

From: Lantz, Martha (Legal) <mlantz@ci.tacoma.wa.us>

Sent: Friday, September 7, 2018 4:54 PM

To: Erick Agina <erick.agina@pdc.wa.gov>

Subject: City of Tacoma: Alleged Violation of RCW 42.17A.550, .555, .255 for unauthorized use of public funds or resources for campaign activity and failure to report independent expenditures. (NOV 17)

Dear Mr. Agina,

I am a Deputy City Attorney for the City of Tacoma. The City Manager has asked me to respond to your below email. The City of Tacoma received the attached complaint dated November 15, 2017 and was in contact with Tony Perkins from the Attorney General's Office. The City of Tacoma responded to the AGO in the attached email dated January 18, 2018.

The City's position in this matter, as was communicated to the AGO on January 18, 2018, is that Mr. West's allegations that the City of Tacoma made unreported independent expenditures in opposition to a ballot proposition in violation of RCW 42.17A.255 and that the City used public resources to oppose a ballot proposition in violation of RCW 42.17A.550 are without merit.

The initiatives referenced by Mr. West were advanced in 2016 by a group called Save Tacoma Water around the same time a controversial methanol plant was proposed to be built in the City of Tacoma. Initiative 6 proposed a change to Tacoma Municipal Code to require that all requests for water permits requiring 1 million gallons of water per day or more get voter approval. Initiative 5 was proposed to amend the City Charter to impose the same public vote requirement. In the spring of 2016 Save Tacoma Water was collecting signatures to qualify Initiatives 5 and 6 for the November 2016 ballot. Prior to Save Tacoma Water turning its signatures in to the Pierce County Auditor, the Port of Tacoma, the Tacoma-Pierce County Chamber and the Economic Development Board for Tacoma Pierce County filed a lawsuit against Save Tacoma Water and also naming the City of Tacoma and the Pierce County Auditor as defendants. The lawsuit sought to invalidate both initiatives as unconstitutional and beyond the powers of a citizen initiative.

The City hired outside counsel (Pacifica Law Group) to assist in the City in determining the merits of a pre-election challenge to the constitutionality of the two proposed initiatives. Ultimately the City filed a cross claim aligned with the arguments made by the Port of Tacoma, the Tacoma-Pierce County Chamber and the Economic Development Board for Tacoma Pierce County that the initiatives were constitutionally flawed and that a pre-election injunction was appropriate. In July of 2016 the Pierce County Superior Court declared the initiatives invalid and enjoined the City and the Auditor from placing them on the ballot. The Washington State Court of Appeals subsequently upheld the trial court's ruling that the pre-election injunction was appropriate (see the attached opinion).

Mr. West made a public disclosure request of the City for certain invoices from the Pacifica Law Firm, which were produced to him in redacted form and which he attached to his November 15, 2017 "Citizen Action Letter" submitted to the PDC. Those invoices relate to the legal work performed by Pacifica on the City's behalf in consideration of whether the proposed initiatives were beyond the initiative power, such that pre-election judicial review was warranted.

The City's payments to Pacifica were for legal services related to defending the City against the original lawsuit filed by the Port of Tacoma, the Tacoma-Pierce County Chamber and the Economic Development Board for Tacoma Pierce County and for legal services related to the City's cross complaint for a pre-

election injunction and for legal advice on the general topic of pre-election initiative challenges. These are not public expenditures in substantive opposition to a ballot proposition. No improper expenditures occurred and no further action of the PDC is required.

The PDC may also wish to note that Mr. West (by way of a non profit corporation called Washington League for Increased Transparency and Ethics) has filed a Complaint in the name of the State of Washington to enforce RCW 42.17A against the City of Tacoma and the Port of Tacoma. The allegations in the complaint include the allegations contained in the November 15, 2017 Citizen Action Letter. That matter is currently pending in Thurston County Superior Court (Cause No. 18-2-01361-34) and is set for trial starting September 23, 2019.

Please let me know if you have questions or require any further response from the City of Tacoma. You can contact me directly at the number below as am handling these matters on behalf of the City.

Sincerely,

Martha Lantz
Deputy City Attorney City of Tacoma
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