



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 42.17A) Report of Investigation
)
Kitsap County Deputy Prosecuting) PDC CASE NO: 15-042
Attorney Guild)
)
Respondent)
_____)

I.
Background

- 1.1 On April 21, 2014, Russell Hauge filed a Candidate Registration (C-1 report) registering his campaign for re-election to the office of Kitsap County Prosecuting Attorney in 2014, selecting the Full Reporting option.
- 1.2 Mr. Hauge was elected as the Kitsap County Prosecuting Attorney in 1994. He was re-elected in 1998, 2002, 2006, and 2010.
- 1.3 Mr. Hauge was defeated by Tina Robinson in the November 5, 2014 general election by a margin of 50.4 percent to 49.6 percent.
- 1.4 The Kitsap County Deputy Prosecuting Attorney Guild (the Guild) represents non-management criminal deputy prosecuting attorneys in Kitsap County.
- 1.5 On July 29, 2014, Elizabeth Coplan, Kenneth Robinson, and Kathryn Simpson jointly filed a complaint alleging that the Guild may have violated RCW 42.17A.405(2) by making over-limit in-kind contributions to the Russell Hauge re-election campaign when the Guild sponsored political advertising featuring content identical to the Hauge campaign's website and advertising. The complaint further alleged that the Hauge campaign may have violated RCW 42.17A.405(14) by accepting over-limit in-kind contributions from the Guild. **Exhibit #1.**
- 1.6 On December 5, 2014, PDC staff informed the complainants and the Hauge campaign that its initial review found no evidence that the Guild's advertising expenditures were made in cooperation, consultation, or concert with, or at the request or suggestion of the Hauge campaign, and that therefore staff would not be conducting a formal investigation into whether the Hauge campaign violated RCW 42.17A.405(14) by accepting over-limit in-kind contributions from the Guild.

II.

Allegations & Summary of Investigative Findings

- 2.1 The portion of the complaint investigated by PDC staff alleged that the Guild may have violated RCW 42.17A.405(2) because its political advertising contained content copied from the Hauge campaign website, and because the Guild had previously made a \$950 monetary contribution to the Hauge campaign, the maximum allowed for the primary election.
- 2.2 On June 21, 2014, the Guild approved expenditures for independent expenditure political advertising (IEs) that supported Mr. Hauge's re-election campaign. On July 25, 2014, the Guild timely filed a report of Independent Expenditures (C-6 report) disclosing that on July 24, 2014, it spent \$6,300 to purchase a series of newspaper and on-line advertisements from the Kitsap Sun in support of Mr. Hauge. No evidence was found that the Guild consulted with the Hauge campaign or sought permission to copy content from its publically available campaign website. The C-6 report disclosed that the IE was first presented to the public on July 24, 2014.
- 2.3 The Guild acknowledged that its IE advertisement included content copied from the Hauge campaign website, including: (1) The heading "Re-Elect Russ Hauge...Kitsap County Prosecutor - Democrat" using the same font, colors, and graphic design; (2) A photograph of Mr. Hauge; and (3) A quote from Congressman Derek Kilmer in support of Mr. Hauge.
- 2.4 The Guild also acknowledged that its IE advertising included some of the same law enforcement endorsements used by the Hauge campaign on its website, but stated that the law enforcement officials making the endorsements worked closely with the Prosecutor's Office and were publicly known. The Guild estimated that 20 to 25 percent of its advertising content was copied from the Hauge campaign website.
- 2.5 On May 6, 2015, the Guild provided copies of invoices showing that the total amount paid to the Kitsap Sun for on-line and print advertising that supported the Hauge campaign was \$6,382. The Guild stated that the Kitsap Sun agreed to make a \$630 refund to the Guild, based the cost difference between the amount paid for an ad in the Bainbridge Independent and the value of the ad that ultimately ran. The refund resulted in a revised total cost of \$5,753 to the Guild for on-line and print advertising. Based on the Guild's estimate that 20 to 25 percent of its advertising content was copied from the Hauge campaign website, the estimated value of the copied material is between \$1,151 and \$1,438. This estimated value represents an over-limit in-kind contribution to the Hauge campaign for the primary election, because the Guild previously made a \$950 monetary contribution, the primary election limit.

III.

