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October 16, 2023

RE: Response to Reported Comments of Idaho Falls School District #91 Superintendent Karla LaOrange Concerning Our Civil Enforcement Efforts

In a recent Idaho Education News article, Idaho Falls School District #91 (“the District”) Superintendent Karla LaOrange is quoted as criticizing recent civil enforcement actions taken by my Office against the District in light of alleged violations of the Public Integrity in Elections Act, and an action to set aside a levy passed in May, 2023, which was determined by the Idaho State Tax Commission to be unlawful.

Some of these public comments reflect an incomplete understanding of these actions, and I believe the citizens of Bonneville County have a right to be fully informed. I therefore will address four main points, that were attributed to Superintendent LaOrange, that were reported in the article.

ASSERTED: “The concern should have been brought to the district’s attention promptly, so it could have been addressed at the time, not months after the fact.”

- It is my understanding that taxpayers raised concerns directly with the District prior to the election. Nevertheless, complaints were eventually presented to the Bonneville County Sheriff’s Office, who typically investigates complaints regarding election laws. The Prosecuting Attorney considers cases presented by law enforcement.
- My Office does not provide legal advice to individuals who may be violating the law.
- In this case, the District had retained legal counsel prior to the election, and they had provided specific legal advice concerning the limitations on the District’s ability to use district funds to advocate for bond issues.
- This advice is publicly available on the District’s website, and the public can judge for themselves whether they followed that advice. For the convenience of the reader, I have attached this document.
- When the investigation was completed by county detectives, I reviewed the results and determined that the evidence supported the conclusion that two employees had violated the Public Integrity in Elections Act, found in Chapter 6 of Title 74 of the Idaho Code (“the Act”).

- This determination was at least partially based on the fact that the District had undeniably not followed the advice of their legal counsel.
- As the investigation drew to a close, I was contacted by two separate attorneys representing the District who then asked that we delay any enforcement action until after the May, 2023, levy election.
- I agreed to delay filing the action so that we would not artificially affect the outcome of this proposed levy, because we do not seek to influence such elections in any way. That is not our purpose.
- The complaint was filed shortly after the results were known from the May, 2023, election.
- The delay in filing the action was a courtesy to the request of counsel representing the District.

ASSERTED: “It’s inappropriate to “file misdemeanor charges against individual district employees who are working on behalf of our students and patrons.”

- Violation of the Public Integrity in Elections Act is not a crime.
- Idaho Code § 74-609(1) provides that “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).”
- Misdemeanors are crimes. The employees were not charged with a crime. They were not arraigned, they did not enter a plea of guilty or not guilty and it does not appear on any record of their criminal history.
- Based on the plain language of the statute, only individual “public officials and employees” may be held accountable.
- Working “on behalf of students and patrons” does not provide immunity to those who violate the Act, which specifically states that public money cannot be used to advocate “for or against ... a ballot measure,” Idaho Code § 74-604(2), which specifically includes “bond measures, or levy measures,” Idaho Code § 74-603(2).

Prosecutorial Discretion. At this point it may be useful to discuss prosecutorial discretion. The Prosecuting Attorney has the absolute discretion to decide whether or not to pursue action against an individual who is alleged to have violated the law. However, when properly exercised, this discretion is exercised in the interest of justice, and without fear or favor. When a prosecutor exercises prosecutorial discretion, it should be based on extenuating or mitigating circumstances, not simply because it would be more politically convenient not to enforce the law. To avoid enforcement of the law simply because it would be publicly unpopular is the definition of political cowardice. To refuse to enforce the law is the same as declaring it non-existent, which subverts the voice of the people expressed through their elected representatives. In this case, the decision to take action was based at least in part on the aggravating factor that the employees failed to follow the advice of their own legal counsel intended to assist them to avoid violating the purposes of the Act.

ASSERTED: “The prosecutor’s office should not be spending so much time, money and resources on this case.”

- We can agree with this statement, but we are being forced to litigate this enforcement action because of the decision of the District Board of Trustees to use public money to defend the individual employees and to challenge the determination of the Idaho State Tax Commission.
- We are utilizing time and resources which could be put to better use prosecuting criminals, providing legal advice to Bonneville County and fulfilling our other constitutional and statutory duties.
- However, we have not asked for any additional allocation of public money to litigate this matter.
- Salaried attorneys have put in extra uncompensated hours in order to meet all of the demands of our constitutional and statutory duties, including the enforcement of the Public Integrity in Elections Act (as required by Idaho Code § 74-606) and enforcing the determination of the Idaho State Tax Commission (as mandated by Idaho Code § 63-809(2) & (3)). These are mandated duties which we cannot simply choose not to fulfill, and we cannot ignore a statutory duty simply because it strains our resources.
- Conversely, the District Board of Trustees has specifically authorized the expenditure of public money to hire outside attorneys to litigate this action.
- To my knowledge, they have not disclosed these costs publicly.

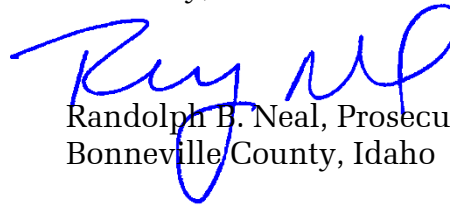
ASSERTED: “LaOrange said the prosecutor’s office has “blatantly ignored Sunshine Act violations by groups who have opposed the bond,” even though the issue has been brought to their attention.”

- This statement is simply untrue.
- The Prosecuting Attorney does not initiate cases based on emails from opposing parties or their counsel.
- All complaints are referred to the appropriate law enforcement agency for investigation.
- We consider criminal charges or civil enforcement actions based on the results of law enforcement investigations.
- However, the constitutionality of certain Sunshine Act requirements have been called into question based on a number of U.S. Supreme Court decisions.¹
- Our Office has never “blatantly ignored” Sunshine Act violations brought to our attention. We have initiated action against violators of the Sunshine Act.
- To my knowledge, every other complaint has been investigated and either law enforcement or reviewing prosecutors have determined that prosecution would not be warranted or supported by adequate evidence.

- Finally, it does not matter whether others are violating the law. This is the common “but other drivers are speeding too!” defense. Two wrongs do not make a right, and certainly in no way excuses actions which violate the law.
- Any suggestion that I have “chosen sides” is simply untrue. In exercising these statutory duties my role, as coined by Chief Justice Roberts, is to objectively call “balls and strikes.”
- My Office and Bonneville County have never taken a position and have no stake in the outcomes of these bond and levy issues.
- I have never personally taken a stand on these issues, and I have no personal stake in their outcome, as I do not live in their taxing district and I do not have any children in their school district.
- Every decision made in these cases has been based on adherence to the law and fulfillment of a mandatory statutory duty.

I encourage anyone who has further questions, to please feel free to contact me by any method indicated above.

Sincerely,



Randolph B. Neal, Prosecuting Attorney
Bonneville County, Idaho

Endnotes

¹ In *Talley v. California* (1960), *McIntyre v. Ohio Elections Commission* (1995), *Buckley v. American Constitutional Law Foundation* (1999), and *Watchtower Bible and Tract Society of New York v. Village of Stratton* (2002), the court protected the anonymity of individuals engaged in personal political activity, such as passing out leaflets or gathering petitions. This brings into question whether someone engaged in “personal political activity” must identify themselves in such exercises of their rights to free speech.