

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION

IN THE MATTER OF,

Re; Elliott Complaint

PDC No. 56501

RESPONSE

I. Background

On August 21, 2019 Mayor Mike Courts of the City of DuPont (Mayor), received a complaint from the Washington State Public Disclosure Commission (PDC), wherein Elizabeth Elliott (Elliott) filed a complaint with the PDC accusing the Mayor of violating RCW 42.17A.555 (prohibiting the use of “public facilities” for campaign purposes). Elliott’s complaint arises from her viewing a DuPont City Council meeting and “was shocked when she saw two candidates for the Steilacoom Historic School District Board give their stump speeches during the first public comment period.” Elizabeth Elliott PDC Complaint No. 56501 (Complaint). The complained of conduct took place during the August 13, 2019 regular City Council meeting which the Mayor chaired as part of his formal duties.¹ The City now responds.

¹ Elliott fails to identify the date of the Council meeting the complained of conduct took place at. However, the PCTV video she cites as evidence demonstrates it was the regular City Council business meeting on August 13, 2019.

1 **II. Response**

2 **A. Public Comment Period**

3 Elliott concedes the complained of conduct took place at a City Council meeting during
4 the public comment period. Complaint. The current City Council Rules of Procedure (Council
5 Rules) were originally adopted on August 10, 2004 as Ordinance No. 04-770
6 <https://dupont.civicweb.net/filepro/documents/262?preview=289>; the most recent amendments were adopted
7 on July 24, 2018 as Ordinance 18-1040 <https://dupont.civicweb.net/filepro/documents/35231?preview=41437>.

8 Beginning with adoption of the these rules and continuing through the most recent amended
9 version, the rules have always required, as a regular agenda item, a public comment period during
10 City Council meetings. For public comment periods, Council Rules specifically state “Comments
11 from the Public: Members of the audience may comment on items relating to any matter on or off
12 the agenda”. Council Rules at 4.1(6).

13 Other than prohibitions against slander, incivility, personal attacks and disruptive behavior,
14 the Council Rules has made the public comment period a time when any audience member may
15 speak on any topic in a neutral, public forum. See Council Rules at 4.1(6); 7.4. This rule has been
16 in place for fifteen years. The Complaint indicates that the public comment period has been a
17 regular feature of City Council meetings for twenty-three years.

18 **B. Conduct Was in Compliance With PDC Guidelines**

19 Either just prior to or contemporaneous with Elliott filing the Complaint with the PDC she
20 contacted the City making the same assertions as contained in the complaint. Concerned by this,
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23

1 the City first consulted the PDC's interpretation of RCW 42.17A.555. PDC Interpretation Number
2 04-02, 2004 (PDC #04-02).

3 That interpretation, under the Guidelines for Local Government Agencies² in Election
4 Campaigns, Activities and Resources, provides: "Agency meeting facilities, including audio visual
5 equipment, may be used by campaign committees for activities on the same terms and conditions
6 available to other community groups, subject to the provisions of the agency's policy." PDC #04-
7 02 at Pg. 19. It further provides that: "use of agency meeting facilities is permitted when the
8 facility is merely a "neutral forum" where the activity is taking place, and the public agency in
9 charge of the facility is not actively endorsing or supporting the activity that is occurring." *Id.*

10
11 Here, the complained of conduct, if it qualifies as campaign activities, took place during a
12 public comment period that as a matter of rule, policy and history is available to any person or
13 community group all subject to the same terms. Council Rules at 4.1(6); 7.4. The public comment
14 period is a neutral public forum where anyone can speak on "any matter". *Id.* No City staff or
15 officials endorsed or supported the conduct, or provided any adjustment or accommodation to the
16 regular schedule, or otherwise encouraged the complained of activity. Under the PDC's
17 interpretation of RCW 42.17A.555 the conduct described in the Complaint does not violate that
18 statute.

19 **C. PDC Confirmed Conduct Was Not Prohibited**

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22 ² RCW 42.17A.005(3) "Agency" includes all state agencies and all local agencies. "State agency" includes every
23 state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every
24 county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office,
25 department, division, bureau, board, commission, or agency thereof, or other local public agency."

1 Even though the PDC's own interpretation of RCW 42.17A.555 confirmed the complained
2 of conduct was not in violation of statute, in an abundance of caution, the City contacted the PDC
3 directly to confirm the conduct was not prohibited.

