



# PORTER FOSTER RORICK

LLP

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January 25, 2019

*Sent by email to [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) and U.S. Mail*

Tabatha Blacksmith  
Compliance Coordinator  
Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

**Re: Peninsula School District; PDC Request for Response to Complaint No. 44855**

Dear Ms. Blacksmith:

This firm represents Peninsula School District regarding the above referenced complaint file. Superintendent Jarvis requested I reply to the allegations made by Daniel White in a complaint forwarded from your office to the Superintendent on alleging a violation of RCW 42.17A.555. The District has investigated Mr. White's allegations and appreciates the opportunity to provide this response.

### **Summary of Allegations and District Responses.**

Mr. White alleges the District violated RCW 42.17A.555 as follows: "Public funds of the Peninsula school district were used to promote a ballot measure for school bonds on the Pierce County April 24, 2018 ballot. The ballot measure was commonly called Resolution No.18-01 for \$220,000,000 in school bonds. Attached are the following: Invoices for Facebook/Instagram Ads from Elan Financial SVR of St Louis, MO \$2,500 and DS Political of Washington DC for a Digital Campaign, \$8,500."

The District has not violated RCW 42.17A.555. Instead, the ad purchases were "normal and regular conduct" under subsection (3) of the statute and WAC 390-05-272 that provided access to objective and neutral factual information about the April 24, 2018 bond measure. The invoices purchased informational notices sent to Facebook subscribers residing in the District regarding upcoming school events, such as public "Q and A" forums, a community tour of

facilities event, and a “Q and A” section on the District’s own Facebook page during the in the Fall of 2017 and early 2018. (See Exhibit 1-3, attached). They were intended to direct viewers to District community events or information on the District’s own Facebook page providing neutral, factual information about District facilities and the proposed use of funds if the April 24, 2018 bond measure were to pass.

These public communications, and expenditure of District funds were authorized and consistent with not only RCW 42.17A.555(3) and WAC 390-05-272, but also the Commission’s Guidelines for School Districts in Election Campaign, PDC Interpretation 01-03 (“PDC guidelines”). The ads were purchased as part of the District’s public information program under RCW 28.320.090. That statute expressly authorizes the District to expend school funds “for the purpose of preparing and distributing information to the general public to explain the instructional program, operation and maintenance of the schools of the district” unless the purpose was to influence “the outcome of a school district election.” The complaint does not identify the content of the Facebook ads, but their content and timing does not warrant any inference of such an improper purpose (See attached Exhibit 1-3).

The content of the ads in Exhibits 1-3 show were designed only to inform recipients where to find further information or attend events involving an “objective and fair presentation of the facts regarding district needs and the anticipated impact of a ballot measure” under the Publication Section of the PDC guidelines. The complaint contains no information, moreover, addressing the content of the ads or any factual information warranting and inference that the ads were intended to to influence the outcome of the April 24, 2018 bond election.

Instead, the complaint relies solely newspaper coverage on a PDC Statement of Understanding resolving Complaint #41447, which involved the purchase of Facebooks ads by the Pierce County Public Library System that called viewers’ attention to a newspaper editorial supporting passage of the Library’s special levy. The gravamen of that complaint, however, was the “electioneering” content—i.e. a statement advocating passage of the library levy that the ads provided Facebook viewers a link to see. In short, the settlement of that complaint does not support a conclusion that using public funds to pay for Facebook ads is a per se violation of RCW 42.17A.555.

In respect to the current complaint, the District’s Facebooks ads linking viewers to permissible, objective, factual information related to a pending election must be viewed under the definition of “normal” and “regular” conduct under RCW 42.17A.555(3). The PDC rules interpreting these terms states:

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means 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. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

Purchase of the Facebooks advertisements was “normal and regular” District practice for purposes of RCW 42.17A.555(3) and WAC 390-05-272. The notices linked viewers to neutral, factual information regarding the instructional program, operation and maintenance of District schools in light of the bond election is District. This meets the definition of “normal” WAC 390-05-272 because providing public information of this nature is legally authorized conduct of the District under RCW 28A.320.090, as discussed above.

