



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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TO: Commissioners

FROM: Andrea McNamara Doyle *AMD*

DATE: April 17, 2014

SUBJECT: Modified Penalty Stipulation for Mark Anderson, PDC Case 12-145

At the February 27, 2014 PDC meeting, the Commission accepted a stipulation of facts and violation signed by PDC staff and Dr. Mark Anderson, Associate Superintendent for School Support Services for Spokane Public Schools, in the above-referenced case. The Commission modified the penalty portion of the stipulation to \$1,000 with \$500 suspended pending no further violations of RCW 42.17A.555 by Dr. Anderson for a period of four years.

In a letter dated March 13, 2014 and received on March 20, 2014, Paul Clay, counsel to Dr. Anderson, confirmed Dr. Anderson's acceptance of the Commission's modification. PDC staff also accepts the Commission's modification. The original stipulation and Mr. Clay's March 13, 2014 letter follow this memo.

STEVENS CLAY, P.S.

SUITE 1575, PAULSEN CENTER
421 W. RIVERSIDE
SPOKANE, WASHINGTON 99201-0402
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PAUL E. CLAY

March 13, 2014

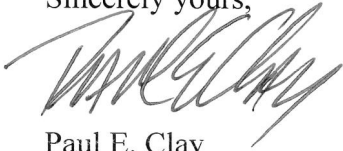
Mr. Tony Perkins
Lead Political Finance Specialist
Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: Spokane School District No. 81

Dear Tony:

Please accept this confirmation that Mark Anderson is agreeable to the modified stipulated penalty of \$1,000 (with \$500 suspended) proposed by the Commission at the February 27, 2014 meeting. Thank you.

Sincerely yours,



Paul E. Clay

cc: Dr. Mark Anderson

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

In the Matter of Enforcement Action
Against:

Mark Anderson

Respondent.

Case No. 12-145

STIPULATION AS TO FACTS,
VIOLATION AND PENALTY

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Mark Anderson, through his attorney, Paul Clay, 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 suggests modification to 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 RCW 42.17A, the Public Disclosure Act; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. In the March 10, 2009 special election, Spokane School District 81 (Spokane Schools) held a maintenance and operations replacement levy election and a bond election. The levy and bond propositions, assigned Proposition No. 1 and Proposition No 2., respectively, were placed on the ballot through resolutions by the Spokane Schools Board of Directors approved on December 3, 2008. Proposition 1 and Proposition 2 were approved by more than 60% of voters participating in the March 10, 2009 special election.
2. Spokane Schools' next maintenance and operations replacement levy election was held in the February 14, 2012 special election. That levy, Proposition No. 1, was placed on the ballot

through a resolution by the Spokane Schools Board of Directors approved on November 9, 2011. Proposition No. 1 was approved by more than 60% of voters participating in the February 14, 2012 special election.

3. Respondent Dr. Mark Anderson held the position of Spokane Schools' Associate Superintendent for School Support Services in the month before the March 10, 2009 special election, and also held his position in the fall and winter before the February 14, 2012 special election.
4. While on paid agency time, Dr. Anderson used his Spokane Schools email address and computer to send the following emails:
 - (a) an email at 10:41 am on Tuesday, February 3, 2009 to six District administrators, seeking to ensure that at least some of the recipients would attend a meeting of the Citizens for Spokane Schools (CFSS) political committee formed to promote levy and bond ballot measures in the district;
 - (b) an email at 10:06 am on Wednesday, February 25, 2009 to various school administrators notifying them of his plan to attend a CFSS meeting;
 - (c) an email at 3:07 pm on Wednesday, September 29, 2010, concerning the scheduling of a meeting for CFSS in which he offered input on who should be included in the meeting;
 - (d) an email at 8:58 am on Tuesday, November 2, 2010, to Deana Brower, suggesting that she send an email reminder to participants in a CFSS meeting planned for November 15, 2010 and a subsequent reply that Ms. Brower should send CFSS-related email to Ms. Terren Roloff at her Spokane Schools email address;
 - (e) an email at 10:29 am on Tuesday, March 3, 2009 forwarding an invitation from CFSS for district staff to attend an election watch event on March 10, 2009;

(f) an email at 2:10 pm on Friday, January 21, 2011 to CFSS officers, inviting them to attend a January 27, 2011 budget forecast meeting for all Spokane Schools administrators, and to speak to the group about the activities of the CFSS committee; and

(g) an email at 10:31 am on Thursday, February 12, 2009, to several recipients outside the district, including officers of CFSS, notifying them of his opinion that it would be more appropriate for someone from CFSS (and not Dr. Anderson) to respond to a private business that sought to support levy campaign activities.

