



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

DECLARATORY ORDER NO. 13

USE OF CITY FACILITIES TO BROADCAST CANDIDATE FORUM (RCW 42.17.130): A city is not prohibited by RCW 42.17.130 from organizing and broadcasting a candidate forum where the purpose of the forum is to educate voters about the candidates for office, each candidate is provided an equal opportunity to participate, and the forum is presented in a fashion that is unbiased and nondiscriminatory with regard to all candidates.

Raymond L. Paoella, City Attorney
Paul T. McMurray, Assistant City Attorney
City of Yakima Ave. Suite 100
Yakima, Washington 98901

Dear Mr. Paoella and Mr. McMurray:

The City of Yakima (City) has petitioned the Public Disclosure Commission (PDC) to issue a declaratory ruling pursuant to RCW 34.05.240 and WAC 390-12-250 regarding the sponsorship and broadcast over the City operated cable channel of a City Council Candidate Forum by the City Cable Communications Division. Having heard the City's presentation by Mayor Patricia A. Berndt, City Attorney Raymond L. Paoella and Assistant City Attorney Paul T. McMurray at its regular meeting on October 24, 1995, the Commission unanimously agreed that the organization and broadcast of the Forum by the City, as described in the Petition, was permissible under RCW 42.17.130. This written ruling will serve to formalize that decision.

FACTUAL BACKGROUND

Pursuant to the Yakima Municipal Code, Sec. 1.18.060(4), the City maintains, operates and administers Yakima Public Affairs Cable (YPAC) and Yakima Community Television. The main purpose of YPAC is to provide information to the public by broadcasting public proceedings and events involving the public interest. To further that purpose, the City intends to organize and

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)



broadcast "an informational City Council Candidate Forum" on YPAC on October 28, 1995 and October 29, 1995. The Forum would be held in the City Council Chambers at Yakima City Hall. All known candidates for City Council positions will be invited to participate. Each of the candidates will be provided equal time to respond to questions asked during the Forum.

The format of the Forum is designed to afford each of the candidates an equal opportunity to participate. Each is given an opening and closing statement of equal length. Questions will be asked by local media representatives and the audience, live and by phone. Each candidate will have equal time to respond. A similar Forum was broadcast in 1993 without complaint. It was also held in the Chambers at City Hall.

This petition was generated as a result of an inquiry regarding whether questions could be asked about a Referendum and whether campaign materials could be passed out during the Forum. The broader issue whether the City could organize and broadcast the forum was then raised.

DISCUSSION

The PDC's decision involves an interpretation of RCW 42.17.130, which provides,

RCW 42.17.130 Forbids use of public office or agency facilities in campaigns. 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. Facilities of 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: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

...

(3) Activities which are part of the normal and regular conduct of the office or agency.

The PDC has adopted rules interpreting the statute, WAC 390-05-271 and WAC 390-05-273, which provide:

WAC 390-05-271 General Applications of RCW 42.17.130.

...

(2) RCW 42.17.130 does not prevent a public office or agency from (a)

making facilities available on a nondiscriminatory, equal access basis for political uses or (b) 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.

WAC 390-05-273 Definition of Normal and Regular Conduct. 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 a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

The PDC has frequently dealt with the interpretation of the statute. It has been guided by a belief that the statute represents a significant public policy: that the resources of the government not be used to skew the results of any election campaign. Our constitution provides that:

"All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."
Wash. Con., Article 19

The statute reflects that fundamental principle and the PDC has attempted to read it strictly to prevent the use of governmental resources to benefit or oppose any particular candidate or ballot measure.

On the other hand, the government has information that should be made available to the public to assist in making informed decisions. In addition, the facilities of the government include meeting places and other opportunities for the exchange and dissemination of information about significant issues during election campaigns. The facilities of government are frequently used for community events which, at least in part, serve to provide information to the public. Some agencies are authorized to provide information that specifically benefits or opposes candidates and ballot measures, such as the Secretary of State and the distribution of the voter's pamphlet pursuant to the constitution. That public policy is contained in the exception that permits "normal and regular conduct".