Findings

- 3.1 For the 2014 election cycle, four candidates filed a Declaration of Candidacy seeking the office of Kitsap County Prosecuting Attorney. Mr. Hauge, the incumbent Prosecuting Attorney, had three challengers, as follows:

- On June 2, 2014, Bruce Danielson filed a C-1 report, selecting the Mini Reporting option and disclosing that he was a candidate for Kitsap County Prosecuting Attorney in 2014. Mr. Danielson had previously been a candidate for State Supreme Court in 2102, Kitsap County Prosecutor in 2010, and Kitsap County Superior Court Judge in 2004 and 2008.
 - On May 21, 2014, Tina Robinson filed a C-1 report, selecting the Full Reporting option and disclosing that she was a candidate for Kitsap County Prosecuting Attorney in 2014. She was a first-time candidate.
 - On May 21, 2014, Robert Scales filed a C-1 report, selecting the Full Reporting option and disclosing that he was a candidate for Kitsap County Prosecuting Attorney in 2014. Mr. Scales was a Bainbridge Island City Councilmember from 2004 through 2013.
- 3.2 The results of the August 5, 2014 primary election were as follows: (1) Russell Hauge (37.5%); (2) Tina Robinson (32.4%); (3) Robert Scales (15.7%); and (4) Bruce Danielson (14.3%).
- 3.3 On June 18, 2014, the Hauge Campaign filed a Monetary Contributions report (C-3 report) disclosing the receipt of a \$950 contribution from the Guild, the maximum allowable contribution for the 2014 primary election.
- 3.4 On July 25, 2014 the Guild timely filed a C-6 report disclosing that on July 24, 2014, the Guild made a \$6,300 IE to purchase a series of newspaper advertisements in the Kitsap Sun in support of Mr. Hauge's campaign for re-election. **Exhibit #2.** The C-6 report disclosed that an IE advertisement was first presented to the public on July 24, 2014.
- 3.5 Staff reviewed the Guild's IE newspaper and on-line advertisements that supported Mr. Hauge, and compared it material found on the Hauge campaign website. Staff estimated that approximately 20 percent of the content in the Guild's advertisements was identical to content found on the Hauge campaign website, including the following:
- 1) The heading "Re-Elect Russ Hauge...Kitsap County Prosecutor - Democrat" appeared in both advertisements using the same font, colors, and graphic design;
 - 2) The same photograph of Russ Hauge was used in both advertisements;
 - 3) The same quote from Congressman Derek Kilmer appeared in both advertisements: "*Russ had been keeping our community safe for over nineteen years. He is passionate, hard-working, and one of the most down to earth people I know. I'm proud to support his re-election.*" (The Hauge campaign website included a photograph of Congressman Kilmer along with the quote, and the quote appeared in a different font, color and design.)
- 3.6 The remaining 80 percent of the Guild's IE newspaper advertisement included the Guild's sponsor identification information; four state and local government officials' endorsements of Mr. Hauge; and additional statements in support of Mr. Hauge.

Kitsap County Deputy Prosecuting Attorney Guild Responses:

- 3.7 On August 8, 2014, Chad Enright, then-President of the Guild, submitted a letter responding to the complaint. Mr. Enright stated that the Guild voted to spend funds in support of Mr. Hauge's candidacy on July 21, 2014. **Exhibit #3.**
- 3.8 Mr. Enright stated the job of preparing the IE advertisements was undertaken by Guild Vice President Farshad Talebi, who designed the text of the advertisements and contacted the Kitsap Sun and other local papers about advertising rates. He stated that the graphic design of the advertisement was prepared by the Kitsap Sun advertising department, and that he (Mr. Enright) approved the advertising, authorized payment, and prepared the PDC form C-6 declaration.
- 3.9 Mr. Enright stated that Mr. Hauge's campaign was not advised, consulted, or even notified that the Guild had purchased an advertisement, and there was no cooperation and coordination between the Guild and Mr. Hauge concerning the advertisement. While there were a number of Guild members who volunteered for the Hauge campaign, he denied that work indicated Mr. Hauge or his campaign collaborated with the Guild on the Guild's IE advertisement.
- 3.10 Mr. Enright stated that the Guild used the graphic content of the phrase "Re-Elect Russ Hauge" taken from Mr. Hauge's campaign website. The Guild asked the Kitsap Sun to take Mr. Hauge's photograph from Mr. Hauge's public campaign website, since the Guild was prohibited from collaborating with the Hauge campaign, and because the Guild believed it was prohibited from directly asking the campaign for a picture of Mr. Hauge.
- 3.11 Mr. Enright stated the Guild's advertising included a link to the Hauge campaign's website in order to redirect readers to the website in case they wanted to know more about Mr. Hauge. He acknowledged the Guild used some of the same law enforcement endorsements that Mr. Hauge listed on his campaign website, but noted that the individuals listed in the Guild's advertisements all worked closely with the Prosecutor's Office and were publicly known. He denied that listing these endorsements in the Guild's IE advertising created a contribution to Mr. Hauge.
- 3.12 Mr. Enright stated that after being informed of the complaint, the Guild immediately reviewed the relevant law and rules cited by PDC staff concerning the definition of a contribution found in RCW 42.17A.005(13)(a)(iii) and WAC 390-05-210(2). He said the Guild asked the Kitsap Sun to adjust the "Re-Elect Russ Hauge" graphic so it would not match the graphic from the Hauge campaign website in an advertisement that was scheduled to run on August 3, 2014.
- 3.13 Mr. Enright stated the Guild would not continue to use the graphic "Re-Elect Russ Hauge" as used on the Hauge campaign website or any other campaign material. He went on to state:
- *"Our advertisement used a quote from Congressman Derek Kilmer that was also used by Mr. Hauge's website. The Kilmer quote is not the property of the Hauge campaign and we are unaware of any prohibition against using the same public*

