hearing setting rather than bringing the modification requests before the full Commission.

As anticipated, there were some questions raised about the address confidentiality, and staff anticipates that there may be an amendment on that issue.

Meeting adjourned at 2:27 pm.

Minutes approved April 27, 2017.