



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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March 19, 2012

STEVEN DAVISON
1240 NW TIBARDIS CT
BREMERTON WA 98311

RE: Complaint against Michael McKinley – PDC Case No. 12-143

Dear Mr. Davison:

The Public Disclosure Commission (PDC) has completed its investigation of your complaint, received on October 18, 2011, alleging that Michael McKinley violated RCW 42.17.130 by using the public facilities of the City of Bremerton to assist his re-election campaign for Fire Commissioner of Central Kitsap Fire & Rescue. You allege that, on July 28, 2011, Mr. McKinley drove a vehicle owned by the City of Bremerton to a candidate interview conducted by the Home Builders Association of Kitsap County.

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

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: (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines normal and regular conduct of a public office or agency, as 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.

We reviewed Mr. McKinley's response to the complaint. We spoke with Mr. McKinley, Bremerton Fire Chief Al Duke, and Teresa Osinski, Assistant Executive Director for the Home Builders Association of Kitsap County. We reviewed documentation concerning the City of Bremerton's take-home vehicle policy and employee leave policy. As a result of our investigation, we found that:

- Mr. McKinley serves as the Assistant Fire Chief for the City of Bremerton and has been with the city fire department for over 30 years.
- As the City of Bremerton's Assistant Fire Chief, Mr. McKinley is assigned a city owned take-home vehicle and is expected to respond to various city fire department related incidents at any time of the day or night (24-hours per day). Fire department practice allows for those assigned a take-home vehicle, such as Mr. McKinley, to make incidental personal stops using their assigned city vehicle.
- The Home Builders Association of Kitsap County conducted candidate interviews on July 28, 2011 for the purpose of making candidate endorsements. Mr. McKinley drove his assigned city take-vehicle to the Home Builders Association of Kitsap County to participate in an interview, as a candidate for Fire Commissioner of Central Kitsap Fire & Rescue. His interview was held from approximately 1:45pm to 2:00pm.
- Mr. McKinley drove his assigned take-home vehicle throughout the day on July 28, 2011 while conducting city fire business, including immediately before and after his candidate interview. If, during his candidate interview, a city fire incident had occurred in which he was needed, Mr. McKinley would have immediately ended the interview in order to respond to the incident. Mr. McKinley is a salaried employee and does not have specific, assigned lunch and rest-break times.
- The City of Bremerton considers that Mr. McKinley's use of his assigned take-home vehicle to make a stop for the candidate interview was incidental and consistent with department policies.

In this instance, PDC staff has determined that Mr. McKinley's use of his assigned city vehicle to drive to a personal, campaign related, appointment is permissible because of his responsibilities as Assistant Fire Chief of Bremerton. As Assistant Fire Chief, Mr. McKinley is assigned a take-home vehicle for use 24-hours per day because he is expected to respond to specific city fire incidents at any time. It is normal and regular for him to drive the city vehicle every day to conduct city business, which he did both before and after his personal appointment. Incidental stops are consistent with regular department practice allowing for personal stops by those who drive assigned take-home vehicles. Although the personal stop was campaign related, the use of his assigned city take-home vehicle is consistent with the normal and regular practices of his position.

Steve Davison
PDC Case No. 12-143

After a careful review of the alleged violations and relevant facts, we have concluded our investigation. Because the investigation has not revealed evidence of material violations or substantial non-compliance with any of the laws or regulations under the commission's jurisdiction that warrant formal enforcement action, I am dismissing your complaint against Michael McKinley, with the concurrence of the Chair of the Public Disclosure Commission.

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 awareness of the campaign finance and disclosure laws.

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 cursive script that reads "Andrea M. Doyle". The signature is written in black ink and is positioned above the printed name and title.

Andrea McNamara Doyle
Executive Director

c: Michael McKinley