quote from a public official. It is a known public statement by a known public person.”

- Mr. Enright stated that the Guild should have produced the statement “Re-Elect Russ Hauge” in the IE advertisement using a different graphic design than the one used by the Hauge campaign.
- He stated that doing so “*would have prevented implications that Mr. Hauge was involved or collaborated in the design. Therefore, we concede that this may have been a violation. But the sponsorship of the advertisement was prominently displayed....*”
- He stated that the Guild did “*...not believe this is a material violation due to lack of injury.*”
- Finally, he stated that the Guild does “*...not intend to appeal any reasonable findings or penalties if the commission deems them necessary.*”

3.14 On January 5, 2015, Philip Bacus submitted a letter on behalf of the Guild, in response to PDC staff’s request for additional information concerning the IE undertaken by the Guild in support of Mr. Hauge. **Exhibit #4.** Mr. Bacus responded to PDC staff’s request that the Guild “quantify the percentage” of its IE advertisements that had been copied from the Hauge campaign website.

3.15 Mr. Bacus stated that based on his discussions with PDC staff concerning the space allocation for the advertisement “*...the Guild roughly estimates that approximately 20 to 25% of the advertisement space was comprised of materials taken from the Official Hauge website...*” He went on to state:

- Mr. Bacus stated that the remaining 75 to 80 percent of the Guild’s advertisement was original information about Russ Hauge that was published by the Guild and relevant to its membership.
- He stated that the vast majority of the information in the Guild’s IE advertisements constituted “*...the most substantive and persuasive portions of the advertisements...*”
- He stated that the “Guild substantially complied” with the PDC laws and rules, but understands “*...that the interpretation of these regulations by the Commission allows for no materials to be taken from....*” a candidate’s website if an IE is undertaken for that candidate without triggering an in-kind contribution.
- Concerning the “Re-Elect” banner and the picture of Mr. Hauge, both taken from the Hauge website, Mr. Bacus stated that “*...None of this information is novel and especially in the case of the print advertisement, comprised only a small portion of the advertisement.*”

- Mr. Bacus stated that the alleged violations by the Guild went to the design and layout as opposed to the content of the advertisement, and the banner in the Guild IE advertisement could have used all of the same words, if they had been displayed in a different font, typeface, and color.
- Finally, he stated that the Russ Hauge picture that was used in the advertisement by the Guild was the same picture of Mr. Hauge that “appeared in multiple additional sources” including in an article in the Kitsap Sun concerning the Deputy Sheriff’s Guild’s opposition to Mr. Hauge.

Guild On-Line Advertisements in the Kitsap Sun:

3.16 Mr. Bacus stated that the Guild’s on-line IE advertisement in the Kitsap Sun cost a total of \$1,500. The advertisement included the phrase “Re-Elect Russ Hauge” and was the same design as Mr. Hauge’s website. He stated that the advertisement included a picture of Mr. Hauge that had also been taken from his campaign website.

