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

In re the Matter of Enforcement Action
Against:

PDC CASE NOS. 26814 & 28028

FINAL ORDER

KENNEWICK PUBLIC FACILITIES
DISTRICT BOARD - BARBARA JOHNSON,
JOHN NEILL, RON HUE, RENEE BROOKS,
and CALVIN DUDNEY, Members,

Respondents.

I. INTRODUCTION

This matter was heard remotely by the Washington State Public Disclosure Commission (PDC, Commission) on March 25, 2021, by audio and online streaming. The hearing was held pursuant to Chapter 34.05 RCW, Chapter 42.17A RCW, and Chapter 390-37 WAC.

Commissioners present both telephonically and online were Fred Jarrett, Commission Chair (presiding); Nancy Isserlis, Commission Vice-Chair; and Commissioners William Downing, and Russell Lehman. Also present both telephonically and online were Assistant Attorney General John S. Meader representing the Commission; Assistant Attorney General Chad Standifer representing PDC staff; and Phil Stutzman, Compliance Officer, for PDC Staff. Eric W. Ferguson, attorney for the Respondents, also appeared telephonically and online. The

1 proceeding was open to the public as limited by Governor's Order 20-28 *et seq.* and recorded.

2 The hearing concerned allegations that the Kennewick Public Facilities District through
3 its Board members Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and Calvin Dudney,
4 violated RCW 42.17A.555 by authorizing activities that, when combined, resulted in a marketing
5 campaign promoting Proposition 17-4.

6 The Commissioners had before them the following materials:

- 7 • Report of Investigation for Case #26814 prepared by PDC Compliance Officer Philip
8 Stutzman, dated January 7, 2021, which included:
 - 9 ○ Complaint filed by Victor Epperly dated October 19, 2017;
 - 10 ○ Response to Complaint from Lee Kerr, received November 13, 2017;
 - 11 ○ Articles written by Wendy Culverwell in the Tri-City Herald, dated May
12 10, 2017, June 29, 2016, and July 7, 2017;
 - 13 ○ Editorial by the Editorial Board of the Tri-City Herald dated July 15,
14 2017;
 - 15 ○ Letter to the Editor from Nolan Kadinger from 2017;
 - 16 ○ Response to supplemental inquiries by Craig Briggs received July 16,
17 2020;
- 18 • Report of Investigation for Case #28028 prepared by PDC Compliance Officer Philip
19 Stutzman, dated January 7, 2021, which included these documents not already before the
20 Commission through the Report of investigation for Case #26814:
 - 21 ○ Staff dismissal letter for PDC Case 5562, Officials of Kennewick Public
22 Facilities District, Proposition 16-8, for the August 2, 2016, Primary
23 Election, dated May 30, 2018;
 - 24 ○ Original Complaint and Exhibits filed by Roger Lenk on September 11,
25 2017, and 3rd Amendment to the original complaint filed October 16,
26 2017, with attachments;

- Amendments 1-2, 4, and 7-8 to the Complaint received October 1, 2017, October 6, 2017, October 21, 2017, October 19, 2017, and October 19, 2017, respectively;
 - Extended Facilities Management Agreement, attached to the 8th Amendment to the Complaint, received December 24, 2017;
 - Response to Complaint from Lee Kerr on behalf of KPFDD, dated January 16, 2018, and received January 22, 2018;
 - Reply by Complainant Roger Lenk to KPFDD's response to original Complaint and 3rd Amendment, received January 21, 2018;
 - Roger Lenk letter to Lee Kerr regarding Mr. Lenk's public records request to KPFDD;
 - Radio advertisement (audio file) paid for by KPFDD;
 - TV advertisement (video file) paid for by KPFDD;
 - Response to door hangers questions from Craig Briggs, dated November 3, 2020, on behalf of KPFDD;
 - Banners, door hangers, newspaper advertisements, and mailer invoices;
 - KPFDD Board meeting minutes for June 22, 2017, July 20, 2017, August 24, 2017, September 20, 2017, October 26, 2017, November 21, 2017;
 - PDC Interpretation 04-02.
- Proposed Stipulation as to Facts, Violations, and Penalty submitted by the parties and signed on March 2, 2021, by Peter Frey Lavalley, Executive Director, for the PDC and Eric W. Ferguson on behalf of Kennewick Public Facilities District Board Members Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and Calvin Dudney, Respondents.

II. STIPULATION

1 The parties jointly submitted a signed Stipulation as to Facts, Violations, and Penalty
2 (Stipulation). Mr. Standifer presented the Stipulation, reviewed the aggravating and mitigating
3 factors, summarized the proposed penalties, and asked the Commission to accept the Stipulation.
4 Mr. Ferguson provided argument on behalf of the Respondents, answered questions, and
5 confirmed the information provided by Mr. Standifer. The Respondents, through their attorney,
6 also took responsibility and asked the Commission to accept the Stipulation. The Commission
7 voted 4-0 to accept the Stipulation.

