

See the closure on this case closure letter at the bottom.

This is the outcome I expected. So Director Berg - "STOP IT" don't talk about "any campaign related matters during any school board meetings".

For the record; I would not hesitate to file a second complaint and at that point and you would then receive more than a mere warning from PDC.



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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August 18, 2021

Delivered electronically to "csskschools@gmail.com"

Subject: Complaint regarding John Berg, PDC Case 95960

Dear David Kimble:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on July 3, 2021. Your complaint alleged John Berg may have violated: (1) RCW 42.17A.320 by failing to disclose sponsor identification on a website hosted by Mr. Berg containing information about South Kitsap School District, its board members, and candidates for board positions in the 2021 elections; and (2) RCW 42.17A.555 by misusing school district facilities during a school board meeting to promote Mr. Berg's private political agenda. You also alleged Mr. Berg was acting as an unregistered lobbyist by lobbying others concerning school district matters. The Public Disclosure Commission (PDC) has jurisdiction over lobbying that is defined in RCW 42.17A.005(34) as attempting to influence the passage or defeat of state legislation or the adoption or rejection of rules of a state agency but has no authority to regulate other types of lobbying such as attempting to influence school district policy.

PDC staff reviewed your allegations; the applicable statutes, rules, and reporting requirements; and the response from John Berg to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

Allegation 1

- The first website identified in your complaint includes a statement at the top of the webpage that the website represents John R. Berg's personal views and opinions, and that John R. Berg is solely responsible for the content of the website. At the bottom of that page the website states it is paid for by John Berg Campaign Committee.
- The second website identified in your complaint states on the first page it is a private website maintained by John R. Berg for stakeholders of South Kitsap School District. The front page of the website also states the website will be used for communication from John R. Berg to the public outside of official school district channels, that the website represents the personal views of John R. Berg, and that John R. Berg is solely responsible for the content of the website. The website

also states it is paid for by John Berg Campaign Committee. John Berg stated because the website was paid for by John Berg Campaign Committee, he believed he was required to file a candidate registration for a possible candidacy for school director in 2023. Mr. Berg said he then obtained a second domain name called SKschools.info for his informational website.

Allegation 2

- Mr. Berg stated it was his understanding he could speak about campaign matters during the May 19, 2021 school board meeting because RCW 42.17A.555 specifically exempts action taken at an open public meeting and actions which are part of the normal and regular conduct of the office or agency. Mr. Berg said the comments in question were made during an open public meeting and concerned a regularly scheduled agenda item called Board Linkages, which is a time when individual Board members report on their activities and relationships with the community and other stakeholders.
- Director Rebecca Diehl was the first to report under Board Linkages. Director Diehl said she has been answering questions and inquiries about filing for school board elections and was very pleased there are people interested in serving on the board. Director Berg followed Director Diehl and reported he too has been following the filings for school board positions. Director Berg then said, as far as communication with the public, he has taken his old website that he previously used in his campaign and he is converting it to an informational website that will be available to the public where they can get information from him that is not necessarily appropriate on the District website. Director Berg said the site would contain his own views, but not speaking for the Board. Director Berg also said his new website would include information from the recent Executive Session of the Board, now that final action has been taken on the matter discussed during the Executive Session.
- Director Berg said while his statements did direct citizens to a website paid for by John Berg Campaign Committee, the website itself is informational in nature and does not overtly promote any re-election campaign, nor does it solicit campaign funds.

The exception cited by Director Berg in RCW 42.17A.555 for action taken during an open public meeting by members of an elected legislative body does not apply to comments made during most agenda item discussions, but applies to the body expressing a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition, provided proper notice is given and there is an approximately equal opportunity given for the expression of an opposing view.

The comments made by Director Berg during the agenda item Board Linkages did not support or oppose individual candidates. It appears the comments made by Director Berg were made to draw attention to Director Berg's newly formed website which he described as an informational website intended to provide information about candidates, including candidates running for two South Kitsap School Board positions in 2021.

Based on these findings, staff has determined that in this instance, Director Berg providing information during a school board meeting about a website created to provide information to the public about candidates for school board positions, does not appear to be a violation of RCW 42.17A.555 warranting further investigation.

However, PDC staff is reminding John Berg about the importance of refraining from discussing campaign related matters during school board meetings.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Phil Stutzman at 360-664-8853, toll-free at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Electronically Signed Philip E. Stutzman

Phil Stutzman
Compliance Officer

Endorsed by,

Electronically Signed Kim Bradford

Kim Bradford
Deputy Director
For Peter Lavalley
Executive Director

cc: John Berg