



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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MINUTES – Regular Meeting

Evergreen Plaza Building, Room 206
711 Capitol Way South
Olympia, Washington

9:30 a.m.

September 24, 2015

COMMISSION MEMBERS PRESENT

Katrina Asay, Chair
Anne Levinson, Vice Chair
Grant Degginger, Member
John Bridges, Member
Amit Ranade, Member

STAFF PRESENT

Fred Kiga, Interim Executive Director
Lori Anderson, Communication and Training Officer
Tony Perkins, Director of Compliance
Phil Stutzman, Sr. Compliance Officer
Kurt Young, Compliance Officer
Jennifer Hansen, Filer Assistance Specialist
James Gutholm, Chief Information Officer
Linda Dalton, Sr. Assistant Attorney General
Jana Greer, Executive Assistant

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Asay at 9:35 a.m. in the Evergreen Plaza Building, Room 206 Olympia, Washington.

Opening Comments

Commissioner Asay called the meeting to order at 9:35 a.m.

Citizens Comments/Concerns

No comments or concerns were expressed.

Commissioner Comments/Concerns

No comments or concerns were expressed.

Minutes

Commissioner Asay noted that amendments submitted by Commissioner Levinson were incorporated into the minutes and sent to the Commission for review prior to the meeting.

August 27, 2015 Regular Meeting

Motion 15-0094

Moved by Commissioner Degginger, seconded by Commissioner Ranade that:

The Commission adopt the regular meeting minutes of August 27, 2015 as amended.

The motion was passed.

September 15, 2015 Special
Commission Meeting

Motion 15-0095

Moved by Commissioner Levinson, seconded by Commissioner Ranade that:

The Commission adopt the special meeting minutes as amended.

The motion was passed.

Enforcement

Report to the Commission

PDC Case 13-027, *Protect Your Right To Vote On Initiatives and Tim Eyman*; Case 15-078, *Voters Want More Choices and Tim Eyman*

Tony Perkins presented staffs findings, conclusion, and recommendations regarding the allegations in *PDC Case 13-027, Protect Your Right To Vote On Initiatives and Tim Eyman, PDC Case 15-078, Voters Want More Choices and Tim Eyman*, alleging violations of RCW 42.17A.205, .235, and .240.

Mr. Perkins stated that Sherry Bockwinkel's complaint alleged that on or around April 15, 2012, the political committee Protect Your Right to Vote on initiatives conducted a paid signature drive to qualify Initiative 517 for presentation to the 2013 Washington Legislature, and that the committee failed to register with the PDC until June 11, 2012.

The complaint further alleged that the committee's contribution and expenditure reports were untimely, and that the committee had failed to disclose contributions and expenditures associated with its signature gathering efforts. Specifically, Ms. Bockwinkel alleged that funds raised by the political committee Voters Want More Choices to obtain signatures for another statewide initiative, Initiative 1185, were paid directly to petitioners to compensate them for signature gathering for both I-1185 and I-517.

Mr. Perkins described evidence indicating that funds raised by Voters Want More Choices to sponsor signature gathering for I-1185 were paid by Citizen Solutions, the committee's signature gathering vendor, back to Mr. Eyman at the close of the I-1185 signature drive. Mr. Perkins stated that the evidence indicates that Mr. Eyman used these funds for personal use, and also to make payments to Citizens In Charge, a Lakeridge, Virginia 501 (c)(4) organization, for the purpose of sponsoring signature gathering for I-517.

Mr. Perkins stated that expenditures by Voters Want More Choices to Citizen Solutions, LLC were incurred in a

manner to effect concealment, because the expenditures were described in the committee's reports as paying for 1-1185 signatures, but were intended in part to result in compensation for Mr. Eyman. If so, the expenses violate RCW 42.17A.435.

Mr. Perkins stated that the evidence indicates that in authorizing these payments to Citizen Solutions, LLC, Mr. Eyman also authorized the expenditure of campaign funds for prohibited personal use. If so, the expenses violate RCW 42.17A.445.

Mr. Perkins stated that the evidence indicates that contributions attributed to Citizens in Charge in reports filed by Protect Your Right to Vote on Initiatives were made by Mr. Eyman through multiple agents, in order to conceal the source of the funds. If so, the expenses indicate additional violations of RCW 42.17A.435.

