



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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May 10, 2016

[thedg3@aol.com](mailto:thedg3@aol.com)

Don Gough  
4324 192<sup>nd</sup> Street SW  
Lynnwood, WA 98036

Subject: Complaint filed against Lynnwood Transportation Benefit District and City of Lynnwood Officials, PDC Case 1345 (Formerly Complaint T15-042 and Case 915)

Dear Mr. Gough:

Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received on August 18, 2014 and supplemented on September 10, 2014, alleging that officials of Lynnwood Transportation Benefit District (Lynnwood TBD, TBD or District) and the City of Lynnwood (City) may have violated RCW 42.17A.555 by using public facilities to support Proposition 1, a measure on the November 4, 2014 ballot seeking to increase the sales tax by 0.2 percent to pay for transportation projects. Proposition 1 did not pass. The complaint alleged that the prohibited use of public facilities included engaging in public outreach in a manner that promoted Proposition 1, including conducting a survey that targeted specific groups and asked questions relating to the level of taxation that persons responding to the survey would support.

The complaint was considered in light of the following statute and rule:

**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 staff reviewed your complaint and its supplement, and responses filed on behalf of officials of the Lynnwood TBD and the City of Lynnwood. As a result of our investigation, we found the following:

- On May 24, 2010, the City of Lynnwood formed the Lynnwood Transportation Benefit District, whose boundaries are the same as the City's boundaries. The District's Board is made up of the Lynnwood City Council Members. On November 29, 2010, the District adopted a vehicle license registration fee of \$20 per vehicle, but later began considering ways to generate additional revenue for transportation projects.
- Prior to placing Proposition 1 on the November 4, 2014 ballot to raise the sales tax by 0.2 percent, the Lynnwood TBD hired PRR, Inc., a consulting firm, to conduct public outreach that would inform its decisions about transportation projects and funding options.
- In late February and early March 2014, PRR conducted five "information table" events at five different locations and received input from a variety of persons. Approximately 90 members of the public attended and provided input. The purpose of these table events was to "raise general awareness of transportation issues, encourage participation in transportation neighborhood meetings, and engage community members who are unlikely to attend one of the transportation neighborhood meetings." Topics of discussion at the table events included lack of awareness of transportation needs and funding needs, belief that the City's transportation system is in good repair, satisfaction with how the City is accommodating growth, belief that certain transportation projects are needed, the need to maintain bus/transit service, questions about light rail and bus service, and the importance of maintenance and capacity-building projects. Participants showed interest in pedestrian and bicycle facilities, and indicated a preference for a "pay-as-you-go" funding option such as a sales tax, instead of a "lump sum" option such as a car tab fee.
- In March 2014, PRR and staff conducted three open houses with approximately 23 people attending. The purpose of the open houses was "to engage community members in a discussion about transportation priorities." The results of the open houses were similar to the results of the table events.
- In March 2014, the Board decided to have PRR conduct a survey of 5,000 randomly selected citizens residing within the boundaries of the District. The survey included 11 substantive questions. The first seven questions related to satisfaction with the current use of funds for transportation improvement projects, whether participants were aware of the current \$20 vehicle license registration fee, the importance of and willingness to fund certain types of transportation projects, and the level of use of certain streets and access points. The survey then asked four questions related to the level of support for the two funding options of a sales tax increase or a vehicle license registration fee increase. The survey found that residents preferred, and would be more likely to support, a sales tax increase over a vehicle license registration fee increase.
- On July 21, 2014, the TBD Board voted to place Proposition 1 on the November 4, 2014 ballot, calling for a 0.2 percent increase in the sales tax to fund transportation projects. On August 18 and September 10, 2014, the PDC received, and began evaluating, your complaint, alleging that the public outreach and survey work would be used to promote Proposition 1.

- No evidence was found that the survey targeted sub groups, such as registered voters. Likewise, no evidence was found that PRR conducted more advanced analysis, as alleged in the complaint, including “cluster analysis” to identify distinct citizen segments toward which more targeted public outreach could be taken.
- The TBD acknowledged that Question 11 in the survey was inconsistent with the PDC’s Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, and that Questions 8, 9, and 10 of the survey were arguably inconsistent with the Guideline to different degrees.
- On September 25, 2014, the District asked PDC staff to review a draft publication and related materials concerning the November 4, 2014 ballot measure and its proposed distributions, and PDC staff declined to review the material, citing reduced staff resources. As a result, the TBD did not publish any fact sheet regarding the November 2014 ballot measure. No evidence was found that the public outreach and survey were intended to be a “voter persuasion effort,” and neither the District nor the City published any information about the outreach or survey results.

It appears that four of the survey questions were designed to determine the preferred funding option, including the level of voter support for various levels of taxation, and that such knowledge likely informed the type and level of funding presented to voters. However, the TBD did not publicize its survey results or otherwise use its outreach or survey work to promote the ballot proposition. In addition, the District did not publish a fact sheet after PDC staff declined to review its draft fact sheet material. Officials of Lynnwood Transportation Benefit District will be warned not to conduct surveys in the future to determine what taxation level the public would support, because to engage in this type of survey work could be viewed as an effort to promote a ballot proposition because it tells agency officials which funding option is most likely to be approved by voters.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation. We found insufficient evidence to demonstrate that officials of the Lynnwood Transportation Benefit District committed a material violation of RCW 42.17A as described above.

Because staff’s investigation has not revealed sufficient evidence to establish a material violation of any laws or regulations under the Commission’s jurisdiction, I am dismissing your complaint against the officials of the Lynnwood Transportation Benefit District and the City of Lynnwood with the concurrence of the Chair of the Public Disclosure Commission.

If you have questions, please contact Phil Stutzman, Sr. Compliance Officer, at 360-664-8853 or toll-free at 1-877-601-2828 or by e-mail at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

Sincerely,

  
Evelyn Fielding Lopez  
Executive Director

cc: Lynnwood Transportation Benefit District and City of Lynnwood officials  
Rosemary Larson, Counsel to Lynnwood TBD