



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

Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

December 21, 2016

[rbucking@co.whatcom.wa.us](mailto:rbucking@co.whatcom.wa.us)

Royce Buckingham  
Chief Civil Deputy Prosecutor for Whatcom County  
Whatcom County Courthouse  
311 Grand Ave. Suite 201  
Bellingham, WA 98225-4079

Subject: Final Order, Whatcom County Officials (Jack Louws, Executive, Bill Elfo, Sheriff, and David McEachran, Prosecutor), PDC Case 1122

Dear Mr. Buckingham:

Enclosed is a copy of the Public Disclosure Commission's Final Order for Whatcom County Officials (Jack Louws, Executive, Bill Elfo, Sheriff, and David McEachran, Prosecutor), PDC Case 1122. For the violations set forth in the Order, the Order assessed a civil penalty of \$1,000.00 against Jack Louws, in his capacity as Whatcom County Executive, with \$500.00 suspended on the conditions set forth in the Order. Executive Louws is required to pay the non-suspended portion of the penalty (\$500.00) within 30 days of the date of this order. All remaining allegations against Executive Louws are dismissed. The Complaint against Sheriff Elfo is dismissed. The Complaint against David McEachran is dismissed.

The penalty payment should be made payable to "WA STATE TREASURER" and should reference "Whatcom County Officials, PDC Case 1122," and should be mailed to:

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

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

Sincerely,

Philip E. Stutzman  
Sr. Compliance Officer

Enclosures – Copy of Final Order and Stipulations

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

In the Matter of Enforcement Action Against:

PDC CASE NO. 1122

Whatcom County Officials (Jack Louws,  
Executive, Bill Elfo, Sheriff, and David  
McEachran, Prosecutor)

FINAL ORDER

Respondents.

**I. INTRODUCTION**

This matter was heard by the Washington State Public Disclosure Commission (Commission) on December 8, 2016 at the Public Disclosure Commission Office, 711 Capitol Way, Room 206, Olympia, Washington 98504. The hearing was held pursuant to RCW 34.05, RCW 42.17A, and WAC 390-37. The proceeding was open to the public and recorded.

Commissioners Anne Levinson, Chair, John Bridges, Vice Chair (by phone), Katrina Asay and Jack Johnson were present. Phil Stutzman, Sr. Compliance Officer, presented the matter on behalf of Public Disclosure Staff (Staff). Chad Standifer, Assistant Attorney General, was also present on behalf Staff. Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney who represented Respondents and Jack Louws, Respondent, were also present.

The parties submitted to the Commission proposed Stipulations as to Jurisdiction, Facts, Violation and Penalty. The Commission determined that the Stipulations would be accepted without modification.

1 Based on those Stipulations, the Commission HEREBY ORDERS that the following  
2 Findings of Fact, Conclusions of Law, and Final Order of the Commission be entered:

3 **II. FINDINGS OF FACT**

4 1. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for  
5 constructing and operating a new jail facility, and for other public safety purposes. The measure  
6 appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected  
7 by 51.43% of voters with 29,896 “No” votes and 28,320 “Yes” votes.

8 2. On or around October 16, 2015, Whatcom County sent out a mailer concerning  
9 Proposition 2015-1. The mailer was sent to all households with at least one registered voter.  
10 The mailer was sent out in two batches to 62,172 households at a cost of \$27,670.76 for printing  
11 and mailing services. In addition, the cost for research and production by DLR Group, the  
12 County’s consultant, totaled \$18,055.00. Jack Louws, Whatcom County Executive, authorized  
13 sending out this mailer. The mailing was not sent to households of residents where there were  
14 no registered voters.

15 3. The jail mailer was not authorized by Sheriff Elfo.

16 4. The jail mailer was not authorized by Prosecutor McEachran.

17 5. The mailer contained a statement that the ballot measure would impose a sales  
18 and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating  
19 jail facilities and for other public safety purposes. The mailer also stated that half of the tax (10  
20 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities no  
21 later than 30 years after issuance.

22 6. The jail mailer did not include a good-faith estimate of the cost of constructing a  
23 new jail facility based on participation of the six small cities who had signed the interlocal  
24 agreements with the County at the time of the mailing. This cost was estimated to be \$75 million  
25 for a 400 bed facility. Nor did the mailer include a good-faith estimate of the cost of constructing  
26 a new jail facility based on the participation of the six small cities and the City of Bellingham,

1 | which the County hoped to achieve through negotiations with the City of Bellingham which  
2 | were on-going at the time of the mailing.