The rules quoted above attempt to provide guidance to agencies when faced with situations that potentially violate the statute. The rules reflect an attempt to find a reasonable balance between the public policy against inappropriate political uses of public facilities and the policy favoring the dissemination of information in the public interest. The rules permit the use of public facilities even where that use may result in benefit to a candidate or ballot proposition if all candidates or

all ballot committees have the same opportunity to enjoy that benefit. The PDC has found the use of school auditoriums for a candidate's night to be appropriate when it was sponsored by a non-political private organization, such as the League of Women Voters. When the facility is normally available for community activities, its use for political purposes is permitted if it is offered on a non-discriminatory use. The common thread is that the facility is not used for the purpose of disproportionately assisting a political campaign.

This interpretation is consistent with the approach taken by the Attorney General's Office. When asked whether a political party could hold its state convention at the Evergreen State College, the Attorney General opined that such use was permissible under state law. It was significant to the analysis that the use was a rental of the facility that did not discriminate against any particular political view. The facility would have been available to any potential user upon the same terms and conditions. In addition, a student sponsored candidates forum was judged to be permissible where the forum was not designed to favor any particular political position. See AGO 1979 No. 3

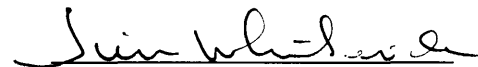
Applying this rationale to the City's proposed candidate's Forum, the PDC concludes that the Forum is permissible under RCW 42.17.130. The Forum is clearly designed to provide each candidate an equal opportunity to participate. No effort is made to benefit incumbents over challengers. In fact, it was asserted that some challengers felt that this Forum offered them a unique opportunity to present their views to the general public. The Forum would provide information to the public in an unbiased and non-discriminatory manner. It serves the public policy of providing information without providing any particular benefit to a specific candidate.


The question was asked whether candidates, including incumbents, could express their positions regarding a referendum in response to questions posed during the Forum. Again, the Commission unanimously agreed that there is nothing in RCW 42.17.130 or the Commission's rules which would prohibit candidates, including candidates who are incumbents, from expressing their views on a ballot measure during the Forum, so long as all candidates are given an equal opportunity to respond.

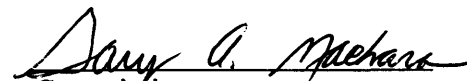
The final question is whether candidates, including candidates who are incumbents, may hand out campaign materials during the Forum. The Commission was of the consensus that, in keeping with the fact that the City's purpose in holding and broadcasting the Forum was to disseminate information to citizens about the candidates in an impartial and non-partisan manner and that the Forum's permissibility under RCW 42.17.130 rests on such purpose, no overt campaigning should take place during the Forum other than the expression by the candidates of their views.

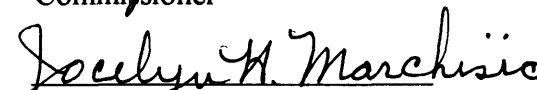
CONCLUSION


By a vote of 5-0, this written, binding Declaratory Order was adopted at a special Commission meeting in Olympia, Washington on December 5, 1995, based on the conclusions reached by the Commission at its meeting on October 24, 1995.


Chair

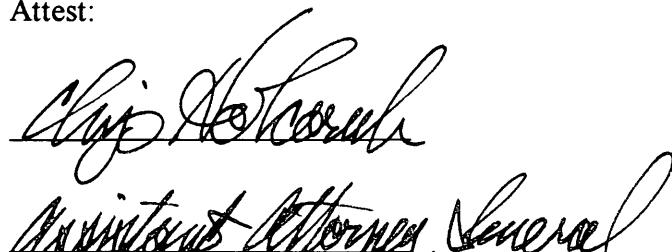

Commissioner


Commissioner


Commissioner


Commissioner

Attest:


TITLE