Finally, Mr. Perkins stated that each instance of concealment also resulted in the failure by Mr. Eyman's committees Voters Want More Choices and Protect Your Right to Vote on Initiatives to file complete and accurate reports of contribution and expenditure activity. Such failure indicates violations of RCW 42.17A.235 and .240.

Mr. Perkins stated that PDC staff recommends that the Commission find that Tim Eyman, Voters Want More Choices, and Protect Your Right to Vote on Initiatives committed multiple apparent violations of RCW 42.17A and given the seriousness of the apparent violations, that the Commission conclude that the Commission's penalty authority is inadequate to address the violations.

Mr. Perkins stated that PDC staff recommends that the Commission refer the matter to the Washington Attorney General to initiate appropriate legal action against the Respondents.

Sherry Bockwinkel was present and addressed the Commission. She stated that she believed the apparent violations described by staff have been occurring for some time, and have continued into the current campaign to support Initiative 1366, Washington Sales Tax Decrease or Two-Thirds Vote for Tax Increase.

The Commission went into deliberations at 10:40 a.m.

The Commission returned to public session at 10:50 a.m.

Commissioner Levinson stated: In regard to Case 13-027, Protect Your Right To Vote On Initiatives and Tim Eyman; and Case 15-078, Voters Want More Choices and Tim Eyman, we are hearing this matter today pursuant to RCW 42.17A.755(3) to consider referral to the Washington State Attorney General or other law enforcement authorities in lieu of holding a hearing or issuing an order. The record before us is as follows:

1. The PDC staff's investigation indicates that I-1185 funds were used to support I-517.
2. The PDC staff's investigation indicates that the initial April 2, 2012 agreement Tim Eyman signed with Citizen Solutions on behalf of Voters Want More Choices included a cost of \$3.50 per signature for I-1185, and a total cost of \$1,050,000 but Citizen Solutions paid petition coordinators between \$1.00 and \$1.40 per I-1185 signature, indicating that the firm made at least \$2.10 per signature, a 60% gross margin.
3. The PDC staff's investigation, including Mr. Eyman's own testimony, indicates that total payments to Citizen Solutions to qualify I-1185 for the 2012 ballot were in excess of a million dollars, that Voters Want More Choices paid Citizen Solutions \$623,325 to qualify I-1185 for the ballot, and that a limited liability corporation that Mr. Eyman operates (Tim Eyman, Watchdog for Taxpayers LLC) received a payment of nearly half that amount back from the signature gathering firm.
4. The PDC staff's investigation, including banking records that Mr. Eyman produced in response to a PDC subpoena, indicates that the payment was made by wire transfer on July 11, 2012, and totaled \$308,185.
5. The PDC staff's investigation, including Mr. Eyman's own testimony and banking records produced as a result of a PDC subpoena, indicates that after receiving this \$308,185 payment from Citizen Solutions, Mr. Eyman's LLC made payments totaling approximately \$200,000, between July 11 and October 30, 2012 to Citizens in Charge and that Mr. Eyman understood that the funds his LLC provided would be used to sponsor

signature gathering for I-517, not the stated purpose for which the donations were collected.

6. The PDC staff's investigation indicates that these payments were reported by Mr. Eyman's committee Protect Your Right to Vote on Initiatives as in-kind contributions from Citizens in Charge, when in fact Mr. Eyman was aware that they came from funds that Voters Want More Choices paid for I-1185 signatures.
7. The PDC staff's investigation indicates that in addition to using contributions raised by Voters Want More Choices for I-1185 to support I-517, Mr. Eyman made personal use of approximately \$170,000 of those funds.
8. The PDC staff's investigation, including sworn testimony from a former principal of Citizen Solutions, indicates that the undisclosed \$308,185 payment Mr. Eyman received from Citizen Solutions on July 11, 2012 may have been one in a series of such payments and that on multiple occasions between 2004 and 2011, after paying hundreds of thousands of dollars in committee funds to Citizen Solutions to qualify his initiatives for the ballot, Mr. Eyman then sought and received payments back from the firm ranging from \$5,000 to \$100,000 per campaign. This compensation to Mr. Eyman, which was also not disclosed to the public, followed a 2002 PDC and Attorney General enforcement action concerning similar efforts by Mr. Eyman to conceal payments to himself from campaign funds. (PDC Case 02-281: Permanent Offense, Tim Eyman et al), resulting in approximately \$55,000 in judgments and fees assessed to Mr. Eyman and his committee. Mr. Eyman was also permanently enjoined from acting as treasurer of any political committee, or as signer on any financial accounts of such a committee.
9. Finally, the PDC staff's investigation indicates that each instance of concealment also resulted in the failure by Mr. Eyman's committees Voters Want More Choices and Protect Your Right to Vote on Initiatives to file complete and accurate reports of contribution and expenditure activity.

