



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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

April 29, 2020

Delivered electronically to Eric D. Peterson, Senior Assistant Attorney General for the Department of Licensing (DOL) on behalf of BORPELS

Subject: Complaint regarding Ken Fuller, BORPELS Executive Director; PDC Case 57847

Dear Mr. Peterson:

Below is a copy of an electronic letter sent to Cody Hart concerning a complaint he filed against Ken Fuller, Executive Director of the Washington State Board of Registration for Professional Engineers and Land Surveyors (BORPELS), alleging violations of RCW 42.17A.635 by indirectly lobbying the legislature outside of authorized channels for public agency lobbying.

As noted in the letter to Mr. Hart, Mr. Fuller completed an SOU on behalf of BORPELS acknowledging violations of RCW 42.17.635 and paying a \$150 civil penalty resolving the issue in PDC Case 67383 for failing to timely file two L-5 reports for the first and second quarters of 2019. This issue was not listed in the complaint, and staff opened PDC Case 67383 only to process the \$150 penalty payment under a separate case number.

In addition, Mr. Fuller also completed an SOU and paid a \$150 civil penalty payment in this matter in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule). By completing the SOU, Mr. Fuller acknowledged violations of RCW 42.17A.635 by using BORPELS equipment, resources and staff time to engage in an indirect lobbying effort in support of legislation. As noted below in the electronic letter sent to Mr. Hart, the PDC will not be conducting a more formal investigation into the allegations listed in the complaint or taking further enforcement action in this matter.

The PDC has dismissed the complaint in accordance with RCW 42.17A.755(1). Thank you for your cooperation in resolving this matter. If you have questions, you may contact Kurt Young at (360) 664-8854, toll-free at 1-877-601- 2828 or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Electronically Signed, Kurt Young
Compliance Officer

/s _____
Electronically Signed BG Sandahl, Deputy Director
for Peter Lavallee, Executive Director



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April 29, 2020

Delivered electronically to Cody Hart

Subject: Complaint filed against Ken Fuller, PDC Case 57847

Mr. Hart:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on September 30, 2019. The complaint alleged that Ken Fuller, Executive Director of the Washington State Board of Registration for Professional Engineers and Land Surveyors (BORPELS), may have violated RCW 42.17A.635 by indirectly lobbying the legislature outside of authorized channels for public agency lobbying. For your information, a public employee such as Mr. Fuller cannot violate RCW 42.17A.640 for failing to report grass roots lobbying activities, but RCW 42.17A.635 prohibits public funds and resources from being used and spent to engage in an indirect lobbying campaign.

PDC staff reviewed the allegations listed in your complaint and the complaint exhibits; the applicable statutes, rules, and PDC guidance, and the October 30, 2019 response provided by Eric D. Peterson, Senior Assistant Attorney General for the Department of Licensing (DOL) on behalf of BORPELS, Mr. Fuller and other Respondents identified in your complaint, to determine whether the record supports a finding of one or more violations. Based on staff's review, we found the following:

- Mr. Peterson stated while BORPELS is an independent agency, it relies on DOL “for certain administrative and other functions, including assistance with management of BORPELS's budget.” During the 2019 Legislative Session, legislation was proposed (HB 1176 and SB 5443), that if approved would make BORPELS an independent state agency responsible for its own budget and administrative functions. He stated Governor Inslee “had appointment authority for BORPELS members under both the prior and new law” and that during the 2019 session, both bills were supported by Mr. Fuller, BORPELS board members, and DOL.
- Staff's review of the response from Mr. Peterson on behalf of BORPELS found that Mr. Fuller and several BORPELS board members met with Legislators and testified in support of House Bill 1176 and Senate Bill 5443 during the first quarter of the 2019 Legislative Session. Those in-person legislative contacts exceeded the four-day exemption for using public funds to directly lobby in accordance RCW 42.17A.635, and those meetings with Legislators and the testimony were reportable on the Lobbying by State Government Agencies (L-5 report).
- Those activities involved Mr. Fuller, who met with Legislators and/or testified in support of HB 1176 and SB 5443, and four BORPELS Board members, James Wengler, Aaron Blaisdell, Ivan VanDeWege, and Marjorie Lund, BORPELS Board member.

