



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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September 16, 2011

STEVE HARRIS
1532 FRUITLAND DR
BELLINGHAM WA 98226

Subject: Complaint filed against Bill Elfo - PDC Case No. 11-046

Dear Mr. Harris:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint against Whatcom County Sheriff Bill Elfo, received on March 28, 2011, alleging that Sheriff Elfo used the facilities of the Whatcom County Sheriff's office to assist his re-election campaign. Specifically, you alleged that Sheriff Elfo was pictured in photographs on his campaign website and on his campaign's social media page, wearing the official Sheriff's Office uniform including badge, shoulder patches, collar brass, and gun belt, alleged violations of RCW 42.17.130.

PDC staff reviewed your allegations in light of the following statute and administrative rule:

RCW 42.17.130 states, in part, that "No elective official nor any employee of his 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[.]"

WAC 390-05-271(2) states, in part, that RCW 42.17.130 does not prevent a public office or agency from making facilities available on a nondiscriminatory, equal access basis for political uses, if such action is part of the normal and regular conduct of the office or agency.

PDC staff reviewed your complaint, the Web site of Sheriff Elfo's re-election campaign, www.sheriffelfo2011.com, and the campaign's Facebook page. Staff spoke with Sheriff Elfo, and reviewed his formal response to the complaint. As a result of our review, we found the following:

- Two photos of Sheriff Elfo in uniform were taken for campaign purposes and posted to his campaign Web site or Facebook page. These were 1) a photo of the Sheriff posing outside the Whatcom County Courthouse with David McEachran,

his campaign manager, and 2) a photo of the Sheriff observing a jail work crew. These two photos were taken by a private individual with a privately-owned camera, in areas accessible to the general public.

- Other photos of Sheriff Elfo in uniform that were used by his campaign were departmental file photos, or were taken by the news media.
- The photos of Sheriff Elfo that were taken for campaign purposes were captured during the Sheriff's normal working hours. Sheriff Elfo believed that this practice was acceptable, because he is on call at all times, and does not consider that he has "non work" hours that would be more appropriate for the taking of such photos.
- In considering the use of photos for his campaign, Sheriff Elfo and his campaign officers consulted with PDC staff, and were told that the inclusion of his uniform in a campaign photo was acceptable under RCW 42.17.130, provided that the uniform and all related equipment were privately owned, and that there were no visible and legible insignias on the uniform.
- Sheriff Elfo's uniform is purchased in part through supplemental income he receives from his agency for that purpose. Because this supplemental income is subject to federal income tax and other withholdings, the Sheriff considers it his private funds. The supplemental income does not cover the full amount of expenses the Sheriff incurs to purchase and maintain his uniform and necessary equipment, but only a portion. Certain items in the Sheriff's uniform (his gun belt) were private gifts to him, and were not purchased with any public funds.
- With the understanding that agency uniforms and equipment purchased with private funds may be used in campaign photos, the Sheriff and his campaign used only those photos that did not include any visible, legible insignia of the sheriff's office. They took this step in compliance with PDC staff's advice, in order to avoid the implication that the Sheriff's Office had endorsed Sheriff Elfo in his re-election campaign.

In taking photos of Sheriff Elfo in uniform, and using those photos for campaign purposes, the Sheriff and his campaign believed that such practice complied with RCW 42.17.130. Key to this belief was the Sheriff's understanding that his uniform, badge, and service weapon were purchased with private funds and were thus personal property, rather than public facilities. There is in fact no specific standard in the law, in the PDC's rules or other formal guidance to determine when a uniform or similar item purchased through a clothing allowance, supplemental salary, or similar arrangement becomes a public facility subject to the prohibition in RCW 42.17.130. However, it is clear that the Sheriff acted in good faith, seeking and following PDC staff's best advice. Therefore, no enforcement is warranted, and with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Sheriff Bill Elfo.

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Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better public disclosure of important campaign information and better awareness of the Public Disclosure Law.

If you have questions, you may contact Phil Stutzman at (360) 664-8853, toll-free at 1-877-601-2828, or by e-mail at phil.stutzman@pdc.wa.gov.

Sincerely,

A handwritten signature in black ink that reads "Doug Ellis". The signature is written in a cursive style with a large, stylized "D" and "E".

Doug Ellis
Interim Executive Director

Enclosure

c: Sheriff Bill Elfo