



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

May 16, 2019

Delivered electronically to "ben.messinger@ksd.org"

Subject: PDC Case 48009

Dear Ben Messinger:

Below is a copy of an electronic letter sent to Roger Lenk concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted below to Roger Lenk, the PDC will not be conducting a more formal investigation into these allegations or taking further enforcement action in this matter.

PDC staff is reminding you about the importance of not using public facilities to directly or indirectly promote or oppose any ballot propositions. We are also reminding you to provide the public with adequate notice and an opportunity to express opposing views when the Kennewick School Board takes any action at a public meeting that concerns a ballot proposition; failure to do so may constitute a prohibited use of public office/agency facilities pursuant to RCW 42.17A.555(1). PDC staff expects that you will comply with .555 in future years in accordance with PDC laws and rules.

If you have questions, you may contact Tabatha Blacksmith at 1-360-586-8929, toll-free at 1-877-601-2828 or by e-mail at pdc@pdc.wa.gov

Sincerely,

/s _____
Tabatha Blacksmith
Compliance Coordinator

Endorsed by,

/s _____
Barbara Sandahl
Deputy Director
For Peter Lavallee
Executive Director



State of Washington
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcca.wa.gov

May 16, 2019

Delivered electronically to "lenk.roger@gmail.com"

Subject: Complaint regarding Kennewick School District No. 17 Board of Directors (Dawn Adams, Brian Brooks, Heather Kintzley, Ron Mabry and Ben Messinger), PDC Cases 48006,48008,48009,48010 and 48011

Dear Roger Lenk:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on March 5, 2019. Your complaint alleged that Kennewick School District No. 17 Board of Directors Dawn Adams, Brian Brooks, Heather Kintzley, Ron Mabry and Ben Messinger (collectively "the Respondents") may have violated RCW 42.17A.555 by failing to provide notice of – and give the public an opportunity to express opposing views about – action taken at its January 9, 2019 Board Meeting which supported a ballot proposition.

PDC staff reviewed your allegations and evidence, the applicable statutes, rules and reporting requirements, and the response provided by the Respondents to determine whether they support a finding of one or more violations. Based on staff's review, we found the following:

- Dawn Adams, Brian Brooks, Heather Kintzley, Ron Mabry and Ben Messinger are School Directors for Kennewick School District No. 17.
- On November 7, 2018, the Respondents met and approved the submission of Resolution 1, which authorized the school district to issue \$125 Mil in bonds to expand/renovate schools, to voters.
- At the Respondents' December 5, 2018 Board Meeting, Dawn Adams suggested the Board "write a Letter to the Editor in support of the upcoming bond." Superintendent Bond indicated he would add Ms. Adams' suggestion to the Board's retreat agenda. This topic was not included in the Agenda for the school district's January 9, 2019 board meeting & retreat.
- During the Respondents' Special School Board Meeting/Retreat on January 9, 2019, the Board took the following actions regarding an agenda item entitled "Letter to the Editor – Supporting Bond":
 - It passed a motion from Brian Brooks, moving the topic from the regular agenda to the retreat agenda;
 - The Board passed a motion from Brian Brooks to draft a Letter to the Editor supporting the bond for the Tri-City Herald Newspaper; and

- It passed a motion from Ben Messinger rescinding the Board's decision to send a Letter to the Editor based on its "desire...to create more transparency and provide greater opportunity for public notice."
- RCW 42.17A.555 prohibits elected or appointed officials and employees of public offices or agencies from using, or authorizing the use of, public office/agency facilities, either directly or indirectly, to promote or oppose any ballot proposition. "Facilities" include, but are not limited to, the use of office space, stationary, postage, machines and equipment, and employee work hours. However, subsection (1) of the statute states that the prohibition described under .555 does *not* apply to "action taken at an open public meeting" by an elected board "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...board...or members of the public are afforded an approximately equal opportunity for the expression of an opposing view."

[Emphasis added]

- The discussion about drafting a support letter to the newspaper was not posted as agenda in advance of the January 9, 2019 meeting. As a result, the Respondents did not meet the criteria set forth in RCW 42.17A.555(1) requiring it to provide notice of the bond-related topic and allow the public/others to express opposing views, which would have excluded the activity from being a use of public facilities.
- The Respondents indicated that they did not draft a Letter to the Editor, use any district staff or resources or take any action on the rescinded motion subsequent to the January 9, 2019 meeting.
- In their response, the Respondents stated their belief that 1) they can express their views so long as they don't use public facilities; and 2) statements made by individuals are not attributable to the Board, unless formally adopted.
- Pursuant to WAC 390-05-271(1), RCW 42.17A.555 does not restrict the right of any individual to express their own personal views concerning supporting or opposing any ballot proposition, if such expression does not involve the use of the facilities of a public office or agency.
- The Board's good-faith effort to rescind its January 9, 2019 motion/vote regarding the Letter to the Editor in order to comply with .555(1), and the fact that it did not use public facilities to act on the proposed idea, are mitigating factors.

Based on these findings, staff has determined that, in this instance, the Respondents' January 9, 2019 approved motions to move, adopt, and later rescind a suggestion to send a letter to the newspaper supporting Prop. 1 does not amount to an actual violation warranting further investigation.

PDC staff is reminding Kennewick School District No. 17 Board of Directors about the importance of 1) not using public facilities to directly or indirectly promote or oppose any ballot propositions; and 2) ensuring the public is provided with adequate notice and an opportunity to express opposing views when the Board takes any action at a public meeting that concerns a ballot proposition.

The PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Tabatha Blacksmith at 1-360-586-8929, toll-free at 1-877-601-2828 or by e-mail at pdcc@pdcc.wa.gov

Sincerely,

/s _____
Tabatha Blacksmith
Compliance Coordinator

Endorsed by,

/s _____
Barbara Sandahl
Deputy Director
For Peter Lavallee
Executive Director

cc: Kenneth Harper, Menke Jackson Beyer, LLP
Ben Messinger, Kennewick School District No. 17