



TWIN FALLS COUNTY  
PROSECUTING ATTORNEY

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ACHD LEGAL

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April 2, 2019

Bruce Wong  
Ada County Highway District, Director  
3775 Adams Street  
Garden City, ID 83714

Steven Price  
Ada County Highway District, General Counsel  
3775 Adams Street  
Garden City, ID 83714

*Re: Possible Violations of Idaho Code 74-604 regarding 2018 Ada County Vehicle  
Registration Fee Increase Ballot Measure*

Mr. Wong and Mr. Price;

As you are no doubt aware, the Ada County Sheriff's Office, in conjunction with my office, has been investigating complaints that the Ada County Highway District violated Idaho Code 74-604<sup>1</sup> by improperly advocating for, or spending county money to support the 2018 Ada County Vehicle Registration Fee Increase Ballot Measure (the Measure).

I received the file from the Ada County Sheriff on November 28, 2018. Since then, I have reviewed the investigation and spoken in detail with Ada County Sheriff's Detective Matt Buie several times. Detective Buie's investigation included interviews with Ada County Highway District Development Services Manager Gary Inselman, Ada County Highway District General Counsel Steven Price, and Ada County Highway District Director Bruce Wong. I believe the investigation, especially the statements of the three individuals mentioned above, shows that these allegations are sustainable.

Specifically, I believe there is evidence to show that:

1. On July 26, 2018, Ada County Highway District Development Services Manager Gary Inselman—at the direction of General Counsel Steven Price—while engaged in his capacity with ACHD added language to and provided edits for the pro-Measure website, "citizens4bettertransportation.com." The sole purpose of this website appears to have been to advocate for the Measure. I believe this violates the letter of 74-604 (1) and 74-604 (2), and certainly the spirit of the law;

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2. On October 22, 2018, Ada County Highway District Communications Officer Natalie Shaver—at the direction of General Counsel Steven Price—referred questions from KIVI reporter McKenna King to Craig Quintana, the spokesman for the political action committee advocating the passage of the Measure. While 74-603 allows agencies to “provide factual information about a ballot measure,” I believe referring calls to an activist group allied with one side of an issue does not constitute “providing information” as much as it does “advocating for;”

3. On October 25, 2018, Ada County Highway District General Counsel Steven Price—at the direction of Ada County Highway District Director Bruce Wong—drafted language and directed the ACHD website staff to post a statement regarding the Measure on the ACHD website. The ACHD website directed citizens to the pro-Measure political action committee, “citizens4bettertransportation.com.” Again, this is not “providing factual information” as is allowed under Idaho Code 74-604, 74-603, but is directing citizens to a single source: the advocacy group lobbying for the Measure.

Accordingly, after my review, it appears that three separate violations of Idaho Code 74-604 were committed by these Ada County Highway Department regarding the 2018 Measure. I believe the responsibility for violations, though some were committed by subordinates, rests with the Director and the General Counsel. But, rather than commence prosecutions for these violations, which I believe were not so much inadvertent as misguided and careless, I propose that ACHD, through its Director and General Counsel, cure these violations in a manner similar to that prescribed in Idaho Code 74-208:

- (7) (a) A violation may be cured by a public agency upon:
  - (i) The agency’s self-recognition of a violation; or
  - (ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.
- (b) Following the public agency’s acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.
- (c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.
- (d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

Specifically, the ACHD and its named officers would, within 14 days of receipt of this letter: 1.) Acknowledge in writing to this Office that this letter constitutes notice of the violations referred to above; 2.) Acknowledge in that same writing that the violations did occur, and; 3.) Outline a training program, and provide a curriculum and schedule of that training to be carried out within a reasonable time, for the ACHD staff about the importance of following both the letter and the spirit of Idaho Code 74-604 so that the citizens of Ada County can be assured of ACHD’s impartiality regarding any future Ballot Measures.

Upon receipt of the letter outlined in the previous paragraph and of the completion of the trainings referred to, this Office will deem this matter permanently closed.

If you have any questions about this office's decision in this case, please feel free to contact me.



Grant Loeb  
Twin Falls County Prosecuting Attorney

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<sup>i</sup> Idaho Code 74-604 reads:

74-604. PUBLIC FUNDS PROHIBITED. (1) Unless specifically required by law, and except as provided in this chapter, neither a public entity nor its employees shall make, nor shall a public official make or authorize, an expenditure from public funds to advocate for or against a candidate or a ballot measure.

(2) Neither a public entity nor any of its employees shall use, nor shall a public official authorize or use, public property or resources to advocate for or against a candidate or a ballot measure.

Idaho Code 74-603 defines the following terms relevant to this case:

74-603. DEFINITIONS. As used in this chapter:

(1)(a) "Advocate" means to campaign for or against a candidate or the outcome of a ballot measure.

(b) "Advocate" does not mean providing factual information about a ballot measure and the public entity's reason for the ballot measure stated in a factually neutral manner. Factual information includes, but is not limited to, the cost of indebtedness, intended purpose, condition of property to be addressed, date and location of election, qualifications of candidates or other applicable information necessary to provide transparency to electors.

(2) "Ballot measure" means constitutional amendments, bond measures or levy measures.

(4) "Expenditure" means:

(a) A purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value; or  
(b) A legally enforceable contract, promise or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value.

(5) "Property or resources" means goods, services, equipment, computer software and hardware, other items of intangible property, or facilities provided to or for the benefit of a candidate, a candidate's personal campaign committee, a political issues committee for political purposes, or advocacy for or against a ballot measure or candidate. Public property or resources that are available to the general public are exempt from this exclusion.

(6) "Public entity" means the state, each state agency, county, municipality, school district or other taxing district or public corporation empowered to submit ballot measures to its electors.

(7) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest or other returns on investment.

(8) "Public official" means an elected or appointed member of a public entity who has:

(a) Authority to make or determine public policy;  
(b) Supervisory authority over the personnel and affairs of a public entity; or  
(c) Authority to approve the expenditure of funds for the public entity.

(9) "State agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority or other administrative unit of the state.