Based on this record, as well as on Mr. Eyman's refusal while being interviewed under oath by PDC staff to answer questions about his compensation, and his refusal

to produce records subpoenaed by the PDC until further enforcement action was taken, the Commission is extremely troubled that it appears that Mr. Eyman intended to hide from the public the sources of funds and the actual purposes for which expenditures were made, and to further conceal that funds were used by Mr. Eyman solely for his personal use. Given his creation of multiple LLCs and committees, his explanations to PDC staff that he did not intend to hide the sources or uses of funds strain credibility. Nor can the Respondent legitimately claim this was somehow inadvertent, due to a lack of experience in filing the required campaign disclosure reports or in understanding the allowable uses of campaign donations. His actions and operations appear to have been an intentional flaunting of campaign finance and disclosure laws, laws which were enacted by the voters to put a stop to conduct such as this.

It does not go unnoticed that the purported purpose of the Respondent's proposed initiatives are to protect the very public he appears to have harmed by his actions. These laws are intended to assure the public that our governmental and political systems and individuals who operate within them are open and honest, and are premised on the principle that the public deserves to know who is funding political campaigns to influence their vote. If this apparent circumvention of campaign finance and disclosure laws were allowed to continue, it would significantly diminish the integrity of our electoral system.

If these facts set forth in this record prove true, then Mr. Eyman's actions would constitute multiple serious violations of RCW 42.17A, including RCW 42.17A.435, RCW 42.17A.445, RCW 42.17A.235 and .240. Considering these violations, as well as Mr. Eyman's prior history with the PDC, frequent and repeated use of the initiative process, the failure to be responsive to subpoenas requiring production of documents, and the likelihood of an intentional ongoing pattern over multiple years, the Commission's penalty authority under RCW 41.17A.755 would be insufficient to enforce compliance with the law in a manner that adequately protects the public, holds Mr. Eyman accountable for his actions and deters future misconduct.

Motion 15-0096

Moved by Commissioner Levinson, seconded by Commissioner Ranade that:

Accordingly, pursuant to RCW 42.17A.755(3), the

Commission refer matters No. 13-027 and 15-078, to the Washington State Attorney General for further investigation and request that the Attorney General move swiftly to take any and all appropriate legal action pursuant to the Attorney General's authority under RCW 42.17A.765, including both possible civil and criminal sanctions. Given that Mr. Eyman's failure to comply with subpoenas means there may be additional violations other than those possible violations brought forth by the staff today, the Commission also requests that the Attorney General's investigation and prosecution expand the timeframe to address any actions taken prior or subsequent to the time period covered by the PDC complaint and include any additional charges as necessary, including failure to comply with subpoenas pursuant to RCW 42.17A.110.

The motion was passed unanimously.

Commissioner Levinson thanked PDC staff for their thorough investigation and their dedication to upholding the law. She stated that it is unfortunate that the Respondent's actions caused a lengthy delay in this investigation and took staff time and resources away from other important ongoing investigations. Neither of these impacts serves the public well.

Review of Brief Hearing Actions

- PDC Case 16-010, *Trisha Claridge*

Kurt Young presented Trisha Coleridge's request for review/reconsideration related to the July 30, 2015 F-1 group enforcement hearing.

Mr. Young stated that Ms. Claridge, an incumbent for the Tenino school district, is seeking a review by the Commission of an initial Order entered in PDC Case 16-010 on August 17, 2015 where she was found in violation of RCW 42.17A.700 for failing to file the F-1 report and assessed a penalty of \$300.

Mr. Young stated that Ms. Claridge was not aware of the F-1 report filing requirement, since she was not seeking re-election for School Board, and therefore requests that the Commission review the Order and reduce or suspend all or a portion of the \$300 penalty assessed.

Mr. Young stated that Ms. Claridge is required to file a final F-1 by April 15, 2016 which will cover calendar year 2015.

Staff recommended that if the Commission entertains a

review and assesses a penalty, that it be with the condition that the final F-1 report be timely filed.

Motion 15-0097

Moved by Commissioner Degginger:

That Commission reconsider the matter of PDC Case No. 16-1010 Trisha Claridge

The motion died for lack of a 2nd motion.

