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August 30, 2018

Public Disclosure Commission
711 Capitol Way S. # 206
PO Box 40908
Olympia WA 98504

Re: Bethel School District

Dear Public Disclosure Commission:

We represent Bethel School District regarding the complaint dated June 20, 2018, alleging that the District violated the Fair Practices Campaign Act (FCPA) and Ch. 42.17A RCW.

RCW 28A.405.400 provides, in part:

28A.405.400 Payroll deductions authorized for employees. In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages to employees of school districts, upon written request of at least ten percent of the employees, shall make deductions as they authorize, subject to the limitations of district equipment or personnel. Any person authorized to disburse funds shall not be required to make other deductions for employees if fewer than ten percent of the employees make the request for the same payee. Moneys so deducted shall be paid or applied monthly by the school district for the purposes specified by the employee. The employer may not derive any financial benefit from such deductions. ...

The statute states the District "shall make deductions" if authorized by 10% of its employees if it is within the limitation of its equipment and personnel. The statute is mandatory and does not give the District discretion.

RCW 42.17.555 provides, in part:

42.17A.555 Use of public office or agency facilities in campaigns – Prohibition – Exceptions. 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. ...

The statute prohibits an elected official or his/her office from promoting a particular candidate or ballot proposition. The salary deductions do not target a particular election and are collected throughout the calendar year. In addition, the contributions fit the definition of "normal and regular conduct of a public office or agency" as they are both lawful and usual. See WAC 390-05-273.

The complainant's reading of the statute would make RCW 42.17A.495(3) meaningless for public employers. The statute provides, in part:

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. ...

In *State ex rel. Evergreen v. WEA*, 140 Wn.2d 615, 999 P.2d 602 (2000), the Court analyzed the statute's application to school districts and the WEA. Implicit in the decision is that school districts can divert part of an employee's wages to a political committee, if it is done properly.

Finally, there is no evidence to support the complainant's allegation of a violation of RCW 41.06.250 that prohibits solicitation of partisan political contributions or the property of a political subdivision.

For the reasons set forth herein, the complaint should be dismissed.

Very truly yours,



WILLIAM A. COATS

WAC:dtm
cc Maxford Nelsen
Todd Mitchell