



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111
• FAX (360) 753-1112 • Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

April 21, 2016

TOM MIELKE
PO BOX 5000
VANCOUVER WA 98666-5000

Sent electronically to Tom Mielke at District18rep@msn.com

Subject: PDC Case 2337 (formerly Case 15-052)

Dear Mr. Mielke:

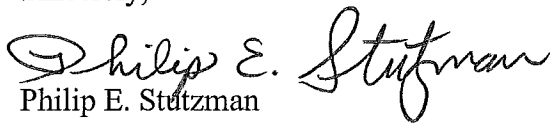
Enclosed is a copy of the Public Disclosure Commission's Order Imposing Fine that was entered in the above-referenced case. The Presiding Officer assessed a \$200 civil penalty against you with \$100 suspended on the condition that you pay the \$100 non-suspended portion of the penalty within 30 days from the date of the Order, and that you commit no further violations of RCW 42.17A for four years from the date of the Order.

Please make your check or money order payable to "WA STATE TREASURER." Be sure to reference PDC Case 2337 (formerly Case 15-052) in the memo line of the check or money order, and mail the penalty to:

WA State Treasurer - Public Disclosure Commission
Financial Office
PO Box 41465
Olympia, WA 98504-1465

Thank you for your participation in the Brief Enforcement hearing. If you have questions, please contact me at (360) 664-8853; or by email at phil.stutzman@pdcc.wa.gov.

Sincerely,


Philip E. Stutzman
Sr. Compliance Officer

Enclosures: Final Order in Case 2337 (formerly Case 15-052)
Information about Appeals and Enforcement of Final Orders



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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

Tom Mielke
P.O. Box 5000
Vancouver, WA 98666-5000

In Re Compliance with RCW 42.17A

Tom Mielke

Respondent.

PDC Case 2337 (formerly Case 15-052)

Findings of Fact,
Conclusions of Law, and
Order Imposing Fine

A brief enforcement hearing (brief adjudicative proceeding) was held by the Public Disclosure Commission (PDC) on April 21, 2016, in Room 206, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington to consider whether Tom Mielke violated RCW 42.17A.555: (1) by using his Clark County email address to oppose Proposition 1, the 2014 Clark County Home Rule Charter ballot measure; and (2) by using his Clark County email address to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart.

The hearing was held in accordance with Chapters 34.05 and 42.17A RCW and Chapter 390-37 WAC. A brief enforcement hearing notice was sent to Tom Mielke on April 11, 2016. Commission Chair Katrina Asay was the Presiding Officer. The Commission staff was represented by Phil Stutzman, Sr. Compliance Officer. The Respondent participated by telephone and provided comments to the Presiding Officer.

Stipulation

The parties jointly submitted a signed Stipulation as to Facts and Violation (Stipulation). Mr. Stutzman summarized the Stipulation which included all relevant facts and a statement that Mr. Mielke violated RCW 42.17A.555 by using his Clark County email address to oppose Proposition 1, the 2014 Clark County Home Rule Charter ballot measure. The Stipulation stated that Mr. Mielke does not stipulate that he violated RCW 42.17A.555 by using his Clark County email address to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart.

Mr. Stutzman asked the Presiding Officer to accept the Stipulation and to find that the Respondent also violated RCW 42.17A.555 by using his Clark County email address to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart. Mr. Stutzman asked the Presiding Officer to assess an appropriate penalty.

Mr. Mielke urged the Presiding Officer to accept the stipulation and to find that he did not violate RCW 42.17A.555 by using his Clark County email address to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart.

The Presiding Officer accepted the Stipulation as to Facts and Violation.

Having considered the evidence, the Presiding Officer finds as follows:

FINDINGS OF FACT

Based upon the Stipulation, which is hereby attached and incorporated by reference, the Presiding Officer finds:

1. The facts are established as provided in the Stipulation.

CONCLUSIONS OF LAW

Based upon the Stipulation, which is hereby attached and incorporated by reference, the Presiding Officer concludes:

1. This matter was duly and properly convened and all jurisdictional, substantive and procedural requirements have been satisfied.
2. The Respondent violated RCW 42.17A.555 by using his Clark County email address to oppose Proposition 1, the 2014 Clark County Home Rule Charter ballot measure.
3. The Respondent violated RCW 42.17A.555 by using his Clark County email address to respond to an email from Larry Patella that opposed the 2014 Clark County Commissioner campaign of Craig Pridemore and supported the campaign of Jeanne Stewart.

ORDER

ON the basis of the foregoing Findings of Fact and Conclusions of Law,

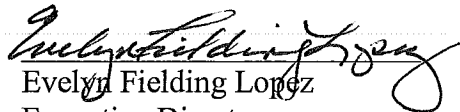
IT IS HEREBY ORDERED that the Respondent is assessed a \$200 civil penalty, of which \$100 is suspended on the following conditions:

1. **The Respondent commits no further violations of RCW 42.17A for four years from the date of the Order; and**
2. **The \$100 non-suspended portion of the penalty is paid within 30 days from the date of the Order.**


This is an **Initial Order** of the Public Disclosure Commission.

Entered this 21st day of April, 2016.

Public Disclosure Commission


Evelyn Fielding Lopez
Executive Director

Enclosure: Information about Appeal Rights

I, Philip E. Stutzman ^{E-Mailed} certify that I mailed a copy of this order to the Respondent/Applicant at his/her respective address postage pre-paid on the date stated herein. 

Philip E. Stutzman 4/21/16
Signed Date

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

In the Matter of Enforcement Action
Against:

Tom Mielke

Respondent.