3 |         7.       Executive Louws contends that representatives of Whatcom County contacted  
4 | Public Disclosure Commission (PDC) staff asking if the mailer could be sent to a list of  
5 | registered voters. Executive Louws contends County officials understood the answer to indicate  
6 | that a list of registered voters may be used as a mailing list, so long as the list is not filtered to  
7 | be restricted by political party or voting platforms. Executive Louws contends that he relied on  
8 | what he understood to be advice from PDC staff when deciding to restrict the County's mailer  
9 | to households with at least one registered voter.

10 |        8.       The mailer used neutral language, and pictures showed the condition of the  
11 | existing jail and drawings of the proposed jail facility.

12 |        9.       Executive Louws and Sheriff Bill Elfo were candidates for re-election in 2015.  
13 | Prosecutor McEachran was not a candidate for re-election in 2015. Executive Louws authorized  
14 | including in the jail mailer pictures of, and statements by, Executive Louws, Sheriff Bill Elfo,  
15 | and Prosecutor David McEachran. Evidence was not found that Executive Louws included his  
16 | picture or Sheriff Elfo's picture for the purpose of assisting either campaign, nor was evidence  
17 | found that including pictures of Executive Louws and Sheriff Elfo had the effect of assisting  
18 | either re-election campaign. Sheriff Elfo was unopposed in his re-election campaign. A public  
19 | agency fact sheet, such as the jail mailer, does not meet the definition a Public Service  
20 | Announcement.

21 |        10.      Sheriff Elfo was a candidate for re-election in 2015. Sheriff Elfo authorized  
22 | Executive Louws to use his picture and the statement attributed to him in the jail mailer. No  
23 | evidence was found that Sheriff Elfo authorized Executive Louws to use his picture and the  
24 | statement attributed to him for the purpose of assisting Sheriff Elfo's re-election campaign, or  
25 | that including the picture identifying Sheriff Elfo had the effect of assisting Sheriff Elfo's  
26 | campaign. In addition, Sheriff Elfo was running unopposed. Sheriff Elfo did not otherwise

1 contribute to the flyer or approve its design, content or distribution. The statement attributed to  
2 Sheriff Elfo was a fair and objective presentation of facts. Also, a public fact sheet, such as a  
3 jail mailer, does not meet the definition of a Public Service Announcement.

4 11. Prosecutor McEachran authorized Executive Louws to use his picture and the  
5 statement attributed to him. Prosecutor McEachran was not a candidate for re-election in 2015,  
6 and the statement attributed to him was a fair and objective presentation of the facts. Also, a  
7 public fact sheet, such as the jail mailer, does not meet the definition of a Public Service  
8 Announcement.

9 12. The mailer did not speculate about the alleged secondary effect of the proposition  
10 on the County's ability to raise money in the future to address other public safety issues.

11 13. Information received by the PDC staff on December 2, 2015 and shortly  
12 thereafter initially indicated that Whatcom County officials may have engaged in prohibited  
13 activities to promote Proposition 2015-1. The County's consultant, DLR Group, attempted to  
14 implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom  
15 County officials, including Executive Louws, Sheriff Elfo, and Prosecutor McEachran rejected  
16 these efforts. For several years, Marvin Wolff has served in various appointed and volunteer  
17 positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for  
18 a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane &  
19 Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including  
20 supporting Proposition 2015-1 and serving as an officer of Citizens for Humane & Safe Jail  
21 Now. No evidence was found the Mr. Wolff or Mr. Baribeau used Whatcom County facilities  
22 to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials,  
23 including Executive Louws, Sheriff Elfo and Prosecutor McEachran, authorized Mr. Wolff or  
24 Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of  
25 Proposition 2015-1.

26 14. The mailer erroneously identified the measure as Proposition 1 rather than as

1 Proposition 2015-1 after relying on information received from the Whatcom County Auditor's  
2 office. Staff found no evidence that Whatcom County Officials, including Executive Louws,  
3 intentionally used the wrong Proposition number, or that using the wrong number would result  
4 in incorrect votes.

