



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 08-096
WITH RCW 42.17)	
)	
ANTHONY HEMSTAD)	REPORT OF INVESTIGATION
)	
Respondent.)	
_____)	

I.

BACKGROUND

- 1.1 In 2007, Anthony Hemstad challenged incumbent Carole Anderson in the race for Hospital Commissioner in King County Hospital District 1 (Valley Medical Center or VMC). Prior to the election, Mr. Hemstad was employed as the city manager for the City of Maple Valley.
- 1.2 In the 2007 general election campaign a postcard mailing conducted by POLIS Political Services was timed to coincide with the mailing of absentee ballots in King County. **(Exhibit 1)** The mailing supported Anthony Hemstad and also Sue Bowman, who was challenging incumbent Gary Kohlwes in the race for VMC Hospital Commissioner in the 2007 election. (Ms. Bowman registered under the Mini Reporting option, which limited her to no more than \$3,500 in total contributions and expenditures, and no more than \$300 in contributions from any source other than her own funds.¹)
- 1.3 Anthony Hemstad and Sue Bowman were successful in their campaigns against incumbent VMC commissioners Carole Anderson and Gary Kohlwes. Ms. Bowman defeated Mr. Kohlwes by 8,211 votes, or 19% of votes cast in the race. Mr. Hemstad's race against Ms. Anderson resulted in a difference of 108 votes in Mr. Hemstad's favor, triggering an automatic recount. After the recount, Mr. Hemstad maintained his 108-vote margin, and was certified the winner by less than one-fifth of one percent of votes cast in the race.

¹ These limits have since been adjusted to \$5,000 and \$500, respectively.



II.

ALLEGATIONS IN COMPLAINT

2.1 On October 31, 2007, a complaint against Anthony Hemstad was received from Carole Anderson. **(Exhibit 2)** The complaint alleged that Mr. Hemstad:

- Failed to disclose employer and occupation information for every individual contributor of more than \$100 in the aggregate to his campaign, an alleged violation of RCW 42.17.090 and WAC 390-16-034;
- Used campaign funds to sponsor political advertising to benefit Sue Bowman, an alleged violation of RCW 42.17.095(8) and/or RCW 42.17.125 and WAC 390-16-238; and
- Sponsored political advertising that included statements falsely implying that he was an incumbent Hospital Commissioner in King County Hospital District 1, an alleged violation of RCW 42.17.530(1)(b).

2.2 On January 15, 2008, PDC staff notified Carole Anderson that two requests were filed for formal Attorney General Opinions (AGO) concerning matters that could affect the disposition of her complaint, and that as a result, investigation of the complaint would be temporarily stayed. On June 20, 2008, PDC staff notified Ms. Anderson that staff's investigation would resume, but would be limited to two aspects of her complaint: first, the allegation that Anthony Hemstad failed to disclose employer and occupation information for every individual contributor of more than \$100 in the aggregate to his campaign, and second, the allegation that Mr. Hemstad spent campaign funds for personal use, or to contribute to the campaign of Sue Bowman in a manner prohibited by law. **(Exhibit 3)** Staff's letter notified Ms. Anderson that enforcement for alleged violations of RCW 42.17.530(1)(b), the statute prohibiting false claims of incumbency in political advertising, would be stayed until the legislature had the opportunity to address the constitutional viability of that section of law.

III.

FINDINGS

**Alleged Failure to Disclose Employer /
Occupation Information**

- 3.1 PDC staff reviewed monetary and in-kind contribution reports filed by Anthony Hemstad and found that out of 130 contributors to his campaign, 24 were individuals whose contributions exceeded \$100 in the aggregate. Of these 24, one contributor's employer was disclosed, but not her occupation. No occupation or employer were disclosed for an additional three contributors; however, one of these three contributors was Mr. Hemstad himself.
- 3.2 Mr. Hemstad's disclosure of complete employer and occupation information for 20 out of 24 individual contributors of more than \$100 in the aggregate represents an overall rate of 83% compliance with the disclosure requirement.

