



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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April 19, 2016

Sent by email only to: inov8@comcast.net

KAY GEORGE
1304 SKYWALL DR
SULTAN WA 98294

Subject: Additional Review of PDC Complaint 1555, Rocky Walker

Dear Ms. George:

On March 1, 2016, Public Disclosure Commission (PDC) staff returned the complaint you filed against Rocky Walker on October 23, 2015 with a minor action, in the form of a letter warning Mr. Walker to comply in the future with sponsor identification requirements for political advertising. On March 15, 2016, following receipt of additional information from you concerning your complaint, PDC staff notified Mr. Walker that we would re-open our review of the matter, and requested a preliminary response from him.

Your complaint alleged that Rocky Walker violated RCW 42.17A.335(1)(a) by sponsoring political advertising or an electioneering communication that contained a false statement of material fact about a candidate for public office, made with actual malice and constituting libel or defamation per se. Specifically, you alleged that Mr. Walker sponsored a mailing on or around October 12 – 14, 2015 that contained statements concerning you and your husband, Ray George, and that these statements were both false and prohibited under the law. In requesting further review of your complaint, you asked that PDC staff consider other possible violations under RCW 42.17A by Mr. Walker, including his possible failure to file required disclosure reports in connection with his mailing.

PDC staff reviewed your allegations to determine whether a formal investigation or enforcement action is warranted. As a result of staff's initial and supplemental review, we found the following:

Statements Concerning Alleged Support for Lawsuit against City of Sultan

- Mr. Walker's October 2015 mailing contained the statement, "*Al Wirta, Bart Dalmasso, and Ray and Kay George are running as a 'Gang' to take over the City of Sultan.*" The mailing suggested that the recipient question the candidates concerning a lawsuit that was filed against the city. The mailing did not explicitly identify any person as a plaintiff in this lawsuit. In your complaint, and in subsequent correspondence with PDC staff, you indicated that neither you nor your husband are plaintiffs in the lawsuit. (As noted in our prior correspondence, Mr. Wirta and Mr. Dalmasso are plaintiffs in the lawsuit.)

- In responding to the complaint, Mr. Walker stated that his mailing connected you and your husband with the lawsuit against the City of Sultan because of your contributions to the Web site *Vote Smart Sultan*, and your public support for and involvement with the Sultan Utility Stakeholders Group, which comprises the plaintiffs in the suit. Mr. Walker described his belief that because of your position on the Sultan City Council, neither you nor your husband formally joined the lawsuit. However, he stated that your support for the lawsuit is well-known in the community.
- In reviewing this allegation, PDC staff noted media reports describing that you and Mr. George have openly proclaimed your support for the Sultan Utility Stakeholders Group's lawsuit, and that you hold, or have represented that you hold, some control over the continuation of the lawsuit. Accordingly, there appears to be no clear and convincing evidence that Mr. Walker's statements concerning your support for the lawsuit were false statements, constituting libel or defamation per se, and made with actual malice, i.e., with knowledge of falsity or reckless disregard for the truth or falsity of the statements.

Statements Concerning Alleged "Blackmail" of City Officials

- Mr. Walker's mailing made additional statements concerning your alleged attempt to pressure council members Joe Neigel and Jeffery Beeler into supporting efforts to privatize garbage collection in the city. In your complaint and subsequent correspondence, you appear to acknowledge that an offer was made to not oppose the reelection of certain unnamed officials, in exchange for the officials' support on a particular policy matter. However, you objected to the characterization of this offer as blackmail.
- In reviewing this allegation, PDC staff noted reports in the October 6 and October 26, 2015 editions of the *Monroe Monitor & Valley News* concerning your alleged offer to Neigel and Beeler. An article in the October 26, 2015 edition stated:

The alleged blackmail attempt occurred after the May 14 council meeting, which was the eve of Snohomish County's candidacy filing deadline. According to Beeler and Neigel, Kay George approached the two councilmembers about getting the lawsuit against them dismissed and not running against them in the election, if they would agree to privatize the city's garbage service.

