

Lewis Co. Water and Sewer District #
921-C Middle Fork Rd.
Onalaska WA 98570

RECEIVED
AUG 11 2017
Public Disclosure Commission

Washington Public Disclosure Commission
Fox Buckhorn
Compliance Coordinator

Aug. 8, 2017

Mr. Buckhorn,

I am in receipt of your August 3rd copy of Mr. Hilliards complaint and your request for an audio CD of the June 21, 2017 meeting.

Please find requested CD enclosed.

Regarding Mr. Hilliard's complaint, Commissioner Carol Fox resigned effective at the closing of the June 21st meeting. RCW42.12.070 provides that the two remaining commissioners appoint a replacement commissioner within 90 days.

At the June 21st meeting it was noted that Steve Nikolich and Deborah Hilliard have filed to run for the position vacated by Carol Fox. As Mr. Hilliard incorrectly stated an appointment was not made. The discussion at the meeting was in no way in support of a particular candidate but rather a discussion to fulfill the RCW requirements. It is my understanding that it is the Commissioners duty to appoint a replacement that they believe will best serve the district. Commissioner Eros suggested that Steve Nikolich should be appointed. There was discussion concerning his willingness to be appointed at this time. He replied that he would be **willing**. The Commissioners may or may not appoint Nikolich or someone else at a future meeting. Since Commissioner Carol Fox's resignation was not effective until the conclusion of that meeting no action was or could be taken.

It should also be noted that since Mr. Hilliard mentioned former Commissioner Kristine Carter, I have enclosed herewith a copy of her letter resigning as clerk and Public Information Officer.

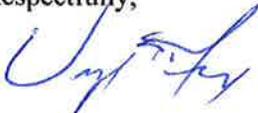
As further indication of Mr. Hilliard's general demeanor, I have also enclosed a copy of the Lewis County Prosecuting Attorney's letter of October 29, 2015.

I am confident that this was an appropriate discussion that had to take place at an open public meeting. In compliance with the RCW's the existing commissioners could not have had such a discussion outside of a public meeting.

I do not see any way that this discussion could be viewed as inappropriate.

Please copy me on your response to Mr. Hilliard.

Respectfully,



Virgil Fox, Commissioner

Kristine Carter
921 -E Middle Fork Rd.
Onalaska Washington
98570

December 1, 2015

Lewis County Water and sewer district #5

Dear Commissioners

I Kristine Carter wish to inform the Board that I am resigning my position as District Clerk as well as my position as Public Records Officer, effective midnight December 9, 2015.

I can no longer tolerate Mr. Hilliard's harassment and intimidation. Since the office has been moved to the pump house at Mr. Hilliard's request, working conditions have been rather poor, I have tolerated that. I can however no longer tolerate his intimidation and harassment. As you know he attempted to have me removed as a Commissioner causing me a great deal of frustration, extra work and embarrassment. As you are also aware he came to the office, blocked the door, scared me half to death and caused me to run home and call the Sheriff. I am concerned for my safety when alone in the office. I no longer wish to be in the same room with him. Responding to his current data requests is beyond my computer capability. I believe the district would be better served to hire someone else perhaps Northwest Water or Skyline pump to carry on the secretarial duties.

Thank You

Respectfully



Kristine Carter



Lewis County Prosecuting
Attorney's Office

345 W. Main Street,
2nd Floor
Chehalis, WA 98532
Phone: (360) 740-1240
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October 29, 2015

Detective Sergeant Dustin Breen
Lewis County Sheriff's Office
Chehalis, WA 98532

RE: **Sent for Review.**
Incident Number: 15C-3456
Decline to file criminal charges.

Dear Detective Sergeant Breen:

Thank you for sending me this report to review. The case presents some very interesting issues.

I was already familiar with the case before you sent the final report to me. Detective Aust and I have been discussing the investigation by the Lewis County Sheriff's Office (LCSO) into the management of the Lewis County Water and Sewer District #5 (LCWSD#5) for the past six months. In addition to reviewing all of the documentation regarding this case, we went to the Washington State Auditor's Office on June 4, 2015, and spoke with the assistant auditors and fraud investigator assigned to LCWSD#5. On July 14, 2015, we met with Mr. Fox and his attorney. Lastly, on August 20, 2015, Det. Aust and I spoke with some of the residents of Birchfield Estates, and heard their concerns.

