



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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March 28, 2017

The Honorable Robert Ferguson  
Attorney General  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504-0100

RE: Washington State Public Disclosure Commission Recommendation Regarding Citizen Action Notice re: Port of Tacoma Officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich) and the Port of Tacoma (PDC Case 11701); Economic Development Board for Tacoma-Pierce County (PDC Case 11702); and Tacoma-Pierce County Chamber (PDC Case 11703)

Dear Attorney General Ferguson:

This letter concerns the matter that your office referred to the Public Disclosure Commission (PDC) for review and possible investigation on January 5, 2017 in response to a 45-day Citizen Action Notice Complaint (Complaint) filed with the Attorney General on December 19, 2016, which was amended slightly on December 20, 2016, by Arthur West. The Complaint alleged that:

1. Port of Tacoma officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich) violated RCW 42.17A.555 by using the Port's facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint alleged that Port officials engaged in a previously unknown media communications and public relations "Campaign" that was in addition to, and separate from, a lawsuit initiated by the Port of Tacoma (Port), the Economic Development Board for Tacoma-Pierce County (EDB) and the Tacoma-Pierce County Chamber (Chamber) on June 6, 2016 to request a declaratory judgment in Pierce County Superior Court to determine whether the two initiatives exceeded the scope of local initiative power.
2. The Port, the EDB, and the Chamber violated RCW 42.17A.255 by failing to report these media communications and public relations "Campaign" expenditures as Independent Expenditures on PDC form C-6; and

3. The Port, the EDB, and the Chamber violated RCW 42.17A.205, .235, and .240 by failing to register and report these media communications and public relations "Campaign" expenditures as a political committee.

Staff reviewed the complaint and prepared an Investigative Review Memorandum concerning the alleged violations. The Commission considered the results of staff's Investigative Review at a regular Commission meeting held March 23, 2017. At that meeting, Sr. Compliance Officer Phil Stutzman presented staff's Investigative Review Memorandum which included a recommendation regarding the allegations<sup>1</sup>. Carolyn Lake, Counsel for Port Officials and the Port, addressed the Commission, and Arthur West, Complainant, also addressed the Commission. A copy of staff's Investigative Review Memorandum is enclosed with this letter. A copy of staff's Investigative Review Memorandum with related exhibits (535 pages) has previously been provided to the Attorney General's Office in electronic format, and is not being reproduced with this letter.

#### **Staff Conclusion and Recommendation**

As noted in the attached Investigative Review Memorandum, staff concluded that a review of Arthur West's December 20, 2016 complaint, and documentation provided by respondents Port of Tacoma officials, the Port, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber, did not show evidence that Port officials violated RCW 42.17A.555 by using public facilities to oppose Tacoma Initiatives 5 and 6. Likewise, staff concluded that no evidence was found demonstrating that the Port, the EDB, or the Chamber violated RCW 42.17A.255 by failing to report Independent Expenditures, or RCW 42.17A.205, .235, or .240 by failing to register and report as a political committee. Staff concluded that the EDB did not prepare or distribute the Communication Plan documents included in Mr. West's Complaint, and that the Chamber did not make any expenditures related to the alleged media campaign or participate in the development, drafting, or editing of any of the documents attached to Mr. West's Complaint.

Based on the factors identified and described in staff's Investigative Review Memorandum, staff concluded that enforcement action would not be appropriate concerning the allegations in the complaint, and recommended that:

*For Port of Tacoma Officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich), Case 11701, the Commission find there is no apparent violation of RCW 42.17A.555 by using or authorizing the use of public facilities to create a communication plan that opposed Tacoma Initiatives 5 and 6, and recommend to the*

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<sup>1</sup> On January 13, 2017, Phil Stutzman, Sr. Compliance Officer, confirmed to Carolyn Lake, Counsel for Port of Tacoma officials, that PDC Executive Director Evelyn Fielding Lopez had recused herself from participating in staff's review and handling of Arthur West's December 20, 2016 Citizen Action Complaint filed against Port officials, the Port, the EDB, and the Chamber. Ms. Lopez was present at the March 23, 2017 Commission meeting, but did not participate in staff's presentation. She did, however, offer comments on a related legal issue at the request of Chair Anne Levinson.

The Honorable Robert Ferguson  
PDC Cases 11701, 11702, and 11703  
March 28, 2017  
Page 3

Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

*For the Port of Tacoma, Case 11701, the Economic Development Board for Tacoma-Pierce County, Case 11702, and the Tacoma-Pierce County Chamber, Case 11703, the Commission find there is no apparent violation of RCW 42.17A.255, by failing to report the cost of a communication plan as an independent expenditure in opposition to Tacoma Initiatives 5 and 6, and no apparent violation of RCW 42.17A.205, .235, and .240 by failing to register and report the cost of a communication plan as political committee expenditures in opposition to Tacoma Initiatives 5 and 6, and recommend to the Washington Attorney General that that office take no further action with respect to these allegations in the Complaint.*

### **Commission Recommendation**

Having received staff's report and recommendation, the Commission unanimously adopted a motion to recommend to the Attorney General that that office take no action with respect to the allegations in the Complaint.

In adopting its motion, Commission members noted their desire to wait until cases with related issues have been fully adjudicated before considering rule making that would provide clearer guidance to the regulated community and the public regarding what actions constitute activity reportable under RCW 42.17A for ballot propositions as they are being considered for placement on the ballot and at each stage thereafter.

If you have questions, please contact me at (360) 664-8853. Thank you.

Sincerely,



Philip E. Stutzman  
Sr. Compliance Officer

cc: Commissioners  
Linda Dalton, Sr. Assistant Attorney General  
Carolyn Lake, Counsel for Respondents John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich, and the Port of Tacoma  
Jason Whalen, Counsel for Respondent Economic Development Board for Tacoma-Pierce County  
Valarie Zeeck, Counsel for Respondent Tacoma-Pierce County Chamber  
Arthur West