**Alleged Personal Use of Campaign Funds, or
Use to Contribute to Another Candidate**

- 3.3 **Payment for Mailing In Support of Anthony Hemstad and Sue Bowman:** On October 23, 2007 Anthony Hemstad paid POLIS Political Services \$15,009.20 for all aspects of a 31,190-piece postcard mailing in support of his campaign and the campaign of Sue Bowman. **(Exhibit 4)** One side of the postcard contained general criticisms of the incumbent VMC administration, and thus benefitted Mr. Hemstad and Ms. Bowman equally; of the side that identified and supported specific candidates, approximately 63% supported Mr. Hemstad, with the remaining 37% supporting Ms. Bowman.¹ **(Exhibit 1)** Ms. Bowman and the "Friends of Anthony Hemstad" committee were identified on the postcard as the postcard's sponsors.
- 3.4 On October 24, 2007, after receiving an informal inquiry about the postcard mailing, PDC staff contacted Mr. Hemstad. **(Exhibit 5)** At that time, Mr. Hemstad stated that the mailing in support of him and Ms. Bowman had so far been paid for from his campaign funds. He stated that Ms. Bowman was currently in Israel on business, and had not yet paid for her share of the mailing. He said that the plan was for her to make a "token payment" at some point, meaning that he would pay for most of the mailing, including a

¹ Taken as a whole, approximately 57% of the postcard supported Mr. Hemstad's campaign, with the remaining 43% supporting Ms. Bowman.

portion of the amount that benefitted Ms. Bowman. He said that he believed this was allowed under PDC rules.

- 3.5 In his formal response to the complaint (**Exhibit 6**), in further correspondence (**Exhibit 7**) and in telephone conversations with PDC staff including an interview under oath, Mr. Hemstad stated that he believed that Ms. Bowman was aware of and had authorized the postcard mailing, that she agreed to make some payment for the portion attributable to her, and that POLIS Political Services would bill her for her share. However, he could point to no specific statement on Ms. Bowman's part that would confirm this understanding. Mr. Hemstad stated that the inclusion of Ms. Bowman on the postcard mailing benefitted his campaign as much as it did hers, and pointed as evidence to her strong 19% margin of victory over Gary Kohlwes. However, he recognized that the mailing benefitted Ms. Bowman to some degree.
- 3.6 On October 17, 2007, Mr. Hemstad was issued a detailed invoice by POLIS Political Services, billing his campaign \$15,009 for design services, printing, labels, mail handling, postage and sales tax for the postcard mailing. (**Exhibit 8**) POLIS subsequently issued an invoice without any detail to Ms. Bowman, billing her a flat \$4,000 for the mailing. (**Exhibit 9**) Ms. Bowman was not charged sales tax; in addition, although the invoice to her was dated October 30, 2007, two weeks after Mr. Hemstad's invoice, Ms. Bowman indicated to PDC staff that it was not received until December 14, 2007, nine weeks after Mr. Hemstad was billed for the mailing, and six weeks after the complaint against Mr. Hemstad was filed.
- 3.7 Ms. Bowman has refused to make any payment for the mailing. She stated that she gave no authorization for the mailing, had no input into its content, was out of the country when it was produced, and saw it only after the fact. When presented with Mr. Hemstad's assertion that she was aware of and had authorized the joint mailing, Ms. Bowman denied Mr. Hemstad's statements to PDC staff. (**Exhibit 10**)
- 3.8 **Rate Charged for Postcard Mailing:** The \$15,009 paid by Mr. Hemstad for the postcard mailing represents a cost of approximately 46 cents per piece. If the \$4,000 billed to Ms. Bowman is added to the amount paid by Mr. Hemstad, the total cost for the postcard becomes \$19,009, and the price per piece increases to approximately 59 cents.
- 3.9 To determine whether Mr. Hemstad's \$15,009 payment covered the full cost of the postcard mailing or only a portion of its cost, PDC staff consulted other vendors who provide services related to political mailings on either a wholesale or retail basis. After reviewing a redacted copy of the invoice that POLIS provided to Mr. Hemstad, these vendors indicated that 46 cents per piece was probably close to the consultant's cost for the mailing, or at most

included a small markup. **(Exhibit 11)** When asked if 59 cents per piece would be a more standard charge for a mailing of this nature, one consultant, Jason Bennett of Argo Strategies, agreed that it would. However, Mr. Bennett cautioned that a particular consultant might have a market rate that would be lower, depending on a multitude of variables, including relationships between the consultant and his subvendors.