5. Following the passage of the March 10, 2009 levy and bond, on Thursday, September 10, 2009, Dr. Anderson attended a School Elections Conference and, acting in his official capacity, presented a PowerPoint slide show with the title "*Lessons Learned - March 2009 Levy and Bond*" at the request of the conference sponsors. In part, the presentation described effective strategies for political campaigns in support of levy and bond measures, an analysis which Dr. Anderson gleaned from interviews with CFSS activists. It included, among many slides, one slide stating "*Key Lesson: Passing your next levy or bond starts today and continues every day between now and election day!*" Although the conference registration was free, Dr. Anderson's travel expenses were paid by Spokane Public Schools, he prepared for the conference with his Spokane Schools computer, and attended on paid agency time.
6. In the two weeks leading up to Spokane Schools' March 10, 2009 levy and bond elections, Dr. Anderson used his school email address and computer in sending the following emails:

(a) an email sent at 8:48 AM on Wednesday, February 25, 2009 to department heads in School Support Services for Spokane Schools, stating, "*Please remind your departmental staff to vote on the School District's bond and levy renewal measures by turning in their election ballots prior to March 10—ITSC, Nutrition Services, Warehouse/Purchasing, Maintenance, and Express staff. Remember, we have to get nearly 41,000 registered voters to turn in their ballots just to make the bond election valid and then 60 percent of those have to vote yes for this critical bond measure to be approved.*";

(b) an email sent at 8:20 am on Tuesday, March 3, 2009 to a "Group-Admin Staff" distribution list (employees assigned to the School District's Administration Building)

stating: "As of yesterday, Monday (March 2), 29,422 ballots had been returned to the Elections Department - 11,258 additional ballots must be received by next Tuesday just to validate our bond election. If you live in Spokane Public Schools and have already voted - thank you. If you haven't voted, please mail your ballot back to the Elections Department before next Tuesday. Also, please remind your friends, relatives, and acquaintances who live in Spokane Public Schools to vote by mailing in their ballot by next Tuesday. The levy and bond provide critical sources of funding to support our mission of educating Spokane's young people."; and

(c) an email sent at 2:53 pm on Friday, March 6, 2009 to Spokane Schools staff and officials, stating: "As of today (Friday), we have 40,621 ballots returned for levy and bond election measures. Given our validation requirement is 40,680, we are now 59 ballots short of validating and will easily validate on Monday. However, the big question is, how many of those ballots are marked yes for the levy and bond and how many are marked no. And, of importance will be what is the return rate for those precincts that typically have a higher percentage of yes votes on school measures than other areas of town - don't know the answer to that at this moment. I say we need to continue the full court information press to the end."

STATUTORY AND RULE AUTHORITY

7. **RCW 42.17.130** (effective January 1, 2012, codified as **RCW 42.17A.555**) 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.

WAC 390-03-273 states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, 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.

VIOLATION

Based on the Stipulation of Facts set forth above, Respondent Mark Anderson stipulates to a violation of RCW 42.17.130 for using and authorizing the use of the Spokane School District email system, computers, travel resources, paid staff time, and administrator meetings, all as described herein.


PENALTY

Based upon the stipulated facts and violations set forth above, Respondent Mark Anderson agrees to pay a total civil penalty of \$700, with \$400 suspended on the following conditions:

1. Respondent is not found to have committed further violations of RCW 42.17A within four years from the date of the entry of the Commission's Final Order in this matter;
2. Payment of the non-suspended portion of the penalty (\$300) is made within 30 days from the date of entry of the Commission's Final Order in this matter.

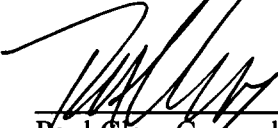
In the event that Respondent fails to meet either of these terms, the suspended portion of the penalty shall become due without any further intervention of the Commission.

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



Andrea McNamara Doyle, Executive Director
Public Disclosure Commission

2/19/14
Date Signed



Paul Clay, Counsel for Respondent
Mark Anderson

2/5/14
Date Signed