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SENT VIA EMAIL to pdcc@pdcc.wa.gov

Public Disclosure Commission
Mx. Fox Blackhorn
Compliance Coordinator 2

Re: Response to Complaint in PDC Case No. 43055

Dear Mx. Blackhorn:

On behalf of Twin Transit, I am responding to the complaint filed in PDC case No. 43055 by Mark Obtinario. The complaint alleges that the complainant received a mailing in support of the Lewis County Transit Measure, and that the mailing and referenced website did not indicate who was responsible for the mailing or website or contain appropriate contact information. The complaint also attaches a copy of a postcard mailed to the complainant. On November 15, 2018 you requested a copy of the materials prepared for Twin Transit and you were provided a copy of the related brochure also pertaining to the Lewis County Public Transit Expansion Proposal. Based on that information the PDC has categorized the complaint as an alleged violation of RCW 42.17A.555 for the misuse of public funds to produce and distribute political advertising in support of the Transit Expansion ballot proposition.

The materials that are the subject of this complaint were produced by and for Twin Transit and contain an objective and fair presentation of the facts concerning the impact of the ballot measure. The development and dissemination of this information was a part Twin Transit's normal and regular conduct and not in any way advocacy for the ballot measure. Twin Transit's position is that the complaint is without merit and should be closed with no further action.

Factual Background.

Twin Transit (or the Lewis County Public Transportation Benefit Area or "LCPTBA") is a Public Transportation Benefit Area that currently serves the cities of Chehalis and Centralia within Lewis County. In September, 2017, Twin Transit entered into an amended contract with Nelson Nygaard Consulting Associates for the LCPTBA Expansion Feasibility Study to evaluate the potential for expansion of Twin Transit's boundary within Lewis County. Nelson Nygaard is a transportation consulting firm that has expertise in evaluating potential service options for transit systems. Because Twin Transit is a small agency, with 30 employees and only seven

administrative staff, it did not have the resources and expertise within its own staff to study, evaluate, and communicate the results related to the impacts of expansion. All but the core functions at Twin Transit are conducted by contract with outside consultants in the normal and regular conduct of business.

In April 2018, a Public Transportation Improvement Conference, a separate entity authorized under RCW 36.57A, consisting of representatives from each of the Lewis County jurisdictions, passed a resolution to expand the Lewis County Public Transportation Benefit Area. In July, the Lewis County Commissioners passed a resolution placing the matter of funding for the expanded area before the voters.

Under its agreement with Nelson Nygaard, Twin Transit directed that materials be produced for an unbiased presentation of the facts to educate voters about the impacts of the expansion, in accordance with the PDC's established guidelines. Because Twin Transit does not have in house analysts, graphics designer or even website expertise, it contracted with Nelson Nygaard to provide that expertise and relied on that expertise to produce and help disseminate the information concerning the impacts of an expansion. Nelson Nygaard is not a campaign committee or political action committee but was acting as an agent of Twin Transit to assist in the development and dissemination of requested factual information.

The material was produced at the direction of Twin Transit, but the direction and intention of both Twin Transit and Nelson Nygaard was to produce objective and fair factual information concerning the impacts of the expansion. The materials were carefully reviewed to avoid even the appearance of supporting or opposing the ballot proposal. The material developed was posted on a website "LewisCountyTransitMeasure.com" for the public to find in one place for all jurisdictions, this objective and fair presentation of the facts and the anticipated impacts of the ballot measure. The 2017 expansion feasibility report as well as the County resolutions were also on the website. Information from the website was consolidated into a brochure, using portions of exactly the same language contained on the website. This brochure was made available by the Twin Transit staff at various local legislative body meetings and public forum meetings that Twin Transit regularly attends, in order to answer questions concerning Twin Transit's service and what the impact of the ballot measure would be on that service. Information from the website was also consolidated even further into a postcard, again using portions of exactly the same language contained on the website, that was mailed to residents within the County who were eligible to vote on the ballot measure. Therefore, the same presentation of facts was used with different media typical of Twin Transit's normal and regular course of business.