Beeler declined and Neigel asked for the proposal in writing. Wirta sent him an email the next day outlining the deal. In exchange for agreeing to sell the city's new garbage truck and trashcans and transfer garbage service to a private carrier, the group would drop the ongoing lawsuit. The email further stated that if he were to comply, the group could spend its resources "elsewhere rather than running a candidate against you."

Neigel advised Wirta that he should run a candidate against him. Shortly after that, on Friday, May 15, Wirta, Dalmasso and the Georges all filed for candidacy.

Beeler referenced the incident during the recent candidate forum held in Sultan.

"Mrs. George and Mr. McCarty, who sits on council now, came out to me and said, 'If you agree with us and vote with us, we won't run somebody against you,' " Beeler said. "I told her no."

Kay George said that the offer was never intended as blackmail. "Most would consider this a further attempt at settlement negotiations, not blackmail," wrote George on the

Vote Smart Sultan website. "The only people approving the spending of this city's legal fees are the current mayor and council; no one else, and certainly not me."

- Apart from the characterization of your offer to Mr. Neigel and Mr. Beeler as "blackmail," statements attributed to the officials in media reports appear to provide a factual basis for the statements in Mr. Walker's mailing. Accordingly, there appears to be no clear and convincing evidence that statements in the mailing concerning your offer to Joe Neigel and Jeffery Beeler were false statements of material fact, constituting libel or defamation per se, and made with actual malice.

Statements Concerning Alleged Destruction of Public Records

- Mr. Walker's mailing made additional statements concerning your alleged deletion of email public records. In providing a preliminary response to the complaint, Mr. Walker stated that these statements were based on a controversy concerning your alleged use of a personal email account to conduct city business.
- Mr. Walker stated that in early 2014, outgoing city council member Steve Slawson filed a public records request for your emails with the City of Sultan. Concerning this request, Mr. Slawson stated to the *Monroe Monitor* that "*People got city business emails from [Kay George], from her computer...I don't have them anymore, but we knew what she was doing the whole time she was on council.*" The same news report describes that the city contacted you by letter on January 28, 2014, expressing city staff's understanding that you had deleted emails from your city email account, and requesting to examine your personal computer in an attempt to recover any deleted items that concerned city business.
- Given this background, there does not appear to be clear and convincing evidence that the statements in Mr. Walker's mailing concerning your alleged deletion of city-related emails were false statements of material fact, constituting libel or defamation per se, and made with actual malice.

PDC Reporting Requirements Created by Walker Mailing

- In his preliminary response to your complaint, Mr. Walker stated that he did not file a PDC form C-6 for Independent Expenditure political advertising, or otherwise disclose the financing of his mailing, because he understood that reporting was not required based on the size of the jurisdiction.
- Per RCW 42.17A.200, the provisions of RCW 42.17A relating to the financing of election campaigns do not apply in jurisdictions with fewer than 5,000 registered voters as of the date of the most recent general election. PDC staff has historically advised that this exemption applies both to candidates running in such small jurisdictions, and to sponsors of political advertising supporting or opposing these candidates.
- As of the November 4, 2014 general election, there were 2,336 registered voters in the City of Sultan. Accordingly, Mr. Walker had no requirement under RCW 42.17A to file PDC reports disclosing contributions or expenditures for his October 2015 mailing.

As previously explained, violations of RCW 42.17A.335(1)(a) must be proven with clear and convincing evidence. The evidence must show that the false statements at issue were made with actual malice, i.e., without sufficient factual basis. While the statements in Mr. Walker's mailing concern issues of some controversy in the City of Sultan, there appears to be sufficient factual basis to conclude that the statements were not prohibited by RCW 42.17A.335(1)(a). Based on staff's initial findings and the results of staff's further review, I have determined there is no reason to believe that Rocky Walker committed a material violation of any law under the Commission's jurisdiction. 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 (360) 586-1042, toll-free at 1-877-601-2828, or by replying to the attached email.

Sincerely,

Endorsed by:



Tony Perkins
PDC Compliance Officer



Evelyn Fielding Lopez
Executive Director

cc: Rocky Walker