



FIREHOUSE LAWYER

Vol. 1, No. 4

Joseph F. Quinn, Editor

July 31, 1997

FIREHOUSE LAWYER SURVEY

As noted in last month's issue, the *Firehouse Lawyer* is conducting a survey of all Pierce County Fire Protection Districts, to obtain certain basic information. The survey is republished on the last page of this issue. As this edition goes to print, only four Pierce County Districts have responded to the survey thus far. Thank you are in order for districts 5, 6, 11 and 21. I know vacations are in progress, but it is hoped that the survey could be completed before publication at the end of September.

REFRESHER COURSE: RCW 42.17.130

As election season is again upon us, we felt it appropriate to refresh everyone's memories concerning the rules surrounding use of public funds, personnel, supplies and equipment in connection with elections. Every year between August 1st and November numerous

questions are asked of counsel concerning appropriate and inappropriate actions and expenditures somehow connected to an upcoming election. Typically, the questions asked of counsel relate to ballot propositions, but the rules are also applicable to Commissioners or other candidate's elections. The balance of this article is essentially a reprint of a general guidance opinion letter written in September, 1995, but still probably useful, as the law has not materially changed.

1. The Statute.

RCW 42.17.130 as presently written places a strict restriction on the use of public facilities of local agencies by providing, in pertinent part, as follows:

No elective official nor any employee of his 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...

There are several points worthy of note in this language. First, the prohibition applies to individual persons and not directly to the entity such as the fire protection district or school district. The liability, therefore, is obviously personal. (A violation can lead to monetary penalties and misdemeanor prosecution.) Second, you can see that the statute is very broad and courts have held that it must be liberally construed to accomplish its purpose.

The statute goes on to define the word "facilities" very broadly and even includes the use of the employees within the word "facilities."

2. The Statutory Exceptions.

There are certain statutory exceptions which set forth

RCW REFRESHER

Page	Inside This Issue
1	Firehouse Lawyer Survey
1	Refresher Course: RCW 42.17.130
4	Pierce County Local Voter's Pamphlet

(con't)...

allowable conduct. The first exception allows for action to be taken at an open public meeting by members of an elected legislative body, such as a school board or a board of fire commissioners. Such an action can include a collective decision, or an actual vote upon a motion, proposal, resolution or similar action, stating support or opposition for a ballot proposition. This exception requires that proper notice of the meeting include the title and number of the ballot proposition and that members of the legislative body or members of the public are given the opportunity (with equal time) for the expression of an opposing view. This means, for example, that such a board not only has the authority to pass a resolution calling for an election on a levy measure or a merger, but they also have the authority to subsequently pass a resolution stating their support for that ballot proposition. The notice of meeting should be carefully worded and posted in public locations. The presiding officer should announce at the beginning of the discussion that any board member or member of the public with an opposing view is expressly invited to spend equal time stating their position. This minutes, therefore, could reflect that the statutory exception is satisfied.

The second exception in the statute allows 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. Thus, a press conference could be called and an elected official could make an affirmative statement, whether a question is asked by the media or not. Furthermore, if there is a specific inquiry by mail, for example, from a constituent, it seems to me that an elected official could make a written statement answering the query. Obviously, this means that such a reply could be done with public facilities.

The third exception is an important one and has been a subject of much discussion. This exception in the statute expressly allows activities which are a part of the "normal and regular conduct" of the office or agency. This language has been interpreted a great deal by the Public Disclosure Commission, the Attorney General and in some court cases and PDC regulations. First, the regulations at WAC 390-05-271 state that the statute does not restrict the right of any individual to express his or her own personal views concerning a ballot proposition if the expression does not involve use of facilities of a public office or agency. Obviously, comments made with a person's own facilities, that of a citizens' committee and on their own time, would not violate the statute. The second part of the regulation,

however, does not seem as obvious. It states that the statute does not prevent a public office or agency from making its facilities available on a non-discriminatory, equal basis for political uses or making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency. Clearly, this is an important regulation. It would allow the adoption of policies regarding use of the fire station, for example, for political forums and other political uses, as long as the facilities are equally available to all sides of the ballot issue.

The second portion of this subsection of the regulation provides a regulatory basis for information or fact sheets if such items make an objective and fair presentation of the facts and if these information sheets are part of the normal and regular conduct of the office or agency. We have in the past advised fire districts that if they publish a regular newsletter, for example, every month or every quarter of the year, that such a newsletter is part of the normal and regular conduct of their agency. Therefore, informational activity as opposed to blatantly promotional material, if presented objectively and fairly, can be a proper part of the newsletter even though the newsletter is produced with public funds or even with public printing

RCW REFRESHER (con't)...

or desk-top publishing facilities. We would stress that one must still be careful to avoid promotion as opposed to the provision of objective facts.

It would be appropriate to combine some of these exceptions. For example, we have previously advised that it is entirely appropriate to reprint in a regular newsletter a copy of a resolution of commissioners supporting a ballot proposition. The page in the newsletter including such resolution could also include an informational article about the ballot proposition. It might be advisable, however, to allow space in the newsletter for the presentation of an opposing view, if there is any person or entity espousing such a view in the community.

