



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
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June 13, 2017

Ken Hohenberg, Police Chief, City of Kennewick
Sent Electronically to Lisa Beaton at "lisa.beaton@ci.kennewick.wa.us"

Subject: Final Order, Ken Hohenberg, PDC Case 16059

Dear Ms. Beaton:

Enclosed is a copy of the Public Disclosure Commission's Final Order for PDC Case 16059 concerning Ken Hohenberg. The Commission assessed a civil penalty of \$750 in accordance with the Stipulated agreement, of which \$500 is suspended on the following conditions:

1. Chief Hohenberg pays the \$250 non-suspended portion of the penalty within 30 days of receiving this Order.
2. Chief Hohenberg commits no further violations of RCW 42.17A or WAC 390 for four years from the date of the Order.

In the event Chief Hohenberg fails to meet any of the above terms of this order, the \$750 penalty, including the \$500 suspended portion of the penalty will become immediately due without any further intervention of the Commission.

The \$250 civil penalty is payable by July 13, 2017. Please make the check or money order payable to the WA State Treasurer, and mail to the following:

WA State Treasurer - Public Disclosure Commission
Financial Office
PO Box 41465
Olympia, WA 98504-1465

Thank you and Chief Hohenberg for your participation and cooperation throughout this process. If you have questions, please contact me at (360) 664-8854; or by email at kurt.young@pdc.wa.gov.

Sincerely,

Kurt Young
Compliance Officer

Enclosure

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

9 In re the Matter of Enforcement Action
10 Against:

11 Ken Hohenberg, Police Chief, City of
12 Kennewick,

Respondent.

PDC CASE NO. 16059

FINAL ORDER

13 **I. INTRODUCTION**

14 This matter was heard by the Washington State Public Disclosure Commission
15 (Commission) on May 25, 2017 at the Public Disclosure Commission Office, 711 Capitol Way,
16 Room 206, Olympia, Washington 98504. The hearing was held pursuant to RCW 34.05, RCW
17 42.17A, and WAC 390-37. The proceeding was open to the public and recorded.

18 Commissioners Anne Levinson, Chair, John Bridges, Vice Chair, Katrina Asay, Jack
19 Johnson and David Ammons were present. Kurt Young, Compliance Officer, presented the
20 matter on behalf of Public Disclosure Commission Staff (Staff). Chad Standifer, Assistant
21 Attorney General, was also present on behalf of Staff. Respondent Ken Hohenberg was not
22 present but was represented by Lisa Beaton, Kennewick City Attorney, who appeared by phone.
23 Also present during the hearing was Penny Allen, Assistant Attorney General, on behalf of the
24 Commission and Bronson Brown, West Richland City Attorney, Howard Saxton Prosser City
25 Attorney, Heather Kintzley, Richland City Attorney, and Josie Delvin who all appeared by
26 phone.

1 The parties submitted to the Commission a proposed Stipulation as to Jurisdiction, Facts,
2 Violation and Penalty (Stipulation). The Commission determined that the Stipulation would be
3 accepted without modification.

4 After reviewing the record, including the Stipulation, listening to the parties'
5 presentations, the Commission HEREBY ORDERS that the following Findings of Fact,
6 Conclusions of Law, and Final Order of the Commission be entered:

7 **II. FINDINGS OF FACT**

8 1. Ken Hohenberg was appointed City of Kennewick Police Chief in 2003.

9 2. On March 4, 2014, the Benton County Commissioners approved Resolution 14-
10 5, and placed a ballot proposition on the August 5, 2014 primary election ballot, to increase the
11 sales and use tax to fund law and justice needs throughout Benton County, including the City of
12 Kennewick.

13 3. On May 13, 2014, a press conference was held at noon at the Sun Pacific Energy
14 facility in Kennewick, in a privately-owned building. Five local law enforcement officials
15 appeared in uniform at the press conference which included Chief Hohenberg; Steven Keane,
16 Benton County Sheriff; David Giles, Prosser Police Chief; Brian McElroy, West Richland Police
17 Chief, and Chris Skinner, Richland Police Chief.

18 4. The press conference, which supported the August 5, 2014, criminal justice ballot
19 measure, was scheduled for the noon hour to allow the law enforcement officers in attendance
20 the opportunity to attend the event during their personal lunch hour.

21 5. Chief Hohenberg attended the May 13, 2014 press conference, wore his City of
22 Kennewick uniform and drove in his City of Kennewick patrol car to the event.

23 6. As the Police Chief for Kennewick, Ken Hohenberg is expected to be available
24 24-7 to respond to urgent matters and as a result drives a city assigned vehicle and wears his
25 uniform both during business hours and non-business hours. Appearing in his uniform is a part
26

1 of the normal and regular conduct of the office and as such Ken Hohenberg did not intentionally
2 set out to violate the statute.