5 15. Whatcom County Officials provided four examples of past mailing to the public  
6 concerning policy issues or matters of public concern. They included: (1) A 2012 mailing titled  
7 "*Flooding in Whatcom County – What to do Before, During and After a Flood;*" (2) A Spring  
8 2015 edition of Ag News; (3) A Summer 2015 mailing of Birch Bay Watershed and Aquatic  
9 Resources Management; and (4) a 2015 newsletter titled, "*Terrell Creek & Birch Bay State of*  
10 *the Watershed Report.*" The mailings were similar to the jail mailer in size, color, or style.

### 11 III. CONCLUSIONS OF LAW

12 1. The Commission has jurisdiction to hear this matter pursuant to  
13 RCW 42.17A.755.

14 2. RCW 42.17A.555 provides in pertinent part:

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

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

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

5 4. Respondent Jack Louws in his capacity as Whatcom County Executive violated:

1 a. RCW 42.17A.555 by:

2 (1) sending out a jail mailer that was targeted to households with  
3 at least one registered voter rather than to all households; and

4 (2) failing to include a fair and objective presentation of facts  
5 concerning the size and cost of construction a new jail based  
6 on:

7 (a) participation by the six small cities who signed  
8 interlocal agreements with the County and

9 (b) by participation by the six small cities and the City  
10 of Bellingham.

11 5. Respondent Jack Louws did not otherwise violate RCW 42.17A.555, except as  
12 noted in subsection 4, and all remaining allegations should be dismissed.

13 6. Respondent Bill Elfo did not violate RCW 42.17A.555. All allegations against  
14 him should be dismissed and no penalty should be assessed.

15 7. Respondent David McEachran did not violate RCW 42.17A.555. All allegations  
16 against him should be dismissed and no penalty should be assessed.

#### 17 IV. ORDER

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

19 1. Respondent Jack Louws, in his capacity as Whatcom County Executive agrees to  
20 pay a total civil penalty of \$1,000.00 with \$500.00 suspended on the following conditions:

21 a. Respondent Louws pays the non-suspended portion of the penalty  
22 (\$500.00) within 30 days of the date of this order.

23 b. Respondent Louws is not found to have committed any material violation  
24 of RCW 42.17A or WAC 390 within four years of the date of the final  
25 order in this matter.

26 c. In the event that Respondent Louws fails to meet any of the terms of the  
suspended penalty, the suspended portion of the penalty (\$500.00) shall  
become due and owing without any further intervention of the  
commission.

d. Respondent Louws affirms his intention to comply in good faith with the  
provision of RCW 42.17A in the future.

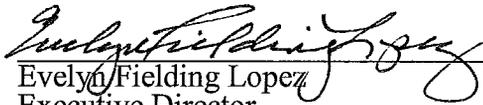
2. All remaining allegations against Respondent Jack Louws, other than those  
reflected above in paragraph 4 of the Conclusions of Law, are dismissed.

3. The Complaint against Sheriff Bill Elfo is dismissed.

1 4. The Complaint against Prosecutor McEachran is dismissed.  
2 The Executive Director is authorized to enter this order on behalf of the Commission.  
3 So ORDERED this 2/5<sup>th</sup> day of December, 2016.

4 WASHINGTON STATE PUBLIC  
5 DISCLOSURE COMMISSION

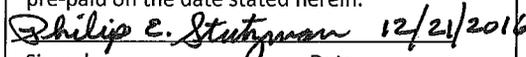
6 FOR THE COMMISSION:

7   
8 Evelyn Fielding Lopez  
Executive Director

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

10 Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, attorney for  
11 Respondents Jack Louws, Bill Elfo and David McEachran ()  
12 Chad Standifer, AAG, Attorney for PDC Staff (chads@atg.wa.gov)

13 I, Phil Stutzman, certify that I  
14 mailed a copy of this order to the Respondent/  
15 Applicant at his/her respective address postage  
16 pre-paid on the date stated herein.

17   
18 Signed Date

19 NOTICE: RECONSIDERATION

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

27 NOTICE: PETITION FOR JUDICIAL REVIEW

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

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

In the Matter of Enforcement Action  
Against:

Jack Louws, Whatcom County  
Executive

Respondent.

PDC Case 1122-1

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 Jack Louws, Whatcom County Executive, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts, Violations and Penalty, and as to Facts and No Violations or 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 modification 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. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 “No” votes and 28,230 “Yes” votes.

