



## **PORT OF TACOMA COMMISSION**

### **BRIEFING MEMO**

Item No. 10C

**Date of Meeting October 15, 2020**

**DATE:** October 6, 2020

**TO:** Port of Tacoma Commission

**FROM:** Eric Johnson, Executive Director  
Carolyn Lake, General Legal Counsel

**SUBJECT:** Report on Port of Tacoma, Economic Development Board for Tacoma-Pierce County (EDB), Tacoma-Pierce County Chamber (Chamber), and the Washington State Office of Attorney General (Attorney General) Settlement of Litigation related to the Fair Campaign Practices Act, Pierce County Cause No. 16-2-10303-6.

#### **A. Synopsis.**

The Port of Tacoma (Port), Tacoma Pierce County Economic Development Board (EDB), Tacoma Pierce County Chamber of Commerce (Chamber), and the Washington State Office of Attorney General (Attorney General) reached a settlement agreement that brings an end to litigation regarding Fair Campaign Act violations.

#### **B. Background**

The litigation stems from a citizen action complaint filed in 2016 with the Attorney General's office against the Port, EDB and Chamber alleging campaign violations surrounding the parties filing of a court action against two initiative petitions regarding water use in future land use developments in Tacoma.

The Port pursued the action on the initiative petitions as part of its normal and regular activity because the initiatives had the potential to impact the Port's economic development mission and, at the time, judicial actions were not considered a form of "campaign activity."

Throughout the litigation, the Port, EDB and Chamber has shared their perspectives and position with the Public Disclosure Commission (PDC), the Court, and Attorney General. The parties judged non-compliance with the Fair Campaign Act resulted from a good-faith error, where that good faith was reinforced by the concurring opinion of both the PDC and Superior Court. None of the parties have any prior violations.

The Attorney General structures its settlements as judgments, where defendants admit the violation, a penalty is assessed and attorney fees are recouped. In full and complete satisfaction of all claims asserted in this litigation, the Port, EDB and Chamber have agreed to

pay a judgment of \$34,000 (with \$17,000 suspended for 4 years contingent on no findings of violations during this period) in addition to \$73,000 for attorneys' fees and costs.

### **C. Key Points.**

Key points to know about the evolution of events throughout this litigation:

- In 2016, the Port, EDB and Chamber filed an action asking the Court to rule on the legality of two local initiative petitions. The Court ruled that the petitions were unconstitutional and not allowed to appear on the ballot. Two subsequent court appeals by the petition organizers were denied.
- Also in 2016, a Citizen Action Complaint was filed with the Attorney General alleging that the Port, EDB and Chamber's action to seek a Court judgment on the petitions was a violation of the Campaign Finance Law.
- The Public Disclosure Commission (PDC) determined that the Port, EDB and Chamber had not committed any violation and that the Attorney General should take no further action on this matter
- Notwithstanding the PDC's finding, in Aug. 2016, the Attorney General brought suit against the Port, EDC and Chamber for the alleged campaign violations. The Trial Court subsequently dismissed the case and the Attorney General filed an appeal.
- In Feb. 2019, the Court of Appeals found against the Port, EDB and Chamber. Material to this ruling was the fact that in Jan. 2019, the state Supreme Court issued its Freedom Foundation decision, ruling that judicial actions are a form of "campaign activity" creating a new law.
- In the time since this litigation has taken place, the state legislature has changed in the Fair Campaign Practices Act (FCPA). The Attorney General no longer has the independent authority to file FCPA enforcement actions; instead the PDC must first determine a violation occurred and refer the case to the Attorney General for filing.

### **D. Future Actions.**

In sum, the law governing actions in response to local initiative petitions, which was previously unclear, is now clarified. The clarity provided by the Court and the state legislature will guide Port actions and choices in the future.