The Facebook informational notices also involved “regular” conduct under RCW 42.17.555(3) because they were “usual, i.e., not effected or authorized in or by some extraordinary means or manner.” WAC 390-05-272(2). In addition to information regarding bond and levy propositions, the District uses Facebook ads for such purposes such as inviting the public to join District study committees, answer surveys, and advertise events. The purchase of information items related to school operations and activities placed with other media other outlets than Facebook, including newspaper notices for public hearings, events and school activities. The District also pays for and provides public information through its own web site, its own Facebook and Twitter social media pages, reader boards in front of facilities, banners, yard signs, posters. “kid mail” and fliers involving a myriad of school related matters, such as educational program issues and initiatives, testing dates, recognition ceremonies (e.g. graduations), dates of all elections. competitive athletic and activity contests and successes (e.g. playoffs, awards) and openings for hard to recruit personnel. The District also uses paid notices, signage and fliers to fulfill legal mandates, such as providing notice of enrollment dates for compulsory school age children or services available for eligible families/students required under federal law designed to seek out children eligible for special education or homeless student services.

Based on this, the use of District funds to purchase Facebook informational notices involved public communications permissibly “distribute[d] in the district’s customary manner” because the District routinely uses a wide a variety of media in its informational program to connect with members of the public within the District as well as parents. As such, the challenged expenditures distributed neutral, factual information “in a manner that is normal and regular for the district” under the PDC guidelines (“District Publications” section), involved “regular” conduct under WAC 390-05-273(2), and therefore did not violate RCW 42.17A.555.

Blacksmith  
January 25, 2019  
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For the reasons discussed in this response, the PDC should close its investigation into this matter and close this complaint file.

Sincerely,

PORTER FOSTER RORICK LLP

A handwritten signature in blue ink, appearing to read "Clifford D. Foster Jr.", with a stylized flourish at the end.

Clifford D. Foster Jr.

cc: Art Jarvis

Event Insights

### Events

- Events
- Calendar
- Birthdays
- Discover
- Hosting

Create Event

#### Manage Page Events

- Peninsula School Distri...
- Kiwanis Club of Gig Ha...
- Harbor Heights Eleme...

See More



**MAR 28** Superintendent's Community Forums - Bond Facts

Public · Hosted by Peninsula School District

Interested

Hootlet

4 Dates · Feb 28, 2018 - Mar 28, 2018  
Event ended about 10 months ago

2/28 KPMS, 3/7: GMS, 3/15 HRMS, 3/28 KMS

About

Discussion

Write Post | Add Photo/Video | Create Poll

Write something...

50 Interested

See All



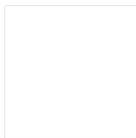
Sami, Karissa and 2 other friends were interested

#### Details

Learn About the April 24 Bond with time for Q and A.  
 Superintendent's Forums (Bond Facts): 6:30 to 8:00 PM  
 Wednesday, February 28: Key Peninsula MS Library  
 Wednesday, March 7: Goodman MS Library  
 Thursday, March 15: Harbor Ridge MS Library  
 March 28: Kopachuck MS Library

#PSDbond

#### About Peninsula School District



**Peninsula School District**  
 Public School · Gig Harbor, Washington  
 Official Site of the Peninsula School District in Gig Harbor, WA

#### Photos of Peninsula School District

#### INSIGHTS

**8.3K**  
 People Reached  
 +0 last 7 days

**50**  
 Resp  
 +0 las

Track ticket sales on your next event by adding a ticket link

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#### INSTANT GAMES

MORE



#### YOUR GAMES

MORE



#### YOUR PAGES

SEE ALL

- Peninsula School Dist... 9
- Kiwanis Club of Gig ... 8
- Peninsula School Dist... 9

#### CONTACTS

- Josh Cash
- Jennifer Mycon
- Shaun Takenouchi
- Krista Randall
- Nick Bradbury

#### GROUP CONVERSATIONS

- Carrie, Kevin

MORE CONTACTS (21)

Search

Search

Event Insights

Events

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Create Event

Manage Page Events

- Peninsula School Distri...
- Kiwanis Club of Gig Ha...
- Harbor Heights Eleme...