Case No. 2337
(formerly Case No. 15-052)

STIPULATION AS TO FACTS
AND VIOLATION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Tom Mielke, 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 state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. The November 4, 2014 general election ballot in Clark County included Proposition 1, a Home Rule Charter ballot measure that if approved would replace the existing system of three County Commissioners. In addition, Craig Pridemore and Jeanne Stewart were on the general election ballot running for the position of County Commissioner in District 3.
2. Voters approved the Home Rule Charter by a 53.35% to 46.65% margin, with 63,731 Yes votes and 55,727 No votes.

3. Jeanne Stewart defeated Craig Pridemore in the race for County Commissioner, District 3, by 0.21%, receiving 60,131 votes to Mr. Pridemore's 59,226 votes.

Alleged use of county email to oppose Proposition 1, the Clark County Home Rule Charter ballot measure, by telling Darlene Johnson to not let the Woodland Chamber of Commerce take a position on the ballot measure

4. On October 23, 2014, Commissioner Mielke used his Clark County email address to respond to Darlene Johnson of the Woodland Chamber of Commerce, and tell her, " ... Please don't let the chamber take a position on this, it will put them in a bad light."
5. Commissioner Mielke was responding to an email he received from Ms. Johnson at his Clark County email address that she had received from John "JJ" Burk, Executive Director of the Woodland Chamber of Commerce. The email chain included an email from Kelly Love, CEO/President of the Greater Vancouver Chamber of Commerce, explaining why the Greater Vancouver Chamber of Commerce and the Camas-Washougal Chamber of Commerce officially supported Proposition 1. Ms. Johnson forwarded the email chain to Commissioner Mielke at his Clark County email address and at his personal email address with the comment, "Thought you might be interested in what is being emailed to Chamber on the Charter issue. Dar"
6. Commissioner Mielke responded using his Clark County email address by saying, "Wow! Hi Dar, I can't believe how hard they are working to do private presentations and so on. I'm not sure *who the 60% might be, but the Charter is a disaster*. Please don't let the chamber take a position on this, it will put them in a bad light. Tom"

Alleged use of county email to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart by subscribing to and accepting an email that supported Ms. Stewart and opposed her opponent, Craig Pridemore

7. On October 23, 2014, Commissioner Mielke used his Clark County email address to respond to an email from Larry Patella's "Local Mailing List" with a subject of

"What Others Are Saying" by stating, "Wow! Just wow! Hard to believe all this went right down party lines ... Enough about working well with others. Tom"

8. The email started out by stating, "Good Morning, Please read and then vote for *Jeanne Stewart*. Below is information provided by reliable sources and the Fish Wrapper spotlighting the highlights of Pridemore's political career. As you can see, *Pridemore repeatedly ignored the voice of the people and has voted for, or spoke in favor of: multiple taxes & hikes ... bridge tolls... elimination of the 2/3 majority in Olympia... , etc.*"
9. The email concluded by stating that the facts were obtained by scanning the archives of The Columbian newspaper from 1996 to the Summer of 2014 concerning Craig Pridemore's political history which resulted in two files attached to the emails titled "Pridemore Report."
10. Commissioner Mielke subscribed to and accepted the "Local Mailing List" email at his Clark County email address of tom.mielke@clark.wa.gov. Even though the email included instructions for unsubscribing to the emails created by Mr. Larry Patella, Commissioner Mielke maintained his subscription to receive Mr. Patella's emails at his Clark County email address, which in this case, was an email supporting Jeanne Stewart and opposing Craig Pridemore, candidates for Clark County Commissioner.

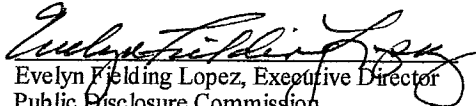
STATUTORY AND RULE AUTHORITY

11. **RCW 42.17A.555** states, in part: "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."


12. WAC 390-05-273 defines the "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."

VIOLATION

13. Based on the Stipulation of Facts set forth above, Respondent Tom Mielke stipulates that he violated RCW 42.17A.555 by using his Clark County email address to oppose Proposition 1, the 2014 Clark County Home Rule Charter ballot measure. He does not stipulate that he violated RCW 42.17A.555 by using his Clark County email address to assist the 2014 Clark County Commissioner campaign of Jeanne Stewart.


Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

4/19/2016
Date Signed


Tom Mielke, Respondent

4/14/2016
Date Signed

**INFORMATION ABOUT APPEALS OF INITIAL ORDERS,
FURTHER APPEAL RIGHTS,
AND ENFORCEMENT OF FINAL ORDERS**

APPEALS

REVIEW OF INITIAL ORDER - BY THE COMMISSION

The presiding officer will issue an initial order following a brief enforcement hearing. Any party may request the Commission **review** an initial order. Parties seeking the review must:

- Make the request orally or in writing, stating the reason for review. *WAC 390-37-144.*
- Deliver the request so it is received at the Commission office within **TWENTY-ONE (21) BUSINESS DAYS** after the postmark date of the initial order.

A Respondent does not need to pay a penalty until after the Commission rules on the request. If the Commission is unable to schedule a meeting to consider the request within twenty (20) business days, the initial order becomes a **final order** and the request will automatically be treated as a **request for reconsideration** of a final order (unless the party advises the Commission otherwise, such as by withdrawing the request). See more information on reconsideration below.

If the request for review was an oral request, it must now be confirmed in writing. The matter will be scheduled before the full Commission as soon as practicable. If the Commission does not receive a request for review within twenty-one (21) business days, the initial order will automatically become a **final order**. At that point, the Respondent is legally obligated to pay the penalty unless reconsideration has been sought or the matter has been timely appealed to Superior Court. *RCW 42.17A.755; RCW 34.05.470; RCW 34.05.570.*

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150.*

- Note: the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). (The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150.*

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5).*

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A **final order** issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755.* The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.