

RECEIVED

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'16 SEP -8 08:13

September 2, 2016

ATTORNEY GENERAL
STATE OF WASHINGTON
GSE/OLYMPIA

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

Jon Tunheim
2000 Lakeridge Dr S.W., Building 2
Olympia, WA 98502

Re: 1- Notice of Intent to Sue for Violations of RCW 42.17A

Dear elected officials:

We represent Opportunity for Olympia ("OFO") in submitting this statutory notice of intent to sue.

OFO has reason to believe that the City of Olympia and its City Council (collectively "Olympia") have violated RCW chapter 42.17A. The members of the City Council are as follows:

- Position #1 Cheryl Selby - Mayor
- Position #2 Jessica Bateman
- Position #3 Nathaniel Jones
- Position #4 Clark Gilman
- Position #5 Julie Hankins
- Position #6 Jeannine Roe
- Position #7 Jim Cooper

OFO intends to bring a citizens' action against Olympia under RCW 42.17A.765(4) if you do not commence an action against Olympia within the following notice periods specified by statute. At the expiration of 45 days from the date of this letter, a second notice of intent to sue will be sent to you if you have not yet filed suit against Olympia. If after 10 days following receipt of the second notice you still have not filed suit against Olympia, OFO will bring an action in Superior Court.

I. Violations of RCW 42.17A.

Indisputable evidence shows Olympia intentionally violated our campaign laws in using public moneys to oppose a qualified local initiative.

Olympia has used tens of thousands of dollars in taxpayer moneys to challenge OFO's initiative to conduct fundraising and impose an excise tax to fund grants for community college education ("OFO Initiative"). Olympia hired Foster Pepper to attack the OFO Initiative and, on information and belief, has paid tens of thousands of dollars for those services. Those services included having Foster Pepper critique the OFO Initiative and then to prosecute a pre-election challenge to try to strip the qualified initiative from the ballot.

On September 2, 2016, the Court of Appeals Division II ruled that OFO Initiative should be placed on the ballot and, on information and belief, Olympia plans to expend thousands of dollars more in taxpayer funds to further challenge the OFO Initiative.

Olympia's opposition is politically motivated by an animus towards the OFO Initiative. In its meetings, the Olympia City Council critiqued the OFO Initiative for political reasons, including making private universities ineligible for the initiative's grant program. In oral argument before the Court of Appeals, the City's outside counsel admitted that the City Council brought its legal challenge to the OFO Initiative because it did not agree with the policies in the initiative.

The political animus is further shown by the City's coordination of its attack on the OFO Initiative with the Freedom Foundation, which has spearheaded the political opposition to the OFO Initiative. There are numerous emails between Olympia and the Freedom Foundation showing this coordination.

However, political motivation is not necessary. Olympia has violated RCW 42.17A merely by spending tens of thousands of dollars in public funds to attack the initiative. This is the identical violation for which the Attorney General sued the Port of Tacoma and others two weeks ago in *State of Washington v. Economic Development Board for Tacoma-Pierce County et al.* Pierce County Superior Court, No. 16-2-10303. A copy of that complain is attached hereto. The violation in this case is even stronger since here Olympia has coordinated with the political opposition and is motivated by its opposition to the OFO Initiative's policy.

II. Penalty Demand.

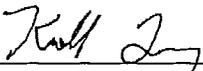
All of the persons and entities described in this letter should pay a penalty for their part in this concealment.

OFO intends to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue. OFO believes that this Notice sufficiently states grounds for filing suit. We intend, at the close of the notice periods or shortly thereafter, to file a citizen's action against the above-named persons and entities under RCW 42.17A.765(4) for violations of the Fair Campaign Practices Act. If you have any questions or concerns regarding this Notice, please contact the undersigned attorney.

45 Day Notice Letter
September 2, 2016
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Very Truly Yours,

SMITH & LOWNEY, PLLC

By: 

Knoll Lowney
2317 E. John, Seattle, WA 98112
Attorneys for Opportunity for Olympia

August 15 2016 4:02 PM

KEVIN STOCK
COUNTY CLERK
NO: 16-2-10303-6

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**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

ECONOMIC DEVELOPMENT
BOARD FOR TACOMA-PIERCE
COUNTY, TACOMA-PIERCE
COUNTY CHAMBER, JOHN WOLFE,
in his official capacity as Chief
Executive Officer for the PORT OF
TACOMA, and CONNIE BACON,
DON JOHNSON, DICK MARZANO,
DON MEYER, and CLARE PETRICH,
in their official capacities as
Commissioners for the PORT OF
TACOMA,

Defendants.

NO.