2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered voter. The mailer was sent out in two batches to 62,172 households at a cost of \$27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled \$18,055.00. Jack Louws, Whatcom County Executive, authorized sending out this mailer. The mailing was not sent to households of residents where there were no registered voters.
3. The mailer contained a statement that the ballot measure would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities and for other public safety purposes. The mailer also stated that half of the tax (10 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.
4. The jail mailer did not include a good-faith estimate of the cost of constructing a new jail facility based on the participation of the six small cities who had signed interlocal agreements with the County at the time of the mailing. This cost was estimated to be \$75 million for a 400 bed facility. Nor did the mailer include a good-faith estimate of the cost of constructing a new jail facility based on the participation of the six small cities and the City of Bellingham, which the County hoped to achieve through negotiations with the City of Bellingham which were on-going at the time of the mailing.
5. Executive Louws contends that representatives of Whatcom County contacted Public Disclosure Commission (PDC) staff asking if the mailer could be sent to a list of registered voters. Executive Louws contends County officials understood the answer to indicate that a list of registered voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms. Executive Louws contends that he relied on what he understood to be advice from PDC staff when deciding to restrict the County's mailer to households with at least one registered voter.
6. The mailer used neutral language, and pictures showed the condition of the existing jail and drawings of the proposed jail facility.

7. Executive Louws and Sheriff Bill Elfo were candidates for re-election in 2015. Prosecutor McEachran was not a candidate for re-election in 2015. Executive Louws authorized including in the jail mailer pictures of, and statements by, Executive Louws, Sheriff Bill Elfo, and Prosecutor David McEachran. Evidence was not found that Executive Louws included his picture or Sheriff Elfo's picture for the purpose of assisting either campaign, nor was evidence found that including pictures of Executive Louws and Sheriff Elfo had the effect of assisting either re-election campaign. Sheriff Elfo was unopposed in his re-election campaign. A public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.
8. The mailer did not speculate about the alleged secondary effect of the proposition on the County's ability to raise money in the future to address other public safety issues.
9. Information received by PDC staff on December 2, 2015 and shortly thereafter initially indicated that Whatcom County officials may have engaged in prohibited activities to promote Proposition 2015-1. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Executive Louws, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Executive Louws, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.
10. The mailer erroneously identified the measure as Proposition 1 rather than as Proposition 2015-1 after relying on information received from the Whatcom County Auditor's office. Staff found no evidence that Whatcom County officials, including Executive Louws,

intentionally used the wrong Proposition number, or that using the wrong number would result in incorrect votes.

11. Whatcom County officials provided four examples of past mailings to the public concerning policy issues or matters of public concern. They included: (1) A 2012 mailing titled, *"Flooding in Whatcom County – What to do Before, During, and After a Flood;"* (2) A Spring 2015 edition of Ag News; (3) A Summer 2015 mailing of Birch Bay Watershed and Aquatic Resources Management; and (4) a 2015 newsletter titled, *"Terrell Creek & Birch Bay State of the Watershed Report."* The mailings were similar to the Jail Mailer in size, color, or style.
12. The County's jail mailer was not an unreported Electioneering Communication.

### 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."

### VIOLATIONS

Based on the facts set forth above, Respondent Jack Louws and PDC staff stipulate that Executive Louws, in his capacity as Whatcom County Executive, violated RCW 42.17A.555 by: (1) sending out a jail mailer that was targeted to households with at least one registered voter rather than to all households; and (2) failing to include a fair and objective presentation of facts concerning the size and cost of constructing a new jail based on: (a) participation by the six small

cities who had signed interlocal agreements with the County; and (b) participation by the six small cities and the City of Bellingham.

**PENALTY**

Based on the facts and violations set forth above, Respondent Jack Louws, in his capacity as Whatcom County Executive, agrees to pay a total civil penalty of \$1,000 with \$500 suspended on the following conditions:

- a. Executive Louws is not found to have committed any of the same or similar violations of the disclosure provisions of RCW 42.17A within four years of the date of the final order in this matter.
- b. Executive Louws pays the non-suspended portion of the penalty (\$500) within 30 days of the date of the final order.

