

RECEIVED

MAR 22 2019

MENKE JACKSON BEYER, LLP

Attorneys at Law

807 NORTH 39TH AVENUE • YAKIMA, WASHINGTON 98902
(509) 575-0313 • FAX: (509) 575-0351

Public Disclosure Commission

ANTHONY F. MENKE
ROCKY L. JACKSON
KIRK A. EHLIS

G. SCOTT BEYER, *Of Counsel*

KENNETH W. HARPER
QUINN N. PLANT
SEANN M. MUMFORD

TYLER J. GALLAWAY

March 20, 2019

Tabatha Blacksmith
Compliance Coordinator
Public Disclosure Commission
P.O. Box 40908
Olympia, Washington 98504-0908

VIA EMAIL/U.S. MAIL
tabatha.blacksmith@pdc.wa.gov

**RE: Ben Messinger/Kennewick School District Board of Directors
Response to PDC Complaint
Public Disclosure Commission Case No. 48009**

Dear Ms. Blacksmith:

This firm represents the Kennewick School District No. 17 Board of Directors and Ben Messinger, a member of the Kennewick School District No. 17 Board of Directors. This letter is provided in response to your request that Mr. Messinger provide a written response to a complaint filed with the PDC on March 5, 2019, by Roger Lenk, designated PDC Case No. 48009.

- In brief, Mr. Lenk alleges that Mr. Messinger and the Kennewick School District Board of Directors failed to provide proper notice of a Proposition 1 bond-related topic and failed to allow the public to express opposing views at a January 9, 2019, special meeting of the Kennewick School District Board of Directors.

Mr. Messinger appreciates the opportunity to provide this response. The complaint filed by Mr. Lenk is without merit because neither Mr. Messinger nor the School Board used or authorized the use of any public facilities in promotion of or opposition to a ballot measure.

Washington's Campaign Disclosure and Contribution Act, Ch. 42.17A RCW, prohibits elected officials from using "facilities of a public office or agency" to oppose or promote a ballot proposition. RCW 42.17A.555. The phrase "facilities of a public office or agency" includes, but is not limited to, use of stationery, postage, machines, and equipment, the use of employees of the office during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. *Id.*

The statute also delineates exceptions pursuant to which facilities of a public office or agency may be used to oppose or promote a ballot proposition. Pertinent here, a school board may express a collective decision, or actually vote upon a motion, proposal, resolution, order or

Tabatha Blacksmith
Compliance Coordinator
Public Disclosure Commission
March 20, 2019
Page 2

ordinance, to oppose or support a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the school board or members of the public are afforded an approximately equal opportunity for the expression of opposing views. RCW 42.17A.555(1).

The complaint filed by Mr. Lenk does not demonstrate that any facilities of the Kennewick School District were used to oppose or promote a ballot measure.

At a special meeting on January 9, 2019, the School Board resolved to draft a letter to a local newspaper supporting a ballot proposition. Nothing more occurred. The letter was not drafted. No district employees spent time during working hours to draft a letter to a local newspaper. No Kennewick School District stationery or envelopes were requisitioned. The resolution contemplated future action that may have used facilities of the Kennewick School District. But that future action did not occur because, at the same meeting on January 9, 2019, the resolution was rescinded. The School Board's resolution was not implemented and no resources of the Kennewick School District were used to support the ballot proposition.

Mr. Lenk is also incorrect that discussion at the January 9, 2019, School Board meeting about the ballot measure implicated RCW 42.17A.555. As elected representatives, School Board members are entitled to express their views on matters coming before the School Board. *See* WAC 390-05-273 ("RCW 42.17A.555 does not restrict the right of any individual to express their own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency."). It is difficult to conceive how a school board could function if individual board members could not express their opinions on matters coming before them.

A school board is a governing body subject to Washington's Open Public Meetings Act, Ch. 42.30 RCW. *See* RCW 28A.320.015. The school board is created by statute and vested with authority as an entity. RCW 28A.320.015. Statements by individual school board members during meetings are not attributable to the school board unless formally adopted by the school board. This result does not differ merely because the speaker happens to be a member of the school board speaking at a meeting of the school board. In its guidelines for school districts, the Commission advises that school board members may use their titles, provided they are speaking on their own behalf and not on behalf of a school board. In the context of the January 9, 2019, Kennewick School Board meeting, any statements by Mr. Messinger in support of a resolution to draft a letter to a local newspaper were his own, are not attributable to the Kennewick School District, and do not give rise to a violation of RCW 42.17.555.

For the foregoing reasons, Mr. Messinger and the Kennewick School Board request that the Commission dismiss this complaint as unfounded. In the meantime, please contact us directly if we can provide further information.

Tabatha Blacksmith
Compliance Coordinator
Public Disclosure Commission
March 20, 2019
Page 3

Very truly yours,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Kenneth W. Harper

cc: clients