

Citizens to Elect Jon Tunheim  
P. O. Box 13443  
Olympia, WA 98508

Ms. Tabatha Blacksmith  
PDC Compliance Coordinator

Via email

RE: PDC Case Number 41292

Dear Ms. Blacksmith,

This letter addresses the allegations in the above-referenced complaint.

The complaint concedes that employees of the Thurston County Prosecuting Attorney's Office are free to contribute to my campaign. However, the complaint alleges that when several exempt employees attended a campaign kickoff luncheon and made a contribution to the campaign at that luncheon, several statutes were violated. I assert that their attendance of my Campaign Kick-off event was not a violation of law for the reasons outlined herein.

Deputy prosecutors are classified by Thurston County as "exempt" employees. That is, deputy prosecutors are exempt from the Fair Labor Standards Act and are considered salaried employees. Therefore, they are not required to keep or report their time for payroll purposes. In addition, deputy prosecutors are not required to request use of their paid leave allowance for any partial day absences. As with all salaried employees, they are expected to put in whatever time is necessary to complete their assigned work, which includes working on weekends or holidays if necessary or perhaps working only a partial day if they can do so and manage their workload. In addition, exempt employees are not eligible for overtime and are generally allowed time for a lunch break which they are free to take when they choose. On occasion, exempt employees may take an early or late lunch, or a longer lunch at their discretion.

Chapter 5 Personnel Policies dated March 24, 2014, page 5-3 states the following:

The Office of the Prosecuting Attorney, along with Thurston County, is subject to the requirements of the Fair Labor Standards Act. Under this act, **employees are classified as either exempt or non-**

**exempt.** Exempt positions are salaried positions that are not subject to extra pay or benefits for overtime. ***This classification includes the Prosecuting Attorney, all Deputy Prosecuting Attorneys, along with the Administrative Services Manager, Legal Support Coordinator, Community Engagement Specialist, and Executive Assistant to the Prosecuting Attorney.*** (emphasis added)

The requirements for requesting partial day absences by Deputy Prosecutors is described in Chapter 5 Personnel Policies, page 5-4, which states the following:

In order to effectively serve the public, law enforcement, clients and other persons who have contact with the Prosecuting Attorney's Office, regular office hours for all employees, including Deputy Prosecuting Attorneys are generally from 8:00 a.m. until 5:00 p.m. unless the Chief Deputy or the Prosecuting Attorney approves a specific change in regular hours. ***Minor deviations are permissible with the approval of the Deputy's Team Leader.*** It is expected that all exempt employees may be required to work beyond these minimum office hours to complete their work.

All Deputy Prosecuting Attorneys and other exempt employees are required to complete a Leave Request Form for any partial day absence of two hours or more for documentation purposes. ***Exempt employees who have partial day absences of two hours or less are not required to complete a Leave Request Form, however, they shall notify their Team Leader, Division Chief, or appropriate supervisor.*** In all cases, the Deputy Prosecuting Attorneys should maintain appropriate communication with their assigned support staff in their absence. In case of emergencies, all leave requests submitted by Deputy Prosecuting Attorney must indicate how they may be contacted while on leave. (emphasis added)

Exempt employees ***are not*** required to request leave for a lunch period. The lunch periods are the employees' personal time and the office does not monitor the time they are absent for lunch.

Deputy prosecutors are encouraged to be active in the community by being members of local community organizations such as service clubs and other non-profit organizations. Often, these organizations have meetings over the lunch hour that typically extend longer than an hour. As outlined above, these deviations are permissible for a deputy prosecutor and they are not considered working while attending these meetings.

In addition, as noted above, exempt employees are not required to complete a leave request form for any partial day absence of two hours or less. Therefore, if a two hour

absence is combined with a lunch hour, an exempt employee could be out of the office for up to three hours over a lunch period without having to submit a leave request form.

The complaint asserts that several deputy prosecutors attended my campaign kickoff while they were "on duty." This is incorrect. While it is true that several deputy prosecutors attended the event, it is important to note that this event was a lunchtime event with a program which went from approximately noon to about 1:00 PM. If a 30 minute round trip is assumed for a drive to and from the location of the Campaign Kick-off from their place of work, then the deputy prosecutors may have been away from the work place for approximately an hour and a half. (It should be noted that some employees may have arrived late or left early if they had to be in court, which would be common). However, because the exempt employees were on their personal lunch time, they could have taken up to three hours without submitting a written leave request form. Thus the absence of a written leave request is not evidence that the deputy prosecutors were "on duty" during their attendance of this event.

In addition, no deputy prosecutors were told to attend or otherwise expected to attend. Every employee who attended this event did so at their own choosing. All employees of the Prosecuting Attorney's Office are reminded each election cycle that they are not allowed to use any government resources to support or promote a campaign. They are also told that they are free to participate in any campaign they wish to support as long as it is on their own time. Finally, they are specifically told that they are not expected in any way to participate in the campaign of the incumbent and their participation or failure to participate will not affect their employment in any way.

Since the deputy prosecutors did not attend this fundraiser while they were "on duty", the Complaint is unfounded because there is not any "use of employees of the office or agency during working hours." In addition, even if any one of the exempt employees had been out longer than three hours, it would only be a personnel rule violation for failing to complete a written Leave Request Form. They would not be considered "on duty" while still out of the office.

The Complaint next alleges violation of RCW 42.17A.565 which restricts a local official or local official's agent from knowingly soliciting, directly or indirectly, a contribution to a candidate for public office from an employee in the local official's agency. Again, it is our position that this event did not violate this statute.

Again, each of the employees attending this event were there by their own choice and not on duty. During the program, as with most political fundraising events, a volunteer supporter spoke to everyone (over two hundred people) in attendance about why she supported my campaign. She then explained how each person in attendance could help the campaign which included donating and/or volunteering. This was done as a general "ask" to the entire audience and not specifically to any one person.

If this statute were interpreted the way the complainant asserts, the result would be that no employees could ever attend a fundraising event for the elected official holding

the office, or, if they did, the rule would require each of the employees who chose to attend a campaign event on their own time to be singled out and asked to leave the room before any general ask is made to the group. At an extreme, the rule would prevent any ask from being made if an employee chose to attend the event. This can not be the intent behind RCW 42.17A.565.

I would assert that the presence of an employee at a political fundraising event where a general ask is made, is not a direct or indirect solicitation for contribution from that employee, especially when the employee is not singled out in any way and remains free to contribute or not contribute. The Complaint also alleges that this solicitation was when the employees were "on duty." However, as stated earlier, the employees who attended this event were not on duty.

Again, the complaint correctly concedes that employees of the Thurston County Prosecuting Attorney's Office are free to contribute to my campaign. Therefore, the fact that some employees chose to attend my kick-off event and then chose to make a contribution should not be determined to be a violation of the cited statutes.

Thus, for the reasons listed above, I respectfully request the allegations alleged be determined to be unfounded and/or dismissed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jon Tunheim", with a long horizontal line extending to the right.

Jon Tunheim, Candidate  
Citizens to Elect Jon Tunheim