See More



**MAR 7** See For Yourself! Community Tours With Supt. Manahan

Public · Hosted by Peninsula School District

Interested

Hootlet

2 Dates · Mar 5, 2018 - Mar 7, 2018  
Event ended about 10 months ago

Peninsula School District  
14015 62nd Ave NW, Gig Harbor, Washington 98332

About

Discussion

Write Post | Add Photo/Video | Create Poll

Write something...

44 Interested

See All



Sami, Karissa and 2 other friends were interested

Details

See for yourself!  
March 5 or March 7

You are warmly invited to join Superintendent Rob Manahan on a free tour of PSD schools followed by lunch with Q and A.

March 5  
 Purdy Elementary  
 Middle School TBD  
 Peninsula High School

March 7  
 Artondale Elementary  
 Harbor Ridge

See More

About the Venue

**Peninsula School District**  
 Public School · 3,896 likes

INSIGHTS

**8.7K**  
 People Reached  
 +0 last 7 days

**44**  
 Responses  
 +0 last 7 days

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INSTANT GAMES

MORE



YOUR GAMES

MORE



YOUR PAGES

SEE ALL

- Audie Peninsula School Dist... 9
- Wom 21% c Kiwanis Club of Gig ... 8
- Peninsula School Dist... 9

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- Harbor Heights Eleme...
- See More

Photos at Peninsula School District

See All Photos

More Events at Peninsula School District

- FEB 4** Facebook Live Bond Q&A  
Mon 5 PM · 108 people are going or interested Interested
- JAN 15** Community Forum - The Future of PSD Facilities  
Tue 6 PM · 7 people are going or interested Interested
- JAN 16** Community Forum - The Future of PSD Facilities  
Wed 6 PM · 11 people are going or interested Interested

See All Events

INSIGHTS

8.7K People Reached +0 last 7 days

44 Responses +0 last 7 days

Track ticket sales on your next event by adding a ticket link

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INSTANT GAMES MORE



YOUR GAMES MORE



YOUR PAGES SEE ALL

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Create Event

Manage Page Events

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- Harbor Heights Eleme...

See More



APR 9 Facebook Live! Bond Q & A Public · Hosted by Peninsula School District

Interested

Hootlet

7 Dates · Feb 26, 2018 - Apr 9, 2018 Event ended about 9 months ago

Peninsula School District 14015 62nd Ave NW, Gig Harbor, Washington 98332

About

Discussion

Write Post Add Photo/Video Create Poll

Write something...

89 Interested See All



Deborah went

Details

LAST CHANCE to Get the Facts! Join Peninsula School District leaders every Monday through April 9 for Q & A about the Bond.

Please submit any questions you have online prior to the weekly Q & A.

Copy and paste to submit your questions: https://docs.google.com/forms/d/e/1FAIpQLSeauhOKoBwxtlFev1RFLN-utvc8-WC8bLWTiTalSmQRjtypNw/viewform

#PSDbond

About the Venue

Peninsula School District Public School · 3,896 likes



Go to Page

INSIGHTS

8.2K People Reached +0 last 7 days

91 Responses +0 last 7 days

Track ticket sales on your next event by adding a ticket link

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INSTANT GAMES MORE



YOUR GAMES MORE



YOUR PAGES SEE ALL

- Audience Insights
- Peninsula School Dist... 9
- Wom 22% c
- Kiwanis Club of Gig ... 8
- Peninsula School Dist... 9

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Search