

Re: Adam Fortney's Response to PDC Complaint 89226

Dear Ms. Blacksmith;

As requested, this letter responds to the complaint filed by Ms. Lori Shavlik alleging that I used County facilities to assist in my recall defense and failed to list my membership on the Pennies for Puppies Board on my F-1 disclosure. Specifically, the Public Disclosure Commission (PDC) asked that I respond to the following allegations:

1. Allegation One: Alleged violation of RCW 42.17A.555 by using public office/agency facilities to assist an election campaign & oppose a ballot proposition (Recall).
2. Allegation Two: Alleged violation of RCW 42.17A.710 by failing to disclose directorship with Dawson Place on F-1 report(s) and position with Pennies for Puppies on F-1 report covering 2020

I appreciate the opportunity to respond to Mr. Shavlik's allegations. Notably, this is not the first time Ms. Shavlik has made allegations about me. She has filed three recall cases against me, one of which is currently pending before the superior court, raising the same or similar claims. She has also filed a PDC complaint against the political action committee formed to defend against the recall charges brought against me, again, raising similar claims. None of the alleged actions, however, constitute violations of campaign finance laws.

I believe that the complaint should be dismissed with no action taken for the reasons described below.

1. Allegation One.

Ms. Shavlik attached to her complaint numerous documents that do not appear directly relate to this PDC complaint, which makes her filing hard to understand. I've gone through the materials however, and I believe that Allegation 1 is based on three claims. Ms. Shavlik claims that I used County facilities or resources, in violation of RCW 42.17A.555, based on (1) a GoFundMe account "To help Sheriff Adam Fortney's Recall Expenses" which displays the Sheriff's Office logo, (2) a GoFundMe account to "Defend Sheriff Adam Fortney From Recall," and (3) an April 30, 2020, email exchange between me and a deputy regarding the first recall case she filed against me. I will address each claim, and explain why there is no violation below.

a. The GoFundMe account "To help Sheriff Adam Fortney's Recall Expenses"

The complaint links to a GoFundMe account "To help Sheriff Adam Fortney's Recall Expenses," which according to the website, was created September 16, 2020. I did not create this account, or ask anyone else to create this GoFundMe account on my behalf.

RCW 42.17A.555 prohibits elected officials from using or authorizing 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."

Because I did not create or authorize the creation of the GoFundMe page, RCW 42.17A.555 was not violated.

b. The GoFundMe account to “Defend Sheriff Adam Fortney From Recall,”

The complaint claims that I used the “resources of the county and time” and links to a GoFundMe account to “Defend Sheriff Adam Fortney From Recall.” What exactly is being alleged is a bit unclear. It is even more unclear how this complaint relates to me, since this GoFundMe account has already been attributed to another entity.

As the PDC found in PDC Case 69913 (initiated after a complaint was filed by Ms. Shavlik), this GoFundMe account is owned by the Fortney Recall Legal Defense Fund (Committee). The Committee initially registered with the PDC on May 14, 2020 and amended the same report/registration twice on May 19 and June 11, 2020. The Committee listed Samuel Wilson and Philip Bentz as treasurer and committee officer, respectively. See PDC Case 69913; PDC’s response issued April 2, 2021.

As stated above, RCW 42.17A.555 prohibits an elected official from using or authorizing the use of public facilities in “opposition to any ballot proposition.” No County resources, facilities, or time was used to create or operate this GoFundMe page. This page was created by the Committee. RCW 42.17A.555 does not apply.

c. The April 30, 2020, email exchange between me and a deputy regarding the first recall case

Ms. Shavlik claims I used public resources to defend against a recall, when I responded to an email from a deputy offering his support on April 30, 2020. This claim is not new. It is part of Ms. Shavlik’s recall petition currently pending before the Snohomish County Superior Court. I will provide the PDC with the same explanation I included in my response to the recall petition.

I did not initiate or solicit anything in the April 30, 2020, email. The email was written by a Sheriff’s Office employee when he learned about the first recall filed against me through an “article in the [Everett] Herald” In my response I did not solicit anything. The email clearly shows that I responded politely to an employee’s declaration of support, and expressed my optimism that I would get through the recall process.

Furthermore, RCW 42.17A.555 does not apply in this situation. A ballot proposition includes a “... recall ... from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.” RCW 42.17A.005(4). In *Garfield Cty. Transportation Auth. v. State*, 196 Wn. 2d 378, 402–03, 473 P.3d 1205, 1218 (2020), a party alleged that plaintiff municipalities violated RCW 42.17A.555 when they used public resources to challenge a proposed initiative (I-976). The Supreme Court found that there was no violation of RCW 42.17A.555 because “at the time of the court challenge, [the initiative] was no longer proposed to be submitted to the voters.” *Id.* (internal citation and quotations omitted).

On April 30, 2020, when the communication occurred, the recall petition was not yet a ballot proposition. The hearing on factual and legal sufficiency, and the court’s order, did not occur until May 15, 2021. Accordingly, the recall petition did not advance to the status of ballot proposition until the Superior Court, pursuant to RCW 29A.56.140, determined the sufficiency of the petition and certified and transmitted the ballot synopsis to the County Auditor, on May 15, 2020, or sometime thereafter. See RCW 29A.56.140.

Therefore, the April 30, 2020, communication does not violate RCW 42.17A.555.

2. Allegation Two.

Allegation two relates to my 2020 F-1 Financial disclosure statement. I am a board member, but not an officer, of Pennies for Puppies, a Washington non-profit corporation. I did not include my membership on the Pennies for Puppies Board on my 2020 F-1 disclosure because I was under the impression that my service on the Pennies for Puppies Board was a part of my official duties as the elected Sheriff. See RCW 42.17A.710; WAC 390-24-211.

Pennies for Puppies was founded in 1997, for the purpose of establishing, expanding, and enhancing a K-9 Unit for the Snohomish County Sheriff's Office. In 2002, Pennies for Puppies became a non-profit corporation of the State of Washington. It is my understanding, that historically, the elected Snohomish County Sheriff has been a member of Pennies for Puppies, or its predecessor corporation, Pennies for Puppies and Ponies. Because I believed that my membership was associated with my office, I did not think that it needed to be reported. (WAC 390-24-211(1) "An elected official or executive state officer is not required to report the office, directorship, or position held in a public or private office for service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official's or executive state officer's official duties.")

After I was notified of this complaint, I reviewed the Pennies for Puppies Bylaws and determined that in spite of the historic practice in Snohomish County, there is no specific reference to a position on the board for the elected Sheriff. To the extent that the PDC determines that Pennies for Puppies should be listed on my F-1 disclosure, I am happy to amend my disclosure. Furthermore, in the abundance of caution, I will make sure to include this organization on any future F-1 disclosure.

For the reasons stated above, I respectfully request that the PDC determine that no violation of the state's campaign finance laws occurred and close the complaint with no further action. If you require any additional explanation, I would be glad to provide any additional information or documentation.