STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm 206, PO Box 40908 * Olympia, Washington 98504-0908 * (360) 753-1111 * Fax (360) 753-1112
Toll Free 1-877-601-2828 * E-mail: pdc@pdc.wa.gov * Website: www.pdc.wa.gov

June 9, 2009

CAROLE ANDERSON
13814 SE 251ST
KENT WA 98042

Subject: Complaint Filed Against Anthony Hemstad, Alleging a Violation of RCW 42.17.530(1)(b) (False Claim of Incumbency)

Dear Ms. Anderson:

On October 31, 2007, we received a complaint from you alleging that Anthony Hemstad made a false claim of incumbency in his 2007 campaign for Hospital Commissioner in King County Public Hospital District No. 1, an alleged violation of RCW 42.17.530(1)(b).

Background

On October 4, 2007, the Washington State Supreme Court decided in *Rickert v. PDC et al.* that RCW 42.17.530(1)(a), concerning false statements of material fact made with actual malice about a candidate, was unconstitutional, and that subsection could no longer be enforced. PDC complaints pending at that time under that subsection were dismissed. Legislation to address the court's concerns and amend subsection (1)(a) was proposed but did not pass during the 2008 session.

Commission Action in 2008

At its May 2008 meeting the Commission determined that in light of the *Rickert v. PDC et al.* State Supreme Court decision about regulation of false political speech, and in the absence of a defamation requirement in the statute, there was significant uncertainty as to the viability of the statute's subsection at (1)(b), concerning false claims of incumbency. Therefore, the Commission stayed enforcement of this subsection until it could assess any legislative response in the 2009 legislative session.

2009 Legislation – Substitute House Bill 1286

The 2009 legislature passed Substitute House Bill 1286, amending RCW 42.17.530, Chapter 222, Laws of 2009. The Governor signed the bill on April 25, 2009 and it will become effective July 26, 2009. The amended law states that it is a violation of state

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law when a person sponsors false statements about candidates in political advertising and electioneering communications when the statements are made with actual malice and are defamatory. The legislature also found that in such circumstances damages are presumed and do not need to be established when such statements are made with actual malice in political advertising and electioneering communications and constitute libel or defamation per se.

The law now states that it is a violation for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

a. Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

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; and

c. Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

The amended law defines "libel or defamation per se" to mean statements that tend:

a. to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business occupation, or

b. to injure any person, corporation, or association in his, her, or its business or occupation.

The amended law also exempts political advertising and electioneering communications that contain false statements of material fact about a candidate for public office, or that falsely represent that a candidate is the incumbent, when the statements are made by the candidate or his or her agent only about the candidate himself or herself because a person cannot defame himself or herself.[1]

Likewise, the law exempts statements falsely claiming or implying the support or endorsement of any person or organization when the statements are made by a person or organization about that person or organization because such persons and organizations cannot defame themselves.

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[1] However, statements of false incumbency when there is an actual incumbent is not a lie only about the candidate; it is also a lie about the incumbent.

Commission Action in 2009, Including Dismissal of Complaint

At its May 28, 2009 meeting, the Commission discussed action taken by the legislature during the 2009 legislative session relating to false and defamatory statements about political candidates for public office. The amended law does not contain a retroactive provision. Therefore, the Commission decided that pending complaints, including those that may be filed between May 28, 2009 and July 26, 2009, alleging violations of RCW 42.17.530, be dismissed.

In accordance with direction given by the Commission at its May 28, 2009 meeting and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Anthony Hemstad, alleging that he made a false claim of incumbency in his 2007 campaign for Hospital Commissioner in King County Public Hospital District No. 1. Mr. Hemstad is being notified of this dismissal by separate letter.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of the Public Disclosure Law.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853, toll-free at 1-877-601-2828, or by email at pstutzman@pdc.wa.gov.

Sincerely,

Vicki Rippie

Vicki Rippie
Executive Director