Executive Louws and PDC staff stipulate that Executive Louws did not violate RCW 42.17A.555, except as noted above, and stipulate that all remaining allegations should be dismissed and no penalty assessed. Respondent Louws 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

Nov. 17, 2016  
Date Signed

  
Royce Buckingham, Whatcom County Civil  
Deputy Prosecuting Attorney on behalf of  
Jack Louws, Whatcom County Executive

11-8-16  
Date Signed

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

County Courthouse  
311 Grand Avenue, Suite #108  
Bellingham, WA 98225-4082



November 8, 2016

**Jack Louws**  
County Executive

Public Disclosure Commission  
711 Capitol Way #206  
PO BOX 40908  
Olympia, WA 98504-0908

Dear Commissioners,

RE: Attachment to Case 1122-1

Thank you for the opportunity to discuss the proposed settlement of charges before you. First though, I'd like to thank Phil Stutzman for his professionalism exhibited throughout the investigation over the last year. He has been forthright, accessible, and committed to finding the facts using his skillset as an investigator. I commend him for doing an excellent job.

The mailer that was published by Whatcom County to its citizens was not our best work, and I am truly sorry for that. As an elected official, I would never want to stir the public ire in a way that would detract from the real issues we have, and the document under discussion did that, as demonstrated by the PDC challenges it received. As the Whatcom County Executive, I take full responsibility on behalf of my team for the mailer and personally accept the penalty on behalf of the organization. After staff and legal review, I gave the final go-ahead for the publishing and mailing of the document, and it is therefore my ultimate responsibility to ensure its accuracy and adherence to the law.

I believe it is time to move on from this. Therefore, in the interest of resolution, I ask that the commission accept this proposed settlement, unless the commission considers it appropriate to set aside the charges based on the good faith effort Whatcom County exhibited in its attempt to get it right. As you know from your review of the documents, Whatcom County relied on the help of both a consultant and the PDC in its development of the mailer, and we ultimately failed in two areas according to the stipulated violations. I submit that neither of these violations was committed with any intent to mislead the public, but rather these were honest misunderstandings of what was technically required.

Regardless of whether you find the charges proper and concur with the settlement, or find it appropriate to set aside the charges, I ask that the Commission use this opportunity to ensure that other jurisdictions learn from this as we have.

I ask the following:

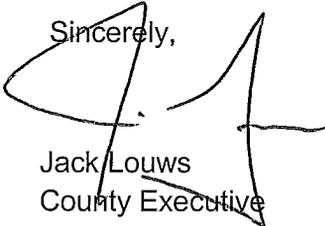
- That the PDC refine and publish the Commission's rules for mailers to reflect that any mailer related to a ballot measure cannot be distributed to voters only. As you know, we worked with PDC staff and our consultant related to this issue, and obviously got it wrong by only sending the mailer concerning a ballot issue to registered voters. I don't believe this is a rule in the RCWs or the WACs, so a clear codification of the PDC's interpretation/rule would be appreciated.

- Refine the Commission's requirements for mailers to reflect the difference between a property tax bond measure with fixed costs and a sales tax measure that is collected in perpetuity. As we all know, property tax collection under most RCWs only allow for the money to be used for capital construction, therefore the cost, duration, and payment are quite easily defined and are extensively regulated by state law. The difference with a sales tax measure under RCW 82.14.450 is that the money is collected in perpetuity, and there is no requirement for a fixed allocation of capital expenditure. My staff and legal team debated extensively concerning the issue of identifying the cost of capital construction versus the amount allocated for operations in perpetuity, and ultimately we decided that we did not have a specific good faith estimate to insert in the mailer. Instead, we detailed the tax rate, and explained the expiration period for repayment of the bonds issued to finance the facilities. I ask that the commission refine and publish a sales tax rule to require jurisdictions to provide a good faith estimate of what is planned for capital construction and/or capital equipment purchases within the first 5 years of the tax collection, so that future expansions of facilities and costs associated with capital facilities infrastructure repair can be accomplished as the RCW allows without controversy.

