



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdca.wa.gov](http://www.pdca.wa.gov)

July 20, 2016

SENT VIA E-MAIL:

[jonathan.gerber.p@gmail.com](mailto:jonathan.gerber.p@gmail.com)

Subject: PDC Case 6516

Dear Mr. Gerber:

The Public Disclosure Commission (PDC) has completed its initial review of the complaint you filed on July 2, 2016. Your complaint alleged that Dan Roach, a candidate for Pierce County Executive, was implying he was the incumbent in campaign yard signs in violation of RCW 42.17A.335.

After receiving your complaint, I contacted you to ask if you had any evidence that Mr. Roach was acting with actual malice and attempting to claim he is the incumbent County Executive, 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.

PDC Case 6516

July 20, 2016

Page 2

I also contacted Dan Roach for a response to the complaint. Mr. Roach responded that it was not his intent to represent that he was the County Executive. He also agreed that if his campaign ordered any additional yard signs or campaign materials, he would amend future wording to avoid any confusion over incumbency.

Based on these findings, I have determined the Dan Roach campaign substantially complied with applicable requirements, did not imply that Mr. Roach was the incumbent Pierce County Executive, 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 [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov).

Sincerely,

  
Evelyn Fielding Lopez  
Executive Director

cc: Dan Roach