



DECLARATORY RULING NO. 2

COUNTY COUNCIL QUESTIONNAIRE MAILED DURING ELECTION CAMPAIGN (RCW 42.17.130; WAC 390-05-271 and -273): The production and mailing of a budget questionnaire at county expense during an election campaign would violate RCW 42.17.130 if it includes a cover page which is unrelated to the questionnaire and which draws special attention to a council member who is a candidate. (October 23, 1979).

Ms. Patricia Thorpe
Councilwoman
King County Courthouse
516 3rd Avenue
Seattle, WA 98104

Dear Ms. Thorpe:

You petitioned for a declaratory ruling pursuant to RCW 34.04.080 and WAC 1-08-580 and -590 as to whether a proposed mailing would violate RCW 42.17.130 if mailed at public expense during the two-month period before the general election in which you are a candidate for re-election. At our special meeting held on September 13, 1979, we orally issued a binding declaratory ruling that the proposed format of your mailing would violate RCW 42.17.130 and, further, that an alternative format would not violate that statute.

At our regular meeting held on September 18, 1979, we decided to issue this written ruling so as to provide guidance to elected officials and their advisors who might be faced with similar situations.

Your petition concerned the application of RCW 42.17.130 which reads:

"No elective official nor any employee of his 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.

Declaratory Ruling: 1

"Facilities of 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: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

"(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

"(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

"(3) Activities which are part of the normal and regular conduct of the office or agency."
(Emphasis supplied.)

FACTS

The testimony before us may be summarized as follows. You were appointed a member of the King County Council from the 6th District on December 18, 1978. You are a candidate for election to that position. Although you were unopposed in the primary election on September 18, 1979, you will be opposed in the general election on November 6, 1979.

Since 1975, the members of the Council have prepared and mailed a budget questionnaire to their constituents. Generally, the purpose of the questionnaire is to ascertain the views of constituents to assist the Council members in setting budget priorities and funding levels for the following year. The questionnaires are prepared, printed, and mailed with public funds appropriated for that purpose.

In 1979, the questionnaire consists of 12 pages. Pages 3 through 10 contain questions which are identical for all members of the Council. Pages 2 and 11 were made available to each member who could then add more questions which related to the special concerns of that member's district. Page 12 was for a mailing label. Page 1 (the cover page) was made available for each member of the Council to include a message to his or her constituents.

An April 11, 1979, you submitted a letter to be placed on the cover page. The proposed text is attached as Exhibit "A." An example of the format which was used by Council Member Stern is attached as Exhibit "B."

During June, 1979, before the cover page had been printed, you were approached by a staff member regarding the format to be used for your cover page. Councilman R. R. "Bob" Grieve and a member of his staff had designed an alternative format. You agreed to change the format from your April 11, 1979, letter to their alternative "Who cares? I care" format. We have attached a copy of your alternative format as Exhibit "C." You testified that the new format would get a better response from your constituents than the letter format.

The contract for the printing of these questionnaires provided that the printer would have them ready to mail 15 working days after receipt of the copy by the printer. The printer was provided the necessary copy on June 5, 1979. The printer delayed the printing until September, 1979. The delay was beyond the control of the Council or any of its staff. At the time of our hearing, the printer had estimated that he could produce a new cover page for the questionnaire in four days; however, you testified that in view of his earlier problem, you had doubts about his four day estimate.

Your questionnaire would be mailed to 41,000 registered voters in your district during the last two weeks in September. As noted earlier, the primary election was on September 18, 1979, and the general election will be held November 6, 1979.

You testified that the mailing of a budget questionnaire was a part of the normal and regular conduct of your duties as a member of the Council. You stated that you lacked the expertise to assess the impact on the electorate of the "Who cares? I care" cover page. You stated that the responses to the questionnaire were very important to you because they provided necessary citizen input into the budget priorities which would otherwise be lacking.

ANALYSIS

1. Questionnaire Alone

We have previously adopted criteria which are used in addressing the use of public funds or facilities in election campaigns. Your mailing must be tested by viewing it as a whole to determine whether it would influence the vote of a disinterested reader taking into consideration such factors as its style, tenor (or content) and the timing in relation to the election. (See Declaratory Ruling No. 1 to Senator Bottiger, November 15, 1977.) The Attorney General has opined that the timing is the most critical factor (AGO 1975 No. 23).