- 3.10 Stan Shore, the principal consultant for POLIS Political Services, stated that the \$19,009 total billed to Mr. Hemstad and Ms. Bowman reflected the full cost of the postcard mailing in support of their campaigns. However, he also stated that his normal rate for a mailing is 40 - 50 cents per piece, depending on volume. **(Exhibit 12)** If true, this would place the charge of \$19,009 approximately 20% above the high end of Mr. Shore's standard markup. This indicates that the actual market value of the postcard may have fallen somewhere between the \$19,009 billed by POLIS and the \$15,009 paid by Mr. Hemstad.
- 3.11 Mr. Shore stated that he had no agreement for compensation with Ms. Bowman, just as he had no formal agreement with Mr. Hemstad. He stated that he knew Anthony Hemstad, and trusted that he would pay reasonable invoices for mailings and consulting. He stated that he did not have any advance understanding with Ms. Bowman regarding payment for the postcard mailing, and that in fact he had never discussed the mailing with her at all. He stated that he had previously designed a flyer that supported both Mr. Hemstad and Ms. Bowman (one that the two candidates reproduced at their own expense), and that Mr. Hemstad asked him to use the same basic design and copy for the postcard mailing. Mr. Shore stated that because Ms. Bowman had been pleased with that earlier flyer, he did not hesitate to move forward with printing the postcard.
- 3.12 Mr. Shore stated that the \$4,000 billed to Ms. Bowman corresponded "imprecisely" to her space on the postcard mailing. He stated that he split the cost of the mailing "*according to the Marxist maxim: 'From each according to their ability' – in this case, [Mr. Hemstad and Ms. Bowman's] ability to pay.*" However, Mr. Shore characterized his invoice to Ms. Bowman not as perfunctory or symbolic, but as an actual bill for services; he stated that Ms. Bowman was supported by the postcard mailing and had an obligation to pay a portion of its cost. He stated that his failure to charge sales tax to Ms. Bowman and the delay in sending her an invoice both resulted from bookkeeping errors. He stated that beyond presenting Ms. Bowman with an invoice for \$4,000, he made no attempt to collect payment from her, once he understood that she was bound by the limits of Mini Reporting. Mr. Shore stated, "*I learned to spend a little more time with new candidates assuring their PDC filings are correct.*" He stated that no one has paid him for his services to Ms. Bowman, and that he remains unpaid.

Summary of Findings

- 3.13 If Anthony Hemstad's payment of \$15,009.20 for the postcard mailing covered the mailing's full cost, approximately \$6,454 (43%) of this expenditure supported Sue Bowman, and was thus not directly related to Mr. Hemstad's campaign. Alternatively, if the full market cost of the mailing was \$19,009, as Stan Shore represented, then Mr. Hemstad's share of the expense equaled approximately \$10,835, and Ms. Bowman's share equaled \$8,174. In this case, by paying \$15,009 for the mailing, Mr. Hemstad made a \$4,174 expenditure from campaign funds that supported Sue Bowman, and was thus not directly related to his campaign.
- 3.14 Mr. Hemstad stated in an interview under oath that Ms. Bowman had authorized the mailing, and that he believed that the consultant who produced the mailing expected payment from Ms. Bowman, and planned from the beginning to bill her. He stated that he had no part in the belated billing of Ms. Bowman. However, at the time the postcard mailing was conducted, Mr. Hemstad stated to PDC staff that he expected to pay a disproportionate share of the mailing's cost, and that he believed this accorded with PDC rules.
- 3.15 Despite statements by Mr. Hemstad and Mr. Shore, PDC staff found no evidence that Ms. Bowman asked Mr. Hemstad to make any payment for a joint mailing, or that she authorized any mailing as a contribution to her campaign.
- 3.16 Staff found that Anthony Hemstad was in substantial compliance with the requirement to disclose occupation and employer information for individual contributors of over \$100 in the aggregate.

IV.

