

November 22, 2019

VIA EMAIL AND U.S. MAIL

pcdc@pdc.wa.gov

Fox Blackhorn
Washington Public Disclosure Commission
Compliance Coordinator 2
711 Capitol Way, #206
PO Box 40908
Olympia, WA 98504-0908

RE: PDC – North County EMS Officials: Alleged Violation of RCW 42.17A.555 for Misuse of Public Facilities to Support a Ballot Proposition (EY 19; Nov 19)

Dear Mx. Blackhorn:

Our office represents North County EMS (“North County”). I write in formal response to the complaint by Timothy Schmitt filed on November 12th, 2019 (the “Complaint”). The Complaint alleges that an informational mailer sent by North County informing voters about a recent ballot measure proposing a levy lid lift violated RCW 42.17A.555.¹

Ultimately, Mr. Schmitt’s allegations in the Complaint present no substantive claims that North County violated RCW 42.17A.555, and for the reasons below, the Public Disclosure Commission (“PDC”) should dismiss the Complaint.

First, taking the allegations in their broadest context, there is no violation of RCW 42.17A.555.

The PDC’s *Guidelines for Local Government Agencies in Election Campaigns (Public Disclosure Law Re: Use of Public Facilities in Campaigns)* (“PDC Guidelines”) states:

The Public Disclosure Commission holds that it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies. This includes informing the community of the needs of the agency that the community may not realize exist. Local governments may expend funds for this purpose provided that the preparation and distribution of information is not for the purpose of influencing the outcome of an election.²

This is consistent with the legislative intent in RCW 42.17A.555 of affirming the State’s longstanding policy of an open and inclusive discussion of proposed ballot measures.

¹ A copy of the Complaint is attached here as Exhibit “A”.

² PDC Guidelines, ¶ 2.

This is also consistent with the Washington Administrative Code and the PDC's historical holdings that with respect to election related publications, "one-jurisdiction wide objective and fair presentation of the facts per ballot measure is appropriate."³

Furthermore, WAC 390-05-271(2) particularly states:

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.

Second, the standard on review here is whether the informational mailer presents "an objective and fair presentation of facts relevant to a ballot proposition." The informational mailer does exactly that. Obviously, due to its limited space, every fact of the levy lid lift cannot be described. The critical elements are whether the mailer gives an objective and fair presentation of the facts.

Schmitt's Complaint takes issue with several select statements in the Complaint without raising any substantive issue as to the statements themselves. In particular:

- "Call volumes have increased 37% since 2013."
- "The one percent increase is not keeping up with inflation, which is 3.2 percent for our area."
- "The fire levy rate falls as property values rise to limit the fire department to roughly the same amount of revenue per year plus a one percent increase allowed by law."

For each of these, respectively, Schmitt follows up with what he asserts is an "unstated" fact:

- "The majority of those calls are for medical assistance, fulfilled by the aid car, which is the cheapest piece of equipment to operation [sic]."
- "The area also had a corresponding increase in new property ownership, adding new tax paying property owners to the overall budget."
- "The fire department budget has increased."

We note that as part of its usual conduct, North County routinely communicates with the general public on relevant ballot measures via information mailer. Additionally, for each of the facts Schmitt purportedly takes issue with, he does not dispute their truthfulness or objectivity, but rather attempts to make note of additional alleged facts he believes should have been included in the mailer.⁴ Neither the law nor the PDC requires that North County provide every possible and conceivable fact but rather that North County simply provide an objective and fair presentation of facts.⁵ This would defeat the very purpose of the mailer and turn it instead into a dissertation if an agency had to include every potentially related fact. Moreover, none of Schmitt's "unstated" facts, even assuming *arguendo*

³ PDC Guidelines, ¶ 7.a.

⁴ To the extent there is any concern over the truthfulness of these statements, the factual basis for these statements in North County's mailer are attached here as Exhibit "B".

⁵ See, e.g., Jan. 12 2015 PDC Memo from Tony Perkins to Local Government Agency Officials, *available at* <https://www.pdc.wa.gov/sites/default/files/Fact.Sheets.pdf> (last accessed Nov. 18, 2019).

any validity to them, have any bearing at all on the factuality and objectivity of the statements in North County's mailer.

Taking these "unstated facts" each in turn, they are unavailing for at least the following reasons:

- (1) Whether the type of call is for medical assistance or not has no bearing on the fact that call volumes have increased 37%. Regardless of whether a call to North County is for medical aid, there is proportionately increased wear and tear on North County vehicles and equipment.
- (2) Likewise, an alleged increase in new property ownership also has no bearing on the fact that the one percent limitation on the levy lid was not keeping up with inflation.
- (3) Similarly, the assertion that "the fire department budget has increased" has no bearing or value in light of the mailer's statement that the fire department has "roughly the same amount of revenue per year plus a one percent increase allowed by law."