In analyzing the potential impact of this mailing on a disinterested reader, we focused our attention on the cover page. The portion of the questionnaire (pages 2-12) devoted to questions to constituents cannot be said to influence the vote of a disinterested reader. The questions seem objective and unbiased. They do not draw attention to any ballot proposition or candidate. The questions seem calculated to obtain responses which would assist in developing budgetary priorities.

This kind of questionnaire is clearly related to the performance of your official duties. A similar mailing has been made in previous years by all the members of the Council. Thus, except for the cover page, the mailing would be both lawful and usual and would not be prohibited by RCW 42.17.130. See WAC 390-05-273.

2. Cover Page

We found that the "Who cares? I care" format (Exhibit "C") as the cover page was improper for several reasons. First, it seems calculated to draw attention to you, the candidate. You testified that this format was more "attention getting" and would get a better response from the recipient than the alternate letter format. We agree that this is true-- whether the recipient is a person who may give answers to the questionnaire and/or a potential voter. (All of the 41,000 recipients of this mailing were drawn from the registered voters list.)

Second, the "Who cares? I care" format is unrelated to the content of the mailing. The text of the cover page is essentially an offer of assistance to the recipient who might encounter problems with county government which is described as "big and complicated." That format does not mention the attached questionnaire or refer to it in any way. It only serves to identify you as a member of the Council who desires to provide assistance. Unquestionably, one of the most important

goals for any candidate in any election campaign is positive name recognition by the electorate. We believe the "Who cares? I care" format would assist your name recognition among the 41,000 registered voters who would receive it.

Third, the mailing was to occur during the last two weeks of September. You and your opponents were announced candidates and the election campaign would be in progress at the time of the mailing. You argued that the general election would be a month and a half after the proposed mailing, and any effect on the campaign would be minimal. We do not agree. If the mailing had occurred during the week immediately before the election, its impact on the electorate would be more serious than your proposed mailing. Conversely, if it had been sent in June before anyone had filed for election, its probable impact would have been minimal. Ultimately, the issue of timing is a matter of degrees and must be determined by the exercise of our best judgment. Given the style and tenor of your mailing, it is our judgment that the timing of your proposed mailing would result in assistance to your election campaign.

You raised two additional arguments in support of this mailing. First, you stated that you did not intend that this mailing influence the voters in your favor nor did you intend that it be mailed as close to the election. Second, you argued that any effect the cover page might have on the election would be offset by the questionnaire, which is recognized to be a part of your official duties.

We reject a test which would involve examining your subjective intentions as to this mailing. The test to be applied in these cases is an objective one: whether your mailing would assist your campaign. We cannot approve a use of facilities which results in actual assistance to a campaign simply because an official states that he did not intend that result. The danger of such a subjective test is obvious. We must deal with the actual result, not the result someone says they intended.

We also reject your contention that the effect of the cover page was outweighed by the attached questionnaire. We found, as noted above, that the cover page would assist your election campaign. The impact of the cover page is not minimized by the attached questionnaire. If part of a mailing is proper, it cannot legitimize another part which is improper.

There was testimony that the cover page did not expressly advocate your election. It did not say "vote for" Patricia Thorpe. The statute does not contain any such limitation. It prohibits an elected official from using the

facilities of his office to assist his election campaign. We have aligned our decisions with the court decisions on this question which have specifically held that assistance to a campaign may be given even without express advocacy. See Stanson v. Mott, 17 Cal.3d 206, 551 P.2d 1, 130 Cal.Rptr. 697 (1976) and cases cited therein.

3. Original Letter Format

During the hearing you requested that we also issue a binding declaratory ruling that your original choice of a letter format (Exhibit "A" substituted for the text of Exhibit "B") would not violate RCW 42.17.130 if mailed during the same time period. As you know, we did so.

As noted earlier, we found that the portion of the mailing devoted to questions was proper as a part of the normal and regular conduct of your office. Your original letter format is clearly related to the attached questions. It states the reason for the mailing, i.e., citizen input in determining budget priorities. It encourages a prompt response. Finally, it provides a means for constituents to gain information regarding burglary prevention programs. It does not extol the virtues of the sender. It does not prominently display the name and picture of a candidate.

