

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

In the Matter of Enforcement Action  
Against:

Brian McElroy, Police Chief, City of  
West Richland

Respondent.

PDC Case 16468

STIPULATION AS TO FACTS,  
VIOLATIONS AND PENALTY

**I. INTRODUCTION**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Brian McElroy, submit this Stipulation as to Facts, Violations 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 that the Commission suggests modifications 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. Brian McElroy was appointed City of West Richland Police Chief in 2010.
2. On March 4, 2014, the Benton County Commissioners approved Resolution 14-5, and placed a ballot proposition on the August 5, 2014 primary election ballot, to increase the sales and use tax to fund law and justice needs throughout Benton County, including the City of West Richland.
3. On May 13, 2014, a press conference was held at noon at the Sun Pacific Energy facility in Kennewick, a privately-owned building. Five local law enforcement officials appeared in uniform at the press conference which included Chief McElroy; Steven Keane, Benton County Sheriff; Ken Hohenberg, Kennewick Police Chief; David Giles, Prosser Police Chief, and Chris Skinner, Richland Police Chief.

4. The press conference, which supported the August 5, 2014, criminal justice ballot measure, was scheduled for the noon hour to allow the law enforcement officers in attendance the opportunity to attend the event during their personal lunch hour.
5. Chief McElroy attended the May 13, 2014 press conference, wore his City of West Richland Police uniform and drove in his City of West Richland patrol car to the event.
6. Chief McElroy did not participate in the coordination of the news conference nor the content but was rather just asked to be present to answer any questions. Chief Hohenberg and Captain Wehner coordinated the news conference to be held during the lunch hour.
7. As the Police Chief for West Richland, Brian McElroy is expected to be available 24-7 to respond to urgent matters and as a result drives a city assigned vehicle and wears his uniform both during business hours and non-business hours. Appearing in his uniform is a part of the normal and regular conduct of the office and as such Brian McElroy did not intentionally set out to violate the statute.
8. Chief McElroy resigned his position as West Richland Police Chief effective at the end of August 2016.

#### IV. 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.”

**PDC Interpretation 04-02** includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following under the Not Permitted column:

- Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.).
- This same prohibition also applies to related equipment including but not limited to: firearms; badges; nametags; holsters; handcuffs; jackets; belts; vests; shoes; agency patches, logos, insignias, emblems; and radios.
- Prohibited uses include but are not limited to using or wearing those uniforms at campaign functions. Exceptions exist for officials to attend campaign functions in uniform and may be made on a case-by case basis under exigent circumstances.

## V. VIOLATIONS

Based on the Stipulation of Facts set forth above, Respondent Brian McElroy agrees that he violated RCW 42.17A.555 by using the facilities of the City of West Richland by appearing in his West Richland Police uniform at a May 13, 2014 press conference in support of an August 5, 2014, local Benton County Law and Justice ballot measure, and driving to the press conference in his official City of West Richland Police vehicle.

## VI. PENALTY

1. Based upon the Stipulation of Facts and Violations set forth above, Respondent Brian McElroy agrees to pay a total civil penalty of \$750, of which the entire \$750 is suspended on the following condition:
  - A. Mr. McElroy commits no further violations of RCW 42.17A or WAC 390 for four years from the date of the Order.
  - B. In the event Mr. McElroy fails to meet the first term of the suspended penalty, the suspended portion of the penalty (\$750) shall become due without any further intervention of the Commission.
2. Respondent Brian McElroy affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

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By: Jandake for Evelyn Fielding Lopez 5/15/17  
Evelyn Fielding Lopez, Executive Director  
Public Disclosure Commission

Date Signed

Brian McElroy  
Brian McElroy

May 11, 2017  
Date Signed