

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action
Against:

Barbara Johnson, John Neill, Ron Hue,
Renee Brooks, and Calvin Dudney,
Kennewick Public Facilities District
Board Members

Respondents.

PDC Cases 26814 & 28028

STIPULATION AS TO FACTS,
VIOLATION AND PENALTY

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Peter Frey Lavallee, and Respondents Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and Calvin Dudney, Kennewick Public Facilities District Board Members, through Eric W. Ferguson, Kerr Ferguson Law, PLLC, submit this Stipulation as to Facts, Violation and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

III. FACTS

1. Kennewick Public Facilities District (KPFDD) is a Washington public facilities district which owns and operates the Three Rivers Convention Center and manages the City of Kennewick's Toyota Center, an indoor stadium in Kennewick, Washington. At the time the complaints

were filed, and during the period covered by the allegations, the KPFDD board members were Barbara Johnson, President; John Neill, Treasurer; Ron Hue, Secretary; Renee Brooks, Board Member; and Calvin Dudney, Board Member.

2. Kennewick Public Facilities District has no employees, and contracts with VenuWorks of Kennewick, LLC (VenuWorks), an Iowa Limited Liability Company with its head office in Ames, Iowa, and a local office in Kennewick, Washington, for the management of Three Rivers Convention Center and the Toyota Center. Corey Pearson is an employee of VenuWorks and serves as the Executive Director for the facilities operated by KPFDD.
3. During the period when the alleged violations occurred, Mr. Pearson worked closely with Barbara Johnson, KPFDD Board President, concerning the day-to-day efforts of the campaign, including development of the content of the various publications and media produced in support of the campaign, but also regularly updated the KPFDD board concerning the operations and activities of the District, including its informational campaign to inform the public about Proposition 17-4.
4. KPFDD officials placed Proposition 17-4 on the 2017 General Election ballot, following the rejection of Proposition 16-8 in 2016. Proposition 17-4 was to fund "The Link," a facility that would include a Broadway-style theater, Toyota Center improvements, and other entertainment and event space, plus expansion of the Convention Center and other improvements authorized on the Three Rivers campus. Proposition 17-4 authorized a sales and use tax increase of two tenths of one percent (two cents on each \$10.00) to fund the improvements.
5. The KPFDD website included a tab listing six entities that expressed support for Proposition 17-4. They were:
 - The Tri-Cities Americans hockey team
 - The Tri-Cities Visitors and Convention Bureau (Visit Tri-Cities)
 - TRIDEC - The Tri-City Development Council
 - The Tri-Cities Regional Chamber of Commerce
 - The Tri-City Herald Newspaper

- The Entertainer magazine
6. The District's website included links to three articles written by Wendy Culverwell for the Tri-City-Herald, a link to an editorial written by the editorial board of the Tri-City Herald, and a link to a letter-to-the-editor written by Nolan Kadinger. The articles/editorial/letter-to-the-editor included facts, positive comments, and suggestions for what was needed to successfully pass what became Proposition 17-4.

Door Hangers/Flyers

7. KPFDD purchased 3,000 door hangers/flyers at a cost of \$1,113.63 concerning Proposition 17-4. The door hangers/flyers were distributed at KPFDD open houses and informational presentations to service groups and other groups. They were made available at the Toyota Center, Toyota Arena and the Convention Center at all events. Some were distributed to households by the Tri City Amateur Hockey Association (TCAHA). Several youth hockey teams volunteered to hand them out as well as potentially other groups.
8. The door hanger/flyer included facts, and statements such as, "Together, we can make the Tri-Cities a destination for **athletes, artists, conventions & more!** **SALES TAX IMPACT – ONLY 2 CENTS ON EVERY \$10!** – From **everyone** from **all communities** who spend in Kennewick" and, "IT'S YOUR 2 CENTS – **REMEMBER TO VOTE - PROPOSITION 17-4.**"

Mailer Distributed in City of Kennewick

9. KPFDD paid for the printing of 14,000 mailers at a cost of \$3,971.63. The mailer was targeted to registered voters who had voted in the 2016 Primary Election, 2016 February Special Election, and 2014 Primary Election. The KPFDD board was made aware by VenuWorks that a list of registered voters existed on the Benton County Auditor's website at no cost. Ms. Johnson said Mr. Pearson and his Executive Assistant, Liz Lutz, obtained "walking lists" from the Benton County Auditor and reported to the board that this list of likely voters would be used to pare down the number of households for the education-only mailer, to stay within the allotted resources of the educational plan. The mailer included statements such as,

“SALES TAX IMPACT – ONLY 2 CENTS ON EVERY \$10! – From everyone from all communities who spend in Kennewick – IT’S YOUR 2 CENTS – REMEMBER TO VOTE - PROPOSITION 17-4.”