There have been several accusations against Mr. Fox, which prompted the investigation by the LCSO. The first was that Mr. Fox was stealing water from LCWSD#5. The problem from a prosecution standpoint is that there is no physical evidence on which to base a criminal prosecution. For example, there are no pictures of water being diverted through unauthorized pipes. There are no definitive records from the Water District showing Mr. Fox has not paid for, or otherwise accounted for, his water usage. While much of Mr. Fox's "payment" has been by means of an offset on a promissory note, the State has to prove that Mr. Fox intended to wrongfully take the water. That proof must be beyond a reasonable doubt.

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When Det. Aust and I met with the State Auditors in June, the opinion of their fraud investigator was that there was no fraud by Mr. Fox. According to the investigator, had there been evidence of fraud, the Auditor's office would have issued a Fraud Report instead of an Accountability Audit Report. Two Accountability Audit Reports have been issued: One on September 5, 2012, and one on February 27, 2014. Both Reports indicate irregularities in accounting, but attribute the irregularities to the commissioners (including Mr. Fox) being unfamiliar with the laws governing water rights and the unique circumstances of the formation of the water district. To me that means there was no criminal intent.

The second accusation against Mr. Fox is that he was self-dealing, in violation of RCW 42.23.030. That statute prohibits a municipal officer (in this case Mr. Fox) from having a beneficial interest in any contract where that commissioner is a party. The unique circumstances referred to by the State Auditors included the fact that LCWSD#5 was the maker of a promissory note that purchased American Water Resources (AWR) from Mr. Fox. Mr. Fox was the developer of Birchfield Estates and the creator of AWR. The law does not require Mr. Fox to give AWR away for free.

Once again, the problem from a criminal prosecution standpoint is that we would have to show Mr. Fox intentionally self-dealt in violation of the statute. But he was the developer of the property and creator of the original, private water source for the property. There is nothing illegal about a developer selling his water rights to a public utility. That's why developers go into the developing business.

It is abundantly clear that Mr. Fox fully intended to sell every parcel in his development, sell AWR, and retire on his profits. The problem is his development never took off. He has been unable to sell enough of the parcels to generate the income necessary for LCWSD#5 to service the debt owed to Mr. Fox as the developer. The intent of RCW 42.23.030 is to prevent public municipal officers from intentionally using their position to benefit themselves. For example, a city councilman may not vote to contract with his own contracting firm to build a municipal building in the city where he/she is a councilman. The rule is not intended to prevent developers from developing, and then selling their property.

Some of the home owners in the district have alleged that Mr. Fox benefited from LCWSD#5's inability to pay the debt owed to Mr. Fox for the purchase of American Water Resources (AWR). LCWSD#5 has incurred additional interest

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and late fees for the non-payment, which effectively increased the amount of money LCWSD#5 has to eventually pay for AWR.

However, it can also be argued that Mr. Fox's actions in offsetting his promissory note actually benefited LCWSD#5 by saving the district from defaulting on its debt. While the merits of that argument can be debated, the very existence of the argument means the State cannot prove (beyond all reasonable doubt) that a crime has been committed. There is no evidence, and it is not alleged, that Mr. Fox defrauded the water district members when they purchased their property.

The last complaint is that Mr. Fox controls the board of commissioners of LCWSD#5, and its voter base, such that it is impossible to elect unbiased commissioners. It is true that the majority of voters of the water district are either family members of Mr. Fox or friends of his. There is nothing inherently illegal about that particular fact. No evidence is stated in the police report that supports an accusation Mr. Fox has engaged in voter fraud or undue influence of voters in the district.

The proper method for removing a public official from office, if the voters disapprove of his management, is for the voters to vote him/her out. The mandate of the Lewis County Prosecutor's Office is to prosecute crimes, not influence elections of public officials. There have been complaints that Mr. Fox denied access by candidates to some of his rental units within the water district. While each case will be determined on its own merits, trespass complaints will only be prosecuted if the trespass is criminal in nature. The State has the burden to prove, beyond a reasonable doubt, that the trespass was unlawful (WPIC 19.07). Generally speaking, doorbelling by candidates for public office during daylight hours does not constitute a crime, so Mr. Fox should think twice before he limits access to the front doors of Birchfield residents.

Thank you very much for sending me this case. After thoughtful review, I am declining to file criminal charges at this time.

Sincerely yours,

J. Bradley Meagher

J. BRADLEY MEAGHER
Chief Criminal Deputy Prosecuting Attorney

JBM/bm