



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action
Against

Barbara Johnson, Kennewick Public
Facilities District Board Members

Respondent.

PDC Cases 26814 and 28028

Notice of Administrative Charges

I. JURISDICTION

1. The Public Disclosure Commission (PDC) has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW, the state campaign finance and disclosure laws; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC. These charges incorporate the Report of Investigation and all related exhibits by reference.

II. ALLEGATIONS

2. PDC staff alleges that Barbara Johnson, Board Member of the Kennewick Public Facilities District (KPFDD or District), violated RCW 42.17A.555 by using or authorizing the use of KPFDD facilities for the promotion of Proposition 17-4, a ballot measure on the November 7, 2017 General Election ballot that asked voters to authorize a sales and use tax increase of two tenths of one percent (2 cents per \$10.00) to fund improvements to the Toyota Center and expansion of the Convention Center of the Three Rivers campus, operated by Kennewick Public Facilities District.
3. The Respondent violated RCW 42.17A.555 by:
 - a. Authorizing a KPFDD webpage at www.thelinktc.com, that promoted Proposition 17-4 by: (1) including a list of six local entities that had endorsed Proposition 17-4;

and (2) including links to three articles, an editorial, and a letter-to-the-editor in the Tri-City Herald.

- b. Authorizing the purchase of 3,000 Door Hangers/Flyers for distribution throughout the City of Kennewick, concerning Proposition 17-4.
- c. Authorizing the production and distribution of 14,000 mailers promoting Proposition 17-4, some of which were targeted to registered voters who live within the City of Kennewick and who voted in the 2016 Primary Election, 2016 February Special Election, and 2014 Primary Election. Mailers were also distributed in the community on behalf of the District by groups such as the Tri City Americans hockey club, Toyota of Tri Cities, and Retter and Company Realty.
- d. Authorizing the purchase of six, one quarter page, full color, newspaper advertisements in the Tri-City Herald, promoting Proposition 17-4.
- e. Authorizing the purchase of six banners, promoting Proposition 17-4.
- f. Authorizing the production of 64 TV ads and 145 radio ads, promoting Proposition 17-4.

III. FACTS

- 4. Kennewick Public Facilities District 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 KPFD board members were Barbara Johnson, President; John Neill, Treasurer; Ron Hue, Secretary; Renee Brooks, Board Member; and Calvin Dudney, Board Member.
- 5. 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 KPFD.

6. 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 KPFD.
7. During the period when the alleged violations occurred, Mr. Pearson worked closely with Barbara Johnson, KPFD Board President, regarding the informational campaign to inform the public about Proposition 17-4. Board members John Neill, Ron Hue, Renee Brooks, and Calvin Dudney were provided only status updates by Mr. Pearson on the progress of the campaign. 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, were left to Mr. Pearson and Ms. Johnson.
8. KPFD 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.

KPFD Website

9. The KPFD 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

10. 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:

- Article written by Wendy Culverwell, May 10, 2017. The article explained the District's plans to place a measure on the ballot that would be very similar to the 2016 proposal that failed, with one notable exception, a proposed third sheet of ice in support of the area's youth hockey program. Although the article was written before the KPFD board made a final decision to place Proposition 17-4 on the 2017 general election ballot, it provided readers with positive comments about what became Proposition 17-4 at a time when Proposition 17-4 was on the ballot.
- Article written by Wendy Culverwell, June 29, 2016. The article was written in 2016 to describe Proposition 16-8, but it was relevant to voters considering Proposition 17-4 because of the similarity between the 2016 and 2017 proposals. The article described how the Kennewick City Council pledged in 2016 to build up to 1,000 new parking spots near the Three Rivers Convention Center complex if the 2016 measure passed, a feature included in the 2017 proposal.
- Article written by Wendy Culverwell, July 7, 2017. The article explained how the Kennewick Public Facilities District was emboldened by the relatively narrow margin of defeat in 2016 and would be considering later in July whether to resubmit a request to voters for The Link project to expand Three Rivers Convention Center. The article included comments from Kennewick Mayor Steve

Young who said the City Council would like to see voters get another chance to invest in the convention center. He said city officials fear Three Rivers will lose convention and meeting business to other communities without an expansion and new amenities.

- Editorial written by Editorial Board of the Tri-City Herald, July 15, 2017. The article written by the editorial board of the Tri-City Herald said it would take thorough preparation, time and a more ambitious campaign than the 2016 effort to ensure the public has the right information, and to get the votes needed to publicly fund improvements to the Three Rivers campus. The editorial noted that Kennewick mayor Steve Young, while not endorsing the plan, said organizers will have to do a better job educating the public about the request. The editorial board said they agreed. The editorial said, after the 2016 loss, the board encouraged backers of The Link to try again because expansion at the Three Rivers Convention Center has been needed for a long time.
- Letter-to-the-Editor written by Nolan Kadinger in 2017. In a letter-to-the-editor, Nolan Kadinger, a Kennewick resident, said he was glad the people pushing The Link project were trying again to get this measure passed. He said he really believed it could pass but said the biggest obstacle to focus on was building up a large voter base. He said KPFD needed to focus on encouraging people who would support the effort to vote. The letter concluded with a statement that if KPFD does these things along with what they are doing now, it would not be hard to see the District riding the wave to victory.

Door Hangers/Flyers

11. KPFD purchased 3,000 door hangers/flyers at a cost of \$1,113.63 concerning Proposition 17-4. The flyers were distributed at KPFD 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.

12. The door hanger included promotional 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

13. 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. KPFDD focused on areas in which households were more likely to vote based on previous elections. KPFDD also provided mailers to groups that distributed the mailer. The mailer included promotional 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

14. KPFDD produced a newspaper advertisement concerning Proposition 17-4. The one quarter page, full color ad, 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 promotional statement, “**SALES TAX IMPACT – 2 CENTS ON EVERY \$10!** – From **everyone** from **all communities** who spend in Kennewick.”

Banners

15. KPF D 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.
16. The banner said, “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

17. KPF D placed 64 TV ads and 145 radio ads for a total of 209 broadcast ads between September 8 and October 16, 2017, at a cost of \$8,469, concerning Proposition 17-4. 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.

IV. LAW

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.”

PDC Interpretation 04-02 (Exhibit 28) Guidelines for Local Government Agencies in Election Campaigns, Basic Principles, Number 7, states, “**7a.** Historically, the PDC has routinely advised and held that with respect to election related publications, one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate. In addition, if an agency has also customarily distributed this information through means other than a jurisdiction-wide mailing (e.g. regularly scheduled newsletter, website, bilingual documents, or other format), that conduct has also been permitted under [RCW 42.17A.555](#) so long as the activity has been normal and regular for the government agency. **7b.** The PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure. If the agency distributes more than this jurisdiction-wide single publication, the agency must be able to demonstrate to the PDC that this conduct is normal and regular for that agency. In other words, the agency must be able to demonstrate that for other major policy issues facing the government jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure. **7c.** Agencies are urged to read the definitions of "normal and regular" at [WAC 390-05-271](#) and [WAC 390-05-273](#). **Agencies need to be aware, however, that in no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct.”**

RESPECTFULLY SUBMITTED this 21st day of January 2021.

Electronically Signed Peter Frey Lavallee

Peter Frey Lavallee
Executive Director