- PDC Case 16-065, *Michael Tate* Kurt Young presented Michael Tate's request for a review by the Commission of an initial Order entered in a brief enforcement hearing of PDC Case No. 16-065 on August 17, 2015.

Mr. Young stated that Mr. Tate is a Board Member/Commissioner of the Commission on Judicial Conduct and was required to file a Personal Financial Affairs Statement (F-1 report) for calendar year 2014 no later than April 15, 2015.

A Brief Enforcement Hearing was held on July 30, 2015, at which the Presiding Officer found Mr. Tate in violation of RCW 42.17A.700 for failing to file an F-1 report for calendar year 2014, and he was assessed a civil penalty of \$150.

Mr. Young stated that Mr. Tate had not received the warning letter or hearing notice since they were mailed to the Washington State University post office box where he no longer receives mail since he is retired.

Staff reviewed Mr. Tate's warning 2015 F-1 Warning letter and Brief Enforcement hearing notice, and confirmed that the mailing address was his former Washington State University post office box "PO Box 641061" in Pullman, WA.

Staff recommended that the Commission vacate the Findings of Fact, Conclusions of Law, and the Order Imposing a Fine in PDC Case No. 16-065 for Michael Tate.

Motion 15-0098

Moved by Commissioner Ranade, seconded by Commissioner Degginger that:

That Commission reconsider the matter of PDC Case No. 16-065 Michael Tate

The motion was passed.

Motion 15-0099

Moved by Commissioner Ranade, seconded by Commissioner Degginger that:

That Commission vacate the Findings, Facts, and Conclusion of Law, and Order imposing a fine in the

matter of PDC Case No.16-065 Michael Tate.

The motion was passed.

Annual Report - Draft

Lori Anderson presented a draft of the PDC 2016 annual report for the Commission's review.

Ms. Anderson highlighted the contents of the report and asked the Commission provide input.

Commissioner Degginger stated that he would like to have a chart in the report showing how much money was spent on campaigns in Washington State, and charting the increases in campaign spending over the years. This will show how the PDC is working hard to provide transparency on campaign finance and the amounts that are spent year after year are increasing.

Ms. Anderson asked the Commission to forward any additional suggestions or edits to her. She will send a final draft to the Commissioners for review.

Staff Reports

Executive Director

Fred Kiga announced that the new Executive Director, Evelyn Fielding Lopez, start date will be October 1, 2015 and that staff has started the transition by scheduling blocks of time with her to discuss the issues and major operations of the agency.

Mr. Kiga stated that that the agency is on a journey now and clearly, transformation is occurring. The amount of energy and quick response from staff to develop a case management system has been phenomenal. He stated that this is a great sign that staff's aspirational state is actually a reality. This has been the most gratifying.

Mr. Kiga thanked the Commission for the opportunity to serve as the Interim Executive Director.

Commissioner Degginger thanked Mr. Kiga for his great leadership. He stated that there is new energy and new eyes on the processes.

Commissioner Ranade noted that you can see that the staff energy and rethinking is happening. Mr. Kiga will be missed.

Mr. Kiga stated that there is also an indication of pride in the workplace.

Commissioner Levinson thanked Mr. Kiga for providing incredible leadership and for stepping into the position, as well as collaborating with a terrific staff.

This is much appreciated and the public appreciates it as

Chief Information Officer

well.

James Gutholm stated that the request for proposals for the redesign of the PDC website is now posted.

The first phase for the Customer Service / Case Management system has been implemented. He reported that customers are using the links on the website, or have sent an email in to the system that is directed to staff to respond. Customers are leaving feedback as well. Staff are very excited about the new system.

Mr. Gutholm provided a scorecard on the status of ongoing IT projects. He asked the Commission to provide feedback in order to make it as informative as possible.

Commissioner Levinson noted that the Commission's IT requests have been incorporated into the division's great work.

She stated that the new systems will allow anyone interacting with the PDC to check the system and obtain up to date information allowing the PDC to be really transparent.

Compliance and Enforcement

Tony Perkins highlighted that in the last 4 weeks the Compliance division has cleared a backlog of 84 complaints that were awaiting action. Some of these are awaiting formal action at this time.

Mr. Perkins acknowledged the Commission's concern over the backlog and stated that staff shares their sense of urgency. He stated that the team is working very hard to address the backlog, both pending complaints and investigations. Staff will continue to gain ground as quickly as they can.