In short, Mr. Schmitt's allegations of a violation of RCW 42.17A.555 are entirely unsupported in fact. The PDC should therefore dismiss the allegations and the Complaint.

If you have any questions or concerns in this regard, please feel free to contact me directly at (360) 671-1796 or rdavis@chmelik.com.

Sincerely,

CHMELIK SITKIN & DAVIS P.S.



Richard A. Davis

BCN/RAD/kbb
Encl.
cc: Client

\\Chmelik Local\DFS\Shared_Docs\FIRE DISTRICTSWORTH COUNTY (SHOHOMISH) REGIONAL FIRE AUTHORITY\Levy\PDC Complaint\Levy_PDC Levy Lid Lit Mailer_111919.docx



Complaint Description

Lethalwit (Tue, 12 Nov 2019 at 11:26 AM)

According to the PDCs website, public agencies may not expend taxpayer equipment and resources on communications if those communications have the effect of aiding an election. That is, even if factual, if the selection of facts has the effect of aiding an election, that is prohibited. This taxpayer funded mailer from the North County EMS meets this threshold. Examples:

Stated: "Call volumes have increased 37% since 2013"

Unstated: The majority of those calls are for medical assistance, fulfilled by the aid car, which is the cheapest piece of equipment to operation.

Stated: "The one-percent increase is not keeping up with inflation, which is 3.2 percent for our area."

Unstated: The area also had a corresponding increase in new property ownership, adding new tax paying property owners to the overall budget.

Stated: "The fire levy rates fall as property value rises to limit the fire department to toughly the same amount of revenue per year..."

Unstated: The fire department budget has increased.

Therefore, by its selection of facts, North County Fire EMS has constructed a postive narrative which supports the levy, conveniently leaving out other facts running counter to that narrative.

What impact does the alleged violation(s) have on the public?

At this time of writing the North County Fire EMS is passing. It's certainly a possibility this levy would not have passed without this mailer. Therefore, property owners are now paying an extra levy.

List of attached evidence or contact information where evidence may be found.

Mailers attached. Note these come straight from the North County Fire EMS, a taxpayer funded agency.

List of potential witnesses with contact information to reach them.

Fire cheif John Cermak, 425-789-8036, jcermak@northcountyfireems.com

Complaint Certification:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.



Questions about the fire levy lid lift?



NORTH COUNTY FIRE/EMS
8117 267th Street NW
Stanwood, WA 98292
(360) 629-2184
www.northcountyfireems.com
#NCFireEMS @NCountyFireEMS

PRSRV STD
ECRWSS
US POSTAGE
PAID
EDOM PETAAL

Local
Postal Customer

We have answers.



What's on my ballot?

North County Regional Fire Authority (known as North County Fire & EMS) is asking voters to return the fire levy to \$1.50 per \$1,000 of assessed property value. This is called a fire levy "lid lift."

Why is my fire department asking for this?

Call volumes have increased 37% since 2013. More calls mean added costs for personnel, apparatus, fuel, equipment, maintenance, and medical supplies.

How much will it cost? How long will it last?

The fire levy has fallen to \$1.36/\$1,000. The 14-cent lid lift would last for six years and cost the owner of a \$350,000 home an additional \$4.08 per month (\$49 per year).

Have we approved \$1.50/\$1,000 before?

Yes, voters originally approved a fire levy of \$1.50/\$1,000 in 2008.

Why did the fire levy rate decrease?

The fire levy rate falls as property values rise to limit the fire department to roughly the same amount of revenue per year plus a one percent increase allowed by law. The one percent increase is not keeping up with inflation, which is 3.2 percent for our area.

What will you do with the revenue?

We recently completed a Strategic Plan that outlines how we will respond to higher call volumes. Funding would be used to hire up to six additional emergency personnel, improve training, and purchase supporting apparatus and equipment.

Where can I find more information?

More information can be found on our website at www.northcountyfireems.com. Visit with us during the Board of Fire Commissioners' meetings on the second and fourth Wednesdays of the month at Station 99 (8117 257th Street NW, Stanwood, WA 98292). Fire Chief John Cermak is also available to answer questions at (425) 789-8036 or jcermak@northcountyfireems.com.

Thank you for considering our request!