Guild Newspaper Advertisements in the Kitsap Sun:

3.17 Mr. Bacus initially stated that the Guild’s print IE advertisement that appeared in the Kitsap Sun on July 26 and 27, 2014, cost \$3,662.50. On May 6, 2015, Mr. Bacus provided copies of invoices, and confirmed that the revised total cost for all advertising, after a \$630 refund, was \$5,752.50. He stated that the newspaper advertisement included the same “Re-elect” banner, picture of Mr. Hauge, and endorsement quote from Congressman Kilmer that appeared on the Hauge campaign website.

3.18 Mr. Bacus offered the following mitigating factors on behalf of the Guild concerning this matter:

- 1) The advertisements clearly indicated that the advertisements were paid for by the Guild.
- 2) Based on the PDC Independent Expenditure and Electioneering Communications brochures and other materials on the PDC website, “...the Guild’s advertisements seemed to satisfy the requirements of an independent expenditure.”
- 3) The Guild had not previously undertaken an independent expenditure, was not familiar with the requirements, and only became aware of the complaint on August 4, 2014, after the IE advertisements had already been published in the Kitsap Sun.
- 4) “...While the Guild did find the Derek Kilmer quote on Mr. Hauge’s website, the statement was made by Mr. Kilmer to the Hauge Campaign...” and as such, the congressman “...should be seen as the owner or source for the quote...”
- 5) The picture of Mr. Hauge taken from the campaign website appeared in other publications.

Russell Hauge email response:

- 3.19 On August 5, 2014, Russell Hauge transmitted an email to PDC staff in response to staff's notification of the complaint concerning the Guild's IE advertisement. In his email, Mr. Hauge stated the following:
- He stated that "[t]here was no coordination" between his campaign and the Kitsap County Deputy Prosecuting Attorney Guild.
 - He stated, "*Both the Guild and I understand the fundamental concept that working together would violate the rules.*"
 - He stated, "*All materials, pictures, banners, color theme, and website URL in question are publicly available on my website.*"
 - Finally, Mr. Hauge stated that he "had no knowledge..." that the Guild would copy his picture and other portions of his campaign website advertising material, and use those in the Guild's IE advertisements. However, he stated that he had no objection to the Guild's use of content from his website.

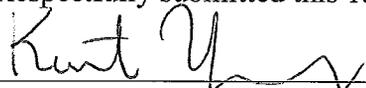
IV.
Scope

- 4.1 PDC staff reviewed the following documents:
- The July 29, 2014, complaint filed by Elizabeth Coplan, Kenneth Robinson, and Kathryn Simpson against the Kitsap County Deputy Prosecuting Attorney Guild;
 - A C-6 report filed by the Kitsap County Deputy Prosecuting Attorney Guild;
 - Information on the Russell Hauge Campaign website;
 - An August 5, 2014, email from Mr. Hauge to PDC staff, sent in response to staff's notification of the complaint concerning the Guild's IE advertisement;
 - An August 8, 2014, response letter from Chad Enright, then-President of the Guild to the allegations listed in the complaint;
 - A January 5, 2015, letter from Philip Bacus on behalf of the Guild, in response to PDC staff's request for additional information; and
 - A May 6, 2015 email from Mr. Bacus with invoices showing the Guild's IE advertising costs.

V.
Laws and Rules

- 5.1 **RCW 42.17A.005(13)(a)** defines "Contribution" to include "(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents; [and] (iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent[.]"
- 5.2 **WAC 390-05-210(2) *Duplicating political advertising***, states, "The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee."
- 5.3 **RCW 42.17A.405(2)** limits the amount of contributions that a person, other than a bona fide political party or a caucus political committee, may make to a candidate for county office, to \$950 per election. **WAC 390-05-400** revises the dollar amounts for the contribution limits to reflect changes in economic conditions.

Respectfully submitted this 15th day of May, 2015.



Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** July 29, 2014, PDC complaint filed by Elizabeth Coplan, Kenneth Robinson, and Kathryn Simpson against the Kitsap County Deputy Prosecuting Attorney Guild (the Guild).
- Exhibit #2** July 25, 2014 C-6 report filed by the Guild.
- Exhibit #3** August 8, 2014 letter from Chad Enright, President of the Guild responding to the allegations listed in the complaint.
- Exhibit #4** January 5, 2015 letter from Philip Bacus on behalf of the Guild, responding to PDC staff's request for additional information concerning the complaint.