



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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December 29, 2016

Mr. Tony Perkins
Senior Investigator/Analyst
Attorney General's Office
PO Box 40100
Olympia, WA 98504-0100

Sent via email to: TonyP@ATG.WA.GOV

Re: Citizen Action Complaint by Glen Morgan

Dear Mr. Perkins:

Thank you for providing me with a copy of the complaint filed by Mr. Morgan. He alleges that I violated RCW 42.17A.110 by dismissing a campaign finance complaint against Mike Wilson for using school district resources to assist a campaign in violation of RCW 42.17A.555. My actions were authorized by the PDC's administrative rules.

RCW 42.17A.110 describes some of the powers of the Public Disclosure Commission. The first two subsections are relevant to Mr. Morgan's concerns:

The commission may:

(1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint an executive director and set, within the limits established by the office of financial management under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

RCW 42.17A.110(1) and (2) (emphasis added).

Under that specific rule making authority, the Public Disclosure Commission has adopted WAC 390-37-060, 061, and 070. These rules set out the process the Executive Director is to follow for handling complaints and determining if formal investigations are merited.

WAC 390-37-060 provides in pertinent part:

(1) Upon receipt of a complaint, the executive director will conduct an initial review of the complaint to determine what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred so as to warrant a formal investigation.

(a) The executive director shall return any complaint that is obviously unfounded or frivolous. The executive director will inform the complainant why the complaint is returned.

(b) The executive director may resolve any complaint that alleges minor or technical violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines should be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(c) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.

(d) The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred.

(2) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever a formal investigation reveals facts that the executive director has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.

The PDC Executive Director has responsibility for making initial decisions on whether complaints can be resolved or require more in depth review. The Commission also adopted WAC 390-37-061 to establish the factors that should be considered in determining whether a complaint is a minor or technical issue, and therefore appropriate for an alternative response to adjudication.

Sometimes, a formal investigation is opened, but at the close of the investigation it appears that the issues amount to minor or technical violations, and adjudicative action (specifically, a hearing) is not warranted. In those circumstances, WAC 390-37-070 authorizes the Executive Director to confer with the PDC Chair, and if the Chair concurs, the complaint may be dismissed. If the Chair does not concur, the matter would be set for a brief adjudicatory proceeding before the Chair, or would be scheduled for a full Commission hearing. This was the process used in the Mike Wilson complaint. After investigation, it appeared that any violations were minor and that a hearing was not the best response. The Chair was briefed and agreed, and I sent warning letters to Mr. Wilson and to several other individuals in the school or district.

The rules authorizing alternative responses to non-compliance were drafted before I was hired as the Executive Director. It is my understanding that the Commission wanted to set up a more efficient process for handling complaints that involved non-material violations. The rules were finalized after I had been hired, and have been in effect since January 2016. The alternative responses have allowed the PDC to better manage complaints and resolve matters more efficiently.

Mr. Morgan alleges that “[b]y illegally seizing the power that belongs solely to the full Commission, Lopez has clearly violated RCW 42.17A.110(2).” I disagree. The actions I have taken were authorized, and established, by the Commission. The Commission decided it needed a more efficient method for handling minor and technical violations, and the Commissioners developed rules for alternatives to formal enforcement proceedings.

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I report on all open complaints at every Commission meeting, and all complaints and resolutions are available on the PDC website. I have not seized control—in fact, quite the opposite. I am doing the job I was hired to do, in accordance with the expectations of the Commission.

Sincerely,


Evelyn Fielding Lopez
Executive Director

EFL