- Mr. Peterson stated that BORPELS board members only serve in a part-time capacity and do not receive a salary. He stated the email communications from Mr. Fuller were to provide information or advocacy for official agency business including support for HB 1176 and SB 5443. He acknowledged there were email exchanges that involved employees of other agencies or BORPELS stakeholder group members, but that only Mr. Fuller sent emails to stakeholders, among other recipients, on BORPELS time with BORPELS equipment.
- Mr. Peterson stated that “all actions were taken openly and in good faith; there is no systematic or ongoing problem” and added there was no “material impact on the public... since the direct lobbying of legislators was clearly lawful.” He stated the Respondents involved had no experience with lobbying statutes, rules, and procedures, and that Mr. Fuller and BORPELS board member did not receive any “personal benefit from the legislation at issue as it instead clarifies BORPELS's operations” as an independent state agency.
- Mr. Peterson provided as further evidence of Mr. Fuller's good faith “that: a) he sought information and guidance from Tod Ayers, a DOL human resources employee, concerning his role in the legislative process (see complaint, pg. 35); and, b) the plan for soliciting others' support and actions was suggested to him by Cliff Webster”, a long-time contract lobbyist registered with the PDC.
- The complaint provided a series of emails from Ken Fuller Executive Director of the Washington State Board of Registration for Professional Engineers and Land Surveyors (BORPELS) as part of the Department of Licensing soliciting support for Senate Bill 5443 during the 2019 Legislative Session.

Failure to timely file L-5 Reports, PDC Staff Generated Complaint (PDC Case 67383)

- RCW 42.17A.635(5) requires each state agency that has expended public funds to lobby the Washington State Legislature or a state agency to file with the PDC quarterly statements providing lobbying information undertaken by the agency for the quarter just completed.
- On December 16, 2019, BORPELS submitted four paper-filed L-5 reports disclosing \$2,080 in agency public funds were expended during calendar year 2019, however the L-5 reports filed for the third and fourth quarters of 2019 contained no reportable public agency lobbying activities had been undertaken. The two L-5 reports disclosed reportable public agency lobbying activity undertaken by BORPELS between January 1 through June 30, 2019 in support of House Bill 1176, Senate Bill 5443, and meeting with the Governor’s Office for the HB 1176 bill signing. The two L-5 reports filed by BORPELS disclosed the following:
 1. 2019 First Quarter (January 1 through March 31, 2019): The L-5 report for the first quarter of the 2019 Legislative Session disclosed that BORPELS spent a total of \$549.83 in public agency funds that included \$265.63 for Ken Fuller, BORPELS Executive Director, for the time he spent meeting with Legislators or testifying in support of HB 1176 and SB 5443. The L-5 report disclosed four BORPELS Board members, James Wengler, Aaron Blaisdell, Ivan VanDeWege, and Marjorie Lund, met with Legislators or testified in support of HB 1176 and SB 5443 during the first quarter of 2019. The per diem and travel reimbursements costs for the board members public agency lobbying activities totaled \$284.20. The L-5 report for the first quarter of 2019 was required to have been filed by BORPELS no later than April 30, 2019 and the information was filed 234 days late.
 2. 2019 Second Quarter (April 1 through June 30, 2019): The L-5 report for the second quarter of the 2019 Legislative Session disclosed that BORPELS spent a total of \$837.24 in public agency funds.

The L-5 report disclosed \$240 for Mr. Fuller's time spent testifying before the House Appropriations committee and meeting with Governors Staff for HB 1176 bill, and an additional \$465 in travel costs were for Mr. Fuller to return early from a conference in Boise to attend the HB 1176 bill signing. The L-5 report disclosed that Mr. VanDeWege, a BORPELS Board member, was reimbursed \$132.24 for his per diem and travel costs to meet with the Governor's staff for the HB 1176 bill signing. The L-5 report for the second quarter of 2019 was required to have been filed by BORPELS no later than July 31, 2019 and the information was filed 142 days late.

- On April 24, 2020, the PDC received a completed Statement of Understanding (SOU) and a \$150 civil penalty payment from BORPELS. The \$150 civil penalty assessed against BORPELS in this matter was done in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule). By completing the SOU, BORPELS acknowledged a violation of RCW 42.17A.635 by failing to timely file two L-5 reports as required for a state agency engaged in public agency lobbying activities.

