



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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

December 14, 2023

Delivered electronically to South Whidbey Parks and Aquatics Foundation (the Foundation) at
info@swparksandaquatics.org

Subject: Complaint filed by Vicky L. McFarlane, PDC Case 142835

Dear Margaret Delp:

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

As noted in the letter to Ms. McFarlane, the PDC has dismissed this matter following RCW 42.17A.755(1) and will not conduct a more formal investigation into these allegations or take further enforcement action in this matter.

However, per WAC 390-37-060(1)(d), this serves as a formal written warning concerning the Foundation's failure to promptly disclose independent expenditures and provide complete sponsor identification on political advertising as noted in the enclosed letter sent to Ms. McFarlane. Staff expects that in the future the Foundation will follow all applicable requirements related to political activity engaged in by the Foundation. If violations of PDC laws or rules occur in the future, the Commission will consider this formal written warning in deciding on further Commission action.

If you have questions, you may contact Tanya Mercier by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Endorsed by,

/s/ Electronically signed

Tanya Mercier
Compliance Officer

/s/ Electronically signed

Peter Frey Lavallee
Executive Director



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December 14, 2023

Delivered electronically to Vicky L. McFarlane at launcntl@earthlink.net

Subject: Complaint against South Whidbey Parks and Aquatics Foundation, PDC Case 142835

Dear Vicky McFarlane:

The Public Disclosure Commission (PDC) has completed its review and assessment of the complaints you filed on September 27th and 28th, 2023. The complaints alleged that South Whidbey Parks and Aquatics Foundation (the Foundation), a registered 501(c)(3) nonprofit organization, may have violated RCW 42.17A.205, .235, .240 and .320 for failure to register as a political action committee, failure to timely and accurately disclose contributions and expenditures on reports, and incomplete sponsor identification on political advertising during the 2023 election year.

PDC staff reviewed the allegation(s); the applicable statutes, rules, and reporting requirements; the response(s) provided by the Respondent; the applicable PDC reports filed by the Respondent; and other relevant information, to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

- The Foundation is an all-volunteer nonprofit organization established in 2008 for the charitable purpose “to make parks and aquatics activities accessible to ALL residents of the South Whidbey community by raising money to fund capital expenses, operating endowments and scholarships as well as supporting new and existing parks and aquatics programs.” The Foundation has also been responsible for activities such as the annual open water swim races, annual open water swim clinics, guided open water swim events, and fund raising for a learn-to-swim program and swim scholarship fund.
- The Foundation, in collaboration with the South Whidbey Parks and Recreation District (the Parks District), has worked to “support the design, construction, programming, and operation of an aquatic center on South Whidbey.” The Foundation has helped raise funds for “feasibility studies and [has] participated on a committee with the Parks District to work directly with consultants, architects, and engineers on the proposed design” of the aquatics center.
- The Parks District, as the local governmental authority for parks and recreation in South Whidbey, submitted a bond measure as a ballot proposition in the 2023 election. The

levy proposed to fund the construction of an aquatic center for which the Parks District would be the owner and operator.