8 9 **III. FINDINGS OF FACT**

10 1. Kennewick Public Facilities District (KPFDD) is a Washington Public Facilities District
11 that owns and operates the Three Rivers Convention Center and manages the City of
12 Kennewick's Toyota Center, an indoor stadium in Kennewick, Washington. At the time the
13 complaints were filed, and during the period covered by the allegations, KPFDD Board members
14 were Barbara Johnson, President, John Neill, Treasurer, Ron Hue, Secretary, and Renee Brooks
15 and Calvin Dudney, Board Members.

16 2. KPFDD contracts with VenuWorks of Kennewick, LLC, for the management of Three
17 Rivers Convention Center and the Toyota Center. Corey Pearson is an employee of VenuWorks
18 and serves as the Executive Director for the facilities operated by KPFDD.

19 3. During the period when the alleged violations occurred, Mr. Pearson worked closely
20 with Barbara Johnson concerning the day-to-day efforts of the campaign. This included
21 development of the content of the various publications and media produced in support of the
22 campaign. Mr. Pearson also regularly updated the KPFDD Board concerning the operations and
23 activities of the District, including its informational campaign to inform the public about
24 Proposition 17-4.

25 4. KPFDD officials placed Proposition 17-4 on the 2017 General Election Ballot,
26 following rejection of Proposition 16-8 in 2016. Proposition 17-4 was intended to fund the

1 “Link,” a facility that would include a Broadway-style theater, Toyota Center improvements,
2 spaces for events and entertainment, expansion of the Convention Center, and other
3 improvements to the Three Rivers campus. Proposition 17-4 authorized a sales and use tax
4 increase of two tenths of one percent (two cents on each \$10.00) to fund the improvements.

5 5. The KPFDF website included a tab listing six entities that expressed support for
6 Proposition 17-4. They were the Tri Cities Americans hockey team; the Tri-Cities Visitors and
7 Convention Bureau (Visit Tri-Cities); TRIDEC – the Tri-City Development Council; The Tri-
8 Cities Regional Chamber of Commerce; The Tri-City Herald newspaper; and the Entertainer
9 Magazine.

10 6. The KPFDF website also included links to three articles written by Wendy Culverwell
11 for the Tri-City Herald, a link to an editorial written by the Editorial Board of the Tri-City Herald,
12 and a letter to the editor written by Nolan Kadinger. Each of these documents included facts,
13 positive comments, and suggestions for what was needed to successfully pass what became
14 Proposition 17-4.

15 7. KPFDF purchased 3,000 door hangers/flyers at a cost of \$1,113.63 concerning
16 Proposition 17-4. The door hangers/flyers were distributed at KPFDF open houses and
17 information presentations to service groups and other groups. They were made available at the
18 Toyota Center, Toyota arena, and the Convention Center at all events. Some of the
19 hangers/flyers were distributed to households by the Tri-City Amateur Hockey Association.
20 Several youth hockey teams volunteered to distribute them as well as potentially other groups.

21 8. The door hangers/flyers included facts and statements such as: “Together, we can
22 make the Tri-Cities a destination for **athletes, artists, conventions & more!**” - “**SALES TAX**
23 **IMPACT – ONLY 2 CENTS ON EVERY \$10!** – from everyone from **all communities** who
24 spend in Kennewick,” and “**IT’S YOUR 2 CENTS – REMEMBER TO VOTE –**
25 **PROPOSITION 17-4.**”

26 9. KPFDF paid for the printing of 14,000 mailers at a cost of \$3,971.63. The mailers were

1 targeted to registered voters who had voted in the 2016 Primary Election, 2016 February Special
2 Election, and 2014 Primary Election. The KPFDD Board was made aware by VenuWorks that a
3 list of registered voters existed on the Benton County Auditor’s website at no cost. Ms. Johnson
4 said Mr. Pearson, and his Executive Assistant Liz Lutz, obtained “walking lists” from the Benton
5 County Auditor and reported to the board that this list of likely voters would be used to pare
6 down the number of households for the education-only mailer to stay within the allotted
7 resources of the educational plan. The mailer included statements such as: “**SALES TAX**
8 **IMPACT – ONLY 2 CENTS ON EVERY \$10 – From everyone from all communities** who
9 spend in Kennewick – IT’S YOUR 2 CENTS – **REMEMBER TO VOTE – PROPOSITION**
10 **17-4.**”

11 10. KPFDD produced a newspaper advertisement concerning Proposition 17-4. It was a
12 quarter-page, full color, advertisement that ran in the Tri-City Herald on six separate dates:
13 September 27, 2017; and October 1, 3, 11, 15, and 17, 2017. The total cost of the advertisements
14 was \$3,888.03. The advertisements included the statement: “**SALES TAX IMPACT – 2**
15 **CENTS ON EVERY \$10 – From everyone from all communities** who spend in Kennewick.”