COMPLAINT FOR CIVIL
PENALTIES AND FOR INJUNCTIVE
RELIEF FOR VIOLATIONS OF RCW
42.17A

I. NATURE OF ACTION

The STATE OF WASHINGTON (State) brings this action to enforce the State's
campaign finance disclosure law, RCW 42.17A. The State alleges that Defendants, the
ECONOMIC DEVELOPMENT BOARD FOR TACOMA-PIERCE COUNTY (EDB) and the
TACOMA-PIERCE COUNTY CHAMBER (Chamber) violated provisions of RCW 42.17A
by failing to properly report independent expenditures they made in opposition to certain local

1 ballot propositions. The State further alleges that Defendant JOHN WOLFE, in his official
2 capacity as Chief Executive Officer of the PORT OF TACOMA, and CONNIE BACON, DON
3 JOHNSON, DICK MARZANO, DON MEYER, and CLARE PETRICH, in their official
4 capacities as Commissioners for the PORT OF TACOMA, violated provisions of RCW 42.17A
5 by authorizing the use of public facilities in opposition to certain local ballot propositions. The
6 State seeks relief under RCW 42.17A.750 and .765, including penalties, costs and fees, and
7 injunctive relief.

8 II. PARTIES

9 1.1 Plaintiff is the State of Washington. Acting through the Washington State
10 Public Disclosure Commission, Attorney General, or local prosecuting attorney, the State
11 enforces the state campaign finance disclosure laws contained in RCW 42.17A.

12 1.2 Defendant, the EDB, is an active nonprofit corporation with a primary place of
13 business in Pierce County, Washington.

14 1.3 Defendant, the Chamber, is an active nonprofit corporation with a primary place
15 of business in Pierce County, Washington.

16 1.4 Defendant, John Wolfe, is the Chief Executive Officer of the Port of Tacoma,
17 which has its primary place of business in Pierce County, Washington.

18 1.5 Defendant, Connie Bacon, is a Commissioner of the Port of Tacoma, which has
19 its primary place of business in Pierce County, Washington.

20 1.6 Defendant, Don Johnson, is a Commissioner of the Port of Tacoma, which has
21 its primary place of business in Pierce County, Washington.

22 1.7. Defendant, Dick Marzano, is a Commissioner of the Port of Tacoma, which has
23 its primary place of business in Pierce County, Washington.

24 1.8 Defendant, Don Meyer, is a Commissioner of the Port of Tacoma, which has its
25 primary place of business in Pierce County, Washington.

26

1 | were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures
2 | to the City of Tacoma Clerk.

3 | 3.4 Tacoma Code Initiative 6 sought to amend the Tacoma Municipal Code by
4 | imposing a requirement that any land use proposal requiring water consumption of one
5 | millions gallons of water or more daily from Tacoma be submitted to a public vote. Charter
6 | Initiative 5 was a companion measure that sought to similarly amend the city charter.

7 | 3.5 On June 6, 2016, the Port of Tacoma, the EDB, and the Chamber brought a
8 | declaratory judgment action in Pierce County Superior Court against the City of Tacoma.
9 | Upon information and belief, Defendant Wolfe authorized participation in the lawsuit by the
10 | Port of Tacoma. The lawsuit sought to (1) declare that Charter Initiative 5 and Code Initiative
11 | 6 exceeded the proper scope of local initiative powers and therefore were invalid, (2) enjoin the
12 | Initiatives' signatures from being validated, and (3) enjoin the Initiatives from being placed on
13 | the November 2016 ballot, or adopted by the City of Tacoma.

14 | 3.6 On June 16, 2016, Port of Tacoma Commissioners Don Johnson, Connie Bacon,
15 | John Marzano, Don Meyer, and Clare Petrich unanimously voted to ratify the Port of Tacoma's
16 | legal action described in paragraph 3.5.

17 | 3.7 On July 1, 2016, the Superior Court enjoined placement of Charter Initiative 5
18 | and Code Initiative 6 on the ballot. On July 29, 2016, Save Tacoma Water appealed.

19 | 3.8 Defendant EDB spent at least \$9,994 as attorneys' fees in conjunction with its
20 | participation in the aforementioned lawsuit.

21 | 3.9 Defendant Chamber spent at least \$10,000 as attorneys' fees in conjunction with
22 | its participation in the aforementioned lawsuit.

23 | 3.10 The Port of Tacoma spent at least \$45,000 in attorneys' fees in conjunction with
24 | its participation in the lawsuit.

25 | 3.11 The EDB and the Chamber should have reported, as independent expenditures, the
26 | value of what was expended for legal services in opposition to the respective ballot proposition(s).

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5.4 For such other legal and equitable relief as this Court deems appropriate.

DATED this 15th day of August, 2016.

ROBERT W. FERGUSON
Attorney General


LINDA A. DALTON, WSBA No. 15467
Senior Assistant Attorney General
CHAD C. STANDIFER, WSBA No. 29724
Assistant Attorney General
Attorneys for Plaintiff State of Washington