EXHIBIT “B”
FACTUAL DATA

1. **“The one percent increase is not keeping up with inflation, which is 3.2 percent for our area.”**

NCRFA Annual General Fund expenditure increase/(decreases) vs. Seattle CPI-U									
	2012 Actuals	2013 Actuals	2014 Actuals	2015 Actuals	2016 Actuals	2017 Actuals	2018 Actuals	2019 Est Actuals	Average Inc/(Dec)
Total Genl Fund Expenditures	\$ 5,047,584	\$ 6,070,514	\$ 6,240,181	\$ 6,787,706	\$ 5,985,274	\$ 6,891,513	\$ 8,274,767	\$ 9,558,382	
Percent Inc/(Dec)		20.3%	2.8%	8.8%	-11.8%	15.1%	20.1%	15.5%	10.1%
CPI-U-Seattle		1.2%	1.8%	1.4%	2.2%	3.1%	3.2%	2.4%	2.2%

Data demonstrates that cost of providing fire and EMS services rises at an average of 10.1% from 2012 to 2019. CPI for Seattle area has risen an average of 2.2% during that same period. So the 1% increase allowed by state law does not come close to matching the district's rising costs much less keep up with CPI for our area.

2. **“The fire levy rate falls as property values rise to limit the fire department to roughly the same amount of revenue per year plus a one percent increase allowed by law.”**

A jurisdiction’s property tax is calculated using three factors:

1. Assessed Valuation
2. Levy Rate
3. Property Tax Levy (Revenue)

The Formula for calculating property is: $(\text{Assessed Valuation}/1000) \times \text{Levy Rate} = \text{Property Tax}$.

State law states that property tax revenue can only increase 1% year over year, so current year’s property tax revenue x 101% is next year’s property tax revenue. So, we know what the property tax revenues will be for the following year and we can get the new assessed value from the county so to make the formula work and to get the levy rate we have to back into the number. So, if we take the 101% increased property tax and divide assessed valuation (divided by 1,000) we can figure out the new levy rate. The problem is that assessed valuation generally increases about 6-8% annually for our area. So, to make the formula work, we have to decrease the levy rate proportionately to get to the 1% maximum revenue increase. In years of rising assessed valuations, the levy rate drops rapidly which inhibits the district from fully charging the lawful maximum levy rates and reducing their ability to fully fund the increased costs of providing services to the community.

3. **“Call volumes have increased 37% since 2013.”**

See following call volume logs. $((4,259-3,113) / 3,113) \times 100 = 37\%$

Incident Count By Alarm Type

2017 (April 01-December31)

Alarm Date.Calendar

(Multiple Items)

FDID

31D30

Incident Count

Column Labels

Row Labels

April

May June July August September October November December Grand Total

Row Labels	April	May	June	July	August	September	October	November	December	Grand Total
BLS - Basic Life Support Code Response	150	125	144	181	169	145	151	103	122	1,290
BLSN - Basic Life Support Non-Code Response	33	26	30	23	24	32	34	32	45	279
COA - Carbon Monoxide Alarm	1	2	1				2	1	2	9
FAC - Fire Alarm Commercial	5	11	5	9	6	9	9	3	6	63
FAR - Fire Alarm Residential	7	6	5	4	5	1	3		4	35
FAS - Fire Alarm Sprinkler Waterflow			1						1	2
FB - Fire Brush, Grass Or Wildland Fire		1	2	8	7	3	3			24
FC - Fire Commercial Response		2	1		5	3	3	1	3	18
FIRE - Generic Fire Call		1	1	2	2	1		2	1	10
FR - Fire Residential Full Response	3	3	6	6	4	4	7	4	5	42
FS - Fire Single Engine Response	9	12	13	28	19	11	9	9	7	117
FTU - Fire Type Unknown			3	1	3	3		1		11
GLI - Gas Leak Inside Structure					1	1		1		3
GLO - Gas Leak Outside Structure		1			1					2
HZ - HAZMAT	1		1	1						3
MAA - Mutual Aid ALS	6	3	8	14	5	4	6	1	9	56
MAB - Mutual Aid BLS		2		3		2		1	2	10
MAF - Mutual Aid Fire	1	5	5	5	3	3	2	4	5	33
MED - Medic Response	94	91	110	97	114	94	105	120	114	939
MEDX - Upgraded Medic Response	5	7	7	6	9	7	5	7	9	62
MU - Move Up		1			1					2
MVC - Motor Vehicle Collision	12	24	21	14	17	25	12	21	24	170
MVCE - Motor Vehicle Collision Entrapment			1		3			1	3	8
MVCF - Motor Vehicle Collision Fire		1					2			3
MVCM - Motor Vehicle Collision Medic	4	3	4	3	2		2	1	1	20
MVCN - Motor Vehicle Collision Non Code Response									3	3
MVCP - Motor Vehicle Collision Pedestrian/Bike Medic				2	1			1	1	5
RESSW - Technical Rescue Water-River/Swift Water				2	2			4		8
RESWA - Technical Rescue Water-Surface Water	1	1	1		2					5
SC - Service Call	15	12	13	34	36	39	24	18	21	212
Unknown	1	1	3	1	1	2		1		10
Grand Total	348	341	386	444	442	389	379	337	388	3,454