4 On August 15, 2019, the City submitted a formal information request to the PDC through
5 its information request system. The question the City presented to the PDC was: "Is it a violation
6 of RCW 42.17A.555 for a political candidate or ballot proponent/opponent, who is not an official
7 of or employed by the municipality, to make campaign statements during the public comment
8 period of a City Council meeting when the comment period is open to any speaker, on any topic,
9 and no topic or speech is endorsed or supported by any city official or staff and is an opportunity
10 provided at every Council meeting? Or is this a "neutral forum" under PDC guidelines and
11 Constitutional law?" PDC Email of August 20, 2019 (*see attachment*).

12 Scott Haley, a Filer Assistance Specialist, with the PDC responded to the City's inquiry on
13 August 20, 2019 provided the following analysis: "RCW 42.17A.555 does not prevent a public
14 office or agency from making facilities available on a nondiscriminatory, equal access basis for
15 political uses *If it is the normal and regular practice of the City Council to have a time at city
16 council meetings when the comment period is open to any speaker, on any topic, than it is
17 acceptable for the City Council to allow a candidate to make statements about his or her campaign
18 at that time.* The city council should take care that they are not violating their written policy about
19 meetings or changing their normal and regular practice to accommodate this." (Emphasis added)
20 *Id.* Finally, the City also contacted the PDC's general council, Sean Flynn via phone. Mr. Flynn's
21 advice and information was substantially similar to the formal written advice provided by the PDC.

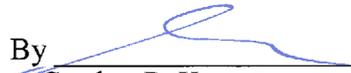
22 As set forth above, the comment period at the City Council meetings is the normal and
23 regular practice of the Council as a matter of rule, policy and history. Council Rules at 4.1(6); 7.4.
24 The Complaint confirms that the complained of conduct took place during the regular public

1 comment period of a City Council meeting. *Id.* As set forth above, that comment period was open
2 to any speaker on any topic. As the video link provided in the Complaint demonstrates, the City
3 did not change the normal routine of the meeting or in any way act to make special
4 accommodations for the complained of conduct. Under the PDC's analysis and information to the
5 City, the conduct described in the Complaint did not violate RCW 42.17A.555.

6 **III. Conclusion**

7 The City provides a neutral public forum in the form of a public comment period as a
8 regular portion of its Council meetings and has done so for many years. As a matter of rule, policy
9 and history, this period has always been open to any person to speak on any matter. To the extent
10 the conduct described in the complaint was campaigning for elected office, it took place during
11 that neutral public forum and no change was made to the regular meeting schedule to accommodate
12 the conduct. Based upon PDC Interpretation 04-02 as well as the information and analysis
13 provided to the City by the PDC, the conduct would not violate RCW 42.17A.555.
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16 DATED this 4th day of September, 2019.

17 By 
18 Gordon P. Karg
19 Attorney for the City of DuPont
20 WSBA No. 37178

From: [PDC Support](#)
To: [Gordon Karg](#)
Subject: Re: PDC - Get help or information - Gordon Karg
Date: Tuesday, August 20, 2019 4:54:41 PM

Hi Gordon,

RCW 42.17A.555 does not prevent a public office or agency from making facilities available on a nondiscriminatory, equal access basis for political uses. If it is the normal and regular practice of the City Council to have a time at city council meetings when the comment period is open to any speaker, on any topic, than it is acceptable for the City Council to allow a candidate to make statements about his or her campaign at that time. The city council should take care that they are not violating their written policy about meetings or changing their normal and regular practice to accommodate this.

Thank you,

--Scott Haley
Filer Assistance Specialist

Washington State law established email as the PDC's official means of communication as of June 7th, 2018 (RCW 42.17A.055). Filers have a duty to amend their reports within 10 days of any material changes, such as new email addresses. Please ensure your email address is up to date.

To respond, please reply to this email.

Washington Public Disclosure Commission
<http://www.pdc.wa.gov>
1.360.753.1111

On Thu, 15 Aug at 11:36 AM , Gordon Karg <gkarg@dupontwa.gov> wrote:
Is it a violation of RCW 42.17A.555 for a political candidate or ballot proponent/opponent, who is not an official of or employed by the municipality, to make campaign statements during the public comment period of a City Council meeting when the comment period is open to any speaker, on any topic, and no topic or speech is endorsed or supported by any city official or staff and is an opportunity provided at every Council meeting? Or is this a "neutral forum" under PDC guidelines and Constitutional law? See <https://www.pdc.wa.gov/learn/guidelines-local-government>
Thank you.