- The Foundation endorsed the bond measure on their website and used general treasury funds to pay for yard signs, posters, newspaper ads, bumper stickers, and a mailer sent to the community.
- RCW 42.17A.205 requires every political committee to register with the PDC within two weeks of organizing or first having the expectation of receiving contributions or making expenditures, whichever is earlier. Pursuant to RCW 42.17A.005(41) a “political committee” is any person, group, club, organization, or collection of individuals (except a candidate or individual dealing with his or her own funds) expecting to receive contributions or make expenditures in support of or in opposition to any candidate or ballot proposition. PDC Interpretation 07-02 outlines that there are two independent qualifying activities, receiving contributions and making expenditures, which can trigger the registration requirement.
- PDC staff did not find any evidence that the Foundation solicited for or received contributions to support their efforts specific to the endorsement of the bond measure.
- In reviewing the case materials, staff reviewed PDC Interpretation No. 07-02, “Primary Purpose Test” guidelines, to determine if the Foundation’s expenditures triggered the requirement to register as a political action committee. Based on the evidence there is no indication the Foundation used over 30% of its general treasury budget, or resources, on spending in the election campaign. However, we also must consider if the activities related to the election campaign spending, regardless of dollar amount, constitute a primary purpose of the organization. In this case, we found the successful outcome of the bond measure is favorable to the mission and goals of the Foundation, but the organization’s election-campaign-related activities were a minor aspect of the organization’s overall activities. Therefore, registration as a political action committee was not required by the Foundation.
- Per RCW 42.17A.235 and .240, under the Full Reporting Option, a committee is required to disclose contribution and expenditure information by submitting Receipts and Expenditure Summary (C-4) reports and Cash Receipts, Monetary Contributions (C-3) reports to the PDC. The due dates for the C-3 and C-4 reports are determined by the Committee’s activity and participation in the election cycle. Because the Foundation was not required to register as a committee, RCW 42.17A.235 and .240 are not applicable to this case.
- Per RCW 42.17A.255, “Independent Expenditure” means any expenditure made in support of or in opposition to any candidate or ballot proposition and not otherwise required to be reported pursuant to RCW 42.17A.225, .235 and .240 (and not subject to certain exceptions outlined further in the statute). These types of expenditures are undertaken without consultation or cooperation with a benefiting candidate or campaign. If an expenditure does not constitute a *contribution* as defined in RCW 42.17A.005(16)(a) and WAC 390-05-210, the entity making it is free to spend as much or as little as they like, but once expenses reach \$1,000 or more, an Independent Spending & Electioneering Communications (C-6) report must be filed within five days. Subsequent expenses must be filed on the 10th of the month preceding the election, 21 days prior to

the election, seven days prior to the election, and then on the 10th of the month after the election.

- Following the complaint, a C-6 report was filed on December 01, 2023, after the election and past the filing deadlines. In this case, the Foundation should have reported expenditures for expenses related to the election campaign earlier, according to the schedule outlined above. The late reporting did deprive the public of critical information prior to the election.
- RCW 42.17A.320 states, “all written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor’s name and address.” The statute exempts yard signs and other forms of political advertising where sponsor identification is impractical. In the case of independent expenditures, the statute further outlines additional information required if the political advertising is undertaken by an entity other than a bona fide political party or transmitted via television or another medium that includes a visual image. In this case, the political advertising is not subject to the “Top Five Contributor” or “Top Three Donors to PAC Contributors” disclosure. Even though the website and mailer did identify the Foundation by name and included their address, it was not clear if the advertising was paid for by the Foundation. Under Washington law, complete sponsor identification includes, “Paid for by” and the sponsor’s name and address, all in the same location, to clearly identify who paid for the advertising.
- The Foundation does not have other similar warnings or violations of PDC requirements.

Based on our findings staff has determined that, in this instance, the alleged violations of RCW 42.17A.205, .235 & .240 are unfounded. Through the case review, staff has further determined that the failure to promptly file C-6 reports covering 2023 campaign activity and providing complete sponsor identification on political advertising does not amount to a violation that calls for further investigation.

Pursuant to WAC 390-37-060(1)(d), however, South Whidbey Parks and Aquatics Foundation will receive a formal written warning concerning their failure to promptly disclose independent expenditures and provide complete sponsor identification on political advertising. The formal written warning will include staff’s expectation that South Whidbey Parks and Aquatics Foundation follow all applicable requirements related to future political activity engaged in by the Foundation. If violations of PDC laws or rules occur in the future, the Commission will consider this formal written warning in deciding on further Commission action.

Based on this information, the PDC finds that no further action necessary and has dismissed this matter per RCW 42.17A.755(1).

If you have questions, you may contact Tanya Mercier by e-mail at pdc@pdc.wa.gov.

Sincerely,

Endorsed by,

/s/ Electronically signed

Tanya Mercier
Compliance Officer

/s/ Electronically signed

Peter Frey Lavallee
Executive Director

cc: Margaret Delp