



April 12, 2019

VIA US MAIL

Grant P. Loebbs
Twin Falls Prosecuting Attorney
425 Shoshone Street North
P.O. Box 126
Twin Falls, ID 83303

Re: *Ada County Highway District*

Dear Mr. Loebbs,

The Ada County Highway District ("ACHD") received your April 2, 2019 letter by mail on April 4. This letter provides ACHD's response. In your letter titled "Possible Violations of Idaho Code 74-604," you suggest that ACHD possibly violated Idaho Code §§ 74-604(1) and (2) with regard to the Ada County Vehicle Registration Fee ballot measure decided in the Fall of 2018. ACHD disagrees with your conclusions for the reasons set forth herein.

As an initial matter, your allegations of "possible violations" are aimed, at least by inference, at the Director of ACHD, Bruce Wong. Please be advised, the Director was not involved in any of the purported "possible violations" addressed in your letter. The Director did not direct or authorize Mr. Gary Inselman in his fact-based interactions with Citizens for Better Transportation. He did not direct or authorize Ms. Natalie Shaver as to her communications with the independent news source, KIVI. And the Director did not expressly authorize the link to citizens4bettertransportation.com posted on ACHD's website. As a result, any allegations aimed at the Director by your office should be withdrawn, and any investigation of the Director should be immediately and permanently closed.

As to the substance of your allegations, ACHD denies the actions identified in your letter constitute a violation of the letter or spirit of Idaho Code § 74-604. As you are no doubt aware, there are no published Idaho appellate decisions interpreting or applying Idaho Code § 74-604 which was made effective on July 1, 2018. Thus, ACHD is left with the plain language of the statute to guide its conduct.

The legislative intent of Idaho § Code 74-601 *et seq.* (the Public Integrity in Elections Act") is to prohibit the use of "public funds, resources or property" to "**advocate** for . . . a ballot measure." See Idaho Code § 74-602 (emphasis added). Idaho Code § 74-604(1) generally precludes a public entity from making "**an expenditure** from public funds to **advocate** for . . . a ballot measure." See Idaho Code § 74-604(1) (emphasis added). Idaho Code § 74-604(2) precludes a public entity from the use of "public property or resources to **advocate** for or against





... a ballot measure.” See Idaho Code § 74-604(2) (emphasis added). Idaho Code § 74-603 specifically defines the term “advocate” as “to campaign for or against . . . a ballot measure.” See Idaho Code § 74-603(1)(a). And it defines an “expenditure” as the “purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value” or “a legally enforceable contract, promise or agreement to make” the same. See Idaho Code § 74-603(4)(a) and (b). Consideration of the legislative intent of the Public Integrity in Elections Act and the application of the relevant provisions of Idaho Code §§ 74-603 and 74-604, demonstrate that there was no violation of the law by ACHD, or ACHD’s staff.

As to the allegation lodged against Mr. Price and Mr. Inselman concerning “added language” and “edits” to the citizens4bettertransportation.com website, your letter misstates both the action taken by Mr. Inselman and the purpose of the action. Mr. Inselman was asked to provide fact-based information to Citizens for Better Transportation to ensure that the fact-based statements made to the public were accurate. There was no campaign made by Mr. Inselman and certainly no expenditure of funds or use of public property made by him to advocate for or against the Ada County Vehicle Registration Fee ballot measure. Indeed, your allegation in this regard appears entirely inconsistent with the purpose of the Public Integrity in Elections Act. If a public entity is requested to fact check certain representations, it would do a disservice to the public if the public entity was precluded from taking that action. Certainly, the letter and the spirit of the law calls for ACHD to take reasonable efforts to ensure that accurate fact-based information is provided to the public, regardless of who is providing the information.

As to the allegations made against Mr. Price and Ms. Shaver regarding referring questions from KIVI to Craig Quintana, nothing about that referral violates Idaho Code §§ 74-604(1) or (2). It is true that Ms. Shaver answered questions from Ms. McKenna King to the best of her ability and consistent with the requirements of the Public Integrity in Elections Act. When Ms. King requested whether ACHD was aware of any additional sources of information, Ms. Shaver noted that Mr. Craig Quintana was another possible source of information. Ms. Shaver made no campaign, expenditure of funds, nor any endorsement of the positions taken by Citizens for Better Transportation. Instead, she simply referred an independent news organization to another source she was aware of that had information on the Ada County Vehicle Registration Fee ballot measure. There is no legitimate way to characterize her action as “advocating” for or making an “expenditure” of funds supporting the ballot measure.

Finally, as to the allegations made against Mr. Price and Director Wong, those allegations also fail to assert a violation of Idaho Code §§ 74-604(1) or (2). First, and as referenced above, the Director had no part in the actions you take issue with in your letter, including the decision to provide a link to the website citizens4bettertransportation.com on ACHD’s website. Second, as was conspicuously called out on ACHD’s website, ACHD acknowledged that it was “prohibited from using any resources to actively campaign for the ballot measure.” Consistent with that acknowledgment, ACHD made no campaign for or against the ballot measure. Instead, because of the fact-based content, much of it fact-checked by ACHD as referenced above, ACHD posted



a link to the citizens4bettertransportation.com for the public's consideration. It cannot be overstated, however, that ACHD made no endorsement of that website or of the positions taken by Citizens for Better Transportation as to the Ada County Vehicle Registration Fee ballot measure.

Setting aside the disagreements concerning what you characterize as "possible violations," as you are aware, the Ada County Vehicle Registration Fee ballot measure failed. There is no pending ballot measure, and there is no live controversy over the "possible violations" set forth in your letter. And even if there were, the "cure" remedy spelled out in your letter is inapplicable to Idaho Code § 74-604. That remedy is available for deliberation or decision-making that is made in violation of Idaho's open meeting laws under Idaho Code § 74-201 *et seq.* Clearly, that statute is not applicable here and certainly is not an appropriate subject of your letter.

As to your specific "cure" requests, ACHD acknowledges receipt of your letter. ACHD is not willing to acknowledge that violations of the Public Integrity in Elections Act occurred because it is ACHD's good faith position that neither it, nor its staff, engaged in any violation of the law. Notwithstanding, as ACHD has in the past, ACHD agrees to continue to educate its leadership, staff, and Commissioners on the variety of laws governing openness and transparency in government. This includes ACHD's continued commitment to educate its leadership, staff, and Commissioners as to the requirements of Idaho's Public Integrity in Elections Act. On this continued commitment, ACHD respectfully requests your office deem this matter concluded and permanently closed.

This letter is sent without prejudice and does not constitute a waiver, election, or estoppel of any rights, defenses, or claims that ACHD has or may later have, all of which are hereby expressly reserved, without limitation.

Very truly yours,

A. Dean Bennett
of Holland & Hart LLP

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