Incident Count By Alarm Type

2018

Alarm Date.Calendar

Calendar 2018

FDID

31D30

Incident Count

Column Labels

Row Labels

January

February

March

April

May

June

July

August

September

October

November

December

Grand Total

AID - Generic Aid/EMS											1			1
BLS - Basic Life Support Code Response	110	95	102	97	94	95	108	94	90	94	89	73	1,141	
BLSN - Basic Life Support Non-Code Response	53	46	50	38	52	62	41	48	50	48	54	37	579	
COA - Carbon Monoxide Alarm	1	1					3			1		1	7	
COAM - Carbon Monoxide Alarm Medic Criteria	1							1					2	
FAC - Fire Alarm Commercial	3	5	3	3	8	2	10	4	11	5	7	8	69	
FAR - Fire Alarm Residential	3	6	4	1	7	2	4	6	5	6	3	5	52	
FAS - Fire Alarm Sprinkler Waterflow	1	1	1	1	2		1					1	8	
FB - Fire Brush, Grass Or Wildland Fire				1	2	3	10	7	1			1	25	
FC - Fire Commercial Response	3	1		1	3	2				1			11	
FIRE - Generic Fire Call	1	1	8	4	2	3	3	2	1	2		4	31	
FR - Fire Residential Full Response	7	5	3	8	2	3	9	1	1	5	6	10	60	
FS - Fire Single Engine Response	7	16	4	7	4	10	24	9	6	12	9	18	126	
FTU - Fire Type Unknown	1	1	1	2		3	1	2	2	2	2	3	20	
GLI - Gas Leak Inside Structure			1				1			3		1	6	
GLO - Gas Leak Outside Structure			2	1						1		1	5	
HZ - HAZMAT							1						1	
MAA - Mutual Aid ALS	4	1	2	1	1	3	6	2	8	6	4	12	50	
MAB - Mutual Aid BLS		3	1				2	3	1	3	1	1	15	
MAF - Mutual Aid Fire	5	2	3	4	1	4	6		5	3	1	1	35	
MED - Medic Response	131	95	117	117	105	97	119	124	94	128	118	101	1,346	
MEDX - Upgraded Medic Response	10	6	6	6	11	10	8	10	5	9	11	8	100	
MU - Move Up	1												1	
MVC - Motor Vehicle Collision	12	19	3	2	9	7	8	9	3	4	9	3	88	
MVCE - Motor Vehicle Collision Entrapment			2		2	1	1	2	2	1		1	12	
MVCF - Motor Vehicle Collision Fire						1				1			2	
MVCM - Motor Vehicle Collision Medic	1	2	2	1	3	6	4	4	3	2	6	3	37	
MVCN - Motor Vehicle Collision Non Code Response	2	14	15	10	8	5	5	8	6	13	5	6	97	
MVCP - Motor Vehicle Collision Pedestrian/Bike Medic	3		1				1		4		1	3	13	
RESSW - Technical Rescue Water-River/Swift Water			1		1		2						4	
RESWA - Technical Rescue Water-Surface Water	1				1		1	1					4	
SC - Service Call	17	39	21	19	22	21	25	26	11	21	17	65	304	
Unknown				1			1		1			3	6	
Unknown		1											1	
Grand Total	378	360	353	325	340	340	405	363	311	371	343	370	4,259	

Incident Log

Date Range From: 1/1/2013 To 12/31/2013

Totals	
Number of Incidents	3,116
Completed	3,116
Not Completed	
Reviewed	3,113
Not Reviewed	3

Incident Log

Date Range From: 1/1/2014 To 12/31/2014

Totals	
Number of Incidents	3,826
Completed	3,826
Not Completed	
Reviewed	3,818
Not Reviewed	8

Incident Log

Date Range From: 1/1/2016 To 12/31/2016

Totals

Number of Incidents	4,389
Completed	4,389
Not Completed	
Reviewed	4,211
Not Reviewed	178

Incident Log

Date Range From: 1/1/2016 To 12/31/2016

Totals

Number of Incidents	4,389
Completed	4,389
Not Completed	
Reviewed	4,211
Not Reviewed	178

Incident Log

Date Range From: 1/1/2017 To 12/31/2017

Totals

Number of Incidents	1,033
Completed	1,033
Not Completed	
Reviewed	956
Not Reviewed	77