It has been past practice for PDC staff to work with jurisdictions in the development of these flyers. I understand that due to budget cuts that service was curtailed, and that Whatcom County was one of the first to "go it alone". Unfortunately what was once a collaborative process is not at this time, and it truly will curtail what the PDC in Interpretation 04-02 says "it is not only the right, but the responsibility of local government to inform the general public..." Regardless of the outcome of this case, I will be reluctant (and most likely refuse) to ever lead an organization in the development and distribution of another informational document such as this, as it is not worth the personal political capital it has cost. I anticipate others will concur throughout the state if the penalty for hard work with good intentions on behalf of the organization one is elected to represent results in personal fines with a high likelihood of damaging one's political career. So please use this as an opportunity for all of us to learn, by making strategic and needed changes to your guidelines, so that organizations and those personally responsible have the confidence and assurance to properly "inform the general public....."

Thank you for your time and consideration of my requests. I look forward to resolving this issue.

Sincerely,



Jack Louws  
County Executive

cc: Chad Standifer, Assistant Attorney General, State of Washington  
Bill Elfo, Whatcom County Sheriff  
Dave McEachran, Prosecuting Attorney, Whatcom County

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

In the Matter of Enforcement Action  
Against:

Bill Elfo, Whatcom County Sheriff

Respondent.

PDC Case 1122-2

STIPULATION AS TO FACTS AND  
NO VIOLATIONS OR PENALTY

**I. INTRODUCTION**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Bill Elfo, Whatcom County Sheriff, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts and No Violations or 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 modification 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. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 “No” votes and 28,230 “Yes” votes.
2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered

voter. The mailer was sent out in two batches to 62,172 households at a cost of \$27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled \$18,055.00.

3. The jail mailer was not authorized by Sheriff Elfo. It was authorized by Whatcom County Executive Jack Louws.
4. Sheriff Elfo was a candidate for re-election in 2015. Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him in the jail mailer. No evidence was found that Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him for the purpose of assisting Sheriff Elfo's re-election campaign, or that including the picture identifying Sheriff Elfo had the effect of assisting Sheriff Elfo's campaign. In addition, Sheriff Elfo was running unopposed. Sheriff Elfo did not otherwise contribute to the flyer or approved its design, content, or distribution. The statement attributed to Sheriff Elfo was a fair and objective presentation of facts. Also, a public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.
5. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Sheriff Elfo, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Sheriff Elfo, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

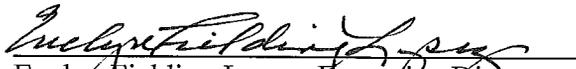
#### IV. LEGAL AUTHORITY

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.”

#### V. NO VIOLATIONS OR PENALTY

Based on the facts set forth above, Respondent Bill Elfo and PDC staff stipulate that Sheriff Elfo did not violate RCW 42.17A.555, as noted above, and stipulate that all allegations should be dismissed and no penalty assessed.

  
Evelyn Fielding Lopez, Executive Director  
Public Disclosure Commission

Nov. 17, 2016  
Date Signed

  
Royce Buckingham, Whatcom County Civil  
Deputy Prosecuting Attorney on behalf of  
Bill Elfo, Whatcom County Sheriff

11-8-16  
Date Signed

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

In the Matter of Enforcement Action  
Against:

David McEachran, Whatcom County  
Prosecutor

Respondent.

PDC Case 1122-3

STIPULATION AS TO FACTS AND  
NO VIOLATIONS OR PENALTY

**I. INTRODUCTION**

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**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**

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3. The jail mailer was not authorized by Prosecutor McEachran. It was authorized by Whatcom County Executive Jack Louws.
4. Prosecutor McEachran authorized Executive Louws to use his picture and the statement attributed to him. Prosecutor McEachran was not a candidate for re-election in 2015, and the statement attributed to him was a fair and objective presentation of facts. Also, a public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.
5. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Prosecutor McEachran, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Prosecutor McEachran, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

#### IV. LEGAL AUTHORITY

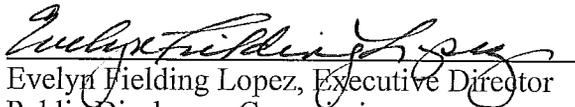
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Based on the Facts set forth above, Respondent David McEachran and PDC staff stipulate that Prosecutor McEachran did not violate RCW 42.17A.555, as noted above, and stipulate that all allegations should be dismissed and no penalty assessed.

  
Evelyn Fielding Lopez, Executive Director  
Public Disclosure Commission

Nov. 17, 2016  
Date Signed

  
Royce Buckingham, Whatcom County Civil  
Deputy Prosecuting Attorney on behalf of  
David McEachran, Whatcom County Prosecutor

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