We are aware that it could be argued that the letter format also assists your campaign in that it provides name identification to you. We believe that such an argument would have more validity if the mailing occurred closer to the election. As noted earlier, this mailing was delayed by means beyond your control and it must be mailed during this period if it is to serve its admittedly beneficial purpose of providing citizen input. We find that the letter format (Exhibit "B" with the text of Exhibit "A") would not influence the vote of a disinterested reader. We do not believe that RCW 42.17.130 was intended to prohibit any communication during an election campaign; however, communications during that period must be subjected to close scrutiny. Such a communication must be directly and necessarily related to the performance of the official's duties and responsibilities. It must not draw undue attention to the candidate.

This written binding declaratory ruling was adopted at the regular Commission meeting in Olympia on October 23, 1979.



Chairman

Lawrence B. Bradley
Commissioner

M. F. Vanik
Commissioner

Jan L. Lewis
Commissioner

Attest:

Chip Holcomb

NOTARY PUBLIC
Title

EXHIBIT "A"

Dear County Resident:

You have been selected from the registered voters in your precinct to give direction to the County Council in determining budget priorities for the 1980 County Budget. Page 9 of this questionnaire reports how the 1979 budget reflects community opinion expressed in last year's questionnaire.

I am interested in knowing where you think the County Council should expand or curtail services. By responding promptly to the questionnaire, it will be possible for me to compile the responses and determine the priorities indicated by them in time for use in the budget making process. Pages 2 and 11 have questions of particular interest to residents of District 6.

Also, please fill out the postcard in the center of the questionnaire if you wish to have an opportunity to participate in burglary prevention programs sponsored by the Department of Public Safety.

EXHIBIT "B"



King County Council
Bernice Stern, District No. 4
Room 402, King County Court House
Seattle, Washington 98104
(206) 344-3475

DEAR KING COUNTY RESIDENT:

YOU HAVE BEEN SELECTED FROM THE KING COUNTY VOTER REGISTRATION LIST TO HELP THE KING COUNTY COUNCIL DETERMINE VOTER OPINION ON CERTAIN BUDGET ISSUES.

THE COUNCIL WANTS TO KNOW CITIZEN OPINION ON ISSUES BEFORE WE BEGIN WORK ON THE 1980 BUDGET. PAGE 9 OF THE QUESTIONNAIRE EXPLAINS HOW LAST YEAR'S QUESTIONNAIRE AFFECTED THE 1979 BUDGET. YOUR CONTRIBUTION IS IMPORTANT.

KEEP IN MIND IN ANSWERING THESE QUESTIONS THAT CERTAIN PROGRAMS AND SERVICES REFERRED TO IN THE QUESTIONNAIRE DO NOT PERTAIN TO THE CITY OF SEATTLE OR OTHER INCORPORATED CITIES. YOU NEED NOT ANSWER ALL THE QUESTIONS IN ORDER TO PARTICIPATE. WE WOULD GREATLY APPRECIATE YOUR TAKING A FEW MINUTES TO COMPLETE THIS QUESTIONNAIRE AND HOPE IT WILL BE POSSIBLE FOR YOU TO MAIL IT BACK WITHIN A WEEK. NO RETURN POSTAGE IS REQUIRED.

YOUR RESPONSE WILL BE ANONYMOUS. THE SURVEY RESULTS WILL BE ANALYZED AND CONSIDERED BY THE COUNCIL AS AN IMPORTANT MEASURE OF COMMUNITY OPINION.

SINCERELY,

BERNICE STERN, COUNCILWOMAN
KING COUNTY COUNCIL
DISTRICT NO. 4

EXHIBIT "C"

Who cares ?

Government today is big and complicated.
If you don't know the right place to go and the right
person to talk to, it's often hard to get anything done --
and frustrating.
So who cares?
I do.

County government is here to serve you and I am
here to see it does.

When you have a problem or you feel County
government isn't doing its job right, call or write so I
can get to work on your problem and show you I care.



**Patricia
Thorpe**



King County
Council
District No. 6
344-3457