



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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October 4, 2019

Delivered electronically to Mark Obtinario at mobtinario@yahoo.com

Mark R. Obtinario
905A North Military Road
Winlock, WA 98596

Subject: Complaint regarding Twin Transit Officials (Derrick Wojcik-Damers and Bobby Jackson), PDC Case 43055

Dear Mr. Obtinario:

Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received on October 24, 2018, alleging that Twin Transit officials Derrick Wojcik-Damers and Bobby Jackson may have violated RCW 42.17A.555 by using public facilities to promote Proposition 1, a ballot measure on the November 6, 2018 general election ballot, that would have increased the sales and use tax by two tenths of one percent (0.2 percent) for most residents in east Lewis County to fund transportation services outside the cities of Centralia and Chehalis.

Your complaint stated that you received a mailing in support of Proposition 1, the Lewis County Transit Measure, and that neither the mailing nor the website www.LewisCountyTransitMeasure.com identified the sponsor of the mailing or provided contact information for the persons responsible for the mailing or website. Because you alleged that the mailing and website promoted Proposition 1, and because both the mailing and the website were paid for by, and prepared on behalf of, Twin Transit, staff treated your complaint as an allegation that the responsible Twin Transit officials (Derrick Wojcik-Damers and Bobby Jackson) may have violated RCW 42.17A.555.

RCW 42.17A.555, states in part, “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency.”

WAC 390-05-273 defines the “normal and regular conduct” of a public office or agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”

PDC staff reviewed your complaint and the response provided on behalf of Twin Transit officials by Janean Parker, an attorney representing Twin Transit in this matter. In addition, staff interviewed Derrick Wojcik-Damers, Bobby Jackson, Doug Hayden (Lewis Mountain Highway Transit), and Tim Payne (Principal, Nelson Nygaard Consulting Associates), and reviewed the work performed by Nelson Nygaard on behalf of Twin Transit.

As a result of the investigation, staff found the following:

Twin Transit Website

- During the fall of 2017, Nelson Nygaard Consulting Associates (Nelson Nygaard) entered into a contract with Twin Transit to conduct a feasibility study about expanding the Twin Transit service area. Nelson Nygaard studied the cost of expanding the service area outside the cities of Centralia and Chehalis, and concluded there would be insufficient revenue from passenger fares to pay for increased service to the rural parts of Lewis County. Starting in March 2018, Nelson Nygaard created a website for Twin Transit to publicize the ongoing results of its study.
- In April 2018, a Public Transportation Improvement Conference (a statutorily created entity separate from Twin Transit) was convened and passed a resolution to expand the Twin Transit boundaries. In July 2018, the Board of Lewis County Commissioners passed a resolution placing the matter of expansion and funding before the voters of expanded area. Twin Transit officials then directed Nelson Nygaard to produce materials to explain the ballot proposition, which included a postcard sent to all registered voters in the affected area and a brochure used as a handout when Twin Transit officials spoke to groups about the ballot measure. The information from the brochure and postcard were taken from content posted on the existing website.
- Nelson Nygaard and Twin Transit officials said the website was initially created to keep the public informed about the feasibility study. It initially included an executive summary of the feasibility study as well as the study itself. Nelson Nygaard and Twin Transit officials said Twin Transit used the website to post information about Proposition 1 because the website was already being used to provide information about the feasibility study, and it naturally evolved into an informational website about the ballot proposition.
- The website included information about the facts and the anticipated impacts of the ballot measure. Information from the website was consolidated into a brochure that was made available at various local legislative body meetings and public forums to answer questions about Twin Transit’s service, and the impact of the ballot measure on that service. The information on the website was also consolidated into a postcard for a mailing. Staff found that it is the regular practice of Twin Transit to place information about its operations and major policy decisions on its website. However, in this case, Twin Transit, on the advice of

Nelson Nygaard, decided to place the information about the 2018 ballot measure on a separate website that was already in existence for a related purpose, and that would be easy to find. Nelson Nygaard and Twin Transit officials acknowledged that they should have identified the website as being a Twin Transit website, and apologized for this oversight.

