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Public Disclosure Commission

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action
Against:

Mark Nelson, Cowlitz County Sheriff

Respondent.

Case No. 12-122

STIPULATION AS TO FACTS,
VIOLATIONS AND PENALTY

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Mark Nelson, Cowlitz County Sheriff, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission seeks to modify any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to Chapter 42.17 RCW and Chapter 42.17A RCW, Public Disclosure Acts; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC.

FACTS

1. On October 1, 2009, Mark Nelson was appointed Cowlitz County Sheriff. He was elected to the position in the November 2010 general election, and is currently the Cowlitz County Sheriff.
2. I-1183 was a statewide ballot proposition concerning public retail sales of liquor, beer, wine, and spirits. It was passed by voters on the 2011 general election ballot.

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3. On August 30, 2011, Sheriff Nelson participated in the videotaping of a political advertisement sponsored by Protect Our Communities (No on I-1183 campaign).
4. The ads aired statewide and appeared on several television stations, including stations in the Seattle area from September 6, 2011 through September 26, 2011, and on stations in the Spokane and Yakima areas from September 27, 2011 through October 2, 2011.
5. The video was 31 seconds in length. Sheriff Nelson appeared for the first six seconds, and stated, "*Alcohol kills more kids than any other drug. That's why we urge you to vote no on Initiative 1183.*" Sheriff Nelson appeared again for four seconds, half-way through the video, saying, "*And problem drinking could increase as much as 48 percent.*"
6. Sheriff Nelson's Cowlitz County patrol vehicle was featured in the background of the segment of the ad that included him. The gray, unmarked patrol vehicle has no identifiable Cowlitz County markings, but is equipped with emergency red and blue flashing dash and grill lights. The lights were activated during the taping of the political advertisement.
7. Sheriff Nelson drove his patrol car to the production site and parked it nearby on a gravel road. The production company was initially planning to use the local cemetery as a background scene for the video, but at the request of an off-site director who did not like the cemetery as a background, Sheriff Nelson agreed to allow his patrol car to be featured in the background instead. The on-site director also asked Sheriff Nelson to turn on the emergency lights of his Cowlitz County vehicle, which he did.
8. During the taping of the ad, Sheriff Nelson wore a jacket that was purchased with Cowlitz County funds and is authorized to be worn with the Cowlitz County Sheriff's uniform. The jacket was purchased approximately two years earlier when he was a Cowlitz County Sheriff's Captain.

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LEGAL AUTHORITY

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RCW 42.17.130 states: No elective official nor any employee of his [or her] 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 or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose 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 legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
- (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (3) Activities which are part of the normal and regular conduct of the office or agency.

VIOLATIONS

Mark Nelson, Cowlitz County Sheriff, violated RCW 42.17.130 by using, or authorizing the use of, Cowlitz County facilities in the taping of a political advertisement that opposed Initiative 1183 (I-1183), a statewide ballot proposition concerning public retail sales of liquor, beer, wine, and spirits, on the 2011 general election ballot, as follows:

1. Sheriff Nelson allowed his Cowlitz County patrol vehicle to be staged as part of the background scene for the video political advertisement sponsored by Protect Our Communities.
2. During the taping of the ad in which he appeared, Sheriff Nelson wore a jacket that was purchased with Cowlitz County funds and is authorized to be worn with the Cowlitz County Sheriff's uniform.

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PENALTY

Based upon the stipulated facts and violations set forth above, Respondent Nelson agrees that a civil penalty in the amount of \$750 may be assessed, with \$500 suspended on the following conditions:

1. Respondent is not found to have committed further violations of RCW 42.17 or RCW 42.17A within four years from the date of the entry of the Commission's Final Order in this matter; and
2. Respondent pays the non-suspended portion of the penalty (\$250) within 30 days from the date of the entry of the Commission's Final Order in this matter.

In the event that Respondent fails to meet any or all of conditions 1-2, the suspended portion of the penalty (\$500) shall become due without any further intervention of the Commission.

Respondent Mark Nelson affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

Andrea M. Doyle
 Andrea McNamara Doyle, Executive Director
 Public Disclosure Commission

2/13/12
 Date Signed

Mark S. Nelson
 Mark Nelson, Cowlitz County Sheriff,
 Respondent

2/11/12
 Date Signed