3 III. CONCLUSIONS OF LAW

4 1. The Commission has jurisdiction over this proceeding pursuant to RCW 42.17A,
5 the State campaign finance and disclosure law; RCW 34.05, the Administrative Procedure Act;
6 and WAC 390.

7 2. RCW 42.17A.555 states in part:

8 "No elective official nor any employee of his or her office nor any person
9 appointed to or employed by any public office or agency may use or
10 authorize the use of any of the facilities of a public office or agency, directly
11 or indirectly, for the purpose of assisting a campaign for election of any
12 person to any office or for the promotion of or opposition to any ballot
13 proposition. Facilities of a public office or agency include, but are not
14 limited to, use of stationery, postage, machines, and equipment, use of
15 employees of the office or agency during working hours, vehicles, office
16 space, publications of the office or agency, and clientele lists of persons
17 served by the office or agency. However, this does not apply to the
18 following activities:

19 ...

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

22 3. WAC 390-05-273 defines the "normal and regular conduct" of a public office or
23 agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by
24 necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized
25 in or by some extraordinary means or manner."
26

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

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

13 5. Respondent Ken Hohenberg violated RCW 42.17A.555 by using the facilities of
14 the City of Kennewick by appearing in his Kennewick police uniform at a May 13, 2014 press
15 conference in support of an August 5, 2014, local Benton County Law and Justice ballot measure,
16 and driving to the press conference in his official City of Kennewick Police vehicle.

17 IV. ORDER

18 Based upon the findings and conclusions, the Commission orders that:

19 1. Respondent Ken Hohenberg is assessed a total civil penalty of \$750.00, of which
20 \$500.00 is suspended on the following conditions:

- 21 a. Respondent Ken Hohenberg pays the non-suspended portion of the penalty within
22 30 days of receiving this Order.
- 23 b. Respondent Ken Hohenberg commits no further violations of RCW 42.17A or
24 WAC 390 for four years from the date of the Order.
- 25 c. In the event Respondent Ken Hohenberg fails to meet any of the above terms of
26 this order, the entire penalty of \$750.00, which includes the suspended portion of
the penalty (\$500.00), will become immediately due without any further

intervention of the Commission, and PDC Staff will refer any outstanding debt to
the Department of Enterprise Services (DES) for collection.

1 The Executive Director is authorized to enter this Order on behalf of the Commission.

2 So ORDERED this 12th day of June, 2017.

3 WASHINGTON STATE PUBLIC
4 DISCLOSURE COMMISSION

5 FOR THE COMMISSION:

6 
7 Peter Lavallee
8 Executive Director

9 *Copy of this Order mailed and emailed to:*

10 Lisa Beaton, attorney for Respondent (lisabeaton@ci.kennewick.wa.us)
11 Kurt Young, PDC Staff (kurt.young@pdc.wa.gov)

12 I, Kurt Young, certify that I mailed a ^{e-mail}
13 copy of this order to the Respondent/ Applicant at his/her
14 respective address postage ~~pre~~-paid on the date stated
herein. Kurt Young 6/13/2017
Signed _____ Date

15 NOTICE: RECONSIDERATION

16 PURSUANT TO THE PROVISIONS OF RCW 34.05.470 AND WAC 390-37-150 YOU MAY
17 FILE A PETITION FOR RECONSIDERATION WITH THE PDC WITHIN TWENTY-ONE
18 (21) DAYS FROM THE DATE THIS FINAL ORDER IS SERVED UPON YOU. ANY
19 REQUEST FOR RECONSIDERATION MUST STATE THE SPECIFIC GROUNDS FOR
THE RELIEF REQUESTED. PETITIONS MUST BE DELIVERED OR MAILED TO THE
WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, 711 CAPITOL WAY,
ROOM 206, BOX 40908, OLYMPIA WA 98504-0908.

20 NOTICE: PETITION FOR JUDICIAL REVIEW

21 YOU HAVE THE RIGHT TO APPEAL THIS FINAL ORDER TO SUPERIOR COURT,
22 PURSUANT TO THE PETITION FOR JUDICIAL REVIEW PROVISIONS OF
23 RCW 34.05.542. ANY PETITION FOR JUDICIAL REVIEW OF THIS FINAL ORDER
24 MUST BE FILED WITH THE COURT AND ALSO SERVED UPON BOTH THE
25 COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL WITHIN THIRTY (30)
26 DAYS AFTER THE DATE THIS FINAL ORDER IS SERVED UPON YOU.