Objectivity of Twin Transit Ballot Proposition Materials

- The Twin Transit postcard explained what Proposition 1 would do, why it was being proposed, what would happen if it passed, what would happen if it failed, its cost, and that more information could be found at www.LewisCountyTransitMeasure.com, the website being used by Twin Transit to post information about the ballot measure.
- Tim Payne of Nelson Nygaard and Doug Hayden of White Pass Community Services Coalition (WPCSC), operator of LEWIS Mountain Highway Transit (LMHT), confirmed that during the Spring of 2017, the WPCSC board informed Twin Transit that it intended to cease operations as of June 30, 2019 because of expected increases to its match requirement for receiving grants from the Washington State Department of Transportation. However, on May 16, 2017, the legislature capped the match requirement for non-profit entities at 10 percent, a level which LMHT said they could handle.
- The Twin Transit postcard, produced by Nelson Nygaard for Twin Transit, stated that if the ballot issue passed, there would be a continuation of service similar to LEWIS Mountain Highway Transit, and if the ballot issue failed to pass, the future of LEWIS Mountain Highway Transit would be uncertain. In addition, the Twin Transit brochure included the statement:

“In addition, White Pass Community Services Coalition has indicated they intend to cease operation of LEWIS Mountain Highway Transit service in mid-2019. The service operates to Onalaska, Mossyrock, Salkum, Randle, Glenoma, Silver Creek, Morton, and Packwood. Service has been in place for roughly 20 years and has transported thousands of White Pass Highway residents to medical services, education, shopping, and employment. Currently, the three round-trip per day service provides about 9,000 passenger trips per year.”
- The postcard failed to state that the match requirement had been capped at 10 percent. PDC staff asked why this fact was not included in the postcard, brochure, or website. Nelson Nygaard and Twin Transit officials stated that after the legislature capped the match requirement at 10 percent, LMHT did not inform Twin Transit that its plans to cease operations in mid-2019 had changed. Twin Transit said it continued to plan with the understanding that LMHT was going out of business in mid-2019.
- Tim Payne stated he did not become aware that the match requirement had been capped at 10 percent until after the November 2018 election. He said if he had been aware of the change when he prepared the ballot measure materials, he would have included information about the change in the materials.

Sending Postcard to Registered Voters

- Twin Transit officials, on the advice of Nelson Nygaard, decided to mail its postcard to residents within Lewis County who were eligible to vote on the ballot measure. Tim Payne said the decision was made as an efficiency measure. He said the idea was to send the postcard to people who would actually have a chance to vote on the measure. He said Twin Transit officials decided to send only one postcard to each household, even if multiple voters resided at the same household.
- Mr. Payne said Twin Transit mailed the postcard to ensure recipients knew what the ballot measure was about, and to give voters a variety of information that would be similar to what they might see in a voter information pamphlet.

After a careful review of the alleged violations and relevant facts, PDC staff have concluded the investigation. Staff found insufficient evidence to demonstrate that officials of Twin Transit (Derrick Wojcik-Damers and Bobby Jackson) used the facilities of Twin Transit to promote the passage of Proposition 1.

Because staff's investigation has not provided reason to believe that a violation has occurred, I am dismissing your complaint in accordance with WAC 390-37-070 against Twin Transit officials (Derrick Wojcik-Damers and Bobby Jackson).

Current Twin Transit officials will be reminded of the Commission's [Interpretation 04-02](#), Guidelines for Local Government Agencies in Election Campaigns, which lists on Page 21 that "agencies shall not distribute election-related information in a manner that targets specific subgroups."

If you have questions, please contact Phil Stutzman, Compliance Officer, at 360-664-8853 or toll-free at 1-877-601-2828 or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,



Peter Lavalée
Executive Director

cc: Derrick Wojcik-Damers and Bobby Jackson
Janean Parker, Attorney, Twin Transit