Various AGO opinions and PDC declaratory rulings have stressed that the timing of such materials is very important. If such materials are not produced for every election or throughout the year, but only when the district has a ballot proposition, the Public Disclosure Commission could challenge on the basis that this is not normal and regular conduct. The PDC will also look to the style, tenor and timing in relation to the election.

The PDC has also enacted a rule defining “normal and

regular conduct.” WAC 390-05-273 provides:

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 the use of public facilities for the purpose of assisting a candidate’s campaign or opposing a ballot proposition, in the absence of a constitutional, charter or statutory provision separately authorizing such use.

The limitations can create a problem for local agencies, because the powers of special purpose districts, for example, are strictly construed. If there is any doubt as to the existence of a power, it is usually denied. See, e.g., State ex rel. Eastvold v. Maybury, 49 Wn.2d 533, 304 P.2d 663 (1956). But, for example, if there is a specific statute that applies, the activity is clearly “lawful.” For example, there is now a statute authorizing a local voter’s pamphlet, which means that automatically any use of public facilities to prepare the statements for inclusion in the local voter’s pamphlet satisfy the first part of this test. This also means that the conduct is normal and regular because the local auditor, as elections officials,

must produce this pamphlet for every election. To prove that the conduct is “usual,” it would suffice to show that it was not a “one time only” publication but something that is normal and recurring for that agency.

The PDC itself has issued declaratory rulings from time to time which have helped to define terminology and clarify the meaning of the statute and the regulations. In fact, education and not regulatory compliance is the focus of the PDC. The Public Disclosure Commission welcomes informal calls to staff in advance if clarification of the statute and regulations is needed by a district or local agency.

An additional point made by the PDC in one of their rulings might be helpful. In their second declaratory ruling, the Commission stressed that it was viewing the entire mailing as a whole and considering the style, tenor and timing of the mailing. Thus, the Commission will look not to isolated parts of the publication or situation, but the totality of the circumstances. The Commission has stressed, however, that communications during an election campaign are reviewed with the closest scrutiny.

The PDC has published a brochure entitled “*Public Facilities and Campaigns - Keeping Them Separate*”, which contains the following helpful list of “do’s” and “don’ts”.

RCW REFRESHER (con't)...

The list of do's contains the following:

- Register citizens to vote, spend time on election day poll checking, wear campaign lapel buttons, display bumper stickers on private vehicles (even if parked in public owned lot);
- **On their own time, and not with the use of public property or equipment,** campaign for or against any candidate or ballot issue, distribute campaign material, solicit voluntary campaign contributions, make campaign contributions, speak before groups in support of personal positions or otherwise undertake advocacy activities;
- In the course of work, respond to election-related questions in a straightforward, objective and factual manner.

The list of don'ts contains the following:

- Campaign or solicit political contributions during work hours, using public telephones or other equipment, or government property, including in staff lounges, cafeterias or break rooms;

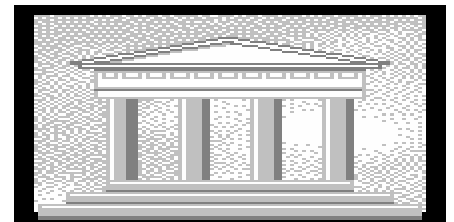
- Carry or display political material in or on publicly owned vehicles;
- Display or distribute campaign posters, placards or other promotional material on publicly owned or operated premises;
- Use government supplies, equipment or facilities to print, mail, or otherwise produce or distribute campaign materials;
- Solicit signatures for any campaign, initiative, recall or referendum effort on publicly owned or operated premises.

It is hoped that the foregoing guidance can help answer most questions before they arise. However, if your district has specific fact situations that are still creating questions or doubts in your mind or that of the commissioners, please contact your legal counsel.

PIERCE COUNTY LOCAL VOTERS PAMPHLET

The administrative rules and regulations for the Pierce County local voter's pamphlet, and the state law on local voter's pamphlets, both require local government agencies proposing ballot propositions to attempt to obtain statements for and against

the ballot proposition. The state law and the Auditor's regulations recognize that it may not be possible to appoint a committee against a ballot proposition or obtain a statement against the proposition. The Auditor has publicly stated that it must be acceptable if the local jurisdiction makes its best efforts to appoint a committee. If a fire district, for example, solicits volunteers for committees for and against at public meetings and by posting the request in stations, that should suffice. While some may not consider this legislation or local administrative rule to be appropriate, it does appear to be a requirement of state law that local governments make such best efforts to find committee members, both for and against such measures.



Published by:
Joseph F. Quinn

Attorney at Law
7509 Grange St. W. Suite A
Lakewood, WA 98467
(253) 475-6195

Services Contract. His office is located in the headquarters of Pierce County FPD 2 (Lakewood) and FPD 3 (University Place) at the above address.

a set of forms for safety officers. Designed to help fire departments comply with the new WAC 296-305 safety standards, these materials are available to non-Pierce County departments for \$50.

In June, 1997, a model Safety Resolution and complete set of operating instructions (SOPs) have been completed, to comply with the "vertical standards". Mr. Quinn has also been developing numerous policy Resolutions and SOPs on various department topics such as open meetings, open records, patient records, etc.

Please call for information.

Mr. Quinn is general counsel to 11 Pierce County fire districts under a Professional

NOTA BENE:

Since January 1, 1997, Mr. Quinn has developed a fire department safety checklist and