



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

July 20, 2016

SENT VIA E-MAIL:

jessica@hdcc.org

Subject: PDC Case 6661

Dear Ms. LaVigne:

The Public Disclosure Commission (PDC) has completed its initial review of the complaint you filed on July 14, 2016, and your second complaint on the same matter filed July 19, 2016. Your complaint alleged that Jack Carroll, a candidate for State Representative in the 23rd Legislative District, was implying he was the incumbent in campaign business cards and letterhead in violation of RCW 42.17A.335.

After receiving your complaint, I contacted you to ask if you had any evidence that Mr. Carroll was acting with actual malice and attempting to claim he is the incumbent Representative, but you did not respond.

As I noted in my email, RCW 42.17A.335 provides in pertinent part: "(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances: ... (b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent." Emphasis added.

The PDC has adopted a rule to help identify when incumbency is implied by a candidate: "Stating the office sought (e.g., "mayor") by a candidate in a political advertisement without expressly stating the candidate is seeking election to the office (e.g., "for mayor"; "Elect Smith Mayor") represents that the candidate presently holds that office." WAC 390-18-040(6). However, an administrative rule cannot set a higher standard of conduct than the statutes, and the statutes tie implied incumbency to behavior engaged in with actual malice. Therefore, there is not a violation of the prohibition against false representations of incumbency unless that representation is made with actual malice.

I also contacted Jack Carroll for a response to the complaint. Mr. Carroll responded that it was not his intent to represent that he was the incumbent, and that he did not think the business card or letterhead indicated that he was anything other than a candidate for the State Representative position. However, he agreed that if his campaign ordered any additional business cards or campaign materials, he would amend future wording to avoid any confusion over incumbency.

Based on these findings, I have determined the Jack Carroll campaign substantially complied with applicable requirements, did not imply that Mr. Carroll was the incumbent State Representative, or act with actual malice. Therefore, no further action is warranted.

For this reason, the PDC has closed the matter, and will not be conducting a more formal investigation into your complaint or pursuing enforcement action in this case.

If you have questions, you may contact me at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,


Evelyn Fielding Lopez
Executive Director

cc: Jack Carroll