Use of public funds to engage in an indirect lobbying effort (PDC Case 57847):

- Mr. Fuller sent out emails using his BORPELS computer, state email address, and on state time that were either cc'd or emailed directly to individuals and organizations outside the permitted agency communication channels in violation of RCW 42.17A.635. While some of the emails were also sent or cc'd to BORPELS Board members, the emails contained "calls to action" and indirect lobbying appeals to contact legislators outside the agency's normal communication email channel for lobbying as detailed in the Report of Investigation.
- In a February 5, 2020 email, Mr. Peterson stated Mr. Fuller estimated that "he spent 20 hours during the 2019 legislative session preparing and sending emails to non-BORPELS members requesting that they contact legislators or the Governor's office to express support for pending legislation (i.e., SB 5443 and HB 1176). He stated the time includes direct emails he sent to non-BORPELS members, as well as cc'd copies to non-BORPELS members of emails that were primarily directed to BORPELS members. He added it also included the time spent Mr. Fuller developing those communications such as preparing sample communications to send to legislators and legislative member email address lists.
- He stated Mr. Fuller estimated that he had an additional two hours of telephone conversations during the 2019 session requesting that non-BORPELS members contact legislators or the Governor's office in support of the two bills. He stated that he believed this was the extent "for sake of argument, the PDC could consider indirect lobbying." He stated that Mr. Fuller also "provided general information and answered others' questions about the impact of the legislative proposals, but this was not connected with any request for legislative support and thus is not indirect lobbying."
- While communicating with staff about completing a proposed SOU to resolve the allegations of using public funds to engage in an indirect lobbying effort, Mr. Peterson provided the following paragraph from Mr. Fuller stating:

"I understand the complaint...also alleged that I acted improperly by directly lobbying legislators and the Governor's office in support of HB 1176 and SB 5443. All such direct lobbying was for official purposes and through official channels and was thus lawful. "The complaint filed also alleged that I engaged in a grass roots lobbying campaign... My conduct did not amount to such a violation, because no covered expenditures were made to present a program to the public within the meaning of the section. "Last, the complaint filed alleged that I personally benefited from the proposed legislation and abused my authority to negotiate with private organizations in exchange for their legislative support.

“There is no merit to these allegations. I hereby enter this (SOU) with respect to indirect lobbying violations in consideration of and with the understanding that the PDC will close the complaint with no findings of violation with respect to the other complaint allegations. Concurrent herewith, I am also executing a Statement of Understanding as it relates to the failure of BORPELS to timely file lobbying reports for Q1/2019 and Q2/2019, which the PDC raised on its own initiative in the course of investigating the complaint.”

- The PDC received a completed SOU and a \$150 civil penalty payment from Ken Fuller. The \$150 civil penalty assessed against Mr. Fuller in this matter was done in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule). By completing the SOU, Mr. Fuller acknowledged violations of RCW 42.17A.635 by using BORPELS equipment, resources and staff time to engage in an indirect lobbying effort in support of legislation.

As noted above, Mr. Fuller completed an SOU on behalf of BORPELS acknowledging violations of RCW 42.17.635 and paying a \$150 civil penalty resolving the issue in PDC Case 67383 for failing to timely file two L-5 reports for the first and second quarters of 2019. This issue was not listed in the complaint, and staff opened PDC Case 67383 only to process the \$150 penalty payment under a separate case number.

Concerning your specific complaint and allegations, PDC staff found that Mr. Fuller and BORPELS were not familiar with the state agency lobbying and reporting requirements, and Mr. Fuller was not aware of the restrictions pertaining to indirect lobbying activities. Mr. Fuller did send emails to BORPELS stakeholders that were outside of the agency permitted lobbying communication channels, however those emails were not sent to the “general public” as required for a grassroots lobbying campaign but did include messages to recipients to contact legislators in support of the legislation. Mr. Fuller took responsibility and completed an SOU acknowledging violations of RCW 42.17A.635 to resolve the allegations that he used public funds to engage in an indirect lobbying campaign and paid a \$150 civil penalty.

PDC staff has determined that, in this instance, the indirect lobbying activities undertaken by Mr. Fuller do not warrant further investigation. Based on this information and the facts listed in this letter and Report of Investigation, the PDC has dismissed the complaint in accordance with RCW 42.17A.755(1). If you have questions, you may contact Kurt Young by e-mail at pdcc@pdc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Electronically Signed, Kurt Young
Compliance Officer

/s _____
Electronically Signed BG Sandahl, Deputy Director
for Peter Lavalley, Executive Director

cc: Eric Peterson, Assistant Attorney General for BORPELS