

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

DATE FILED PDC

APR 19 2017

In the Matter of Enforcement Action
Against:

Ken Hohenberg, City of Kennewick
Police Chief

Respondent.

PDC Case 16059

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 Ken Hohenberg, 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. Ken Hohenberg was appointed City of Kennewick Police Chief in 2003.
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 Kennewick.
3. On May 13, 2014, a press conference was held at noon at the Sun Pacific Energy facility in Kennewick, in a privately-owned building. Five local law enforcement officials appeared in uniform at the press conference which included Chief Hohenberg; Steven Keane, Benton County Sheriff; David Giles, Prosser Police Chief; Brian McElroy, West Richland 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 Hohenberg attended the May 13, 2014 press conference, wore his City of Kennewick uniform and drove in his City of Kennewick patrol car to the event.
6. As the Police Chief for Kennewick, Ken Hohenberg 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 Ken Hohenberg did not intentionally set out to violate the statute.

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.).

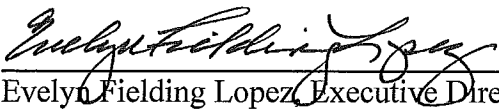
- This same prohibition also applies to related equipment including but not limited to: firearms; badges; nametags; holsters; handcuffs; jackets; belts; vests; shoes; agency patches, logos, insignias, emblems; and radios.
- Prohibited uses include but are not limited to using or wearing those uniforms 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 Ken Hohenberg agrees that he violated RCW 42.17A.555 by using the facilities of the City of Kennewick by appearing in his Kennewick 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 Kennewick Police vehicle.

VI. PENALTY

1. Based upon the Stipulation of Facts and Violations set forth above, Respondent Ken Hohenberg agrees to pay a total civil penalty of \$750 of which \$500 is suspended on the following conditions:
 - A. Mr. Hohenberg pays the \$250 non-suspended portion of the penalty within 30 days of receiving this Order.
 - B. Mr. Hohenberg commits no further violations of RCW 42.17A or WAC 390 for four years from the date of the Order.
 - C. In the event Mr. Hohenberg fails to meet the first term of the suspended penalty, the suspended portion of the penalty (\$500) shall become due without any further intervention of the Commission.
2. Respondent Ken Hohenberg affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.


Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

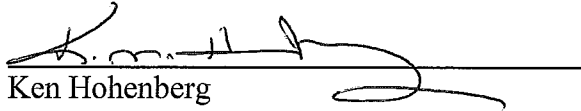
4/27/2017
Date Signed

Ken Hohenberg, City of Kennewick Police Chief

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Stipulation to Facts, Violations and Penalty

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Ken Hohenberg

04/19/17
Date Signed

CRIME w LITRELL
EXPIRES 12/30/2019
Benton County, WA