SCOPE

4.1 PDC staff reviewed the following:

- A. Complaint against Anthony Hemstad, received from Carole Anderson on October 31, 2007;

- B. A postcard political advertisement supporting Anthony Hemstad and Sue Bowman;
- C. Contribution and expenditure reports filed by the 2007 Anthony Hemstad campaign;
- D. Formal response to complaint, received from Anthony Hemstad on December 5, 2007;
- E. Response to PDC staff's additional questions, received from Anthony Hemstad on August 20, 2008;
- F. Correspondence received from Sue Bowman on July 29, 2008 and January 11, 2009;
- G. A copy of an invoice from POLIS Political Services, received from Anthony Hemstad on August 28, 2008;
- H. A copy of an invoice from POLIS Political Services, received from Sue Bowman on July 30, 2008;
- I. Correspondence received from Stan Shore of POLIS on December 31, 2008 and January 2, 2009;
- J. Correspondence received from Jason Bennett of Argo Strategies on January 6, 2009; and
- K. A written printing estimate received from Rodney Anderson of Capitol City Press on January 14, 2009.

4.2 Staff spoke to the following individuals:

- A. Sue Bowman on July 29, 2008;
- B. Anthony Hemstad on September 3, 2008;
- C. Carole Anderson on November 15, 2007, February 11, 2008, and May 21, 2008;
- D. D.D. Ponder of Mercury Direct on January 6, 2009; and
- E. Senator Pam Roach on January 28, 2009.

V.

LAW

RCW 42.17.080 and 090 require candidates reporting under the Full Reporting option to file timely, accurate reports of contributions and expenditures.

WAC 390-16-034 requires candidates reporting under the Full Reporting option to disclose the occupation and employer of every individual contributor of more than \$100 in the aggregate, and the employer's city and state.

RCW 42.17.095 prohibits the transfer of campaign funds from a candidate to another candidate, or to a political committee, except for surplus funds transferred to a political party or to a caucus political committee.

WAC 390-16-234 allows one candidate to reimburse another from campaign funds, but only for the expending candidate's proportionate share of documented and properly reported joint campaign expenses.

RCW 42.17.125 prohibits the transfer of campaign funds to a candidate, a treasurer, or another individual, or the expense of campaign funds for an individual's personal use, with three exceptions: 1) reimbursement of earnings lost due to campaigning, 2) reimbursement of out-of-pocket campaign-related expenses, or 3) repayment of loans made to the candidate's campaign.

WAC 390-16-238 states that any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17.125.

Respectfully submitted this 4th day of March, 2009.

Tony Perkins

Tony Perkins
Political Finance Specialist

EXHIBIT LIST

- Exhibit 1** Postcard mailing in support of Anthony Hemstad and Sue Bowman.
- Exhibit 2** A complaint against Anthony Hemstad, received from Carole Anderson on October 31, 2007.
- Exhibit 3** PDC correspondence to Carole Anderson, sent on June 20, 2008.
- Exhibit 4** Amended C-4 Report (Campaign Summary, Receipts and Expenditures) filed by the Anthony Hemstad campaign on December 10, 2007.
- Exhibit 5** PDC staff's record of a telephone conversation with Anthony Hemstad on October 24, 2007.
- Exhibit 6** Formal response to complaint, received from Anthony Hemstad on December 5, 2007.
- Exhibit 7** Response to PDC staff's additional questions, received from Anthony Hemstad on August 20, 2008.
- Exhibit 8** A copy of an invoice from POLIS Political Services, received from Anthony Hemstad on August 28, 2008.
- Exhibit 9** A copy of an invoice from POLIS Political Services, received from Sue Bowman on July 30, 2008.
- Exhibit 10** Correspondence received from Sue Bowman on July 29, 2008.
- Exhibit 11** Record of PDC staff's telephone conversation with D.D. Ponder of Mercury Direct on January 6, 2009, correspondence received from Jason Bennett of Argo Strategies on January 6, 2009, and a written printing estimate received from Rodney Anderson of Capitol City Press on January 14, 2009.
- Exhibit 12** Correspondence received from Stan Shore of POLIS on December 31, 2008 and January 2, 2009.