With this background, it is clear that Twin Transit did not use public funds to produce and distribute political advertising to support a ballot measure. Contrary to Mr. Obtinario's allegations, the content of the postcard mailer, as well as the other materials produced by Nelson Nygaard for Twin Transit, were not advocating for the approval of the ballot proposition, but instead were informing the residents of Lewis County about the facts surrounding the measure and its impacts on Twin Transit's service. Such information is not political advertising and is authorized under the law.

As an initial matter, the information provided does not meet the definition of political advertising. Under RCW 42.17A.005(39) "*Political Advertising includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, digital communication, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.*" In this case the materials were produced and used only to provide objective and fair representation of the facts and not used to appeal for votes or financial support. The information of the materials described the ballot measure, set forth the text of the ballot measure, and answered questions about why the measure was on the ballot and what the impacts of passage or failure would likely be. The information did not appeal, even indirectly, for votes or promote the ballot proposition in any way.

In addition, the actions of Twin Transit (and its agent Nelson Nygaard) did not violate RCW 42.17A.555. This statute prohibits a public agency from using public resources for the promotion or opposition to any ballot proposition. Here, the information developed and distributed to county residents did not promote or oppose any ballot proposition, but objectively and fairly described the process, facts, and impacts of the proposed measure on Twin Transit operations.

PDC guidance provides generally, with respect to election related publications of public agencies, that the agencies may develop *an objective and fair presentation of the facts* regarding agency needs and the anticipated impact of a ballot measure and *may distribute it in the agency's customary manner*. One jurisdiction-wide presentation has been determined appropriate but if also customarily distributed through other means, that conduct has also been permitted so long as normal and regular for the agency. The mailer at issue in this complaint was just such an objective and fair presentation of the facts and was distributed throughout the County to those voting on the measure. As such the mailer that is the subject of this complaint is not a violation of RCW 42.17A.555.

RCW 42.17A.555 also exempts activities which are part of the normal and regular conduct of the agency. The PDC guidance provides that if the agency has also customarily distributed this information through means other than a jurisdiction-wide mailing, that conduct is also permitted so long as the activity has been normal and regular for the agency. In this case, both the website and the brochure are normal and regular for the agency.

It has been the regular practice of Twin Transit board and staff to attend city council meetings and other community meetings to describe key policy changes such upcoming projects, new initiatives, or operational changes, and to answer questions and concerns from the community concerning Twin Transit's service and to make available brochures or other informational written materials related to the policy decisions at these meetings. As such the distribution of the brochure at these meetings is normal and regular for Twin Transit and is not a violation of RCW 42.17A.555.

Furthermore, it is the regular practice of Twin Transit to place information about its operations and major policy decisions on its website. In this case, upon the advice of Nelson Nygaard, Twin Transit chose to have Nelson Nygaard put the information in a separate website address. The key reason for this was simply to assure it was objective and easy to find. Twin Transit had not initiated the ballot

measure. Instead, each of the jurisdictions within Lewis County had voted to expand the boundary and Lewis County had voted to place the measure on the ballot. Twin Transit wished to have a dedicated address where the public could go to access the objective factual presentation quickly and efficiently. To the extent that Twin Transit did not communicate that it was the agency providing the information on the website, we apologize for this error and any confusion it caused. However, this omission was not a violation of law because the information, the same as that provided in the mailer and the brochure, was an objective and fair presentation of facts. As such, the posting of the information on the website was not a violation of RCW 42.17.555.

In conclusion, Twin Transit respectfully requests that the complaint be dismissed with no further action for the foregoing reasons. Twin Transit would like to thank the PDC for the opportunity to provide additional information concerning this complaint. If there is any further information that would assist you in your evaluation, please do not hesitate to contact me.

Janean Parker



Law Office of Janean Z. Parker.
Twin Transit Attorney

Cc: Derrick Wojcik-Damers, Twin Transit General Manager