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IN THE DISTRICT COURT OF THE
SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

STATE OF IDAHO,
Plaintiff,

v.

JAMES SHANK AND
MARGARET WIMBORNE,
Defendants.

CV10-23-2483

CASE NO. ~~CV10-23-~~

COMPLAINT

COMES NOW, the State of Idaho, by and through the Prosecuting Attorney of Bonneville County, Idaho, and complains as follows:

JURISDICTION AND VENUE

1. The district court has jurisdiction pursuant to Idaho Code § 1-705.
2. The magistrate division of the district court has jurisdiction pursuant to Idaho Code § 1-2210 and Idaho Court Administrative Rule 5(c).
3. Venue is proper in Bonneville County pursuant to Idaho Code §5-402 because it is the county where the cause, or some part thereof, arose and is against a public officer, or person specially appointed to execute his duties, for any act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

PARTIES

4. PLAINTIFF is the STATE OF IDAHO, by and through the Prosecuting Attorney of Bonneville County, Idaho, who is authorized to enforce the provisions of the Public Integrity in Elections Act, Idaho Code §§ 74-601, *et. seq.*, pursuant to Idaho Code § 74-606(4).

5. DEFENDANT JAMES SHANK, an individual, is or was a resident of Bonneville County, Idaho, and is or was employed as the Superintendent by the Idaho Falls School District #91.

6. DEFENDANT MARGARET WIMBORNE, an individual, is or was a resident of Bonneville County, Idaho, and is or was employed as the Director of Communications by the Idaho Falls School District #91.

STATEMENT OF FACTS

7. Plaintiff realleges paragraphs one through six in this Complaint and incorporates them here as if set forth in full.

8. On August 4, 2022, MARGARET WIMBORNE, who was and is the director of communications, employed by Idaho Falls School District #91, ordered posters and postcards from Teton Printing (Invoice #59405) relating to a District 91 Bond Issue on the ballot of the November, 2022, general election.

9. On August 16, 2022, invoice #59405 was paid for in full with Idaho Falls School District 91 funds in the amount of \$635.40.

10. On September 26, 2022, Ms. Wimborne ordered 7,925 bookmarks for the District 91 Bond Issue from Teton Printing (Invoice #59758).

11. On October 12, 2022, Invoice #59758 was paid in full, using school district funds in the amount of \$919.05.

12. On October 10, 2022, Ms. Wimborne ordered a digital run and postage run of District 91 Bond Issue material (Invoice #IF-278970) from Alpha Graphics in the quantity of 24,101.

13. On October 24, 2022, and October 26, 2022, Visa card ending in 0184 was used to pay with school district funds for the invoice #IF-278970, in the amount of \$12,649.60.

14. On October 19, 2022, Ms. Wimborne sent an email in response to a request for information regarding the use of District 91 funds being used for bond issues, and advised that approximately 7,925 bookmarks were produced at a cost of \$841.05, and that a logo was created for the bond issue at a cost of \$20.00.

15. Defendant JAMES SHANK, who at the time of these expenditures was the Superintendent of Idaho Falls School District #91, and Ms. Wimborne admitted to Bonneville County investigators that District 91 funds were used to produce District 91 Bond Issue material prior to the general election.

16. Dr. Shank admitted to Bonneville County investigators he authorized the use of the funds to produce District 91 Bond Issue material.

17. Dr. Shank and Ms. Wimborne advised that bond issue material was distributed through the use of district schools and property.

18. Dr. Shank advised that opposition material was not allowed to be distributed in the same manner as pro-bond material in either distribution or in time at meetings.

19. A memorandum from Hawley Troxell Ennis & Hawley LLP, to Idaho Falls School District 91, stated, "We find, and the case law illustrates, the most questionable actions often occur when districts try to explain the "need" for the new facilities. Such explanations can be seen as advocating for the bond measure even if the information is inherently factual. Stating

the crowding issues or age of facilities, while perhaps factual, may be better left to foundation and committee members.”

20. All bookmarks, postcards, and mailers produced and paid for by Idaho Falls School District 91 contain the words “Need” “Aged”, and “Overcrowding”, which was contrary to advice of the district’s counsel.

21. The media produced and distributed advocated for passage of the bond issue.

FIRST CAUSE OF ACTION
Idaho Code § 74-604(1). PUBLIC FUNDS PROHIBITED.

22. Plaintiff realleges paragraphs one through twenty-one in this Complaint and incorporates them here as if set forth in full.

23. The Defendants were employees of the Idaho Falls School District #91, a public entity.

24. The Defendants knowingly or otherwise made or authorized an expenditure from public funds to advocate for a ballot measure.

25. These expenditures were not specifically required by law, and were not exceptions as provided in Title 74, Idaho Code, Chapter 6.

SECOND CAUSE OF ACTION
Idaho Code § 74-604(2). PUBLIC FUNDS PROHIBITED.

26. Plaintiff realleges paragraphs one through twenty-five in this Complaint and incorporates them here as if set forth in full.

27. The Defendants were employees of the Idaho Falls School District #91, a public entity.

28. The Defendants knowingly or otherwise authorized or used public property or resources to advocate for a ballot measure.

29. These expenditures were not specifically required by law, and were not exceptions as provided in Title 74, Idaho Code, Chapter 6.

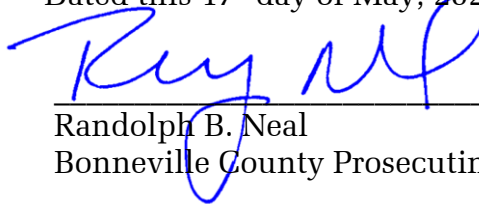
PRAYER FOR RELIEF

The State of Idaho, prays, pursuant to Idaho Code § 74-606, as follows:

1. Any public official or employee who conducts or participates in an activity that violates the provisions of this chapter shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250).
2. Any public official or employee who knowingly violates the provisions of this chapter shall be subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500).
3. Any other remedies as deemed appropriate by the Court.

WHEREFORE, as the Defendants have acted contrary to the laws of the State of Idaho, the State of Idaho requests that the Defendants be summoned before the Court to answer as to the allegations and causes of actions contained in this complaint, and that a judgment for the penalty(ies) set forth above (\$1,500.00 if by default) be entered as against each Defendant named herein.

Dated this 17^h day of May, 2023



Randolph B. Neal
Bonneville County Prosecuting Attorney