

REQUEST FOR INVESTIGATION

To: **Whatcom County Incarceration Reduction and Prevention Task Force
& Whatcom County Ethics Commission**

~ NOTICE OF IMPROPER CONDUCT ~

Section A: Election interference

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the [original mailer file](#) or a copy arranged to present the flier as it was [designed to be read](#).
2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. [Whatcom County Contract No. 20140913](#) stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a “*coordinated message and...graphics to support the message*”. The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.
3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.
4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.
5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.
6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.
7. The mailer includes ‘feel bad’ pictures of real inmates in overcrowded conditions and ‘feel good’ pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.
8. Stake holders have identified a number of inaccuracies in the mailer:
 - a. The Sheriff’s statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report.

- b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff's department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated and housed inhumanely inside the current jail.
- c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services.
- d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process. This is lacking substantial facts.
 - 1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An [earlier unbiased review](#) found many planning deficiencies but they were never addressed.
 - 2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.
 - 3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.
 - 4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being "outside the scope" of the [FEIS](#).
 - 5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests.
- e. Executive Jack Louws takes credit for \$11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the [County's own staff](#).
- f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor's case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined [fifteen ways](#) the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the [USA Today review of FBI statistics](#), reported by local jurisdictions, wherein Whatcom County has a [racial arrest disparity rate](#) greater than that of Ferguson, MO.

Section B: Fiscal Mismanagement

Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds:

1. There is [evidence](#) that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern.
2. Disturbing [peculiarities](#) regarding the jail property's price, acquisition and [site selection](#) have been noted.
3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition.
4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was [never considered](#) despite being indicated as preferred in both [USDOJ](#) site selection and [NIC](#) jail design guidance.
5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be "[squandered on other things](#)". The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newsfeed. It has since been removed.
6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on pre-bookings diversions internally identified by the County's own staff as the [most necessary](#), important and cost effective.

Section C: Fiduciary Irresponsibility

The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law.

1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are [false](#) and [misleading](#). The County received constant information about jail alternatives for over five years. These were systematically ignored.
2. Substantial funds were produced from a confusing [\\$18.75 million property/fund swap](#) including large contributions from the supposedly dedicated Road Fund and the Economic

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available [budget](#) report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. [Whatcom County Code 1.28.100](#) instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has [substantially increased bookings](#) while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.
4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

Section D: Ancillary Concerns

Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are [31 Whatcom gangs](#) with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a [jail adjacent to the courthouse](#) should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015

A digital edition of this document is available at www.RestorativeCommunity.com