



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In Re Compliance with RCW 42.17

Benjamin Messinger

Respondent.

PDC Case No. 12-164

Report of Investigation

I. Background & Allegations

- 1.1 On July 8, 2011, Benjamin Messinger filed a Candidate Registration (C-1 report) with the Public Disclosure Commission (PDC), declaring his candidacy in the 2011 general election for Kennewick School District 17, School Director, Position #3. **See Exhibit #1.** The C-1 report disclosed that Mr. Messinger selected the Mini Reporting option for the financing of his campaign, which limits the candidate to raising and spending no more than \$5,000, and receiving contributions of no more than \$500 in the aggregate from any one contributor, other than the candidate.
- 1.2 Mr. Messinger listed himself as the campaign treasurer, and no other officers.
- 1.3 Mr. Messinger was a first time candidate for public office in 2011. He was opposed by Kathleen White in the November 8, 2011, general election. Mr. Messinger won by receiving 53.6 percent of the vote.
- 1.4 On December 12, 2011, a complaint was filed by Tom Staly, Jr., alleging that three 2011 candidates for School Director in the Kennewick School District (Benjamin Messinger, Ron Mabry, and Brian Brooks) each received contributions exceeding the \$500 contribution limit of the Mini Reporting option each had selected, alleged violations of the state's campaign disclosure and contribution laws and rules. **See Exhibit #2.**

II. Findings

- 2.1 On August 29, 2011, Benjamin Messinger received a \$250 monetary contribution from Ty Haberling. Mr. Messinger is employed as a financial advisor at Haberling Financial Group, a partnership between him and Ty Haberling.

- 2.2 On October 5, 2011, Ty Haberling made an expenditure totaling \$2,817 on behalf of the Benjamin Messinger, Ron Mabry, and Brian Brooks campaigns, for the postage costs associated with three political advertisements that consisted of mailings supporting each of the three candidates.
- 2.3 Each candidate paid for their proportional share of the printing costs. Mr. Haberling coordinated the postage expenditure with each of the three candidates, making the value of each his in-kind contribution to each candidate \$939.
- 2.4 PDC statutes, rules and reporting requirements state that coordinated expenditures, such as the postage paid for by Mr. Haberling, are in-kind contributions to the benefitted candidates. When the postage costs are included in the aggregate contributions from Mr. Haberling, the Messinger campaign received a total of \$1,189 from Mr. Haberling. This amount exceeded the \$500 limit under the Mini Reporting option selected by Mr. Messinger by \$689.
- 2.5 Tom Staly, Jr. inspected the campaign records of Benjamin Messinger, Ron Mabry, and Brian Brooks during the records inspection period October 31 through November 7, 2011. He provided an accounting of those records as an attachment to his complaint.
- 2.6 Prior to the complaint being filed, PDC staff had been in contact with Mr. Staly, and based on those conversations, PDC staff contacted Mr. Messinger concerning the alleged excess contributions received from Mr. Haberling on October 5, 2011.
- 2.7 On November 22, 2011, the Benjamin Messinger campaign re-paid Ty Haberling \$939 for the postage expense.
- 2.8 On April 2, 2012, Mr. Messinger submitted a written response to the complaint. See Exhibit #3. Mr. Messinger stated the following concerning Mr. Haberling assisting his campaign:

“[Mr. Haberling was a]...volunteer, performing many duties such as posting signs and distributing literature. At the time Mr. Staly reviewed my campaign finance records I had recorded in my books an accounts-payable to Mr. Haberling of \$938.98. Mr. Haberling had incurred this postage expense in the course of his duties as a ministerial campaign aide and was subsequently reimbursed in full.”
- 2.9 Mr. Messinger stated that it was Mr. Staly who had labeled the account payable as a loan in the “financial data included in the complaint,” and that he considered Mr. Haberling’s staff expense an accounts payable. He said he treated the accounts payable as a reimbursement for an out-of-pocket expense and not as a loan or a contribution to the campaign.
- 2.10 RCW 42.17.020(15)(b)(iii) states that a contribution does not include, a contribution received by a candidate that is returned to the contributor within five business days of the date on which it is received by the candidate.

- 2.11 The Messinger campaign re-paid \$939 to Mr. Haberling 48 days after Mr. Haberling's initial expenditure and 16 days after the general election had been held.
- 2.12 The Benjamin Messinger campaign did not exceed \$5,000 in total contributions received or expenditures made and did not accept more than \$500 from any other contributors. Mr. Messinger stated that this was his first involvement in a campaign for public office, and he regrets the error. He stated that it was his intention to comply fully with the law.

III. Scope

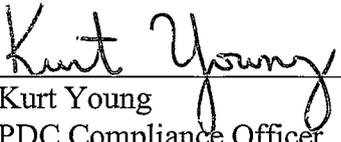
- 3.1 PDC staff reviewed the complaint, supporting e-mails, and advertisements filed by Tom Staly.
- 3.2 PDC staff reviewed Benjamin Messinger's initial response letter.
- 3.3 PDC staff spoke with Mr. Staly.
- 3.4 PDC Staff spoke with Mr. Messinger.
- 3.5 PDC staff reviewed Mr. Messinger's follow-up e-mail response to additional PDC staff questions.

IV. Law

- 4.1 **RCW 42.17.020(15)(a)** states, "Contribution" includes: A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration
- 4.2 **RCW 42.17.040** states that every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission.
- 4.3 **RCW 42.17.080 and 090** require candidates under the full reporting option to file timely, accurate reports of contributions and expenditures.
- 4.4 **WAC 390-16-105** states that a candidate shall not be required to comply with the provisions of RCW 42.17.065 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed \$5,000 and no contribution or contributions from any person other than the candidate within such aggregate exceed \$500.

- 4.5 **WAC 390-16-125** states that a candidate or political committee shall apply in writing to the commission for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. Exceeding the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 without complying with the provisions of this section shall constitute one or more violations of chapter 42.17A RCW or 390-17 WAC.

Respectfully submitted this 17th day of September 2012.


Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** July 9, 2011, Candidate Registration filed by Benjamin Messinger.
- Exhibit #2** Complaint filed by Tom Staly received on December 12, 2011.
- Exhibit #3** April 2, 2012, response letter received from Benjamin Messinger.