Communications and Outreach

Lori Anderson, in addition to her written activity report, presented a list of current Interpretations that may, at some point, be converted to rules.

Rules

Public Hearing and possible adoption of:

Proposed new rules:

- WAC 390-37-055 Alternatives to adjudicative proceedings in response to non-compliance
- WAC 390-37-056 Alternative responses to Non Compliance – Goals and objectives – Factors to be considered

A public hearing was held to consider adopting permanent rules related to enforcement and the Executive Director's duties.

Lori Anderson stated that the new and amended rules will 1) establish alternatives to adjudicative procedures for resolving minor violations of RCW 42.17A or Title 390 WAC, 2) clarify the executive director's duties and authorize the director to determine when an alternative resolution is the most appropriate resolution of a complaint, and 3) increase the Commission's brief

- WAC 390-37-057 Notices of correction – process; and
- WAC 390-37-058 Deferred enforcement – Process

Proposed amended rules:

- WAC 390-12-200 Public disclosure commission – Executive Director
- WAC 390-37-010 Enforcement procedures – general
- WAC 390-37-030 Enforcement procedures – Citizen complaints filed with the commission
- WAC 390-37-050 Enforcement procedures – Respondent’s notice of complaint
- WAC 390-37-060 Enforcement procedures – Alternative responses to non-compliance – Investigation of complaints – Initiation of hearing (adjudicative proceeding)
- WAC 390-37-070 Enforcement procedures – Complaints dismissed by executive director
- WAC 390-37-090 Informal settlement – Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms
- WAC 390-37-103 Commission options following receipt of a staff report on alleged violations
- WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings) – Authority
- WAC 390-37-142 Brief enforcement hearings (adjudicative proceeding) – Procedure
- WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule
- WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule

adjudicative penalty authority.

The proposed rules will increase the Commission’s brief enforcement penalty from \$500 to \$1,000 so that more cases can be heard by a single Commissioner rather than the full Commission, making the enforcement process more efficient. The proposed rules will adjust the penalty schedules for routine compliance matters.

Ms. Anderson noted that the proposed rules would allow the Executive Director to decide which cases merit this alternative response and which response is appropriate.

Adam Hall, Policy Council to the Senate Democratic Caucus addressed the Commission.

Mr. Hall stated his concerns about the proposed language and noted that it appeared that the WAC may be in conflict with language that exist in RCW 42.17A.110 (2).

He suggested that the Commission consider referencing the statutory authority within the proposed rules or review whether a statutory change would be necessary.

The Commission discussed adding language that would address the concerns raised by Mr. Hall.

Ms. Anderson stated that she would meet with Mr. Hall and that any revisions would come back to the Commission for review and the public hearing would be re-noticed.

The Commission recommended staff incorporate the items discussed and bring back to the Commission for consideration in December.

- WAC 390-37-165 Candidate registration statement (C-1) candidate statement of financial affairs (F-1) Penalty schedule
- WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule
- WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule
- WAC 390-37-182 Penalty factors
- WAC 390-32-030 Complaint Publication – Fair campaign practices code – Alternative to investigation or adjudicative proceeding

Reporting Modification

Recall Mark Lindquist

Jennifer Hansen presented a request for a new reporting modification for the political committee Recall Mark Lindquist (RML), which requested an exemption from disclosing specific contributors who work in Pierce County's justice system.

Staff made no recommendation for this modification request.

Joan Mell, attorney with III Branches Law, PLLC addressed the Commission.

She stated that she has experienced first-hand the vindictive character of the current prosecuting attorney Mark Lindquist and it is his established record of vindictiveness that forms the basis of the recall petition.

She provided examples that are specific to the request being considered.

The Commission went into deliberations at 11:45 a.m.

The Commission returned to public session at 12:00 p.m.

Moved by Commissioner Bridges, seconded by Commissioner Degginger:

Motion 15-00100

The Commission deny the partial reporting modification as requested, finding that literal application would not cause a manifestly unreasonable hardship on the applicant and that a limited modification would frustrate the purposes of the act.

The motion was passed unanimously.

Executive Session

The Commission went into executive session at 12:00 p.m. to discuss pending and potential litigation with legal counsel.

The Commission returned to the public session at 1:15 p.m.

Adjourn

The meeting adjourned at 1:15 p.m.

Approved

October 22, 2015