Newspaper Advertisement

10. KPFD produced a newspaper advertisement concerning Proposition 17-4. It was a quarter page, full color ad, that ran in the Tri-City Herald on six separate dates for a total cost of \$3,888.03. The ad ran on:

- Wednesday, September 27, 2017;
- Sunday, October 1, 2017;
- Tuesday, October 3, 2017;
- Wednesday, October 11, 2017;
- Sunday, October 15, 2017; and
- Tuesday, October 17, 2017.

The newspaper ad included the statement, **“SALES TAX IMPACT – 2 CENTS ON EVERY \$10! – From everyone from all communities who spend in Kennewick.”**

Banners

11. KPFD purchased six banners for a total cost of \$2,280.60. The banners were used on-site at the Three Rivers Convention Center, and were set up in booths during events, such as a chamber of commerce event or a bridal show.

12. The banner included the statement, **“The Link Entertainment Center – SOMETHING FOR EVERYONE.”** It included the statement, **“Together we can make the Tri-Cities a destination for athletes, artists, conventions and more!”** and the statement, **“SALES TAX IMPACT – ONLY 2 CENTS ON EVERY \$10!”**

TV and Radio Advertisements

13. KPFD placed 64 TV ads and 145 radio ads between September 8 and October 16, 2017, at a cost of \$8,469. The content for the radio and TV ads included a script similar to the text and

material on the District's website, and in its door hanger/flyer, mailer, newspaper ad, and banner.

STATUTORY AND RULE AUTHORITY

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize 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. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

VIOLATION

Based on the facts set forth above, Respondents Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and Calvin Dudney, Kennewick Public Facilities District Board Members, stipulate that they violated RCW 42.17A.555 by authorizing activities that, when combined, resulted in a marketing campaign promoting Proposition 17-4. These combined activities included: (1) a website listing entities that expressed support for Proposition 17-4 and links to articles, an editorial, and a letter-to-the-editor in the Tri-City Herald favorable to Proposition 17-4; (2) Door Hangers/Flyers; (3) a mailer targeted to registered voters who had voted in recent elections; (4) Newspaper advertisements; (5) Banners; and (6) TV and radio advertisements.

PENALTY

Based on the facts and violations set forth above, the Respondents agree to pay the following civil penalties:

- Barbara Johnson, \$2,000 with \$1,000 suspended on the conditions stated below;
- John Neill, \$2,000 with \$1,000 suspended on the conditions stated below;

- Ron Hue, \$2,000 with \$1,000 suspended on the conditions stated below;
- Renee Brooks, \$2,000 with \$1,000 suspended on the conditions stated below; and
- Calvin Dudney, \$2,000 with \$1,000 suspended on the conditions stated below.

Conditions for suspended penalties:

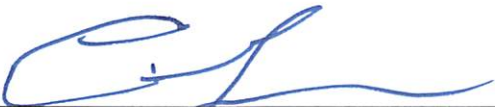
- a. Board members Barbara Johnson, John Neill, Ron Hue, Renee Brooks, or Calvin Dudney are not found to have committed any further violations of RCW 42.17A or WAC 390 within four years of the date of the final order in this matter. The finding of a violation by a Respondent is a basis to impose the suspended penalty applicable to that Respondent only. The suspended penalty shall not be assessed based solely upon any remediable violation, minor violation, or error classified by the Commission as appropriate to address by a technical correction.
- b. The non-suspended portion of the penalty is paid by each Respondent within 30 days of the date of the final order in this matter. If any Respondent fails to make timely payment of their non-suspended portion of the penalty, the suspended portion of their penalty shall immediately become due without further action by the Commission.

Respondents Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and Calvin Dudney, Kennewick Public Facilities District Board Members, affirm their intention to comply in good faith with the provisions of RCW 42.17A in the future.



 Peter Frey Lavalley, Executive Director
 Public Disclosure Commission

03/02/2021
 Date Signed



 Eric W. Ferguson, on behalf of:
 Barbara Johnson, John Neill, Ron Hue,
 Renee Brooks, and Calvin Dudney,
 KPFDD Board Members

3-2-21
 Date Signed