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In the matter of violations of 260.432 by Jason Vetter

) Notice of
) Proposed Civil
) Penalty; Opportunity to
) Request Hearing

1/23/2017

Case Number: 16-119

Jason Vetter
21950 NE Palisade Place
Fairview, OR 97024

Dear Jason Vetter:

This letter constitutes Notice of Proposed Civil Penalty. Please read the information below carefully and contact our office if you have any questions about its contents or necessary actions on your part.

Reason for Notice:

This notice is being sent because the Secretary of State, Election Division has determined that Jason Vetter has violated provisions of election law.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.432, ORS 260.995, OAR 165-013-0020 and the *Restrictions on Political Campaigning by Public Employees Manual*, OAR 165-013-0030.

Notice of Matters Asserted & Charged:

1. During the date and time of November 8, 2016 at issue, you were employed as a Deputy at the Multnomah County Sheriff's Office, located in Multnomah County, Oregon.
2. At approximately 1:00 pm on November 8, 2016, near SE Morrison and 11th St. in Portland, Oregon, while on duty in an official capacity and in uniform, you were a passenger in a clearly marked official Multnomah County Sheriff's Office ("MCSO") work crew vehicle which drove past electors standing in line to vote at the Multnomah County Elections Office for the November 2016 General Election.
3. Your partner, Deputy LaRae M. Ross, drove the vehicle in which you were a passenger.

4. At this location, and during this time period, there was a large number of electors standing in line, waiting to vote. The line went from within the county elections office to around the corner.
5. You saw that you were driving by a place to vote.
6. You used the clearly marked official MCSO work crew vehicle's public announcement system, and chanted "Trump, Trump" while driving down the street and past the line of electors. Donald Trump was a candidate for the office of United States President.
7. Members of the public, in line to vote, heard you chant the name of a presidential candidate. There were several other candidates on the ballot for that office, and you only chanted one candidate's name.
8. Some of those who heard you had concerns regarding your actions and questioned whether it was legal. Several individuals complained about your actions to either the MCSO or the Secretary of State's Office.
9. Prior to November 8, 2016, as a Multnomah County Sheriff's Officer, you received several e-mails instructing you about ORS 260.432 and the prohibitions against political advocacy for public employees while on the job.

- a. On August 30, 2016, at approximately 10:38:19 am, Multnomah County Sheriff Mike Reese ("Sheriff Reese") sent an email, directed to all Multnomah County Sheriff's Officers, with the subject line "2016 Elections Law Reminder". In the body of Sheriff Reese's e-mail, he stated: "As the fall election cycle begins, the County Attorney, Jenny Madkour, sent out a reminder below related to restrictions for elections and political activities for public employees. Additionally, attached you will find general guidelines Central Labor Relations provided for public employees and allowed activities in the workplace." MCSO employees were informed that they could contact their supervisor with questions.

In addition, below the e-mail from Sheriff Reese was the original e-mail from County Attorney Jenny Madkour. Her e-mail stated: "With the election season underway, please familiarize yourself with the restrictions on public employee campaigning and election law requirements. The overriding principle is that **public employees may not use County time or resources to support or oppose elections petitions, candidates, political committee or ballot measure...**" (Emphasis in original.) "The following resources contain a complete list of the restrictions on political activity and include examples of allowable and prohibited activities: ORS 260.432 Quick Reference and Secretary of State's Handbook." She noted, "Please be aware that violations may result in personal liability, fines, and disciplinary action." Both the referenced manuals were linked in the body of the e-mail. She also invited anyone with questions or concerns about possible violations to speak with a manager or supervisor, or contact the Oregon Secretary of State, Elections Division, and provided a phone number.

- b. On November 7, 2016, at approximately 1:42 p.m., Lieutenant Chad Gaidos ("Lt. Gaidos"), Public Information Officer for the MCSO, sent an e-mail to "All MCSO" with the subject line "Election Process Protocol". In the body of that e-mail Lt. Gaidos stated: "Tomorrow is Election Day and it is important to remember that as members of a non-partisan organization, we must remain neutral in our political stance while representing the agency...As an agency we respect the right to vote and the voting process, therefore cannot speak to personal opinions with regard to the ballot."

Determination

You violated ORS 260.432 by engaging in political advocacy while on the job during working hours as a public employee.

The Secretary is the chief elections officer, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of election law. ORS 246.110. The Secretary may also adopt rules necessary to facilitate and assist in achieving and maintaining maximum degrees of impartiality. ORS 246.150.

Oregon Administrative Rule ("OAR") 165-013-0030 adopts the *Restrictions on Political Campaigning by Public Employees* manual ("Manual"). The purpose of the Manual is to interpret ORS 260.432. ORS 260.432 applies to candidates "as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a)" (Manual at 4). "Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a public employee may be found in violation even though they used a minimal amount of work time." (Id.) If an individual engages in prohibited activity, he has violated the statute.

"ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. However, it does restrict some verbal communication while on the job during working hours (or while acting in an 'official capacity')." (Manual at 7.) "A public employee cannot give a speech or a presentation advocating a political position if they are on the job or acting in their official capacity." (Manual at 8.) The actions which are prohibited under ORS 260.432 while on the job, during working hours, are those which "support or oppose measures, candidates, recalls, political committees or petitions."

The Secretary of State's Office, through its Elections Division, has found that you engaged in political advocacy. You chanted the name of only one candidate for the office of United States President in an area that was a county elections office, and you were aware of that fact. Further, you chanted the name through the public address system that amplified your voice to send your message in support of a candidate. This enabled your voice to carry your message to a larger audience than could be reached through use of your voice alone, even if you had shouted.

Similar to giving a speech in support of a candidate, chanting the name of only one candidate in this context is a form of advocacy. (See Manual, page 8.) The chant occurred outside an elections office where electors were visibly queued up to vote on the office of the United States President (the same office for which you chanted the candidate's name) and were within earshot of your chant. The chant was deliberately made louder by your use of the public address system. Even though you did not chant "vote for", the chant was only for one of many candidates. Through your action, you supported this candidate for the office. Your action was political advocacy.

The Secretary of State's Office has also found that you were on the job during working hours when you engaged in this political advocacy. You were an on-duty police officer, riding in a clearly marked, official MCSO work crew vehicle. You purposefully availed yourself of the use of government property and county resources available only to MCSO officers to send your message in support of a candidate, by

using the public address system to amplify your chant and support of the candidate. This was not an expression of personal political view during personal time. (See Manual, page 7.)

Therefore, the Elections Division finds that you did engage in prohibited activities to support or oppose a candidate while you were on the job during working hours as a public employee and thereby violated ORS 260.432(2).

Proposed Civil Penalty:

The Secretary is proposing a civil penalty of \$75.00 pursuant to Appendix B to OAR 165-013-0020.

Reduction or Waiver of Penalty:

A reduction or waiver of the penalty will be considered only if one of the following mitigating circumstances is present:

- (1) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;
- (2) The violation is the direct result of an error by an elections officer;
- (3) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);
- (4) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing or by email that the draft publication was impartial information that the governing body could legally produce and distribute;
- (5) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing body could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(6) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated ORS 260.432(2); or

(7) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity, consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of ORS 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

Opportunity to Request a Hearing:

You have the right to a hearing before an administrative law judge with the Office of Administrative Hearings. You have 20 days* from the date of service on this letter to take one of the following actions:

Action	Result
Do not take any action.	Your failure to file timely transactions will be considered a violation of Oregon election law. A final order by default imposing the civil penalty may be issued against you. The Secretary designates the agency file on this matter as the record for the purpose of proving the prima facie case. OAR 165-001-0025 . Payment may be made to the Secretary of State prior to the issuance of a final order by default.
Complete and sign the Hearing Request Form choosing either the personal appearance or telephone hearing option. The hearing will be conducted by an independent Administrative Law Judge with the Office of Administrative Hearings.	A public hearing will be scheduled within 45 days and you will be notified of the date and time by the Office of Administrative Hearings. If, after the hearing is scheduled, you subsequently determine that you do not want to attend the hearing, you may choose to submit written notarized testimony and other evidence in lieu of appearing in person at the hearing. <i>Those documents must be received not later than three business days before the day of the hearing.</i>
Complete and sign the Hearing Request Form and choose the notarized testimony option. By choosing this option you are waiving your right to a personal appearance or telephone hearing.	The agency will refer your testimony and the Division's testimony to an independent Administrative Law Judge with the Office of Administrative Hearings. You have the right to

	submit rebuttal testimony to the agency not later than five business days from the date of service of the agency's testimony (the date the testimony was emailed or mailed.) OAR 165-001-0034.
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(*If the 20th day falls on a Saturday, Sunday or holiday, the deadline to request the hearing is the next business day.)

Active duty servicemembers have a right to postpone proceedings under the federal Servicemembers Civil Relief Act (SCRA) and may contact the Oregon State Bar at (800-452-8250) or the Oregon Military Department (800-452-7500) for more information. Servicemembers may also visit the United States Armed Forces Legal Assistance Legal Services Locator at <http://legalassistance.law.af.mil/content/locator.php> for more assistance.

If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,



Aleea Sharp
Investigations and Legal Specialist

DATE of Service: 1/23/2017

Enclosures:

Restrictions on Political Campaigning by Public Employees-ORS 260.432 Manual
Appendix B Penalty Matrix
Notice of Contested Case Rights and Procedures
Hearing Request Form

c: Elizabeth Porter
Via E-Mail Only
betsy.porter@gmail.com

Multnomah County Sheriff's Office
Attn: Lieutenant Travis Gullberg
501 SE Hawthorne Blvd., Suite 350
Portland, OR 97214

Sent VIA Electronic Mail
Karen Clevering, AAG
Oregon Dept of Justice
General Counsel Division – Gov't Services Section
Karen.clevering@state.or.us