16 11. KPFDD purchased six banners for a total cost of \$2,280.60. The banners were used
17 on-site at the Three Rivers Convention Center, and were set up in booths during events such as
18 a Chamber of Commerce event or a bridal show. The banners included the statements: “The
19 Link Entertainment Center – **SOMETHING FOR EVERYONE,**” and “Together we can make
20 the Tri-Cities a destination for athletes, artists, conventions and more!” They also included the
21 statement: “**SALES TAX IMPACT – ONLY 2 CENTS ON EVERY \$10!**”

22 12. KPFDD placed 64 TV advertisements and 145 radio advertisements between
23 September 8, and October 16, 2017, at a cost of \$8,469. The content of the radio and TV
24 advertisements included a script similar to the text and material on the District’s website, the
25 door hanger/flyers, mailers, newspaper advertisements, and banners.
26

1 **IV. CONCLUSIONS OF LAW**

2 1. The Commission has jurisdiction over this proceeding pursuant to Chapter 42.17A
3 RCW, the state campaign finance and disclosure law; Chapter 34.05 RCW, the Administrative
4 Procedure Act; and Title 390 WAC.

5 2. Based on the facts set forth above and the agreed stipulation of the parties, the
6 Respondents, KPFD Board members Barbara Johnson, John Neill, Ron Hue, Renee Brooks, and
7 Calvin Dudley, violated RCW 42.17A.555 by authorizing activities that, when combined,
8 resulted in a marketing campaign promoting Proposition 17-4. These combined activities
9 included a website listing entities that expressed support for Proposition 17-4 and links to
10 articles, an editorial, and a letter-to-the-editor favorable to Proposition 17-4; door hanger/flyers;
11 a mailer targeted to registered voters who had voted in recent elections; newspaper
12 advertisements; banners; and TV and radio advertisements.

13
14 **V. ORDER**

15 Based upon its Findings of Fact, the stipulated Findings of Fact, and its Conclusions of
16 Law, the Commission accepts the agreed Stipulation of the parties and orders that:

- 17
18 1. The Respondents pay the following civil penalties:
- 19 a. Barbara Johnson: \$2,000 with \$1,000 suspended on the conditions stated
20 below;
 - 21 b. John Neill: \$2,000 with \$1,000 suspended on the conditions stated below;
 - 22 c. Ron Hue: \$2,000 with \$1,000 suspended on the conditions stated below;
 - 23 d. Renee Brooks: \$2,000 with \$1,000 suspended on the conditions stated
24 below;
 - 25 e. Calvin Dudley: \$2,000 with \$1,000 suspended on the conditions stated
26 below.

1 2. \$1,000 of the \$2,000 civil penalty for each Board member is suspended on the
2 following conditions:

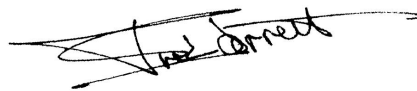
3 a. Board members are not found to have committed any further violations of
4 Chapter 42.17A RCW or Title 390 WAC, within four years of the date of
5 the Final Order in this matter. The finding of a violation by a Respondent
6 is a basis to impose the suspended penalty applicable to that Respondent
7 only. The suspended penalty shall not be assessed based solely upon any
8 remediable violation, minor violation, or error classified by the
9 Commission as appropriate to address by a technical correction.

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11 b. The non-suspended portion of the penalty (\$1,000 per Respondent) is
12 paid by each Respondent within 30 days of the date of the Final Order in
13 this matter. If any Respondent fails to make timely payment of their
14 non-suspended portion of the penalty, only the suspended portion of
15 their own penalty shall immediately become due without further action
16 by the Commission.

17
18 So ORDERED this ___4th___ day of April, 2021.

19 WASHINGTON STATE PUBLIC
20 DISCLOSURE COMMISSION

21 FOR THE COMMISSION:

22 

23 _____
24 Fred Jarrett,
25 Chair, Public Disclosure Commission

26 *Copy of this Order mailed and/or emailed to:*

1 Eric W. Ferguson, Attorney, for KPFD Board members (eferguson@kerrlawgroup.net);
2 Phil Stutzman, PDC Compliance Officer (phil.stutzman@pdc.wa.gov);
3 Chad Standifer, Assistant Attorney General, Counsel for PDC Staff (ChadS@atg.wa.gov).
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6 I, Philip E. Stutzman, certify that I mailed and/or emailed a copy of this order to the
7 Respondent/ Applicant at his/her respective address postage pre-paid on the date stated
8 herein.

8 *Philip Stutzman* 4/5/2021

9 Signed Date

10
11 **NOTICE: RECONSIDERATION**

12 Pursuant to the provisions of RCW 34.05.470 and WAC 390-37-150, you may file a Petition for
13 Reconsideration with the PDC within ten (10) days from the date this Final Order is served upon
14 you. Any Request for reconsideration must state the specific grounds for the relief requested.
15 Petitions must be electronically mailed to the Washington State Public Disclosure Commission,
16 711 Capitol Way, Room 206, Box 40908, Olympia WA 98504-0908, pdc@pdc.wa.gov.

17 **NOTICE: PETITION FOR JUDICIAL REVIEW**

18 You have the right to appeal this Final Order to Superior Court, pursuant to the Petition for
19 Judicial Review provisions of RCW 34.05.542. Any Petition for Judicial Review of this Final
20 Order must be filed with the court and also served upon both the Commission and the Office of
21 the Attorney general within thirty (30) days after the date this Final Order is served upon you.
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